



BALANCING AGREEMENT

Nr. NUMBER

NETWORK USER NAME

This balancing agreement (hereafter the or this “**Balancing Agreement**”) is entered into by and between:

- (1) **Balansys S.A.**, a company incorporated in and under the laws of Luxembourg, having its registered office at 59-61 rue de Bouillon, L-1248 Luxembourg, registered at registre de commerce et des sociétés du Luxembourg sous le numéro B196896;

Hereinafter referred to as “**Balancing Operator**”;

Hereby duly represented by [●];

and:

- (2) [●], a company incorporated in and under the laws of [●], having its registered office at [●], registered at the [●] under number [●] with VAT number [●];

Referred to as the “**Network User**”;

Hereby duly represented by [●], [●] and [●], [●];

Balancing Operator and Network User may hereinafter individually be referred to as a “**Party**” and collectively as the “**Parties**”.

WHEREAS:

- A. Article 7 of the Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas promotes regional cooperation between transmission system operators. The Belgian Gas Act and the Luxembourg Gas Act implementing the aforementioned directive enable the transmission system operators of both countries to appoint a jointly held entity as Balancing Operator of an integrated balancing zone.
- B. The Balancing Operator has been established by the TSOs as responsible for the management of the Balancing within the BeLux Area.
- C. The Network User transports or trades, or is willing to transport or trade, Natural Gas within the BeLux Area for which it has subscribed, or intends to subscribe Services with the relevant Transmission System Operator.
- D. Balancing Operator is willing to provide Balancing Services in respect of the Balancing regime within the BeLux Area in accordance with the terms and conditions set out in this Agreement and in the Balancing Code.
- E. This Agreement conforms to the Balancing Agreement approved by the CREG on [●] and submitted to the ILR on [●].

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

Unless the context requires otherwise in this Agreement including its attachments, the terms used in this Agreement including its attachments shall have the meaning given to them in the Glossary of definitions set out in attachment 2 of this Agreement.

1.2. Interpretation

- 1.2.1. The headings of articles shall not affect their interpretation.
- 1.2.2. Words importing a gender include every gender.
- 1.2.3. References to a '*company*' shall be construed so as to include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.2.4. References to '*person*' shall be construed so as to include any physical person, individual, firm, company, government, state or agency of a state or any joint venture, association or partnership (whether or not having separate legal personality).
- 1.2.5. Reference to any person includes references to that person's successors and permitted assignees;
- 1.2.6. Reference to a statute, by-law, regulation, rule, delegated legislation or order is to the same as amended, modified or replaced, from time to time, and to any by-law, regulation, rule, delegated legislation or order made thereunder;
- 1.2.7. In case an index used or referred to in this Agreement ceases to be available or is materially changed or affected in its content, or no longer reflects the price of the commodity it refers to at the place it refers to, or the methodology used to calculate the index is materially altered as compared to how it was calculated at the date of execution of this Agreement, Balancing Operator shall, after having consulted the Network User (and the market), provide an appropriate adjustment or replacement of such index in order to achieve as accurately as possible the objectives which were at the basis of the choice of the original index. Such adjustment or replacement shall apply automatically, as the case may be after the approval by Competent Regulator(s).

2. OBJECT

The object of this Agreement is to lay down the terms and conditions which are applicable to the Balancing within the BeLux Area.

3. CONTENTS OF THIS AGREEMENT

The following documents are part of the Agreement:

(i) General conditions

In addition to the provisions set out in this Agreement, the terms and conditions applicable to this Agreement are set out in attachment 1 (the ***General Conditions***). By signing this Agreement, each of Balancing Operator and Network User agree to be bound by all provisions set out herein and in the General Conditions.

(ii) Glossary of definitions

The terms used in this Agreement and its attachments shall have the meaning given to them in the glossary of definitions set out in attachment 2 (the ***Glossary of definitions***). By signing this Agreement, each of Balancing Operator and Network User acknowledge to be bound by and to have taken knowledge of all the definitions set out in attachment 2.

4. BALANCING CODE

By signing this Agreement, each of Balancing Operator and Network User agrees and acknowledges to be bound by and to have taken knowledge of all provisions set out in the Balancing Code of the BeLux Area.

5. BELUX INTEGRATED MARKET MODEL & BALANCING PROGRAMME

The BeLux integrated market model describes the BeLux Area and the services offered within the BeLux Area.

The Balancing Programme consists in a description of the Balancing model applicable in the BeLux Area.

By signing this Agreement, each of Balancing Operator and Network User acknowledges to have taken knowledge of the content of the BeLux integrated market model and of the Balancing Programme.

6. BALANCING AGREEMENT AS PREREQUISITE TO THE USE OF SERVICES WITHIN THE BELUX AREA

Network User acknowledges that the adherence to and due performance under this Agreement is required for the use of the Services offered by the TSOs (except to the extent provided otherwise in any regulated documents of the TSOs).

Balancing Operator will notify the TSOs of the BeLux Area of the signing, of any non-compliance by the Network User with the obligations assumed in this Agreement (including the Balancing Code), the rescission, the termination, the annulment, any Force Majeure event, or the resumption of performance of the Agreement as well as any event or circumstance it deems relevant in this respect. Such notification is to occur promptly and not later than two (2) Business Days following the relevant event.

7. MODIFICATION OF DOCUMENTS

The Agreement, the Balancing Code and the Balancing Programme may be changed from time to time. Such changes shall automatically apply after consultation of the market and after they have been approved or decree by the Competent Regulator(s) (or after notification to ILR concerning the Balancing Agreement in Luxembourg), and on the date of entry into force as determined by the Competent Regulator(s).

