

EFET

European Federation of Energy Traders

Amstelveenseweg 998 / 1081 JS Amsterdam
Tel: +31 20 5207970

E-mail: secretariat@efet.org

Webpage: www.efet.org

GAS CAPACITY APPENDIX (FLUXYS/GRTGAZ)



to the
EFET General Agreement
Concerning the Delivery and Acceptance of Natural Gas
Versions 2.0/January 6, 2003 and 2.0(a) May 11, 2007
(the “Gas Capacity Appendix”)

NOTICES & WAIVER: THIS GAS CAPACITY APPENDIX WAS PREPARED BY EFET’S MEMBERS EXERCISING ALL REASONABLE CARE. HOWEVER EFET, THE EFET MEMBERS, REPRESENTATIVES AND COUNSEL INVOLVED IN ITS PREPARATION AND APPROVAL SHALL NOT BE LIABLE OR OTHERWISE RESPONSIBLE FOR ITS USE AND ANY DAMAGES OR LOSSES RESULTING OUT OF ITS USE IN ANY PARTICULAR CASE AND IN WHATEVER JURISDICTION. IT IS THEREFORE THE RESPONSIBILITY OF EACH PARTY WISHING TO USE THIS GAS CAPACITY APPENDIX AND THE EFET AGREEMENT TO ENSURE ITS TERMS AND CONDITIONS ARE LEGALLY BINDING, VALID AND ENFORCEABLE AND BEST SERVE TO PROTECT THE USER’S LEGAL INTERESTS. USERS OF THIS GAS CAPACITY APPENDIX ARE URGED TO CONSULT RELEVANT LEGAL OPINIONS MADE AVAILABLE THROUGH EFET AS WELL AS THEIR OWN COUNSEL.

NOTICE—GEOGRAPHIC USE LIMITATION: THIS VERSION 1 OF THE GAS CAPACITY APPENDIX WAS DEVELOPED SPECIFICALLY IN ACCORDANCE WITH THE RULES OF FLUXYS NV/SA, THE TSO OF BELGIUM, AND THE RULES OF GRTGAZ, ONE OF THE TSO’S OF FRANCE, AND THE RULES OF CAPSQUARE, THE CAPACITY PLATFORM OPERATOR, IN EACH CASE PREVAILING IN DECEMBER 2008. USERS ARE STRONGLY ENCOURAGED TO CONSULT THEIR OWN COUNSEL BEFORE ATTEMPTING TO USE THIS DOCUMENT IN OTHER JURISDICTIONS OR WITH OTHER TSOS.

EFET

European Federation of Energy Traders

Gas Capacity Appendix
to the
General Agreement
Concerning the Delivery and Acceptance of Natural Gas
(Versions 2.0/January 6, 2003 and 2.0(a)/May 11, 2007)

GAS CAPACITY APPENDIX **(FLUXYS/GRTGAZ)**



This Gas Capacity Appendix shall constitute an Appendix to, and form part of, any EFET General Agreement between the Parties to which it is appended at the time of its execution. In this case, the Effective Date of such EFET General Agreement shall also be the “**Gas Capacity Appendix Effective Date.**”

OR

Check the box and fill in date ONLY if you are using this Gas Capacity Appendix to modify and supplement a previously executed General Agreement between the Parties:

By executing this Gas Capacity Appendix in the signature block at the end hereof, effective _____ (the “**Gas Capacity Appendix Effective Date**”),

(“**Party A**”)

and

(“**Party B**”)

(collectively, “**the Parties**”) hereby modify, supplement and amend the terms of that certain previously executed General Agreement entered into and dated as of _____, _____ to provide that the terms of this Gas Capacity Appendix shall be incorporated therein and shall be applicable to and thereafter govern all Gas Capacity Transactions (as defined below).

GAS CAPACITY APPENDIX

Part I: General Terms

(1) **Subject of Gas Capacity Appendix.** The purpose of this Gas Capacity Appendix is to modify certain provisions of the General Agreement in order that its terms facilitate the purchase, sale and transfer of Gas Capacity by the Parties. This Gas Capacity Appendix to the General Agreement (inclusive of this Gas Capacity Appendix' Annexes) modifies, supplements and amends, to the extent set forth herein, certain provisions of the General Agreement and shall only apply to and govern all Individual Contracts entered into by the Parties for and concerning the transfer and acceptance of Gas Capacity on the Fluxys NV/SA and/or the GRTgaz Natural Gas transport networks, as applicable (each such Individual Contract being a "**Gas Capacity Transaction**", and collectively, the "**Gas Capacity Transactions**") save as expressly provided to the contrary with respect to any Section or Sections of the General Agreement or this Gas Capacity Appendix. Any and all future Individual Contracts between the Parties that constitute Gas Capacity Transactions shall be automatically subject to the General Agreement, as it is modified, supplemented and amended by its Annexes, Election Sheet and this Gas Capacity Appendix, without any further action by the Parties, unless the agreed upon terms of such Individual Contract expressly provide otherwise. For all other types of Individual Contracts, the General Agreement shall remain unchanged. The provisions of the General Agreement are hereby modified, supplemented and amended (except as expressly noted to the contrary herein) only in respect of such Gas Capacity Transactions in accordance with the following:

(2) **Definitions and Construction.** Capitalized terms used in this Gas Capacity Appendix shall have the meanings ascribed to them in either this Gas Capacity Appendix or the General Agreement. In the event of any inconsistency between definitions found in this Gas Capacity Appendix and those found in the General Agreement, this Gas Capacity Appendix' definitions will prevail for the purposes of all Gas Capacity Transactions. All references to "Natural Gas", "Network Operator", "Total Supply Period" and "Delivered Quantity(ies)" in the General Agreement shall, in the context of Gas Capacity Transactions, be construed as references to "Gas Capacity(ies)", "TSO", "Total Capacity Period" and "Transferred Gas Capacity(ies)". All references to "deliver" and grammatical permutations thereof in the General Agreement in the context of Natural Gas shall be construed as references to "transfer" and appropriate grammatical permutations thereof in the context of Gas Capacity. References to a Section (§) or Sections (§§) shall be references to a Section or Sections in the General Agreement unless otherwise stated. In the event of any inconsistency between the terms of a Gas Capacity Transaction (whether evidenced in a Confirmation or otherwise) and the provisions of either this Gas Capacity Appendix or the General Agreement (as amended by this Gas Capacity Appendix), the terms of the Gas Capacity Transaction shall prevail for the purpose of that Gas Capacity Transaction.

(3) **Concluding and Confirming Gas Capacity Transactions.** All Gas Capacity Transactions shall contain the information stipulated in, and if confirmed with a Confirmation, shall be substantially in the form of, the sample Confirmation sheet attached as Annex 2 (A) of this Gas Capacity Appendix and shall identify whether the nature of the Gas Capacity Transaction is a purchase and sale of:

- (a) Capacity Usage Rights (as defined in § 6.1(a) below) (such Gas Capacity Transaction being referred to as a "**Usage Right Gas Capacity Transaction**"); or
- (b) Capacity Title (as defined in § 6.1(b) below) (such Gas Capacity Transaction being referred to as a "**Title Transfer Gas Capacity Transaction**").

(4) **Primary Obligations for Transfer of Gas Capacity.** For the purposes of Gas Capacity Transactions, § 4 (*Primary Obligations for Delivery and Acceptance of and Payment for Natural Gas*) of the General Agreement shall be deleted in its entirety and replaced with the following:

"§ 4.1 Transfer and Acceptance: In accordance with each Gas Capacity Transaction:

- (a) the Seller shall:
 - (i) sell to the Buyer;
 - (ii) Schedule the Gas Capacity Transaction; and
 - (iii) if applicable pursuant to a Title Transfer Gas Capacity Transaction, upon Scheduling being effected, pay to the Buyer the Contract Price for,

- (b) the Buyer shall:
 - (i) purchase from the Seller;
 - (ii) Schedule the Gas Capacity Transaction; and
 - (iii) except pursuant to any Title Transfer Gas Capacity Transaction where the Seller must pay the Buyer, once Scheduling has been effected, pay to the Seller the Contract Price for,

the Contract Quantity of the Gas Capacity in respect of each Time Unit of the Total Capacity Period pursuant to the agreed nature of the Gas Capacity Transaction.

§ 4.2 Definition of Schedule: “Schedule” shall mean, as applicable, those actions, taken reasonably in advance of the start of the Total Capacity Period applicable to such Gas Capacity Transaction and any applicable deadlines imposed by the relevant TSO(s) or any other relevant entity(ies), necessary for a Party to comply with all obligations and requirements to effect its respective transfer and acceptance obligations in accordance with all applicable rules, regulations, procedures, contracts, agreements, registrations, filings and all other mandatory requirements of the relevant TSO(s), any other relevant entity(ies) and any other customary industry practices and procedures, each as modified, amended and/or supplemented from time to time, (referred to herein collectively as the “**Applicable Rules**”) in order to enable the TSO(s) or other relevant entity(ies) to process and give effect to the transfer and acceptance of transfer of Gas Capacity in accordance with the nature of rights being transferred and any relevant terms of such Gas Capacity Transaction.

