

AGREEMENT PEAK SERVICE

2023/2024

BETWEEN

GASUNIE TRANSPORT SERVICES B.V.

AND

<<Supplier>>

DATED

[•] December 2022

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AGREEMENT PEAK SERVICE

between

GASUNIE TRANSPORT SERVICES B.V.,

a Dutch company with limited liability with registration number 02084889, having its principal place of business at Concourslaan 17, 9727 KC Groningen, the Netherlands, hereinafter referred to as **GTS**,

and

<<Supplier>>,

a [●] with registration number [●], having its principal place of business at [●], hereinafter referred to as **Supplier**.

GTS and Supplier may collectively be referred to as the **Parties** and individually also as a **Party**.

Whereas:

- (A) by the governmental decree regarding security of supply ('*Besluit leveringszekerheid Gaswet*') GTS has been designated the task of securing the security of supply of peak demand by small consumers in the Netherlands;
- (B) GTS has issued a tender for delivery of peak service for winter 2023/2024;
- (C) Supplier has offered to provide such peak service for winter 2023/2024;
- (D) GTS has accepted this offer;

Now therefore the Parties have agreed as follows:

1 DEFINITIONS, INTERPRETATION AND CONSTRUCTION

- 1.1 For the purpose of this Agreement, except where the context expressly provides otherwise, the following words and expressions have the following meanings:

Affiliate means in relation to a person (the *first person*), another person which directly or indirectly controls the first person, is controlled by the first person or under common control with the first person, in each case as to a majority of ownership or voting rights or the equivalent rights to determine the decisions of the first person.

Agreement means this agreement for Peak Service and any amendments, in writing and agreed by Parties, thereof.

Banking Day means a day (other than a Saturday or Sunday) when banks in the Netherlands are generally open for business.

Delivered Volume means the Gas volume in MWh delivered under this Agreement.

Delivery means the process by which Supplier transfers Gas to GTS at the Delivery Point.

Delivery Capacity means the quantity of Gas in MWh/h, which shall be delivered by Supplier on request of GTS in accordance with this Agreement.

Delivery Point means the Title Transfer Facility.

EURIBOR means the one-month Euro interbank offered rates as set and published by the joint European banks.

Force Majeure has the meaning as set out in Article 13.

Forecasted Effective Temperature or **T_{eff}** means, for the respective Gas Day (D), the most recent available forecasted effective temperature provided by a reputable weather forecasting company to GTS on the previous Gas Day (D-1) before 17:00 Hours. This forecasted effective temperature equals the forecasted average ambient air temperature in degrees Celsius at De Bilt (T_f) for the Gas Day, corrected by the average forecasted wind speed expressed in meters per second at the same weather station and during the same period of time (V_f) as: $T_{eff} = T_f - (V_f/1.5)$, rounded to one decimal place.

Gas means natural gas (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 the gaseous state).

Gas Day means a period commencing at 06:00 Hours on a calendar day and ending at 06:00 Hours on the following calendar day, and the date of any Gas Day (D) shall be the date of its beginning as herein defined.

Hour means the period of one clock hour, starting at the full hour, and **Hourly** shall be construed accordingly.

Hourly Quantities means a quantity of Gas expressed in kiloWatt-hour (kWh) in one Hour.

LET means Local European Time, including daylight saving, being equal to UTC + 1 outside the daylight saving period and equal to UTC + 2 during the daylight saving period. For the avoidance of doubt, the daylight saving period starts at UTC 01:00 hours on the last Sunday in March and ends at UTC 01:00 hours on the last Sunday in October, and UTC is Coordinated Universal Time, according to ISO 8601: 1988 (E).

m³(n;35.17) means a cubic metre of Gas under normal conditions (m³(n)) with a superior calorific value (see Wobbe Index) of 35.17 MJ.

Neutral Gas Price means the “neutrale gasprij” as defined in and calculated pursuant to the “Transportvoorwaarden Gas-LNB” as published from time to time by the Autoriteit Consument & Markt.

Peak Day means a Gas Day in the Peak Delivery Period with a T_{eff} below –6.0°C.

Peak Delivery Period means the period from 1 December 2023 06:00 Hours up to 1 March 2024 06:00 Hours.