8. START DATE

This Agreement will enter into force and effect on [●].

9. CONTACT DETAILS

9.1 Any notice, demand, offer or other written instrument required or permitted to be given pursuant to this Agreement and to the Balancing Code shall be sent:

- By Network User, by email to info@balansys.eu or if required to by letter or registered letter, to the registered office of Balancing Operator with a copy by email
- By Balancing Operator, by email to [●] or if required to by letter or registered letter, to the registered office of Network User with a copy by email.

9.2 Each Party may change these contact details to which notice shall be sent, or specify one additional address to which copies of notices shall be sent, in accordance with the provisions of this Agreement.

* * *

IN WITNESS WHEREOF

This Agreement is made up in [●] on [●] in [●] original copies; each Party acknowledges having received one (1) original copy.

FOR THE PARTIES:

For and on behalf of Balancing Operator:

Name: _____

Name: _____

Function: _____

Function: _____

For and on behalf of the Network User:

Name: _____

Name: _____

Function: _____

Function: _____

ATTACHMENT 1
GENERAL CONDITIONS

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1. BALANCING IN THE BELUX AREA AND BALANCING MONTHLY FEES

- 1.1 Subject to the terms and conditions of this Agreement and of the Balancing Code, Balancing Operator shall provide Network User with a Balancing Monthly Fee and a Balancing Monthly Self-billing Fee for the Balancing Services.
- 1.2 The Balancing Monthly Fee consists of the:
- (i) Shortfall Monthly Balancing Settlement Fees;
 - (ii) Monthly Neutrality Charge Fees (if applicable);

The Balancing Monthly Self-billing Fee consists of the:

- (i) Excess Monthly Balancing Settlement Fees;
 - (ii) Monthly Neutrality Charge Fees (if applicable);
- 1.3 As described in the Balancing Code, Excess and Shortfall Monthly Balancing Settlement Fees are calculated based on provisional data. Network User acknowledges that the TSOs of the BeLux Area will perform Allocation Settlements based on validated data in accordance with, and as defined in the CCF and STA respectively applicable in Luxembourg and in Belgium.
- 1.4 In the event of any modification to the Regulated Tariffs, the Balancing Monthly Fee and the Balancing Monthly Self-billing Fee shall be adapted as from the calendar day of the entering into force of the modifications.

2. INVOICING AND PAYMENT

- 2.1 As from the Start Date, and in accordance with the Balancing Code, Balancing Operator shall on the tenth (10th) Day of each Month (or the next Business Day if the tenth (10th) Day is not a Business Day):
- issue the Monthly BAL Invoice including the following fees to Network User:
 - (i) the Balancing Monthly Fee for the previous Month; and
 - (ii) any correction on the Balancing Monthly Fee(s) for the previous eighteen (18) Months in accordance with Article 2.9
 - issue the Monthly BAL Self-billing Invoice including the following fees to Network User:
 - (i) the Balancing Monthly Self-billing Fee for the previous Month; and
 - (ii) any correction on the Balancing Monthly Self-billing Fee(s) for the previous eighteen (18) Months in accordance with Article 2.9

- 2.2 The Balancing Monthly Fee and the Balancing Monthly Self-billing Fee are exclusive of any taxes, duties or levies of a similar nature. The Balancing Operator is entitled to add to the amount due by the Network User all taxes, duties or levies of a similar nature imposed on the Balancing Operator by law or any competent authority with respect to or affecting the Balancing performed by the Balancing Operator under the Agreement (including but not limited to VAT, the levies, excise or any taxes or levies whatsoever imposed by public authorities, but excluding taxes on income, profit and share capital).
- 2.3 All invoices shall include detailed calculations mentioning amongst others the pricing formula and the values of the relevant parameters and indexes (if applicable), the invoicing date, the bank account information, the payment terms (including the time of payment), the currency and the interest rates (if applicable).
- 2.4 For the sake of convenience, a summary of consolidated invoices by Due Date shall be communicated to the Network User each Month, including a summary note, that is to say, the balance to be paid to the Balancing Operator or to be reimbursed to the Network User.
- 2.5 Invoices may be rendered electronically or by letter or by telefax.
- The receipt of the invoice is deemed to have occurred the fifth (5th) Business Day following the date of the invoice.
- 2.6 The amounts of the invoices shall be paid in EUR at the latest on the Due Date. If this day of payment is not a Business Day, the first following Business Day shall apply.
- 2.7 a) In case of manifest calculation error(s), the Network User notifies such error to the Balancing Operator (to the attention of the Managing Director – invoicing@balansys.eu) at the latest on the Due Date. In such case, only the undisputed part of the invoice, including VAT, shall be paid on the Due Date. The Balancing Operator shall treat the complaint within thirty (30) Business days after receipt of such notification. In case the parties cannot come to an agreement, either Party may call upon Article 11 of these General Conditions.
- b) In case Network User disputes part or all of an invoice for reasons other than calculation error(s), the Network User notifies such contestation to the Balancing Operator (to the attention of the Managing Director – invoicing@balansys.eu) at the latest on the Due Date. In such case both undisputed and disputed part(s) of the invoice(s) will be paid, including VAT at the latest on the Due Date. The Balancing Operator shall treat the complaint within thirty (30) Business Days after the receipt of such notification. In case the parties cannot come to an agreement, either party may call upon Article 11 of these General Conditions.
- 2.8 If any amount owed hereunder has not been paid on the Due Date, default interest shall accrue for each Day payment is overdue. Said default interest shall be calculated in accordance with the EURIBOR three (3) months rate on the Due Date increased by two hundred (200) basis points.

