

# EFET

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### Individual PRISMA Gas Capacity Contract

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**NOTICE USE LIMITATION: THIS VERSION 2.0 OF THE INDIVIDUAL PRISMA GAS CAPACITY CONTRACT WAS DEVELOPED SPECIFICALLY IN ACCORDANCE WITH THE RULES OF PRISMA CAPACITY PLATFORM FOR THE SECONDARY MARKET PREVAILING IN OCTOBER 2014 AND A QUESTIONNAIRE COMPARING THE RULES OF THE PARTICIPATING NETWORK OPERATORS (ANSWERED ONLY BY SOME OF THE PARTICIPATING NETWORK OPERATORS). USERS ARE STRONGLY ENCOURAGED TO CONSULT THEIR OWN COUNSEL BEFORE ATTEMPTING TO USE THIS DOCUMENT AND TO FAMILIARISE THEMSELVES WITH THE RULES OF THE NETWORK OPERATORS, IN PARTICULAR, THE DIFFERING RIGHTS AND OBLIGATIONS INVOLVED IN TRANSFER OF USE TRANSACTIONS AND ASSIGNMENT TRANSACTIONS AND THE TREATMENT OF CAPACITY THAT IS NOT ACQUIRED DIRECTLY FROM THE PRIMARY CAPACITY HOLDER. USERS ARE ALSO ADVISED TO CONSIDER THEIR CREDIT POSITION WITH ALL POTENTIAL COUNTERPARTIES BEFORE USING THIS INDIVIDUAL PRISMA GAS CAPACITY CONTRACT.**

# EFET

## European Federation of Energy Traders

### PART I (Commercial Terms) of the Individual PRISMA Gas Capacity Contract (UNBUNDLED)

between:

\_\_\_\_\_

having its registered office at \_\_\_\_\_

[entity selling the Gas Capacity via PRISMA] ("**Seller**"); and

\_\_\_\_\_

having its registered office at \_\_\_\_\_

[entity buying the Gas Capacity via PRISMA] ("**Buyer**"),

on the date established via PRISMA for this Gas Capacity Transaction, the commercial terms of which are set forth below in this Part I (Commercial Terms), and the general provisions of which are set forth below in its Part II (General Provisions), and which incorporate by reference herein, and form a part hereof.

#### SECTION A: COMMERCIAL PROVISIONS

**Relevant Network Operator:** \_\_\_\_\_

**Gas Capacity details:**

Entry  
 Exit

Physical Flow  
 Backhaul

If Entry: Entry Point shall be: \_\_\_\_\_

If Exit: Exit Point shall be: \_\_\_\_\_

**Gas Capacity Type:**

Firm  
 Statistical Firm  
 Interruptible

**Nature of Gas Capacity Transaction:**

**Transfer of Use Transaction**

Contract Price Payable by Buyer

Contract Price Payable by Seller

**Assignment Transaction**

A

Contract Price Payable by Buyer

Contract Price Payable by Seller

**Contract Quantity:**

**Time Unit:**  1 hour

1 Day

**Total Capacity Period:** From:  hours on  /  /

To:  hours on  /  /

**Contract Price:** The amount in Euros per  established via PRISMA for this Gas Capacity Transaction

## **SECTION B: ELECTIONS FOR THE PURPOSES OF PART II (GENERAL PROVISIONS)**

**Payment Method:**  Monthly Payment Method

Lump Sum Payment Method

### **§§ 5.1(a)(iv) (*Transfer of Use Transaction*):**

Does the Seller give the warranty set out in §§ 5.1(a)(iv)?

Yes

No

### **§§ 7.1(d)(iv) (*Default and Consequences*):**

Number of days shall be:

### **§§ 9.3 (*Invoicing, Payment*):**

Default Interest Rate: [monthly] / [yearly] EURIBOR plus  %

### **§ 13 (*Governing Law and Dispute Resolution*):**

#### **Governing Law:**

English Law OR

German Law

#### **Dispute Resolution:**

Courts, OR

Arbitration

If German Law chosen:

Courts of: \_\_\_\_\_ OR

Place of Arbitration: \_\_\_\_\_

Language of Arbitration:

English OR

German

**SECTION C: AMENDMENTS TO PART II (GENERAL PROVISIONS)**

# EFET

## European Federation of Energy Traders

### PART I (Commercial Terms) of the Individual PRISMA Gas Capacity Contract (BUNDLED)

**between:**

\_\_\_\_\_

having its registered office at [\_\_\_\_\_]

[entity selling the Gas Capacity via PRISMA] ("**Seller**"); and

\_\_\_\_\_

having its registered office at \_\_\_\_\_

[entity buying the Gas Capacity via PRISMA] ("**Buyer**"),

on the date established via PRISMA for this Gas Capacity Transaction, the commercial terms of which are set forth below in this Part I (Commercial Terms), and the general provisions of which are set forth below in its Part II (General Provisions), and which incorporate by reference herein, and form a part hereof.