§ 4.3 Payment for Gas Capacity: In respect of a Gas Capacity Transaction, unless otherwise set forth in Part II of this Gas Capacity Appendix in respect of § 13 (*Invoicing and Payment*) or in the Confirmation relating to such Gas Capacity Transaction, the Buyer shall pay to the Seller or the Seller shall pay to the Buyer, as applicable, the Contract Price for each Time Unit of Transferred Gas Capacity, either:

- (a) **Payment for Capacity Usage Rights:** In respect of a Usage Right Gas Capacity Transaction, in accordance with the provisions of Payment Method A set forth in § 13 (*Invoicing and Payment*); or
 - (b) **Payment for Capacity Title:** In respect of a Title Transfer Gas Capacity Transaction, in accordance with the provisions of Payment Method B set forth in § 13 (*Invoicing and Payment*).
- (5) **Primary Obligations for Options on Gas Capacity.** For the purposes of Gas Capacity Transactions, § 5 (*Primary Obligations for Options*) of the General Agreement shall be deleted in its entirety.
- (6) **Transfer, Measurement and Risk.** For the purposes of Gas Capacity Transactions, § 6 (*Delivery, Measurement, Transportation and Risk*) of the General Agreement shall be deleted in its entirety and replaced by the following:

§ 6.1 Transfer of Rights: Any provision in this Gas Capacity Appendix not specifically limiting its applicability to either a Usage Right Gas Capacity Transaction or a Title Transfer Gas Capacity Transaction shall apply to all Gas Capacity Transactions. Further, a Usage Right Gas Capacity Transaction shall be governed by: § 4.3(a) (*Payment for Capacity Usage Rights*), § 6.1(a) (*Transfer of Capacity Usage Rights*) and § 6.3 (*Continuing Liabilities of the Seller and the Buyer for a Usage Right Gas Capacity Transaction*), and a Title Transfer Gas Capacity Transaction shall be governed by: § 4.3(b) (*Payment for Capacity Title*), § 6.1(b) (*Transfer of Capacity Title*) and § 6.4 (*No Continuing Liability of the Seller for a Title Transfer Gas Capacity Transaction*), as follows:

§ 6.1(a) **Transfer of Capacity Usage Rights:** Subject to § 6.2 (*Enforceability of the Transfer Against the TSO*) and § 6.3 (*Continuing Liabilities of the Seller and the Buyer for a Usage Right Gas Capacity Transaction*):

- (i) Upon entering into a Usage Right Gas Capacity Transaction, each Party irrevocably commits to fulfilling all Scheduling obligations necessary to effect the transfer of all of the Seller's rights to nominate and confirm the flow of Natural Gas and otherwise make use of the Contract Quantity of the Gas Capacity during each Time Unit of the Total Capacity Period on the Fluxys NV/SA and/or the GRTgaz Natural Gas transport networks, as applicable (the “**Capacity Usage Rights**”) and, subject only to fulfilment of the other Party’s respective Scheduling obligations, such Capacity Usage Rights shall transfer from the Seller to the Buyer in accordance with all the Applicable Rules then in effect for a Usage Right Gas Capacity Transaction. Upon entering into a Usage Right Gas Capacity Transaction, the Seller shall have no further right to sell, assign, transfer, pledge or otherwise encumber the Contract Quantity during the Total Capacity Period.

- (ii) The Seller warrants to the Buyer that it has the right to sell and transfer (or cause to be sold and transferred) to the Buyer the Transferred Gas Capacity free and clear of any adverse claims and the Seller shall indemnify and hold the Buyer harmless against any such adverse claims in respect of the Capacity Usage Rights.

§ 6.1(b) Transfer of Capacity Title: Subject to § 6.2 (*Enforceability of the Transfer Against the TSO*) and § 6.4 (*No Continuing Liability of the Seller for a Title Transfer Gas Capacity Transaction*):

- (i) Upon entering into a Title Transfer Gas Capacity Transaction, each Party irrevocably commits to fulfilling all Scheduling obligations necessary to effect the transfer of all of the Seller's rights, title, interest and obligations relating to the Contract Quantity of the Gas Capacity during each Time Unit of the Total Capacity Period on the Fluxys NV/SA and/or the GRTgaz Natural Gas transport networks, as applicable (the "**Capacity Title**") and, subject only to fulfilment of the other Party's respective Scheduling obligations, such Capacity Title shall transfer from the Seller to the Buyer in accordance with all the Applicable Rules then in effect for a Title Transfer Gas Capacity Transaction.
- (ii) The Seller warrants to the Buyer that it has the right to sell and transfer (or cause to be sold and transferred) to the Buyer full title and entitlement to the Transferred Gas Capacity free and clear of any adverse claims and the Seller shall indemnify and hold the Buyer harmless against any such adverse claims in respect of the Contract Quantity of the Gas Capacity during each Time Unit of the Total Capacity Period.