Without prejudice to Article 7.3, in the event of a payment default by a Party, the other Party shall have the right to set-off the same amount from any amount she has to pay to the Party in default.

- 2.9 Any invoice established in accordance with Article 2.1 shall be considered as final between the Parties eighteen (18) Months after the Due Date, unless they have been disputed in accordance with Article 2.7.
- 2.10 Upon termination of the Agreement and each time the Network User so requests, the Balancing Operator shall deliver a statement of accounts.
- 2.11 If the Network User is obliged to provide Collateral in accordance with section 7.1, the Balancing Operator continuously monitors the amounts to which the Network User is exposed according to the next Monthly BAL Invoice and Monthly BAL Self-Billing Invoice. When the Network User creates during a Month, imbalances such as the balance of the Monthly Balancing Fee and the Monthly Balancing Self-billing Fee - provisional, calculated during the month - due by the Network User to the Balancing Operator is greater than the higher of a) and b):
- a) the lower of the two following elements:
 - a. twice the amount of the Collateral as defined in Article 7.2,
 - b. the amount of the Collateral as defined in Article 7.2 increased by one hundred thousand euros (100.000 EUR)
 - b) one hundred thousand euros (100.000 EUR),

then, without prejudice to Articles 7.3.2 ,7.3.3 and 7.3.4, the Balancing Operator shall issue - in derogation from Article 2.1 - the concerned Monthly BAL Invoice and the Monthly Self-Billing Invoice in advance to the Network User who has to pay them (as well as any previous not yet paid BAL invoices and BAL Self-billing invoices) within a period of eight (8) Business Days from receipt– in derogation of Article 2.5, which will be deemed to have been acquired within two (2) Business Days of its shipment by mail, e-mail or fax.

In the absence of payment within this period, the Balancing Operator sends a formal notice by registered mail to the Network User and informs the Competent Regulator(s).

If, within three (3) Business Days from the date of issue by the Balancing Operator of such notice, the Network User has still not paid the concerned invoice(s), the Balancing Operator shall inform the TSOs of the BeLux Area (and the Network User acknowledges that TSOs of the BeLux Area have the right to immediately suspend all or part of Services of the Network User in accordance with the contractual provisions provided for this purpose).

3. WARRANTIES

3.1. Mutual warranties

Each Party (in respect of itself and each of its permitted assigns) warrants to the other Party (for the benefit of the other Party and each of its permitted assigns) as follows:

- (a) It is duly organised and validly existing under the laws of the jurisdiction of its organisation or incorporation (and, if relevant under those laws, in good standing).
- (b) It has the power (i) to execute this Agreement and any other documentation relating to this Agreement to which it is a party and (ii) to perform its obligations under this Agreement and has taken all necessary action to authorise that execution, delivery and performance.
- (c) The execution and performance referred to in paragraph (b) do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets.
- (d) Its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with its terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application.

3.2. Network User's warranties

The Network User hereby warrants to the Balancing Operator that it holds any and all licenses, permits and authorisations required under applicable law to subscribe Balancing Services and that it shall use its reasonable endeavours to maintain such licenses, permits and authorisations throughout the duration of this Agreement.

3.3. Balancing Operator warranties

The Balancing Operator hereby warrants to the Network User that it holds any and all authorisations and rights required under applicable law to perform the Balancing within the BeLux Area. It shall take all necessary steps to maintain the required licenses, permits, authorisations and rights throughout the duration of this Agreement.

4. BALANCING OBLIGATIONS FOR NETWORK USER

- 4.1 Network User shall at all times use reasonable endeavours to minimize its Network User Balancing Position at End-of-Day in order to contribute to keeping the Market Balancing Position within its limits during the day in accordance with the Balancing Code.

- 4.2 Without prejudice to the above, Network User shall not deliberately create an imbalance for reasons of commercial opportunities nor abuse or manipulate the Balancing system.
- 4.3 When Network User has breached Article 4.2 of these General Conditions or when the Network User has created imbalances so that Balancing Operator may expect, based on objective elements, not to receive full payment of the anticipated Balancing Monthly Fee on time, then Balancing Operator shall:
- (i) Inform the TSOs (and Network User acknowledges that the TSOs shall have the right to immediately suspend all or part of the Services of Network User);
 - (ii) Inform the Competent Regulator(s), setting out the elements justifying the notification of the Balancing Operator;
 - (iii) charge to Network User, and Network User shall have to pay, any balancing costs incurred by the Balancing Operator or the TSOs relating to the specific behaviour of the Network User.

5. LIABILITY

5.1. General

Except for wilful misconduct including breach of Article 4.2, in case of contractual liability or extra-contractual liability, or in case of a concurrence between a contractual and extra-contractual liability, Article 5 of these General Conditions shall apply to all circumstances under which a Party and/or its Affiliated Companies may be held liable for damages arising out this Agreement.

Damages from one Party towards the other Party shall be limited to Direct Material Damages which have a causal link with the fault(s) and the damages determined in Article 5.2 of these General Conditions. Any other damages, such as loss of use, loss of income, loss of production, loss of profit or interest and any indirect (material or immaterial) damages are expressly excluded.