#### **SECTION A: COMMERCIAL PROVISIONS**

**Relevant Network Operator (Exit):** \_\_\_\_\_

**Relevant Network Operator (Entry):** \_\_\_\_\_

**Gas Capacity – Exit - details:**

- Physical Flow
- Backhaul

Exit Point shall be: \_\_\_\_\_

**Gas Capacity Type:**

- Firm
- Statistical Firm
- Interruptible

**Gas Capacity – Entry - details:**

- Physical Flow
- Backhaul

Entry Point shall be: \_\_\_\_\_

**Gas Capacity Type:**

D

- Firm
- Statistical Firm
- Interruptible

**Nature of Gas Capacity Transaction:**

**If Exit:**

- Transfer of Use Transaction OR
- Assignment Transaction

**If Entry:**

- Transfer of Use Transaction OR
- Assignment Transaction

**Contract Price Payable by Buyer:**

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**Contract Price Payable by Seller:**

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**Contract Quantity:**

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- Time Unit:**
- 1 hour
  - 1 Day

- Total Capacity Period:**
- From:  hours on [ / / ]
- To:  hours on [ / / ]

- Contract Price:** The amount in Euros per [ ] established via PRISMA for this Gas Capacity Transaction

**SECTION B: ELECTIONS FOR THE PURPOSES OF PART II (GENERAL PROVISIONS)**

- Payment Method:**
- Monthly Payment Method
  - Lump Sum Payment Method

**§§ 5.1(a)(iv) (Transfer of Use Transaction):**

- Does the Seller give the warranty set out in §§ 5.1(a)(iv)?
- Yes
  - No

**§§ 7.1(d)(iv) (Default and Consequences):**

Number of days shall be: [ ]

**§§ 9.3 (Invoicing, Payment):**

Default Interest Rate: [monthly] / [yearly] EURIBOR plus [ ]%

**§ 13 (Governing Law and Dispute Resolution):**

**Governing Law:**

- English Law OR
- German Law

**Dispute Resolution:**

- Courts, OR
- Arbitration

If German Law chosen:

- Courts of: \_\_\_\_\_ OR
- Place of Arbitration: \_\_\_\_\_

Language of Arbitration:

- English OR
- German

**SECTION C: AMENDMENTS TO PART II (GENERAL PROVISIONS)**

# **EFET**

## **European Federation of Energy Traders**

### **PART II (General Provisions) of the Individual PRISMA Gas Capacity Contract**

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## § 1

### **Subject of the Gas Capacity Transaction**

**1.1 Subject of the Gas Capacity Transaction:** The Seller wishes to sell Gas Capacity(ies) and the Buyer wishes to purchase and accept the Gas Capacity(ies) in one or more of the transport networks participating in PRISMA as specified in Part I (Commercial Terms) (the “**Gas Capacity Transaction**”). The provisions of this Part II (General Provisions) constitute an integral part of (but may be supplemented by the terms of Part I (Commercial Terms) of this Individual PRISMA Gas Capacity Contract) the Gas Capacity Transaction.

**1.2 Physical Settlement of the Gas Capacity Transaction:** For the avoidance of doubt, except in cases of §7.3, the Gas Capacity Transaction under this Individual PRISMA Gas Capacity Contract must be physically settled.

## § 2

### **Definitions and Construction**

**2.1 Definitions:** Terms used in this Individual PRISMA Gas Capacity Contract shall have the meanings set out in Annex 1.

**2.2 Inconsistencies:** In the event of any inconsistency between the terms specified in Part I (Commercial Terms) of this Individual PRISMA Gas Capacity Contract and the provisions of this Part II (General Provisions), the terms of the Gas Capacity Transaction as set out in Part I (Commercial Terms) shall prevail for the purposes of the Gas Capacity Transaction.

**2.3 Interpretation:** Headings and titles are for convenience only and do not affect the interpretation of this Individual PRISMA Gas Capacity Contract. References to Sections or § shall be to Sections or § of this Part II (General Provisions) of this Individual PRISMA Gas Capacity Contract.

**2.4 References to Time:** References to time shall be to Central European Time (CET) unless otherwise agreed.

**2.5 Types of Gas Capacity Transaction for Bundled Capacity:** A Gas Capacity Transaction for Bundled Capacity may consist solely of Transfers of Use Transactions, solely of Assignment Transactions or a combination of Transfer of Use Transaction(s) and Assignment Transaction(s) and the provisions of this Part II (General Provisions) to the Individual PRISMA Gas Capacity Contract shall be construed accordingly.

## § 3

### **Conclusion of a Gas Capacity Transaction**

**3.1 Conclusion of a Gas Capacity Transaction:** A Gas Capacity Transaction shall be concluded by any means offered by PRISMA from time to time and shall be legally binding from the time the terms of such Gas Capacity Transaction are so concluded on PRISMA. The obligations to pay the Contract Price and for the Seller to make available the Gas Capacity for use by the Buyer shall be subject to the Gas Capacity Transaction being Validated by the Relevant Network Operator(s). If the Gas Capacity Transaction is not Validated by the Relevant Network Operator for reasons other than a failure to Schedule the Parties shall be released from performing or procuring performance of any further obligations under the Gas Capacity Transaction and no remedies shall be payable. If the Validation has however been rejected due to a failure to Schedule, the Party not in default is entitled to request remedies in accordance with §7 (**Default and Consequences**). When the Gas Capacity Transaction is in respect of Bundled Capacity it must be Validated by all Relevant Network Operators for the condition set out above to be deemed to have been satisfied.

**3.2 Nature of Gas Capacity Transaction:** It shall be stipulated in Part I (Commercial Terms) of this Individual PRISMA Gas Capacity Contract whether the nature of the Gas Capacity Transaction is:

- (a) a Transfer of Use Transaction; or

- (b) an Assignment Transaction; or
- (c) in the case of a Gas Capacity Transaction for Bundled Capacity, the applicable combination of Transfer of Use Transactions and Assignment Transactions.