§ 6.2 Enforceability of the Transfer Against the TSO: The enforceability of any sale and transfer of Gas Capacity under a Gas Capacity Transaction against the relevant TSO or any other relevant entity shall be governed by the Applicable Rules relevant to that TSO or other entity.

§ 6.3 Continuing Liabilities of the Seller and the Buyer for a Usage Right Gas Capacity Transaction: Subject to § 8 (*Remedies for Failure to Deliver or Accept the Contract Quantity*) in respect of each Usage Right Gas Capacity Transaction and each Time Unit of the Total Capacity Period related to such Usage Right Gas Capacity Transaction:

- (a) the liability for payment of the Tariff Rate, if any, of the Seller to the relevant TSO in respect of the Transferred Gas Capacity shall remain the continuing liability of the Seller; and
- (b) the Buyer shall bear all other risks associated with, and be responsible for all other costs and charges imposed on or associated with the acceptance and use (or its non-use, as the case may be) of, the Transferred Gas Capacity from the start till the end of the Total Capacity Period.

§ 6.4 No Continuing Liability of the Seller for a Title Transfer Gas Capacity Transaction. Subject to § 8 (*Remedies for Failure to Deliver or Accept the Contract Quantity*) in respect of each Title Transfer Gas Capacity Transaction and each Time Unit of the Total Capacity Period related to such Title Transfer Gas Capacity Transaction, the Buyer shall assume all the obligations of the Seller to the relevant TSO in respect of the Transferred Gas Capacity including, without limitation, the liability for payment of the Tariff Rate, if any, of the Seller to the relevant TSO and the Buyer shall bear all other risks associated with, and be responsible for all other costs and charges imposed on or associated with the ownership and its use (or its non-use as the case may be) of, the Transferred Gas Capacity from the start till the end of the Total Capacity Period.

§ 6.5 Documentation of Transfer: In respect of any Gas Capacity Transaction, upon reasonable request, a Party shall provide to the other Party such documentation in its possession or control that evidences its rights, title and interest in, and performance of its Scheduling obligations with respect to, the Gas Capacity which is the subject of the Gas Capacity Transaction and shall use its reasonable and diligent efforts to request and acquire from the relevant TSO and/or other relevant entity, and share with the requesting Party, any additional documentation necessary to enforce the transfer of the Contract Quantity of the Gas Capacity in respect of each Time Unit of the Total Capacity Period against the relevant TSO or other relevant entity; PROVIDED THAT the obligations on a Party under this § 6.5 shall only require such Party to extract from the documentation and provide to the other Party information as relates to Gas Capacity Transactions concluded between the Parties, and not information relating to contracts or transactions with other counterparties.

§ 6.6 Seller and Buyer Costs for a Gas Capacity Transaction: In respect of any Gas Capacity Transaction, each Party shall bear all of its own costs or charges imposed on or associated with Scheduling Transferred Gas Capacity charged by or on behalf of the relevant TSO or other relevant entity in accordance with the Applicable Rules. All costs or charges imposed on or associated with nominating and confirming flows of Natural Gas charged by or on behalf of the relevant TSO or other relevant entity in respect of any Transferred Gas Capacity, other than the payment of the Tariff Rate by the Seller in respect of a Usage Right Gas Capacity Transaction, shall be borne by the Buyer and, if the Seller incurs any such costs or charges, it shall inform the Buyer which shall reimburse on demand such costs and/or charges to the Seller.

(7) **Non-Performance Due to Force Majeure:** For the purpose of Gas Capacity Transactions, § 7 (*Non-Performance Due to Force Majeure*) of the General Agreement shall be amended as follows:

§ 7.1 (*Definition of Force Majeure*) shall be deleted in its entirety and replaced with a new § 7.1 (*Definition of Force Majeure*), as follows: “For purposes of this Gas Capacity Appendix only, “**Force Majeure**” means an occurrence beyond the reasonable control of the Party claiming Force Majeure (the “**Claiming Party**”) which it could not reasonably have avoided or overcome and which makes it impossible for the Claiming Party to confirm or procure the confirmation of the Scheduling of the Gas Capacity by the TSO or other relevant entity in accordance with the terms of this Agreement and the Applicable Rules.”

§ 7.3 (*Notification and Mitigation of Force Majeure*): the words: “(which, in the case of a Transportation Failure, shall include using all commercially reasonable efforts to procure that the relevant Network Operator mitigates and overcomes the effects of the Transportation Failure)” shall be deleted in their entirety.

§ 7.5 (*Long Term Force Majeure Limit*): shall be deleted in its entirety.