Peak Portfolio means a portfolio set up by GTS for Supplier, with shipper code <<GSxxxPeak>>, specifically set up for the Peak Service and containing two points: the Physical Source and the TTF.

Peak Service means the service provided by Supplier to GTS consisting of the right of GTS to use the Delivery Capacity made available to GTS and the obligation of Supplier to deliver the requested Gas to GTS in accordance with the provisions of this Agreement.

Physical Source means the physical point where the gas delivered under this Agreement by Supplier originates from. In appendix 1 of the TSC this point is indicated with network point identification/NetworkpointID <<301xxx>> and description << description >>.

Reasonable and Prudent Operator means a person seeking in good faith to perform its contractual obligations and in so doing and in the general conduct of its undertaking exercising that degree of skill, diligence, prudence and foresight that would reasonably and ordinarily be expected from a skilled and experienced person engaged in the same type of undertaking under the same or similar circumstances, and any reference to the standard of a Reasonable and Prudent Operator shall be a reference to such a degree of skill diligence prudence and foresight.

Redelivery means the process by which GTS transfers Gas to Supplier at the Redelivery Point. As opposed to previous years, GTS aims to redeliver any delivered gas as soon as possible, i.e. within days instead of the months following February.

Redelivery Point means the Title Transfer Facility.

Redelivered Volume means the Gas volume in MWh redelivered under this Agreement.

Request means a message, including a change to the previous message, from GTS to Supplier containing the Hourly Quantities to be delivered by Supplier or redelivered by GTS for all Hours for a maximum of twelve hours of a certain Gas Day D.

Request Response means a message from Supplier to GTS containing the Hourly Quantities to be delivered by Supplier or redelivered by GTS for all Hours of a certain Gas Day D.

Service Fee or **SF** has the meaning as described in Article 7.1.

Temperature Related Delivery Capacity or **TRDC** has the meaning as described in Article 3.3 and 3.4, and **Maximum TRDC** is the maximum value of the TRDC as described in Article 3.4.

Title Transfer Facility or **TTF** means the virtual location, serving as an entry and exit point, at which shippers can transfer Gas.

Transmission Service Conditions or **TSC** means the standard conditions of GTS for the performance of services as applied by GTS during the period to which the Agreement relates, published at www.gasunietransportservices.nl.

Wobbe Index means the superior calorific value divided by the square root of the relative density under normal conditions, in which:

(i) ‘superior calorific value’ means the amount of energy, expressed in MJ, released by the

complete combustion in air of one (1) m³(n) of Gas in such a way that the pressure of 101.325 kPa (1.01325 bar) at which the reaction takes place remains constant and all the products of combustion are returned to the same temperature of 298.15 K as the temperature of the reactants, all of these products being in the gaseous state except for water formed by combustion which is condensed to the liquid state at a temperature of 298.15 K; and

(ii) '*relative density*' means the density of Gas at normal conditions divided by the density of dry air (meaning air composed according ISO 6976 annex B) at normal conditions; and
(iii) '*normal conditions*' are the conditions determined by a temperature of 273.15 K (0 C) and an absolute pressure of 101.325 kPa (1.01325 bar).

Working Gas Volume has the meaning as described in Article 3.5.

- 1.2 Unless context and common sense dictate otherwise, references to articles and annexes are to articles and annexes of this Agreement.
- 1.3 A reference to this Agreement or a document, act, regulation or statutory provision is to the Agreement, document, act, regulation or statutory provision as amended, supplemented or replaced from time to time, except when Parties expressly agree otherwise. References to a statutory provision include that provision and any subordinate legislation made under that provision as from time to time modified or re-enacted. (For the avoidance of doubt: this interpretation rule is not intended to require Supplier to supplement or amend the deliverables to facilitate compliance.)
- 1.4 If a word or phrase is defined, its other grammatical forms have a corresponding meaning, and '*include*' and '*including*' are to be construed without limitation. If a word or phrase is followed by a word or phrase in the Dutch language between parentheses, the (legal) meaning of the word or phrase in the Dutch language shall prevail.
- 1.5 References to '*persons*' includes individuals, bodies corporate (wherever incorporated), unincorporated associations, partnerships, trusts or any other legal entities, including any governmental authorities and include references to that person's successors and permitted assignees. A reference to one gender includes all genders.
- 1.6 The headings contained in this Agreement do not affect the construction or interpretation of particular terms.
- 1.7 Any reference to time shall be to LET.
- 1.8 Hourly Quantities to be delivered by Supplier shall be identified with a negative sign. Hourly Quantities to be redelivered by GTS shall be identified without a sign.