§ 4

**Primary Obligations For Transfer, Assignment and Acceptance of Gas Capacity**

**4.1 Transfer or Assignment and Acceptance:** In accordance with the terms of the Gas Capacity Transaction:

- (a) the Seller shall:
  - (i) sell to the Buyer;
  - (ii) transfer or assign (as applicable) and Schedule the Gas Capacity Transaction;
  - (iii) if a Transfer of Use Transaction has been agreed, ensure as far as possible that the Network Operator Capacity Contract and any other capacity contracts with the Relevant Network Operator(s) required to be in force for the Transfer of Use Transaction to be effective are not terminated, withdrawn, suspended or amended in respect of the Gas Capacity until the end of the Total Capacity Period;
  - (iv) if an Assignment Transaction has been agreed, ensure as far as possible that the Network Operator Capacity Contract and any other capacity contracts with the Relevant Network Operator(s) required for the Assignment Transaction to be effective are not terminated, withdrawn, suspended or amended in respect of the Gas Capacity during the period in which the Relevant Network Operator(s) requires such contract(s) to be in force for the Assignment Transaction to become effective;
  - (v) if a Transfer of Use Transaction has been agreed, ensure payment or procure payment of the Tariff Rate; and
  - (vi) if applicable, subject to Validation, pay to the Buyer the Contract Price for,
- (b) the Buyer shall:
  - (i) purchase from the Seller;
  - (ii) accept the transfer or assignment and Schedule the Gas Capacity Transaction; and
  - (iii) except if pursuant to the Gas Capacity Transaction the Seller must pay the Buyer, once Validation 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 terms of the Gas Capacity Transaction.

**4.2 Definition of Schedule:** “**Schedule**” shall mean, as applicable, those actions necessary for a Party to comply in a timely manner with all obligations and requirements (in particular in relation to the provision of all necessary credit support to the Relevant Network Operator(s)) to effect its respective transfer or assignment or acceptance obligations in accordance with all applicable rules, regulations, procedures, contracts, agreements, registrations, filings and all other mandatory requirements of the Relevant Network Operator(s), any other relevant entity(ies), as applicable, 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 Relevant Network Operator(s) to Validate the Gas Capacity Transaction.

§ 5

## Transfer, Assignment and Risk

**5.1 Application of this Part II (General Provisions):** Any provision in this Part II (General Provisions) to this Individual PRISMA Gas Capacity Contract not specifically limiting its applicability to either a Transfer of Use Transaction or an Assignment Transaction shall apply to the Gas Capacity Transaction.

(a) **Transfer of Use Transaction:**

- (i) Upon entering into a “**Transfer of Use Transaction**”, the Seller irrevocably commits to transferring and Scheduling the right to use the Gas Capacity (as provided by the Relevant Network Operator in the Network Operator Capacity Contract) to the Buyer for each Time Unit of the Total Capacity Period and the Seller shall continue to be liable for payment (or to procure payment) of the Tariff Rate to the Relevant Network Operator in respect of the Gas Capacity and, subject only to Validation, such Gas Capacity shall transfer from the Seller to the Buyer in accordance with all the Applicable Rules then in effect for a Transfer of Use Transaction. Upon entering into a Transfer of Use Transaction, the Seller shall have no further right to sell, assign, transfer, pledge, change the Gas Capacity Type or otherwise encumber the Contract Quantity during the Total Capacity Period.

All risks associated with, and the responsibility for all costs and charges other than the Tariff Rate imposed on or associated with the acceptance and use (or its non-use, as the case may be) of, the Gas Capacity under a Transfer of Use Transaction during the Total Capacity Period shall be transferred to the Buyer upon Validation of such Transfer of Use Transaction.

- (ii) The Seller warrants to the Buyer that as at the date it enters into this Individual PRISMA Gas Capacity Contract it has the right to sell and transfer to the Buyer the Gas Capacity free and clear of any adverse claims. The Seller shall inform the Buyer immediately of any termination, withdrawal, suspension or relevant amendment of the Network Operator Capacity Contract or, if different, any other relevant capacity contract with the Relevant Network Operator.
- (iii) The Seller further warrants to the Buyer that: (A) it has entered into all contracts necessary for the sale and transfer of the Gas Capacity to the Buyer which will remain in place until at least the end of the Total Capacity Period; (B) it has or will have, in accordance with the Applicable Rules, sufficient Gas Capacity to transfer the Contract Quantity of Gas Capacity to the Buyer in each Time Unit in the Total Capacity Period; (C) at the date of this Individual PRISMA Capacity Contract it is not in default of the terms of any of its contracts with the Relevant Network Operator in respect of the Gas Capacity; and (D) until the end of the Total Capacity Period it shall take all such steps to ensure that it does not commit a default or do anything that might otherwise result in termination of its contracts with the Relevant Network Operator.
- (iv) Unless the Seller specifies in Part I (Commercial Terms) of this Individual PRISMA Capacity Contract that it does not give this warranty, the Seller warrants to the Buyer that either (A) all the Gas Capacity is primary capacity booked by the Seller directly with the Relevant Network Operator or (B) full title to all the Gas Capacity has been assigned to the Seller with the consent of the Relevant Network Operator in such a way that the Seller's title to the Gas Capacity is not dependent on the existence of any third party contracts with the Relevant Network Operator.

(b) **Assignment Transaction:**

- (i) Upon entering into an “**Assignment Transaction**”, the Seller irrevocably commits to assigning and Scheduling the full capacity title (as provided by the Relevant Network Operator in the Network Operator Capacity Contract) for each Time Unit of the Total Capacity Period to the Buyer and, the Buyer shall assume all obligations of the Seller to the Relevant Network Operator in respect of the Gas Capacity including,

without limitation, the liability for payment of the Tariff Rate and all other risks associated with, and the responsibility 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 Gas Capacity and, subject only to Validation, such Gas Capacity shall transfer from the Seller to the Buyer in accordance with all the Applicable Rules then in effect for an Assignment Transaction.