(8) **Remedies for Failure to Transfer or Accept the Contract Quantity.** For the purpose of Gas Capacity Transactions, § 8 (*Remedies for Failure to Deliver or Accept the Contract Quantity*) of the General Agreement shall be deleted in its entirety and replaced with the following new § 8 (*Remedies for Failure to Deliver or Accept the Contract Quantity*), as follows:

“§ 8.1 (*Underdelivery*): In the event that the Seller fails to comply with its obligations under § 4.1 (*Transfer and Acceptance*) to Schedule, in part or in whole, the Contract Quantity pursuant to a Gas Capacity Transaction (referred to herein as “**Seller’s Default**”) and the Seller is not relieved from liability on the grounds of Force Majeure in accordance with § 7 (*Non-Performance Due to Force Majeure*), the Seller shall pay to the Buyer as compensation for its resulting Losses, an amount (“**Buyer’s Damages**”) calculated as follows:

- (a) If the Buyer is able to purchase or procure the purchase of replacement or alternative Gas Capacity to fulfill its obligations to third parties in respect of that portion of the Contract Quantity pursuant to a Gas Capacity Transaction that the Seller failed to Schedule (“**Seller’s Default Quantity**”), Buyer’s Damages shall be the cost, if any, determined in a commercially reasonable manner, in excess of the Contract Price which the Buyer pays or could have paid to purchase or procure the purchase of replacement or alternative Gas Capacity in respect of the Seller’s Default Quantity increased by other reasonable and verifiable costs or expenses incurred by the Buyer in respect of the Seller’s Default Quantity; or
- (b) If it is impossible for the Buyer to purchase or procure the purchase of replacement or alternative Gas Capacity to fulfill its obligations to third parties in respect of the Seller’s Default Quantity, Buyer’s Damages shall be Buyer’s Consequential Damages.

§ 8.2 (*Under Acceptance*): In the event that the Buyer fails to comply with its obligations under § 4.1 (*Transfer and Acceptance*) to Schedule, in part or in whole, the Gas Capacity pursuant to a Gas Capacity Transaction (referred to herein as “**Buyer’s Default**”) and the Buyer is not relieved from liability on the grounds of Force Majeure in accordance with § 7 (*Non-Performance Due to Force Majeure*), the Buyer shall pay to the Seller as compensation for its resulting Losses, an amount by which the Contract Price exceeds the price at which the Seller acting in a commercially reasonable manner is or would be able to contract to sell that portion of the Contract Quantity pursuant to a Gas Capacity Transaction that the Buyer failed to Schedule (“**Buyer’s Default Quantity**”) in (an) arm’s length sale(s) to (a) third party(ies) (which may include the relevant TSO or other relevant entity). Such amount shall be increased by other reasonable and verifiable costs or expenses incurred by the Seller in respect of the Buyer’s Default Quantity.

§ 8.3 (Amounts Payable): Amounts that are due according to this § 8 (*Remedies for Failure to Deliver or Accept the Contract Quantity*) shall be invoiced and paid in accordance with the nature of the Gas Capacity Transaction and the Payment Method made applicable from among the options set forth in § 13.2 (*Payment*).

(8a) Off-Spec Gas. § 8a (*Off-Spec Gas*) shall not apply for the purposes of Gas Capacity Transactions.

(9) Suspension of Transfer. § 9 (*Suspension of Transfer*) shall be deleted in its entirety with respect to Gas Capacity Transactions.

(10) Term and Termination Rights. For the purpose of this Gas Capacity Appendix, § 10 (*Term and Termination Rights*) of the General Agreement is hereby amended with respect to both Individual Contracts for Natural Gas and Gas Capacity Transactions at any time in which the Parties have outstanding Gas Capacity Transactions remaining between them to be partially or fully performed by:

(a) the addition in the second line of § 10.3(a) (*Termination for Material Reason*) after the words “may terminate the Agreement” of the words “or the Gas Capacity Appendix only (if applicable in accordance with § 10.5 (*Definition of Material Reason*))”; and

(b) the following amendments:

§ 10.5 (Definition of Material Reason): The addition at the end of the second line of § 10.5, after the words “(each a “**Material Reason**”),” of the words “save that in the event of termination pursuant to § 10.5(a) (*Non Performance*) or § 10.5(e) (*Representation or Warranty*) of the General Agreement, the Terminating Party may, at its sole discretion, elect to terminate only this Gas Capacity Appendix and all Gas Capacity Transactions thereunder and not the entire General Agreement, but only if such uncured non-performance, warranty breach or misrepresentation concerns only one or more Gas Capacity Transactions between the Parties. If the Terminating Party elects to terminate only this Gas Capacity Appendix together with all Gas Capacity Transactions thereunder, it may do so in the manner prescribed in § 10 (*Term and Termination Rights*) and § 11 (*Calculation of Termination Amount*), but only with respect to the Gas Capacity Transactions between the Parties and in such manner as to result in the accrual of an amount due from one Party to the other Party analogous to a Termination Amount but concerning only the Gas Capacity Transaction(s) terminated (a “**Gas Capacity Termination Amount**”).”