5.2. Limitation of liabilities

Each Party's liability towards the other Party shall be limited:

- (a) in the event of a liability caused by gross negligence (Dutch: '*grove fout*'; French: '*faute grave*'), per event to hundred twenty five thousand Euros (EUR 125 000) and per calendar year to two hundred fifty thousand Euros (EUR 250 000); or ,
- (b) in all cases other than Article 5.2(a), per event to seventy five thousand Euros (EUR 75 000) and per calendar year to hundred fifty thousand Euros (EUR 150 000); and,
- (c) in any case per event to five hundred thousand Euros (EUR 500 000) for all claims from Network User and all other Network Users who have incurred

damages in respect of one single event. In the event the total amount claimed by Network User and all other Network Users for this single event exceeds five hundred thousand Euros (EUR 500 000), this five hundred thousand Euros (EUR 500 000) shall be distributed between Network User and the other affected Network Users *pro rata* the amount of Direct Material Damages sustained by all affected Network Users.

5.3. Third party claims

Each Party shall indemnify, hold harmless and defend the other Party from and against any claim, demand, cause of action, expense or liability whatsoever (including, but not limited to the costs of litigation, and whether arising in contract or otherwise), from or in respect of any third party, arising out this Agreement.

6. FORCE MAJEURE

- 6.1 The term "Force Majeure" shall mean any unforeseeable and insurmountable event beyond the control of a Party (including its subcontractors or agents) acting in accordance with the standards of a Reasonable and Prudent Operator or reasonable and prudent Network User which temporarily or definitively makes impossible for such Party to fulfil any obligation under this Agreement.
- 6.2. The following events could as the case may be constitute Force Majeure, without being limited thereto : forces of nature, strikes, acts of Government or any governmental authority or representative thereof (whether or not legally valid), non-obtainment or non-renewal in due time of any authorisations or licences in case such non-obtainment or non-renewal is not attributable to any delay caused by the Party requesting such authorization or license or other fault on the part of the requesting Party, refusal by the authorities to maintain any authorisations or licences, hostile attacks, wars, insurrections, riots, landslides, fires, floods, earthquakes, explosions, breakage or accidents to any process or equipment necessary for the allocation or communication of the required data related to the Balancing or Force Majeure invoked by one or both TSOs under the STA and/or CCF that hinders the provision of Services by one or both TSOs.
- 6.3 If due to a Force Majeure the affected Party is wholly or partially unable to perform its obligations under this Agreement, then such Party, as long as and to the extent that the obligations are affected by such Force Majeure, may claim relief from the performance of its obligations and failure, delay or omission to fulfil such obligations shall not be deemed to be in breach of this Agreement.
- 6.4 A Party claiming relief on account of Force Majeure shall:
 - (i) forthwith notify the other Party of the event constituting Force Majeure and shall furnish all available information on the cause of the event and estimate the time required to remedy the Force Majeure situation and shall provide regular updates on such event of Force Majeure; and,

- (ii) forthwith take all reasonable practicable steps to minimize the consequences of the Force Majeure and to limit the damage caused thereby.

6.5. If within one month as from the notification referred to in Article 6.4 of these General Conditions the Parties do not agree to accept the event as Force majeure, either Party can call upon Article 11 of these General Conditions.

6.6 In the event of Force Majeure by Balancing Operator:

- (i) Balancing Operator and Network User shall be held to settle any imbalance positions in a manner matching as closely as possible the calculation for the balancing settlements provided in the Balancing Code with the exception that during any period of Force Majeure where the individual balancing position of the Network User is not timely made available by Balancing Operator, the Small Adjustment, as defined in the Balancing Code, will not be applied to calculate the balancing settlement price determined by Balancing Operator and this, even if Network User is able to calculate its balancing position based on the data transmitted by the TSOs of the BeLux Area;
- (ii) Network User shall not be released from its obligations under this Agreement and in the Balancing Code unless Network User is itself affected by an event of Force Majeure under the conditions of Article 6.1.

7. CREDITWORTHINESS

7.1. Creditworthiness Requirements

7.1.1 In order to secure Network User's due performance of this Agreement, Network User shall:

- (i) either submit a Collateral in accordance with Article 7.2; or,
- (ii) have an acceptable credit rating – which corresponds to a rating for the Network User's long term unsecured and non credit enhanced debt obligations of not less than BBB+ by Standard & Poor's Rating Services or Fitch Ratings or not less than Baa1 by Moody's Investor Services – or to provide an unconditional and irrevocable parent company guarantee by its parent company who has such acceptable credit rating (Standard & Poor's/Fitch : BBB+ and Moody's : Baa1). The Network User must demonstrate at the latest on the Start Date and then annually at the latest each 1st of January that the Network User or its parent company still meets the requirements of an acceptable credit rating.

7.1.2 Notwithstanding Article 7.1.1. (ii), the Network User shall provide a Collateral in accordance with Article 7.2 of these General Conditions if Network User has made a payment with a delay after the Due Date of more than:

- (i) twenty (20) Business Days once in the past twelve (12) Months; or,
- (ii) ten (10) Business Days twice in the past twelve (12) Months;

7.1.3 The Balancing Operator may at any time request the Network User to demonstrate that it is complying with these creditworthiness provisions under Article 7.1.

7.2. Collateral

7.2.1. Principle

The Network User that has to provide a Collateral pursuant to Article 7.1.1 of these General Conditions must, five (5) Business Days before the Start Date of this Agreement, submit a Collateral in the form of a Bank Guarantee in accordance with Article 7.2.3.