- (ii) The Seller warrants to the Buyer that it has the right to sell and assign to the Buyer for the Total Capacity Period full title and entitlement to the Gas Capacity free and clear of any adverse claims.
- (iii) The Seller further warrants to the Buyer that: (A) it has entered into all contracts necessary for the sale and assignment of the Gas Capacity to the Buyer which will remain in place until at least the start of the Total Capacity Period (or such other period as required by the Relevant Network Operator for the Assignment Transaction to become effective); (B) it has or will have, in accordance with the Applicable Rules, sufficient Gas Capacity to assign the Gas Capacity to the Buyer; (C) at the date of this Individual PRISMA Capacity Contract it is not in default of the terms of any of its contracts with the Relevant Network Operator in respect of the Gas Capacity; and (D) that at all relevant times it shall take all such steps to ensure that it does not commit a default or do anything that might otherwise result in termination of its contracts with the Relevant Network Operator.
- (iv) The Buyer warrants to the Seller that it will not amend the terms on which the Gas Capacity is provided by the Relevant Network Operator in such a way that would change the Gas Capacity Type in any Time Unit after the end of the Total Capacity Period.

**5.2 Documentation:** In respect of this Individual PRISMA Gas Capacity Contract, 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(ies) which is the subject of the Gas Capacity Transaction and shall use its reasonable and diligent efforts to request and acquire from the Relevant Network Operator(s) and/or other relevant entity, and share with the requesting Party, any additional documentation necessary to enforce the transfer or assignment of the Contract Quantity of the Gas Capacity(ies) in respect of each Time Unit of the Total Capacity Period against the Relevant Network Operator(s) or other relevant entity; PROVIDED THAT the obligations on a Party under this §5.2 (**Documentation**) shall only require such Party to extract from the documentation and provide to the other Party information as relates to the Gas Capacity Transaction concluded between the Parties, and not information relating to contracts or transactions with other counterparties.

**5.3 Seller and Buyer Costs for the Gas Capacity Transaction:** In respect of the Gas Capacity Transaction, each Party shall bear all of its own costs or charges imposed on or associated with Scheduling of the Gas Capacity charged by or on behalf of the Relevant Network Operator(s) 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 Network Operator(s) or other relevant entity in respect of any Gas Capacity, other than the payment of the Tariff Rate by the Seller in respect of a Transfer of Use 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.

## § 6

### Non-Performance Due to Force Majeure

**6.1 Force Majeure:** For purposes of this Individual PRISMA Gas Capacity Contract, “**Force Majeure**” means an occurrence beyond the reasonable control of the Party claiming Force Majeure (the “**Claiming Party**”) which it could not reasonably have avoided or overcome and which makes it impossible for the Claiming Party to perform any of its obligations set out in §4.1 (**Transfer or Assignment and Acceptance**), including in particular, its obligation to Schedule the Gas Capacity Transaction to the

Relevant Network Operator(s) or other relevant entities in accordance with the terms of this Individual PRISMA Gas Capacity Contract and the Applicable Rules.

**6.2 Release from Delivery and Acceptance Obligations:** Subject to §6.5 (*Relevant Network Operator Unavailability*), if a Party is fully or partly prevented due to Force Majeure from performing the obligations set out in §4.1 (*Transfer or Assignment and Acceptance*) and such Party complies with the requirements of §6.3 (*Notification and Mitigation of Force Majeure*) then no breach or default on the part of the Claiming Party shall be deemed to have occurred and it shall be released (and not merely suspended) from those obligations but only for the period of time and to the extent that such Force Majeure prevents its performance. No obligation to pay damages pursuant to §7 (*Default and Consequences*) will accrue to the Claiming Party with respect to default quantities arising under the Gas Capacity Transaction as a result of Force Majeure affecting the Claiming Party's obligations.

**6.3 Notification and Mitigation of Force Majeure:** The Claiming Party shall as soon as practicable after learning of the Force Majeure notify the other Party of the commencement of the Force Majeure and, to the extent then available, provide to it a bona fide non-binding estimate of the extent and expected duration of its inability to perform. The Claiming Party shall use all commercially reasonable efforts to mitigate and overcome the effects of the Force Majeure and shall, during the continuation of the Force Majeure, provide the other Party with reasonable bona fide updates, when and if available, of the extent and expected duration of its inability to perform its obligations under the Gas Capacity Transaction.

**6.4 Effects of Force Majeure on Other Party:** In the event, and to the extent, that a Seller's transfer or assignment obligations are released by Force Majeure, the Buyer's corresponding acceptance obligations shall also be released. In the event, and to the extent that a Buyer's acceptance obligations are released by Force Majeure, the Seller's corresponding transfer or assignment obligations shall also be released.

**6.5 Relevant Network Operator Unavailability:** If, in respect of a Transfer of Use Transaction, at any time during the Total Capacity Period the Relevant Network Operator waives, releases or reduces the obligation to pay the Tariff Rate for one or more Time Units due to the unavailability of the Gas Capacity for reasons of force majeure, maintenance, emergencies or otherwise, the Seller shall promptly inform the Buyer of the same and any obligation to pay the Contract Price by the Buyer or the Seller (as applicable) shall be released or reduced for each Time Unit in which the obligation to pay the Tariff Rate to the Relevant Network Operator is waived, released or reduced.