§ 10.5(d) (Failure to Deliver or Accept): § 10.5(d) is deleted in its entirety.

(11) Calculation of the Termination Amount: For the purpose of Gas Capacity Transactions, § 11 (*Calculation of the Termination Amount*) of the General Agreement shall be amended, as follows:

§ 8.3(c) (“**Losses**”): Reference to “Losses” shall be determined in accordance with the applicable methodology provided in accordance with § 8 (*Remedies for Failure to Transfer or Accept the Contract Quantity*) and further, in respect of a Title Transfer Gas Capacity Transaction for which payment has been made but, as a result of the Material Reason causing Early Termination, the Buyer is unable to make use of the Transferred Gas Capacity, it may further increase its Losses by the amount of the pre-payment attributable to all or any portion of that Title Transfer Gas Capacity Transaction to which the Buyer’s right to nominate and confirm flows of Natural Gas have been denied.

(12) Limitation of Liability. For the purpose of Gas Capacity Transactions, § 12 (*Limitation of Liability*) of the General Agreement shall be amended as follows:

All references to § 6.3 (*Transfer of Rights to Natural Gas*) and § 8a (*Off-Spec Gas*) shall be deleted in their entirety and replaced with references to § 6.1 (*Transfer of Rights of Title*), § 6.3 (*Continuing Liabilities of the Seller and the Buyer for a Usage Right Gas Capacity Transaction*), § 6.6 (*Seller and Buyer Costs for a Gas Capacity Transaction*), § 10.5 (*Definition of Material Reason*) and § 11 (*Calculation of the Termination Amount*).

(13) Invoicing and Payment. For the purpose of Gas Capacity Transactions, § 13 (*Invoicing and Payment*) of the General Agreement shall be amended as follows:

§ 13.1 (Invoice): (i) in line 2 after the words: “shall transmit to the other Party”, by the addition of the words: “: (a) in respect of a Usage Right Gas Capacity Transaction,”; (ii) in line 4 after the words: “in the previous calendar month” by the addition of the words: “; and (b) in respect of a Title Transfer Gas Capacity Transaction, on or before

the date that Scheduling of the Gas Capacity is confirmed by the TSO or other relevant entity, an invoice setting forth the total quantities of Transferred Gas Capacity that were sold under each Gas Capacity Transaction”; (iii) the deletion of the reference to § 8a (*Off-Spec Gas*) in line 8; and (iv) the deletion in its entirety of the last sentence commencing with the words: “Invoicing of Premiums due under an Individual Contract for Options”...

§ 13.2 Payment: (i) the deletion of the words in the first sentence of § 13.2 (*Payment*) commencing: “On or before the later to occur of”... up to and including the words: “following receipt of an invoice (the “**Due Date**”), a” and their replacement with the words set-out below:

“Unless otherwise specified as applying in Part II of this Gas Capacity Appendix, payments due in relation to Gas Capacity Transactions shall be in accordance with either Payment Method A in respect of a Usage Right Gas Capacity Transaction or Payment Method B in respect of a Title Transfer Gas Capacity Transaction (each, a “**Payment Method**”), as follows:

Payment Method A (Usage Right Gas Capacity Transaction): “On or before the later to occur of either: (a) the twentieth (20th) day of the calendar month or if not a Business Day the immediately following Business Day; or (b) the tenth (10th) Business Day following receipt of an invoice (whichever being the “**Due Date**”). A”; or

Payment Method B (Title Transfer Gas Capacity Transaction): “On or before the fifth (5th) Business Day after the later to occur of: (a) the date that Scheduling of the Gas Capacity is confirmed by the TSO or other relevant entity; or (b) following receipt of an invoice (the “**Due Date**”). A”;

and (ii) the deletion in its entirety of the last sentence commencing with the words: “Notwithstanding the foregoing”...

§ 13.3 (Payment Netting): a new § 13.3.1 (*Cross Product Payment Netting*) shall be inserted after the existing text as follows:

§ 13.3.1 Expanded Payment Netting: If the Parties have elected to make § 13.3 operative via their Election Sheet, then unless the Parties have specified in Part II of this Gas Capacity Appendix that “**Expanded Payment Netting**” shall not apply, payments in relation to Individual Contracts for Natural Gas shall be netted against payments in relation to Gas Capacity Transactions. If the Parties have elected to make § 13.3 operative via their Election Sheet, and the Parties have specified in Part II of this Gas Capacity Appendix that “**Expanded Payment Netting**” shall not apply, then payment in relation to Individual Contracts for Natural Gas shall continue to be netted one against the other and payments in relation to Gas Capacity Transactions shall also be netted one against the other, but payments in relation to Individual Contracts for Natural Gas shall not be netted against payments in relation to Gas Capacity Transactions.