7.2.2. Amount of the Collateral

The amount of the Collateral shall be at least equal to the sum of the Network User's average Balancing Monthly (and Self-billing) Fee and of the Network User's maximum Balancing Monthly (and self-billing) Fee invoiced to Network User during the last twelve (12) Months rounded upwards to a multiple thousand Euro (EUR 1.000), subject to the following:

- (i) Month(s) for which Network User did not nominate or trade any Natural Gas quantities within the BeLux Area are excluded from the calculation.
- (ii) Any Month(s) for which Network User nominated or traded Natural Gas quantities but for which the Balancing Monthly Fee was zero Euro (EUR 0) will be taken into account for the calculation.
- (iii) At inception of this Agreement, the amount of the Collateral shall be calculated by applying the abovementioned principles to the aggregated imbalances recorded in the Belgian and Luxemburg markets during the last twelve (12) Months.
- (iv) If the Network User did not nominate or trade any Natural Gas quantities for the last twelve (12) Months within the BeLux Area (whether before or after the creation of the integrated market), the amount of the Collateral shall be one hundred thousand Euros (EUR 100.000).

Each year in January, the amount of the Collateral will be determined by Balancing Operator on the basis of the provisions in Article 7.2.2 and communicated by mail by Balancing Operator to Network User. The Network User shall ensure that at the latest on the first (1st) of March of such year the Collateral has been amended or a new Collateral has been issued that complies with Articles 7.2.1 and 7.2.2.

7.2.3. Form of Collateral

When Network User has to submit a Collateral according to Articles 7.1.1 and 7.1.2, Network User must submit an unconditional and irrevocable Bank Guarantee issued by a bank approved by the Financial Services & Markets Authority (or by an equivalent body in one of the Members States of the European Union) and which has an acceptable credit rating as specified in Article 7.1.1(ii). The Network User must demonstrate annually that the financial institution, or the equivalent body, still meets the requirements stipulated in Article 7.1.1 (ii) and has extended the Bank Guarantee's term.

7.3. Non-compliance with payment or creditworthiness obligations

- 7.3.1 When the Network User does no longer comply with the provisions in Article 7.1.1(ii) or 7.2.3(ii) of these General Conditions, it shall immediately notify the Balancing Operator hereof by registered mail; and within twenty (20) Business Days deliver to the Balancing Operator a (new) Collateral meeting the requirements of Article 7.2 of these General Conditions, failing which Balancing Operator shall notify the TSOs of the BeLux Area thereof. Network User acknowledges that in such case the TSOs of the BeLux Area shall have the right to immediately suspend the all or part of Services of the Network User.
- 7.3.2 When the Network User becomes obligated to provide a Collateral in accordance with the Article 7.1.2, the Balancing Operator shall notify the Network User hereof. Network User must submit the Collateral twenty (20) Business Days after the notification by the Balancing Operator by registered letter with acknowledgment of receipt. If upon expiry of the twenty (20) Business Days period, the Network User has not provided the Collateral in accordance with Article 7.2, Balancing Operator shall notify the TSOs of the BeLux Area thereof. Network User acknowledges that in such case the TSOs of the BeLux Area shall have the right to immediately suspend all or part of the Services of the Network User.
- 7.3.3 If the invoices are not paid on the Due Date and within fourteen (14) calendar days from the receipt by the Network User of a formal notice hereto sent by the Balancing Operator, the Balancing Operator may call upon the Bank Guarantee for all amounts then outstanding, as the case may be. In such event, the Network User must, within the following twenty (20) Business Days, demonstrate to the Balancing Operator that he has ensured that the amount of the Collateral corresponds to the minimum level determined in Article 7.2, failing which Balancing Operator shall notify the TSOs of the BeLux Area thereof. Network User acknowledges that in such case the TSOs of the BeLux Area shall have the right to immediately suspend all or part of the Services of the Network User.
- 7.3.4 If the Network User, which is not required to provide a Collateral pursuant to Article 7.1.1 (ii), has not paid the invoices on the Due Date, the Balancing Operator shall send to the Network User a final demand to pay such invoice(s) within fourteen (14) calendar days after receipt of such final demand to pay, failing which Balancing Operator shall notify the TSOs of the BeLux Area thereof. Network User acknowledges that in such case the TSOs of the BeLux Area shall have the right to immediately suspend all or part of the Services of the Network User.

8. TERM, TERMINATION AND SUSPENSION OF THE AGREEMENT

8.1. Term and duration of the Agreement

The Agreement shall be effective for an undetermined term.

8.2. Termination of the Agreement by the Network User

The Network User may terminate this Agreement by giving prior written notice to the Balancing Operator and under the condition that all the Services subscribed under the STA and/or CCF and for which, according to Article 6 of this Agreement, the adherence to and due performance under this Agreement is required, have been terminated or have ended.

8.3. Suspension by the Balancing Operator in the event of incident or emergency

In the event one of the TSOs of the BeLux Area notifies an event of incident or emergency that are partly or wholly incompatible with the continued performance of the Balancing in the BeLux Area to Balancing Operator, the Balancing Services will, based on the measures taken by the TSOs of the BeLux Area pursuant to the applicable transmission access rules and notified to Balancing Operator, be partly or wholly suspended by Balancing Operator so long as the measures taken by the TSOs are applicable.

8.4. Assignment and negotiation

No Party may assign, negotiate or otherwise transfer its rights or obligations under this Agreement to a third party without the prior written consent of the other Party.

9. MISCELLANEOUS

9.1. Notices

Unless otherwise expressly stated, every notice and request provided for herein shall be in writing and shall be deemed to have been given in due course and time if delivered to the other Party or sent to said Party, by post, telefax (in which event the telefax shall immediately be confirmed by letter), by airmail letter or by e-mail, in accordance with Article 2 of the General Conditions of the Agreement.

9.2. Confidentiality

- 9.2.1 All information, including commercial sensitive information obtained hereunder by one Party from the other Party (excluding the existence and contents of this Agreement) shall be treated as confidential and shall not be disclosed to any third party save as expressly permitted hereunder.