## § 7

### Default and Consequences

**7.1 Default:** Subject to §6 (*Non-Performance Due to Force Majeure*), a Party (the “**Defaulting Party**”) shall be in default (“**Default**”):

- (a) if it fails to Schedule and transfer, assign or accept (as applicable) the Gas Capacity, in part or in whole, in accordance with §4 (*Primary Obligations For Transfer, Assignment and Acceptance of Gas Capacity*);
- (b) if it fails, when required, to make a payment that is due, or to perform any other material obligation set out in §4.1 (*Transfer or Assignment and Acceptance*), provided, that in the case of a failure to pay, such failure is not cured within two (2) Business Days of a written demand, or, in the case of any other failure of performance, such failure is not cured within ten (10) Business Days of a written demand;
- (c) if it fails, when required, to make a payment that is due, or to perform any other material obligation, to, the Relevant Network Operator in respect of the Gas Capacity;
- (d) if the Party:
  - (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger);
  - (ii) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;

- (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors;
  - (iv) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, that proceeding or petition (A) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (B) is not withdrawn, dismissed, discharged, stayed or restrained in each case within the number of days of the institution or presentation of that proceeding or petition specified in Part I (Commercial Terms);
  - (v) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
  - (vi) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for all or substantially all its assets;
  - (vii) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets;
  - (viii) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in §7.1(d)(i) to §7.1(d)(vii) (inclusive); or
  - (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts referred to in this §7.1(d);
- (e) the Network Operator Capacity Contract or any other capacity contract with a Relevant Network Operator that is required to be in place for the Gas Capacity Transaction to be effective is terminated due to a Relevant Network Operator Termination with the effect that any of the Gas Capacity that is the subject of the Gas Capacity Transaction is no longer available to the Buyer (or to any entity to which it has transferred any of the Gas Capacity); or
  - (f) the Buyer's capacity contract with a Relevant Network Operator is terminated due to a Relevant Network Operator Termination with the effect that any of the Gas Capacity that is the subject of the Gas Capacity Transaction reverts or transfers to the Seller, the Relevant Network Operator or any other entity.

**7.2 Suspension:** In the case of a Default of the types set out in §§7.1(b), (d), (e) or (f), the Party not in default (the “**Non-Defaulting Party**”) shall, if permitted by the Applicable Rules, have the right to suspend performance of the Gas Capacity Transaction the subject of this Individual PRISMA Gas Capacity Contract by giving the Defaulting Party at least three (3) Business Days' written notice of suspension. With effect from the specified start date of the period of suspension, all obligations of the Parties to make payments and perform under this Individual PRISMA Gas Capacity Contract shall be released (and not merely suspended) until the Default has been cured or, in the case of a Default under §7.1(d), the end of any applicable suspension or decision period.

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· Note: Before the Non-Defaulting Party elects to suspend or terminate an Individual PRISMA Gas Capacity Contract, it should check with the Relevant Network Operator(s) whether, and on what terms, it/they will suspend or reverse the transfer or assignment of Gas Capacity(ies). Parties should note that in many Relevant Systems unilateral suspensions, terminations or reversals of capacity transfers or assignments are **not** permitted.

**7.3 Termination:** In the case of a Default of the types set out in §§7.1(b), (d), (e) or (f), the Non-Defaulting Party shall, if permitted by the Applicable Rules, have the right to terminate the Individual PRISMA Gas Capacity Contract by giving the Defaulting Party written notice of termination. A notice of termination shall specify the relevant Default and shall designate a day as an early termination date (the “**Early Termination Date**”). The Early Termination Date may not be earlier than the day the notice is deemed to have been received and not later than 20 days after such day. With effect from the Early Termination Date all further payments and performances in respect of the Gas Capacity Transaction shall be released (and not merely suspended).

**7.4 Indemnity:** In the case of a Default of the types set out in §§7.1(a), (b), (c), (e) and (f) and irrespective of whether the Non-Defaulting Party elects to suspend or terminate the Individual PRISMA Gas Capacity Contract in accordance with §7.2 (*Suspension*) and §7.3 (*Termination*), the Defaulting Party shall indemnify the Non-Defaulting Party against all losses, costs and expenses including any foreseeable consequential or indirect losses and foreseeable losses of income or profits, in each case howsoever arising and whether caused by tort (including negligence) breach of contract or otherwise, that it incurs as a result of the Default.

**7.5 Release:** If as result of the Default a non-defaulting Buyer is no longer able to use the Gas Capacity that is the subject of the Gas Capacity Transaction, then it shall immediately be released from any of its obligations to pay the Contract Price in respect of any part of the Total Capacity Period and amount of the Gas Capacity which it is unable to use the Gas Capacity.

**7.6 Mitigation:** Subject to applicable law, each Party agrees that it has a duty to mitigate any losses it suffers or incurs under this Individual PRISMA Gas Capacity Contract as far as reasonably possible and undertakes to use all commercially reasonable efforts to minimize such losses, including by means of the purchase or sale of gas capacity or natural gas.

## § 8

### Limitation of Liability

**8.1 Exclusion of Liability:** Except as otherwise provided in this Individual PRISMA Gas Capacity Contract, a Party and its employees, officers, contractors and/or agents, shall not be liable to the other Party for any loss, cost, expense or damages incurred by the other Party under or in connection with this Individual PRISMA Gas Capacity Contract, other than where such losses, costs, expenses or damages are due to the gross negligence, intentional default or fraud of a Party or its employees, officers, contractors and/or agents used by such Party in performing its obligations under this Individual PRISMA Gas Capacity Contract.

**8.2 Fraud, Death or Personal Injury:** Nothing in this Individual PRISMA Gas Capacity Contract shall exclude or in any way limit either Party’s liability for fraud, or for death or personal injury caused by its negligence.