2 GENERAL

- 2.1 TSC appendix 5 "Operating procedures" and TSC appendix 6 "Allocation Procedures" are applicable to this Agreement. In case of any discrepancy between the terms of this Agreement and the Operating procedures and/or Allocation Procedures, the terms of this Agreement shall prevail.
- 2.2 Each Party shall conduct its respective operations as a Reasonable and Prudent Operator. This particularly applies to informing each other in a cooperative manner and as soon as reasonably possible of any foreseeable condition or occurrence, which could affect their respective operations.

3 SERVICE AND DELIVERY

- 3.1 The Peak Service rendered by Supplier to GTS shall be available during the Gas Days belonging to the Peak Delivery Period.

- 3.2 Supplier shall provide the Peak Service to GTS by means of supplying the requested Delivery Capacity from the Physical Source during the requested period of time on a Gas Day belonging to the Peak Delivery Period at the Delivery Point.
- 3.3 The TRDC shall mean for each Hour the maximum available Delivery Capacity to GTS during the Peak Delivery Period under this Agreement depending on Tfeff.
- 3.4 The value of the TRDC for the respective Gas Day D will be communicated by GTS to Supplier before 17:00 Hours on the previous Gas Day D-1 and will be determined as follows: when the Tfeff for the respective Gas Day D is above -6.0°C the TRDC equals 0 MWh/h, when the Tfeff for the respective Gas Day D is below -14.0°C the TRDC equals 488,47 MWh/h (= Maximum TRDC) and for the remainder of Tfeff (meaning Tfeff equal to or between -6.0°C and -14.0°C) the TRDC shall equal: $(T_{feff} + 6)/(-8) \times \text{Maximum TRDC}$ MWh/h.
- 3.5 The Working Gas Volume is the volume which can be delivered by Supplier on request of GTS during the Peak Delivery Period under this Agreement comprising 30 x 488,47 MWh minus (i) the sum of Delivered Volume plus (ii) the sum of Redelivered Volume at that time.
- 3.6 If on Gas Day D-1 GTS foresees a Peak Day on Gas Day D then GTS will issue an early notification to inform Supplier no later than 14:00 Hours on Gas Day D-1 by E-mail that Supplier must prepare himself for a possible Peak Day on Gas Day D.
- 3.7 If based on Tfeff the Gas Day D is a foreseen Peak Day then GTS will issue an notification to inform Supplier (among other things the TRDC) by (i) E-mail and (ii) telephone, no later than 17:00 Hours on Gas Day D-1. In case GTS has not given a notification to Supplier on Gas Day D-1 prior to 17:00 Hours then the TRDC for Gas Day D will be zero and no request for Peak Services can be made by GTS pursuant to Article 4, regardless of any early notification pursuant to Article 3.6.
- 3.8 If GTS requires Peak Services during said Peak Day, GTS will send a Request to Supplier in accordance with Article 4. The requested Delivery Capacity shall never exceed the TRDC.
- 3.9 If any applicable gas law or TSC would limit Supplier in steering its portfolio with its storage facility to fulfil the Peak Service, Supplier shall inform GTS forthwith on the matter and Parties shall seek to find a solution to adapt that situation.
- 3.10 Use of the Peak Portfolio
 - 3.10.(a) Supplier shall for the full Peak Delivery Period arrange for entry capacity in the Peak Portfolio in the matter of the Physical Source for the Maximum TRDC
 - 3.10.(b) The not-requested entry capacity, being the entry capacity minus the requested Delivery Capacity, can be used by Supplier to deliver gas from the Physical Source to the TTF to Supplier's regular portfolio as long as this does not hinder Supplier's ability to comply with a new Request.
 - 3.10.(c) The Peak Portfolio does not participate in the normal GTS balancing regime. The Peak Portfolio must be balanced each hour. Entry from the Physical Source must be equal to exit (delivery) on the TTF for every Hour.
 - 3.10.(d) Redelivery is described in Article 5 and takes place in Supplier's regular portfolio.
- 3.11 It is possible the NetworkpointID is not specified in this definition (and is just a generic description: <<301xxx>>. In that case Supplier is to specify the NetworkpointID before October 1st 2023.