If, and only to the extent that, such disclosure is required for the proper performance of their operations or work in relation to this Agreement and is not in violation of the Compliance Programme, such confidential information may be disclosed

- (i) by Balancing Operator: to employees, agents, contractors, consultants or TSOs excluding however, for the avoidance of doubt, any undertaking performing any of the functions of production or supply of natural gas or electricity.
- (ii) by Network User: to employees, agents, contractors, consultants, affiliates, TSOs, customers, sellers of the Natural Gas and other Network Users

In such case, the disclosing Party shall cause the persons to which the information is disclosed to treat the information in accordance with the confidentiality undertakings in this Article 9.2 as if they were a party to it. The disclosing Party shall ensure that appropriate safeguards for the protection of the disclosed information are made by the person to which the information was disclosed.

9.2.2 Balancing Operator shall safeguard the confidentiality of commercially sensitive information in compliance with its Compliance Programme. Each Party shall exercise due precaution to avoid improper disclosures of confidential and commercial sensitive information.

9.2.3 This confidentiality obligation under this Article 9.2 shall not apply to information:

- (i) which is publicly available at the time it is made available to the receiving Party or subsequently becomes generally available to the public other than as a result of (improper) disclosure or other act or omission by the receiving Party or otherwise contrary to its confidentiality obligations;
- (ii) which was available (as can be demonstrated by its written records) to the receiving Party, any of its employees or representatives, prior to the supply of such confidential information by the other Party, and which is free of any restrictions as to its use for disclosure; or,
- (iii) which the relevant Party is required to disclose by law, regulation, court order or by the requirements of any regulatory or other authority, including the Competent Regulator(s).

9.3. Information

The Parties shall at all times provide each other all such information as may be necessary or useful to enable each Party to exercise its rights and to carry out its obligations under this Agreement and in accordance with the Balancing Code. Whenever Network User becomes aware that any information provided to Balancing Operator is inaccurate or incomplete, it shall promptly inform the Balancing Operator thereof and provide corrected data.

9.4. Network User's representative

Network User shall have the right at any time to appoint a representative who may act in its name and on its behalf for the purpose of, inter alia, the following:

- (i) give and receive all statements, notices and information hereunder;
- (ii) to perform Network User's rights as provided under the Balancing Code.

Such appointment shall be notified to Balancing Operator and Balancing Operator shall be fully protected in acting in reliance upon any and all acts or things done or performed or agreements made in respect of, inter alia, the above mentioned matters by Network User's representative as if Network User had done or performed the same.

9.5. Severability

If any of the provisions of this Agreement is or becomes invalid, illegal or unenforceable in whole or in part, such provision shall be removed from this Agreement and shall be substituted by a valid and enforceable provision after formal approval, or as the case may be, absence of objections by the Competent Regulator(s) pursuant to and in accordance with the applicable regulatory framework.

9.6. Survival of rights, duties and obligations

- 9.6.1 Termination of this Agreement for any cause shall not release a Party from any liability which at the time of termination has already accrued to the other Party which thereafter may accrue in respect of any act or omission prior to such termination.
- 9.6.2 Termination shall not release the Parties from their obligations under Article 9.2 of these General Conditions, which shall continue in force for a period of three (3) years following termination.

10. CHANGED CIRCUMSTANCES

The Network User acknowledges that regulations regarding Balancing (including applicable legal provisions and the Balancing Code) are evolving. If during the term of this Agreement, there is a change of such regulations, due to a valid decision of the Competent Regulator(s) or any other regulatory authority, or due to any change in the applicable regulatory law, such change shall automatically and *ipso jure* apply to the Agreement as of the moment such change has become effective. Such changes shall enter into force for each Network User on the same day, on the date set by Competent Regulator(s).

If certain provisions of this Agreement require to be amended following a change in the applicable law or regulation, the Balancing Operator shall be entitled to amend or modify this Agreement after consultation of the Network Users and after approval, or, as the case may be, absence of objections of Competent Regulator(s) in accordance with the applicable laws and regulation, in order to make it comply with applicable law and regulation.

11. ILLEGALITY

If any provision or sub-provision of this Agreement is found to be invalid, illegal or unenforceable, the Balancing Operator will change the provision or sub-provision in question in application of Article 7 of the Agreement, to the extent required to make it valid, enforceable and legal. Pending the entry into force of the aforementioned amendment, (i) the provision or sub-provision in question shall be deemed to have been changed as minimum as possible in order to make it valid, enforceable and legal, and (ii) if such amendment is not possible, the provision or sub-provision is deemed to be deleted. Any such change or deletion of a provision or partial provision of this Article 11 will not affect the validity and enforceability of the remainder of the Agreement.

12. DISPUTES

- 12.1 The Commercial courts of Brussels shall have jurisdiction to settle all claims, disputes and other matters arising out of or relating to this Balancing Agreement which the Parties are unable to resolve by mutual agreement, without prejudice to the exclusive jurisdiction of the settlement authority provided for in article 15/18 of the Belgian Gas Act.

Alternatively, a party may request the other Party to submit the dispute to arbitration. If the other Party so agrees, the dispute shall be submitted to arbitration for final settlement under the Rules of Arbitration of the International Chamber of Commerce (ICC) by three (3) arbitrators appointed by the International Court of Arbitration of the ICC.

The place of the arbitration will be Brussels, Belgium.

The language of the arbitration will be English.