## § 9

### Invoicing, Payment

**9.1 Invoice:** The Party that is, according to Part I (Commercial Terms), entitled to ask for payment of the Contract Price for the transfer or assignment of Gas Capacity shall transmit to the other Party: (A) in case of a Monthly Payment Method, in the course of the calendar month before the month of the use of Gas Capacity; and (B) in case of a Lump Sum Payment Method, on or after the date the Gas Capacity Transaction is Validated, an invoice (including a valid VAT invoice) setting forth the total quantities of Gas Capacity that have been transferred or assigned, (i) in case of a Monthly Payment Method, in respect of the next month; or (ii) in case of a Lump Sum Payment Method, during the Total Capacity Period. In such invoice the Party shall state all amounts then owed between the Parties pursuant to the Gas Capacity Transaction for which it entitled to ask for payment of the Contract Price including, without limitation, all amounts owed for the purchase and sale of Gas Capacity, damages, interest and other payments or credits owed between the Parties (including, without limitation, under §7 (*Default and Consequences*)) and the net amount due for payment in respect of the Gas Capacity Transaction.

## 9.2 Payment:

- (a) If a Monthly Payment Method is elected in Part I (Commercial Terms): On or before the tenth (10th) Business Day following receipt of the invoice; or
- (b) if a Lump Sum Payment Method is elected in Part I (Commercial Terms): On or before the fifth (5th) Business Day after receipt of an invoice,

a Party owing an invoiced amount shall pay, by wire transfer in freely available funds, the amount set forth in such invoice to the payment address or bank account specified in the relevant invoice. Such payment shall be made, unless otherwise agreed, in EURO and subject to §10 (*VAT and Taxes*), and the remitter shall pay its own bank charges.

**9.3 Late Payment Interest:** If a Party is overdue with any payment due under this Individual PRISMA Gas Capacity Contract, then without prejudice to the other Party's other rights or remedies, the late-paying Party shall be liable to pay interest on the overdue amount at the specified rate equal to EURIBOR applicable from time to time plus the percentage specified in Part I (Commercial Terms) compounded monthly from and including the date payment becomes overdue to but excluding the date on which the other Party receives payment of the overdue amount together with all interest that has accrued.

**9.4 Substitute Interest Rate:** If the interest rate specified in §9.3 (*Late Payment Interest*) ceases temporarily or permanently to be published then the Party owed money may substitute a rate that it considers in good faith to be equivalent to that rate published by the European Central Bank.

## § 10

### VAT and Taxes

**10.1 VAT:** All amounts referred to in this Individual PRISMA Gas Capacity Contract are stated exclusive of any applicable VAT chargeable on the transfer or assignment of Gas Capacity. If VAT is payable on any such amounts, the Party paying the amount shall pay to the other Party an amount equal to the VAT at the rate applicable from time to time provided that such amount shall only be required to be paid once the Party due to receive the VAT provides the other Party with a valid VAT invoice in relation to that amount.

**10.2 Zero- Rated:** Where, in accordance with EU and/or national legislation, any supplies under the Gas Capacity Transaction may be Zero-Rated and/or subject to a reverse charge, the following shall apply:

- (a) the Parties hereby covenant that they will do all such proper acts, deeds and things as are necessary (which may include and shall not be limited to providing all such proper, true and accurate documentation or assistance as may reasonably be required by the relevant taxing authority) to ensure that such supply is Zero-Rated or subject to the reverse charge for the purposes of such legislation;
- (b) in the event that a Party fails to comply with such obligation, the non-complying Party shall indemnify the other Party in respect of any and all VAT, penalties and interest incurred by the other Party as a result of the non-complying Party's failure to comply with the above covenant; and
- (c) in the absence of a Party providing any documentation as referred to in §10.2 (a) above, the other Party reserves the right to charge local VAT.

**10.3 Taxes, duties, royalties and other sums:** 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 the Gas Capacity Transaction between the Parties to be paid. In the event that a Party is required by law to pay any Tax which is determined for the account of the other Party, the other Party shall promptly indemnify or reimburse the first Party in respect of any such Tax not so deducted.

## § 11



## Confidentiality

**11.1 Confidentiality Obligations:** Subject to §11.2 (*Exclusions from Confidential Information*), neither Party shall disclose the terms of the Gas Capacity Transaction (“**Confidential Information**”) to a third party.

**11.2 Exclusions from Confidential Information:** Confidential Information shall not include information which:

- (a) is disclosed with the other Party's prior written consent;
- (b) is disclosed by a Party to a Relevant Network Operator, the operator of PRISMA, its directors, employees, Affiliates, agents, professional advisers, bank or other financing institution, rating agency or a permitted, intended assignee of this Individual PRISMA Capacity Contract;
- (c) is disclosed to comply with any applicable law, regulation or rule of any exchange, Relevant Network Operator, PRISMA or regulatory body, or in connection with any court or regulatory proceeding; provided that each Party shall, to the extent practicable and permissible under such law, regulation, or rule use reasonable efforts to prevent or limit the disclosure and to give the other Party prompt notice of it;
- (d) is in or lawfully comes into the public domain other than by a breach of §11 (*Confidentiality*); or
- (e) is disclosed to price reporting agencies or for the calculation of an index provided that such disclosure shall not include the identity of the other Party.

**11.3 Expiration:** A Party's obligation under §11 (*Confidentiality*) shall expire one year after the end of the Total Capacity Period.