§ 13.4 (Invoicing and Payment of Scheduled Contract Quantities): shall be deleted in its entirety.

§ 13.7 (Invoices based on Contract Quantities): shall be deleted in its entirety.

(14) **VAT and Taxes.** For the purposes of Gas Capacity Transactions, § 14 (*VAT and Taxes*) of the General Agreement shall be amended as follows:

§ 14.1 (VAT): the reference to: “Articles 38, 39 or 195” in the second line of the second paragraph shall be deleted and replaced with the following reference: “Articles 56(h) and 196”.

§ 14.3 (Seller’s and Buyer’s Tax Obligations): the existing text shall be deleted in its entirety and replaced with the following:

“**§ 14.3 (Taxes in Respect of Gas Capacity Transactions):** Subject to each Party’s obligations relating to VAT, each Party shall cause all royalties, Taxes, duties and other sums (including any stamp duty, other documentary Taxes, climate change levy or other environmental Tax or levy) legally payable by that Party arising in connection with each Gas Capacity Transaction between the Parties to be paid. In the event that the Seller is required by law to pay any Tax which is determined for the account of the Buyer, the Buyer shall promptly indemnify or reimburse the Seller in respect of such tax. In the event that the Buyer is required by law to pay any Tax which is determined for the account of the Seller, the Buyer may deduct the amount of any such Tax from the sums due to the Seller under

the relevant Gas Capacity Transaction and the Seller shall promptly indemnify or reimburse the Buyer in respect of any such Tax not so deducted.”

§ 14.4 (*Taxes Targeted at End-Users*): shall be deleted in its entirety.

§ 14.5 (*Exemption Certificates*): shall be deleted in its entirety.

§ 14.6 (*Indemnity*): shall be deleted in its entirety.

(15-20) Except to the extent modified herein, there shall be no change to § 15 (*Floating Prices and Fallback Procedure for Market Disruption*), § 16 (*Guarantees and Credit Support*), § 17 (*Performance Assurance*), § 18 (*Provision of Financial Statements and Tangible Net Worth*), § 19 (*Assignment*) and § 20 (*Confidentiality*) of the General Agreement with respect to Gas Capacity Transactions.

(21) **Representations and Warranties.** For the purposes of Gas Capacity Transactions, § 21 (*Representations and Warranties*) shall be amended by replacing of the “.” at the end of sub-paragraph “I” with a “;” and the addition of the following after such “;”:

“§ 21 (m) it has entered into and complies with the terms of any and all contracts, agreements, registrations, filings or any other things necessary in accordance with the Applicable Rules with the relevant TSO or other relevant entity or otherwise that may be necessary for the purposes of performing its obligations under all Gas Capacity Transactions between the Parties.”

and such representation and warranty shall be given by each Party to the other upon entering into this Gas Capacity Appendix and each time the Parties enter into a Gas Capacity Transaction.

(22-23) There shall be no change to § 22 (*Governing Law and Arbitration*) and § 23 (*Miscellaneous*) of the General Agreement with respect to Gas Capacity Transactions.

Part II: Elections for Customization of Provisions in the Gas Capacity Appendix

**§ 13
Invoicing and Payment**

- § 13.2 **Payment:** the following Payment Method(s) for Gas Capacity Transactions shall apply: _____.
- § 13.3.1 **Expanded Payment Netting:** Payments due in relation to Individual Contracts in respect of Natural Gas shall not be netted against payments due in relation to Gas Capacity Transactions.

Additional Provisions and/or Amendments to the Gas Capacity Appendix

This page need ONLY be executed by Parties that checked and completed the box on the first page hereof. Those appending this Gas Capacity Appendix to a General Agreement at the time of its execution need only append it to the General Agreement.

IN WITNESS whereof this Gas Capacity Appendix has been duly executed by the authorized representatives of each Party on the respective dates set out below with effect from the Gas Capacity Appendix Effective Date.