- 12.2 The Parties waive any defence based on sovereign immunity to arbitration, immunity to judicial proceedings to enforce or to aid any such arbitration, and immunity to enforcement and execution of the award or of any judgment entered thereon.
- 12.3 If timely requested by a TSO of the BeLux Area or by Network User, Balancing Operator shall participate to any expertise organized in accordance with contractual provisions between the concerned TSO and Network User.

13. APPLICABLE LAW

This Agreement shall be exclusively governed by and construed in accordance with Belgian law.

ATTACHMENT 2

GLOSSARY OF DEFINITIONS

Unless the context requires otherwise, capitalised terms in this Agreement, the Balancing Code and in the Balancing Programme defined shall have the following meaning:

“Affiliated Company” shall mean any company falling within the definition of art. 2, 22 of the Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC.

“Allocation Settlement” shall mean the settlement executed by the TSOs of the BeLux Area of the difference between provisional allocations and the final allocations allocated to the Network User in accordance with the Contrat Cadre Fournisseur and/or the Standard Transmission Agreement applicable respectively in Luxembourg and in Belgium.

“Balancing” shall mean the execution by the Balancing Operator of the Balancing Services.

“Balancing Code” shall mean the document containing the operational balancing rules as approved or validated by the Competent Regulator(s) and published by the Balancing Operator on its website.

“Balancing Agreement” shall mean the contract under which the Balancing Services are subscribed and used in the BeLux Zone by the Network User.

“Balancing Network Code” shall mean the commission regulation (EU) n° 312/2014 of 26 March 2014 establishing a Network Code on Gas Balancing of Transmission Networks

“Balancing Monthly Fee” shall mean the fee invoiced by the Balancing Operator for the provision of the Balancing Services.

“Balancing Monthly Self-billing Fee” shall mean the fee invoiced to the Balancing Operator in the framework of the Balancing Services.

“Balancing Operator” shall mean the party in charge of the balancing activities within the BeLux Zone, namely Balansys.

“Balancing Programme” shall mean the document describing the applicable Balancing model as approved by the Competent Regulator(s) (or as the case may be, submitted to the Competent Regulator(s) following which no objections were raised) and published by the Balancing Operator on its website

“Balancing Services” shall mean the services carried out by the Balancing Operator in accordance with this Agreement and the Balancing Code and including without

limitation, performance of within-day or end-of-day settlements, provision of relevant information such as individual and market balancing position, imbalance pooling, and calculation as well as invoicing of balancing fees each as further defined and described in this Agreement and the Balancing Code.

“Balancing Settlement” shall mean the modification by the Balancing Operator of the Market Balancing Position and of the Network User Balancing Position in order to bring the Market Balancing Position within the Market Threshold (Within-day) or to zero (End-of-Day).

“Bank Guarantee” shall mean the financial security on first demand which Network User may be required to provide in accordance with the provisions of Article 7 of the Balancing Agreement.

“Belgian Gas Act” shall mean the Belgian Gas Law concerning the transportation of gaseous and other substances by pipeline of 12 April 1965, as amended from time to time, or any successor thereof.

“BeLux” shall mean the integrated market model of Belgium and the Grand Duchy of Luxembourg.

“BeLux Area” shall mean the area resulting from the integration of both Luxembourg and Belgian markets and consisting of the H-Zone and the L-Zone.

“Business Day” shall mean a day, other than a Saturday or Sunday or a public holiday or a ‘bridging day’ for the Balancing Operator, as published on website of the Balancing Operator.

“Collateral” shall mean the financial security which can be provided by Network User in the form of a Bank Guarantee in accordance with Article 7 of the General Conditions of the Balancing Agreement.

“Competent Regulator(s)” shall mean for the L-zone, CREG and for H-zone, ILR and CREG.

“Compliance Programme” shall mean the document established by Balancing Operator in accordance with article 7.4 of directive 2009/73/CE, article 34bis of Luxembourgish Gas Act of 1 august 2007 and articles 15/2 bis/ter of Belgian Gas Act.

“Connection Point” shall mean a physical or a virtual point of the Transmission Grid of one of the TSOs of the BeLux Area at which Network User delivers Natural Gas to the concerned TSO for the performance of Services; or at which the concerned TSO redelivers Natural Gas to Network User after having performed Services.

“Contrat Cadre Fournisseur” or **“CCF”** shall mean the agreement under which Transmission Services are subscribed and used in Creos’ Transmission Grid by Network User

“CREG” shall mean the ‘*Commission pour la Régulation de l’Electricité et du Gaz*’ as referred in the Belgian Gas Act.

“Creos Luxembourg” shall mean Creos Luxembourg SA, with registered office located at 59-61 rue de Bouillon, 1248 Luxembourg, Grand-Duchy of Luxembourg

“Day” shall mean a period of twenty-four (24) hours (or twenty-three (23) or twenty-five (25) as the case may be for daylight saving days) beginning at 00:00 hours on each day and ending at 00:00 hours on the following day.

“Day-ahead” shall mean the next Gas Day

“Direct Material Damages” shall mean damage to tangible property in accordance with Article 5 of the General Conditions.

“Domestic Point” shall mean a point connecting the Transmission Grid of one of the TSOs of the BeLux Area to Final Customer(s) and/or Producer(s), either directly connecting an End User to the Transmission Grid, either via the distribution network.

“Due Date” shall mean thirty (30) Days after the date of issuance of an invoice, or the date specified in Article 2.11 of the General Conditions, as the case may be.

“Electronic Data Platform of the Balancing Operator” shall mean the data platform, by which information is made available by Balancing Operator to the Network User.

“End-of-Day” shall mean at the last hour of the Gas Day.

“End User” shall mean a Final Customer directly connected to the Transmission Grid.