4 ORDERING AND NOMINATION

- 4.1 The ordering procedure, as set out in this Article 4, consists of a Request and Request Response, send by E-mail. The nomination procedure is set out in TSC appendix 5 ("Operating procedures").
- 4.2 Each Request submitted by GTS must specify:
- (a) only one Gas Day D;
 - (b) GTS's identity as specified in Article 8.4;
 - (c) Suppliers identity as specified in Article 8.5;
 - (d) Subject to Article 3.8, second sentence, for each full Hour of Gas Day D the Hourly Quantity to be nominated.
- 4.3 Subject to Article 3.7 and 3.8 GTS may submit Request(s) for a Gas Day D not earlier than 17:00 Hours on Gas Day D-1 but at least 2 Hours before the start of the first relevant Hour of Gas Day D. As long as GTS has not submitted a Request for a Gas Day D GTS will be deemed to have submitted a Request for such Gas Day D in respect of which the Hourly Quantities to be delivered by Supplier or redelivered by GTS for all Hours of Gas Day D are zero.
- 4.4 Supplier shall send a Request Response for Gas Day D within 1 Hour after receipt of the Request of GTS. The Request Response contains the Hourly Quantities to be delivered by Supplier or redelivered by GTS during Gas Day D to confirm the latest Request received.
- 4.5 At any time between 17:00 Hours on Gas Day D-1 and the end of Gas Day D GTS may replace a Request for Gas Day D by sending a new Request for Gas Day D.
- 4.6 A changed Request for Gas Day D must specify all Hours of Gas Day D, with a maximum of a total of twelve hours, including the Hours that are not changed,
- 4.7 GTS will send a Request at least 2 Hours before the first relevant Hour that is different compared to the previous Request for Gas Day D and starting at a full Hour.
- 4.8 If GTS has submitted a Request for Gas Day D at least 2 Hours before the first relevant Hour that is different compared to the previous Request, then Supplier will send a new Request Response for Gas Day D at least 1 Hour before the first relevant Hour that is different compared to the Request for Gas Day D.
- 4.9 In exceptional circumstances, GTS may send a Request at least 1 Hour before a change in Delivery Capacity is required. Such Request shall always be announced by a telephone call from GTS to Supplier to agree (i) the start time of the delivery; and (ii) the exact quantity of Gas to be delivered from Supplier to GTS at the Delivery Point which shall not exceed the TRDC.
- 4.10 A Request Response will always be based on the last Request received by Supplier. If GTS receives a Request Response for a certain Gas Day D then the previous Request Response received for that Gas Day D is no longer valid.

5 REDELIVERY

- 5.1 GTS has the obligation to redeliver to Supplier the total Delivered Volume for Peak Services, subject to the provisions of this Article 5.
- 5.2 GTS has the right to redeliver to Supplier in whole or in part the Delivered Volume during the Peak Delivery Period. Redelivery shall be done by GTS at the Redelivery Point. In case GTS wants to use this right GTS will contact Supplier and GTS and Supplier shall agree upon redelivery conditions that fit both Parties.

- 5.3 By no later than ~~the fifteenth (15) Banking Day in March 2024~~ one day after Delivery is done, GTS will establish the volume actually delivered for the Peak Service, in accordance with the allocation procedures as described in the TSC, and notified by GTS to Supplier. Supplier will review the calculation and shall notify GTS in writing no later than ~~five (5) one~~ Banking Days after receiving such notice of its approval and/or objections.
- 5.4 GTS has the obligation to redeliver to Supplier the total Delivered Volume for Peak Service, minus the total already Redelivered Volume that was redelivered in the Peak Delivery Period in accordance with Article 5.2. Redelivery shall be done by GTS at the Redelivery Point right within a day of approval, mentioned in 5.3, by Supplier. ~~prior to 1 July 2024~~. GTS and Supplier shall agree upon redelivery conditions that fit both Parties. GTS decides the moment of redelivery (which is expected to be about ~~four months~~ two days after delivery).