## § 12

### General Representation and Warranties

**12.1 General Representation and Warranties:** Each Party hereby represents and warrants to the other Party upon entering into this Individual PRISMA Gas Capacity Contract as follows:

- (a) it is an entity duly organised, validly existing and in good standing under the laws of its jurisdiction of incorporation or organisation;
- (b) the entering by it into this Individual PRISMA Capacity Contract and the carrying out of the Gas Capacity Transaction shall not violate any provision of its constitutional documents;
- (c) it has the power and is authorised to enter into deliver and perform its obligations under this Individual PRISMA Capacity Contract;
- (d) it has negotiated and entered into this Individual PRISMA Gas Capacity Contract as principal (and not as agent or in any other capacity, fiduciary or otherwise);
- (e) it is acting for its own account (and not as advisor, agent, broker or in any other capacity, fiduciary or otherwise), has made its own independent decision to enter into this Individual PRISMA Gas Capacity Contract and as to whether the Gas Capacity Transaction is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of, and understands and accepts, the terms, conditions and risks of this Individual PRISMA Gas Capacity Contract;
- (f) the other Party is not acting as its fiduciary or adviser;
- (g) it is not relying upon any representation made by the other Party other than those expressly

set forth in this Individual PRISMA Gas Capacity Contract or on PRISMA; and

- (h) with respect to a Party, it is not insolvent, and there are no pending or threatened legal or administrative proceedings to which it is a party which to the best of its knowledge would materially adversely affect its ability to perform the Gas Capacity Transaction, such that it could become insolvent.

### § 13

#### **Governing Law and Dispute Resolution**

**13.1** If English Law is chosen in Part I (Commercial Terms) the following shall apply:

- (a) This Individual PRISMA Gas Capacity Contract shall be construed and governed by English law, excluding any application of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980.
- (b) If Courts are chosen in Part I (Commercial Terms), any disputes (whether such disputes are contractual or non-contractual in nature such as claims in tort, for breach of statute or regulation or otherwise) which arise under or in respect of this Individual PRISMA Gas Capacity Contract, including any question regarding its existence, validity or termination, shall be subject to the exclusive jurisdiction of the English Courts.
- (c) If Arbitration is chosen in Part I (Commercial Terms), any dispute arising under out of or in connection with this Individual PRISMA Gas Capacity Contract including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration, which Rules are deemed to be incorporated by reference into this §13.1(c). The number of arbitrators shall be three, each Party having the right to nominate one arbitrator. The place of arbitration shall be London, England where all hearings and meetings shall be held, unless the Parties agree otherwise. The language to be used in the arbitral proceedings shall be English and the Parties hereby expressly waive any right of appeal to any court having jurisdiction on any question of fact or law. It is agreed that the arbitrators shall have no authority to award exemplary or punitive damages of any type under any circumstances whether or not such damages may be available under the relevant applicable law, the Parties hereby waiving their right, if any, to recover such damages.

**13.2** If German Law is chosen in Part I (Commercial Terms) the following shall apply:

- (a) This Individual PRISMA Gas Capacity Contract shall be construed and governed by the substantive law of the Federal Republic of Germany.
- (b) If Courts are chosen in Part I (Commercial Terms), any disputes arising under, out of or in connection with this Individual PRISMA Gas Capacity Contract shall be submitted to the exclusive jurisdiction of the Courts specified in Part I (Commercial Terms).
- (c) If Arbitration is chosen in Part I (Commercial Terms), any dispute arising under, out of or in connection with this Individual PRISMA Gas Capacity Contract, shall be referred for resolution to the German Institution of Arbitration (DIS) and decided according to its rules, ousting the jurisdiction of the ordinary courts. The number of arbitrators shall be three. The arbitration shall be conducted in the language chosen in Part I (Commercial Terms).

### § 14

#### **Miscellaneous**

**14.1 Assignment or Transfer:** Neither Party may assign or transfer all or part of this Individual PRISMA Gas Capacity Contract without the prior written consent of the other Party, which shall not be unreasonably delayed, refused or withheld.

**14.2 Entire Understanding:** This Individual PRISMA Gas Capacity Contract and the applicable PRISMA

rules constitute the entire understanding of the Parties with respect to its subject matter and supersedes and extinguishes any representations previously given or made with respect to its subject matter other than those given or made in this Individual PRISMA Gas Capacity Contract and the applicable PRISMA rules but nothing in this §14.2 (*Entire Understanding*) limits or excludes any liability for fraud in relation to those representations.

**14.3 Amendments:** No alteration to or variation of this Individual PRISMA Gas Capacity Contract shall take effect unless and until the same is in writing and signed on behalf of each of the Parties by a duly authorised representative.

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

**14.5 Third Party Rights:** The Parties do not intend that any third party shall have any rights under or be able to enforce the Individual PRISMA Gas Capacity Contract and the Parties exclude to the extent permitted under applicable law any such third party rights that might otherwise be implied.

**14.6 Notices and Communications:** All notices or invoices sent by one Party to the other shall be in writing and shall be delivered by letter or facsimile to the address and facsimile number provided by the Parties to each other from time to time (and if no such address is provided to a Party's registered office). Written notices and invoices shall be deemed to be received and effective:

- (a) if delivered by hand or courier on the Business Day delivered or on the first Business Day after the date of delivery if delivered on a day other than a Business Day;
- (b) if sent by first class post, on the second Business Day after the date of posting, or if sent from one country to another, on the fifth Business Day after the date of posting; and
- (c) if sent by facsimile transmission and a valid transmission report confirming good receipt is generated, on the day of transmission is transmitted before 17:00 hours (recipient's time) on a Business Day or otherwise at 09:00 hours (recipient's time) on the first Business Day after transmission.