“Excess Monthly Balancing Settlement Fee” shall mean the amounts, credited to Network User on a monthly basis based on the Network User Balancing Position and the Market Balancing Position, as determined in accordance with the Balancing Code.

“Final Customer” shall mean any person or company who off-takes Natural Gas at the Domestic Point for its own consumption.

“Financial Services and Market Authority” or “FSMA” shall mean the financial services and market authority established by the law of 2th August 2002 concerning the monitoring of the financial sector and the financial services such as defined in Article 1, 29° of the Gas Act.

“Fluxys Belgium” shall mean Fluxys Belgium SA, sise à l’avenue des Arts 31, 1040 Bruxelles

“Force Majeure” shall have the meaning as defined in Article 6 of the General Conditions.

"Gas Act of 1 august 2007" shall mean the modified law of 1 august 2007 on the organization of the natural gas market in Luxembourg

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

"Gas Month" shall mean the period that starts at 06:00 hours (CET) on the first Day of each month and that ends at 06:00 hours (CET) on the first Day of the next month.

"Gas Year" shall mean the period of 365 or 366 Gas Days, as the case may be, beginning at October 1st at 06:00 hours (CET) and ending at September 30th 06:00 hours (CET) of the next year.

"General Conditions" or **"GC"** shall mean the general conditions as set forth in Attachment 1 of this Agreement.

"H-Zone" shall mean the zone within the BeLux Area, consisting of all Connection Points located on the transmission grid of Creos Luxembourg and on the high-calorific transmission grid of Fluxys Belgium.

"ILR" shall mean the "Institut Luxembourgeois de Régulation" in accordance with Gas Act of 1 august 2007.

"L-Zone" shall mean the zone within the BeLux Area, consisting of all Connection Points located on the low-calorific transmission grid of Fluxys Belgium.

"Managing Director" shall mean the person appointed as "administrateur délégué" or "directeur général" of the Balancing Operator, in accordance with its articles of association.

"Market Balancing Position" shall mean an hourly value per Zone, expressed in kWh, as provided for in the Balancing Code.

"Market Threshold" shall mean upper and lower limit per Zone, expressed in kWh, made available to Network Users as described in the Balancing Code.

"Month" shall mean the period beginning at 00:00 hours (CET) on the first Day of any calendar month and ending at 00:00 hours (CET) on the first Day of the next succeeding calendar month.

"Monthly BAL Invoice" shall mean the amounts, payable by Network User as defined in Article 1 and 2 of the GC in accordance with the provisions of the Balancing Code.

"Monthly BAL Self-billing Invoice" shall mean the amounts to be paid to Network User as defined in GC 1 & 2 of this Agreement and in accordance with the provisions of the Balancing Code.

“Monthly Neutrality Fee” shall mean the fee payable by or to be paid to Network User on a monthly basis to cover the Balancing costs as determined on the basis of the Regulated Tariffs

“Natural Gas”: shall mean the gaseous fuel from underground origin, and consisting mainly out of methane, including liquefied natural gas (LNG) and except mine gas.

“Network Users” means all entities or persons having entered into a balancing agreement with Balancing Operator and, unless reference is made to “other Network Users”, including Network User

“Network User Balancing Position” shall mean an hourly value per Zone, for the Network User, expressed in kWh, as provided for in the Balancing Code.

“Nomination” shall mean the notice of the quantity expressed in Energy per hour, sent by the Network User towards a TSO of the BeLux Area, notifying the TSO of the quantity the Network User wishes to have transmitted, as provided for in the operating procedures described in CCF and STA.

“Party” shall mean the Balancing Operator and the Network User as identified in this Agreement when individually named.

“Producer” shall mean any person or company that performs injection of compatible gas at a Domestic Point.

“Provisional Data” shall mean real time hourly data (which has not yet been validated by the relevant TSO), used by Balancing Operator for the calculation of the Network User Balancing Position and of the Market Balancing Position communicated to Network User for the steering of its individual Network User Balancing Position.

“Reasonable and Prudent Operator” shall mean that degree of diligence, prudence and foresight reasonable and ordinarily exercised by experienced operators engaged in the same line of business under the same or similar circumstances and conditions having due consideration to the interest of the other Party under this Agreement.

“Regulated Tariffs” shall mean the tariffs regarding the use of the Balancing Services, duly approved by the Competent Regulator(s) in accordance with the applicable regulatory and legal framework.

“Shortfall Monthly Balancing Settlement Fee” shall mean the amounts, payable by Network User on a monthly basis based on the Network User Balancing Position and the Market Balancing Position, as determined in accordance with the Balancing Code.

“Standard Transmission Agreement” or **“STA”** shall mean the agreement under which Services offered by Fluxys Belgium are used in Belgium by Network User, including the access code for transmission.

“Start Date” shall mean the date on which the Balancing Agreement enters into force and effect, and which is stipulated in the Balancing Agreement.

“Transmission Grid” or **“Transmission System”** shall mean either the high pressure transmission system operated by Creos to provide Services in Luxembourg or the high pressure system operated by Fluxys Belgium to provide Services in Belgium.

“Services” shall mean the services provided by one of the TSOs of the BeLux Area according to CCF or STA, applicable in Luxembourg and in Belgium respectively.

“Transmission System Operator” or **“TSO”** shall mean the party operating a Transmission Grid, being Fluxys Belgium in Belgium and Creos Luxembourg in Luxembourg.

“Within-Day” shall mean during any hour of the Gas Day not being the last hour of the Gas Day.

“Zone” shall mean either the L-Zone or the H-Zone.