6 WARRANTS, TITLE AND DELIVERY

- 6.1 Each Party represents and warrants to the other that it has obtained and will maintain at all times during the term of this Agreement all licences, authorisations, permits, consents and other approvals necessary for the performance of its obligations hereunder.
- 6.2 Title and risk in Gas delivered shall pass from Supplier to GTS at the Delivery Point and Supplier warrants that such Gas shall be free from any liens, charges, taxes, claims or encumbrances arising on or before delivery at the Delivery Point.
- 6.3 Title and risk in Gas redelivered shall pass from GTS to Supplier at the Redelivery Point and GTS warrants that such Gas shall be free from any liens, charges, taxes, claims or encumbrances arising on or before Redelivery at the Redelivery Point.

7 SERVICE FEE

- 7.1 The Service Fee is an all-in fee being:
 $SF = \text{Maximum TRDC} * T = \text{xxx.xxx Euro/y}$

Where:

- (a) Maximum TRDC = 977 MWh/h
 (b) $T = \text{all-in tariff} = \text{<<price>>} \text{ €/MWh/h/y}$

- 7.2 The Service Fee is exclusive of any taxes, duties or levies of a similar nature.
- 7.3 All amounts referred to in this Agreement are exclusive of any current or future applicable tax, including, but not limited to VAT, energy tax, levies and surcharges regarding the Peak Service and or supply of gas. These are payable additionally by GTS to Supplier or vice versa. The tax treatment of the Peak Service and or supply of gas under this Agreement shall be determined pursuant to the tax laws of the jurisdiction where a taxable transaction for such tax purposes is deemed to take place.

8 NOTICES AND MESSAGES

- 8.1 For the purposes of any notice to be given or message to be sent under or in connection with this Agreement, the contact details of the respective dispatching departments are as specified below. The dispatching departments shall be reachable twenty-four (24) Hours each Gas Day and every Gas Day by phone, fax and any agreed other secure data communication system.
- 8.2 Before ~~<<November 1st 2023>>~~ a communication check with GTS is required to validate the messages concerning the ordering procedure by E-mail. This check shall be initiated by GTS.

- 8.3 For the nomination procedure Parties shall use their regular NOMINT and NOMRES message as set out in TSC appendix 5 ("Operating procedures").
- 8.4 If a Party is temporarily unable to send and/or receive messages that Party will inform the other Party as soon as possible. Parties will as Reasonable and Prudent Operators agree to send and accept messages by other communication tools. Parties will use reasonable endeavours to restore the exchange of messages as soon as possible.
- 8.5 The contact details of GTS dispatching are:

Telephone number:

+31 50 521 1500

Fax number:

+31 50 521 1550

Address:

P.O. Box 181,
9700 AD Groningen, the Netherlands

E-mail:

ccpmail@gastransport.nl

Communication protocol:

AS2 over internet

Shipper Code:

GSPEAK

The contact details of Supplier are:

Telephone number:

<<....>>

Fax number:

<<....>>

Address:

<<....>>

E-mail:

<<....>>

Communication protocol:

<<....>>

Shipper Code:

<<....>>

9 NON-DELIVERY, RESTRICTED AVAILABILITY AND IMBALANCES

- 9.1 In case Supplier fails to provide the Peak Service requested in accordance with Article 4 on a Peak Day (a default), Supplier shall refund a default payment to GTS in accordance with the following formula:

$$DP = \frac{DQ}{\text{<< volume>> MWh}} * SF$$

Where:

- (a) DP = the default payment in Euro;
 - (b) DQ = default quantities in MWh; defined as quantities that Supplier failed to provide to GTS on a Gas Day belonging to the Peak Delivery Period under this Agreement;
 - (c) SF = the yearly Service Fee.
- 9.2 In case of non-delivery or partial delivery of the Peak Service by Supplier all extra demonstrable costs above the default payment DP as determined in Article 9.1 related to such non-delivery or partial delivery of the Peak Service shall be paid by Supplier to GTS. GTS will use reasonable endeavours to minimize any costs in case of non-delivery or partial delivery of the Peak Service by Supplier. The aggregate amount payable by Supplier under Article 9.1 up to and including 9.2 shall not exceed one and a half (1.5) times the value of the SF and shall be the sole remedy to GTS unless the default is the result of wilful misconduct or gross negligence of Supplier.
- 9.3 In case of an unplanned event, which restricts the availability of the Peak Service, Supplier shall inform GTS as soon as possible by telephone and subsequently send a written confirmation to GTS. Supplier will with all possible diligence and speed investigate the cause(s) of the deficiency and shall notify as soon as possible the nature of the failure and take those actions within its control which can be expected from a Reasonable and Prudent Operator to expeditiously remedy the cause and the resulting situation.
- 9.4 Supplier will keep GTS informed about the available quantities during the period of restricted availability.
- 9.5 Imbalance in the Peak Portfolio
- 9.5.(a) In case Supplier creates a shortage in its Peak Portfolio during a Peak Day, this shortage is a non-delivery as described in article 9.1 and 9.2.
- 9.5.(b) In case Supplier creates a short position in its Peak Portfolio during a Gas Day that is not a Peak Day and during which GTS has in any Hour taken action for the purchase of Gas on the within day market to balance the national grid, Supplier shall pay to GTS an amount equal to the "buy price" minus the Neutral Gas price, multiplied by the largest short position on that Gas Day, where the "buy price" is the highest price that GTS has paid on the exchange to buy Gas during that Gas Day.
- 9.5.(c) In case Supplier creates a long position in the its Peak Portfolio during a Gas Day that is not a Peak Day and during which GTS has in any Hour taken action for the sale of Gas on the within day market to balance the national grid, Supplier shall pay to GTS an amount equal to the Neutral Gas price minus the "sell price", multiplied by the largest long position on that Gas Day, where the "sell price" is the lowest price that GTS has received on the exchange to sell Gas during that Gas Day.

10 INVOICING AND PAYMENT

For each month of this Agreement Supplier shall submit to GTS an invoice for the Peak Service according to one of the following invoicing schedules:

- (a) and this invoice shall amount to one-twelfth (1/12) of the total annual Service Fee. Supplier shall submit the monthly invoice to GTS after the applicable month (so for

example the invoice for July shall be submitted in the beginning of August). GTS shall pay the monthly invoice to an account specified by Supplier within fifteen (15) Banking Days after receipt,

(b) One invoice shall amount to one third (1/3) of the total annual Service Fee, for the calendar year 2023, to be send and paid in 2023. A second invoice shall amount to the other two third after the Peak Delivery Period,

(c) One invoice shall amount to the full total annual Service fee, and be send after the Peak Delivery Period.

10.1 If Supplier has failed to provide the Peak Service to GTS on one or more Peak Days:

- (a) Supplier will credit GTS the full applicable default payment as defined in Article 9.1 on the first following ~~monthly~~ invoice after the amount of default payment is known; and
- (b) GTS will submit to Supplier a substantiated invoice for all extra demonstrable costs related to a non-delivery or partial delivery in accordance with Article 9.2. Supplier shall pay the invoice in such a manner that GTS will have the money at its free disposal to an account specified by GTS within fifteen (15) Banking Days after the receipt of the invoice.

10.2 If a Party disputes the correctness of an invoice, the Parties will consult each other on the matter. The disputing Party is entitled to suspend payment only of the disputed amount. If it is shown that payment was suspended on justifiable grounds, no interest is payable with regard to the amount justifiably suspended.

10.3 For late payments of correct invoices the debtor can be charged interest at the rate of EURIBOR plus two (2) percentage points per annum for each day by which the specified payment period is exceeded.

10.4 Any invoice or settlement of a payment shall be final and binding upon Parties if such invoice or settlement remains unchallenged for a period of one (1) year from the date of the invoice or from the settlement of the payment, as the case may be.