“Party A”

“Party B”

[Name of Party]

[Name of Party]

[Name of Signatory/ies]

[Name of Signatory/ies]

[Title of Signatory/ies]

[Title of Signatory/ies]

(Date)

(Date)

EFET

European Federation of Energy Traders

ANNEX 1 to the GAS CAPACITY APPENDIX

Defined Terms

Terms used in this Gas Capacity Appendix shall have the following meanings:

“**Applicable Rules**” has the meaning given in paragraph (4) of this Gas Capacity Appendix;

“**Buyer’s Consequential Damages**” means the Buyer’s commercially reasonable estimate of its Losses and costs or expenses incurred as a result of its inability to make use of the Seller’s Default Quantity of Gas Capacity and which may include, without limitation, Losses on the re-sale of Natural Gas contracted for transportation on such Default Quantity of Gas Capacity, damages payable due to the inability of the Buyer to effectuate re-sale obligations to a third party and other similar verifiable costs and expenses in respect of the Seller’s Default Quantity;

“**Buyer’s Damages**” has the meaning given in paragraph (8.1) of this Gas Capacity Appendix;

“**Buyer’s Default**” has the meaning given in paragraph (8.2) of this Gas Capacity Appendix;

“**Buyer’s Default Quantity**” has the meaning given in paragraph (8.2) of this Gas Capacity Appendix;

“**Capacity Title**” has the meaning given in paragraph (6.1(b)(i)) of this Gas Capacity Appendix;

“**Capacity Usage Rights**” has the meaning given in paragraph (6.1(a)(i)) of this Gas Capacity Appendix;

“**Gas Capacity(ies)**” means with respect to a Gas Capacity Transaction, the Capacity Usage Rights or the Capacity Title as specified in the relevant Individual Contract;

“**Gas Capacity Termination Amount**” has the meaning given in paragraph (10) of this Gas Capacity Appendix;

“**Gas Capacity Transaction**” has the meaning given in paragraph (1) of this Gas Capacity Appendix;

“**Gas Capacity Appendix**” means this Gas Capacity Appendix to the General Agreement (inclusive of its Annexes);

“**Seller’s Default**” has the meaning given in paragraph (8.1) of this Gas Capacity Appendix;

“**Seller’s Default Quantity**” has the meaning given in paragraph (8.1) of this Gas Capacity Appendix;

“**Tariff Rate**” means the regulated rate charged by the relevant TSO for each Time Unit of Gas Capacity for the Total Capacity Period;

“**Title Transfer Gas Capacity Transaction**” has the meaning given in paragraph (3) of this Gas Capacity Appendix;

“**Total Capacity Period**” means, in respect of a Gas Capacity Transaction, the capacity period agreed between the Parties;

“**Transferred Gas Capacity(ies)**” means the Gas Capacity(ies) that (has/have) been transferred from the Seller to the Buyer under and in accordance with the all the Applicable Rules;

“**TSO**” means the transmission system operator or operators in whose pipeline system the Seller holds the Gas Capacity to be transferred; and

“Usage Right Gas Capacity Transaction” has the meaning given in paragraph (3) of this Gas Capacity Appendix.

The definition of **“Contract Quantity”** in the General Agreement shall, for the purposes of Gas Capacity Transactions, be amended so that it reads as follows: “means in respect of an Individual Contract, the quantity of Gas Capacity, expressed in either m³ (n), MWh/day (25 degrees) or MWh/Day (0 degrees), to be transferred by the Seller to the Buyer in a Time Unit pursuant to such Individual Contract as agreed between the Parties”.

EFET

European Federation of Energy Traders

ANNEX 2 (A) to the GAS CAPACITY APPENDIX (FLUXYS/GRTGAZ)

CONFIRMATION OF GAS CAPACITY TRANSACTION

BETWEEN:

(1) _____ ("Seller")

[Seller's Shipper Code: []]; and

(2) _____ ("Buyer").

[Buyer's Shipper Code: []]

concluded on [/ /], [:] hours

Relevant TSO: [Fluxys NV/SA] / [GRTgaz]

Gas Capacity details: [Entry] [Exit] [Backhaul]

[If Entry: [Entry Points]]

[If Exit: [Exit Points]]

Gas Capacity firmness: [Firm]

Nature of Gas Capacity Transaction:

[] **Usage Right Gas Capacity Transaction**

Contract Price Paid by Buyer: []

[] **Title Transfer Gas Capacity Transaction**

[] **Contract Price Paid by Buyer:** []; or

[] **Contract Price Paid by Seller:** []

Contract Quantity: [] [m³ (n)] / [MWh/day (25 degrees)] / [MWh/Day (0 degrees)]

Time Unit: [1 hour]

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

Total amount: [Contract Quantity x Total Capacity Period x Contract Price]

Special Conditions:

Capitalized expressions used in this Confirmation which are not expressly defined herein or in the General Agreement shall have the meanings given to such expressions, whether in capitalized or uncapitalized form, but in quotation marks, in the transmission service conditions of the relevant TSO or other relevant entity.

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

Date :

Signature :