# EFET

## European Federation of Energy Traders

### ANNEX 1 to the Individual PRISMA Gas Capacity Contract

#### Defined Terms

Terms used in this Individual PRISMA Gas Capacity Contract shall have the following meanings:

"**Affiliate**" means with respect to a Party, any entity controlled, directly or indirectly, by that Party, any entity that controls, directly or indirectly that Party or any entity directly or indirectly under the common control of a Party;

"**Applicable Rules**" has the meaning given in §4.2 (*Definition of Schedule*) of Part II (General Provisions) of this Individual PRISMA Gas Capacity Contract;

"**Assignment Transaction**" has the meaning given in §5.1(b)(i) of Part II (General Provisions) of this Individual PRISMA Gas Capacity Contract;

"**Bundled Capacity**" means a bundled capacity product offered on PRISMA for a specified quantity of exit capacity in a Relevant System and an equal quantity of entry capacity in one or more connected Relevant Systems;

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

"**Buyer**" has the meaning specified in the Part I (Commercial Terms) of this Individual PRISMA Gas Capacity Contract;

"**Claiming Party**" has the meaning given to it in §6.1 (*Force Majeure*) of Part II (General Provisions) of this Individual PRISMA Gas Capacity Contract

"**Confidential Information**" has the meaning given to it in §11.1 (*Confidentiality Obligations*) of Part II (General Provisions) of this Individual PRISMA Gas Capacity Contract;

"**Contract Price**" means, in respect of the Gas Capacity Transaction, the price agreed between the Parties by means of PRISMA;

"**Contract Quantity**" means in respect of the Gas Capacity Transaction, the quantity of Gas Capacity to be transferred or assigned by the Seller to the Buyer in each Time Unit;

"**Default**" has the meaning specified in §7.1 (*Default*) of Part II (General Provisions) of this Individual PRISMA Gas Capacity Contract;

"**Defaulting Party**" has the meaning specified in §7.1 (*Default*) of Part II (General Provisions) of this Individual PRISMA Gas Capacity Contract;

"**Early Termination Date**" has the meaning specified in §7.3 (*Termination*) of Part II (General Provisions) of this Individual PRISMA Gas Capacity Contract;

"**Force Majeure**" has the meaning specified in §6.1 (*Force Majeure*) of Part II (General Provisions) of this Individual PRISMA Gas Capacity Contract;

"**Gas Capacity(ies)**" means the capacity(ies) the subject of the Gas Capacity Transaction;

"**Gas Capacity Transaction**" has the meaning given in §1.1 (*Subject of the Gas Capacity Transaction*) of Part II (General Provisions) of this Individual PRISMA Gas Capacity Contract;

"**Gas Capacity Type**" means the type of Gas Capacity, being firm, statistical firm, interruptible or any other type of gas capacity;

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

**"Individual PRISMA Gas Capacity Contract"** means this Individual PRISMA Gas Capacity Contract (inclusive of its Annexes);

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

**"Lump Sum Payment Method"** shall apply if elected in Part I (Commercial Terms) of this Individual PRISMA Gas Capacity Contract;

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

**"Monthly Payment Method"** shall apply if elected in Part I (Commercial Terms) of this Individual PRISMA Gas Capacity Contract;

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

**"Network Operator Capacity Contract"** means the contract for primary gas capacities between the Seller or the original primary capacity holder, as applicable, and the Relevant Network Operator from which the Gas Capacity originates;

**"Non-Defaulting Party"** has the meaning specified in §7.2 (*Suspension*) of Part II (General Provisions) of this Individual PRISMA Gas Capacity Contract;

**"Party"** means a party to this Individual PRISMA Capacity Contract and **"Parties"** means both of them;

**"PRISMA"** means the internet based PRISMA Capacity platform at [www.prisma-capacity.eu](http://www.prisma-capacity.eu) operated at the date of this Version 2.0 by PRISMA European Capacity Platform GmbH on which secondary entry and exit gas capacities can be traded;

**"Relevant Network Operator(s)"** has/have the meaning(s) specified in Part I (Commercial Terms) of this Individual PRISMA Gas Capacity Contract;

**"Relevant Network Operator Termination"** means the exercise by the Relevant Network Operator of a right to terminate the Network Operator Capacity Contract or any other capacity contract with the Relevant Network Operator that is required to be in place for the Gas Capacity Transaction to be effective following a breach of the relevant contract's terms by, or an event of default affecting, the entity contracting with the Relevant Network Operator;

**"Relevant System(s)"** means, in respect of the Gas Capacity Transaction, the gas pipeline system(s) operated by the Relevant Network Operator(s) set out in Part I (Commercial Terms) of this Individual PRISMA Gas Capacity Contract;

**"Schedule"** has the meaning given to in §4.2 (*Definition of Schedule*) of Part II (General Provisions) of this Individual PRISMA Gas Capacity Contract and **"Scheduling"** shall be construed accordingly;

**"Seller"** has the meaning specified in Part I (Commercial Terms) of this Individual PRISMA Gas Capacity Contract;

**"Tariff Rate"** means the rate charged by the Relevant Network Operator for each Time Unit of Gas Capacity during the Total Capacity Period;

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

**"Time Unit"** means, in respect of the Gas Capacity Transaction, the Time Unit for the purposes of such Gas Capacity Transaction set out in Part I (Commercial Terms) of this Individual PRISMA Gas Capacity Contract;

**"Total Capacity Period"** means, in respect of the Gas Capacity Transaction, the capacity period set out in Part I (Commercial Terms) of this Individual PRISMA Gas Capacity Contract;

**"Transfer of Use Transaction"** has the meaning given in §5.1(a)(i) of Part II (General Provisions) of this Individual PRISMA Gas Capacity Contract;

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

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

"**Validation**", "**Validated**" and to "**Validate**" means in the case of a Transfer of Use Transaction, the transfer, or agreement to transfer, by the Relevant Network Operator with effect from the start of the Total Capacity Period of the Gas Capacity from the Seller's account or portfolio to the Buyer's account or portfolio and, in the case of an Assignment Transaction, the acceptance by the Relevant Network Operator of the assignment of the Gas Capacity; and

"**Zero-Rated**" means, in respect of a supply, a tax exempt export or tax-free export under applicable VAT Rules.