11 TERM, SUSPENSION AND TERMINATION

11.1 This Agreement shall be effective from 1 July 2020 and shall expire on 1 July 2021, unless it is terminated earlier in accordance with this Agreement. Upon expiration or termination of the Agreement all undisputed payments that have accrued prior to expiration or termination will be payable in full within twenty (20) Banking Days thereof.

11.2 A Party is entitled to terminate this Agreement by giving notice of termination by registered letter to the other Party, without any liability towards the other Party, with effect from any specific Gas Day, appointed in said letter (but not earlier than the date of the notice), if one or more of the following situations has occurred:

- (a) the other Party is declared bankrupt (*'in staat van faillissement verklaard'*) or is granted (provisional) suspension of payment (*'surséance van betaling'*) or is declared in a similar legal status affecting the rights of creditors generally, from the moment the foresaid bankruptcy, suspension or similar status is legally effective; or
- (b) the other Party fails to fulfil any material obligation under this Agreement, such as but not limited to the obligation to perform as a Reasonable and Prudent Operator; or
- (c) the other Party claims Force Majeure and the Force Majeure situation lasts for a period of more than thirty (30) consecutive days. Upon expiration of this period or at any time thereafter as long as the Force Majeure situation still exists at that time the

Party that did not claim Force Majeure shall be entitled to terminate the Agreement in whole or in part, in so far as affected.

In the case referred to under (a) a Party shall be entitled to immediately suspend the performance of the Peak Service or to terminate this Agreement. In the case referred to under (b) and without prejudice to Article 13.3 a Party shall only exercise this right under the condition it has summoned the other Party in writing to remedy its default within ten (10) Banking Days and that other Party has not acted to remedy the default within such period unless it is apparent that the defaulting Party is not in a position to be able to remedy the relevant default. In the case referred to under (c), save any unsettled claims, and subject to Articles 11.3, 11.4 and 11.5 (b) the Parties shall have no further rights or obligations towards each other.

11.3 All amounts which have accrued under this Agreement shall be immediately due and payable from the day of receipt of the notice of termination. In addition, GTS shall redeliver to the Supplier the total Delivered Volume in accordance with Article 5.4. Each of these obligations shall survive termination of this Agreement.

11.4 When the Supplier is the terminating Party the amounts which have accrued under this Agreement prior to termination shall be the monthly amount due and payable pursuant to Article 10.1 (and any previous monthly amounts due and payable under Article 10.1 which have not been paid by GTS) and, in addition (where applicable), the following:

where the termination is effective during the Peak Delivery Period:

- (a) In the month December a pro rata share of an amount equal to the monthly payments of the Service Fee which would be payable by GTS for the remainder of the term of the Agreement pursuant to Article 10.1 and which is proportionate to the number of Gas Days during that month on which the Supplier had made the Peak Service available to GTS up to the date of termination (regardless of whether or not the Supplier was actually requested by GTS to deliver Gas on any particular Gas Day during the Peak Delivery Period); or
- (b) In the months January and February, in respect of each month a pro rata share of an amount equal to three times the monthly payment of the Service Fee which would be payable by GTS for the remainder of the term of the Agreement pursuant to Article 10.1 and which is proportionate to the number of Gas Days during that month on which the Supplier had made the Peak Service available to GTS up to the date of termination (regardless of whether or not the Supplier was actually requested by GTS to deliver Gas on any particular Gas Day during the Peak Delivery Period).

11.5 When the designation of GTS as set out in "Whereas (A)" terminates:

- (a) effective before 1 July 2020, this Agreement becomes null and void, without any Party having any obligation or liability whatsoever to the other; or
- (b) effective after 1 July 2020, GTS shall have the right to terminate this Agreement on not less than ten (10) Banking Days written notice to Supplier and, upon such termination, the Parties shall have no further rights, obligation and/or liability towards each other, save that GTS shall, within fifteen (15) Banking Days of the date of termination of this Agreement, pay the Supplier the amounts which have accrued under this Agreement prior to termination, which amounts shall be established *mutatis mutandis* according to the calculation method set out in Article 11.4.

12 LIABILITY

- 12.1 Parties shall not be liable to each other under any circumstance, for any direct or indirect or consequential damage including and without limitation, loss of profit and loss of business expectations and opportunities or loss of contract incurred by the other Party, except in respect of any amounts payable under Articles 9.1 and 9.2, and subject to Articles 12.2 and 12.4.
- 12.2 The limitation of liability according to Article 12.1 does not apply to direct damage resulting from wilful misconduct or gross negligence, where:
- (a) '*wilful misconduct*' means an intentional or consciously reckless disregard, and
 - (b) '*gross negligence*' means a reckless disregard,
- by a Party or any of its Affiliates acting for and on behalf of a Party and/or its (or such Affiliate) directors or employees of any provisions of this Agreement.
- In case of wilful misconduct or gross negligence Parties shall not be liable for indirect damages incurred by Parties in connection with this Agreement, including and without limitation, loss of profit, loss of business expectations and opportunities or loss of contract.
- 12.3 To the extent a Party is not liable to the other Party under this Agreement, the latter shall hold harmless and indemnify the former from and against all claims by third parties which are in relation to this Agreement.
- 12.4 Notwithstanding the above, GTS and Supplier shall each be responsible and liable for damages and personal injury (including death), suffered by their respective employees, servants, agents and representatives, however caused or incurred and notwithstanding the negligence of the other Party. GTS and Supplier shall indemnify and hold each other harmless from any claim, action, or proceeding in relation thereto.

13 FORCE MAJEURE

- 13.1 Force Majeure ('*overmacht*') exists if the conditions of Article 6:75 of the Dutch Civil Code are met.
- 13.2 In so far as a Party is unable to fulfil any or a part of an obligation under this Agreement due to Force Majeure, such Party will be relieved of those obligations. The Party claiming Force Majeure shall give written notice and reasonably full particulars to the other Party promptly after the occurrence of such Force Majeure, stating among other things the period which said Party estimates it will require to remedy the Force Majeure situation and shall keep the other Party regularly informed about the progress of such remedy. In the event, and to the extent, that a Party is relieved of any obligation due to Force Majeure, the other Party shall be entitled to suspend the performance of a corresponding obligation under this Agreement.
- 13.3 Subject to Article 11.2 (c), if any Party claims Force Majeure under this Agreement no Party shall be entitled to terminate this Agreement on the grounds of such Force Majeure.
- 13.4 Any Party claiming relief by reason of Force Majeure shall use all reasonable endeavours to overcome and minimise the effects of any such Force Majeure.
- 13.5 Despite the above, any failure to pay money due shall not be treated as Force Majeure.

14 CHANGE IN ICT-SYSTEMS AND PROCEDURES

- 14.1 Supplier may change, upgrade and amend its ICT-systems and procedures. Supplier will inform GTS of such changes well in advance, but only where such changes would necessitate amendments to this Agreement. If such changes would cause substantial costs to GTS or necessitate amendment of this Agreement, consent of GTS is necessary, which consent shall not be withheld or delayed unreasonably.

15 APPLICABLE LAW AND DISPUTE RESOLUTION

- 15.1 This Agreement, and any non-contractual obligations arising out of or in connection with this Agreement, shall be governed by and construed in accordance with the laws of the Netherlands.
- 15.2 All disputes arising out of or in connection with this Agreement (including any disputes regarding non-contractual obligations) shall be referred to the competent Dutch court, and jurisdiction by any other court is excluded.

16 LANGUAGE, EXCHANGE OF INFORMATION AND CONFIDENTIALITY

- 16.1 All written and oral communication between the Parties shall be conducted in the English or Dutch language.
- 16.2 The content of this Agreement and other information obtained in connection therewith by one Party from the other, including all engineering and operational data, shall be held strictly confidential by the Parties for a term of three (3) years from the end date of this Agreement. Neither Party nor their legal successors shall make public any information with regard to the contents of the aforementioned documents under these conditions without prior written consent of the other Party.
- 16.3 However, a Party may make available said contents or information without such prior written consent to:
- (a) its employees or employees of Affiliates or shareholders to the extent reasonably necessary for the approval, performance and evaluation of this Agreement, provided that such employees and shareholders shall be bound by equivalent provisions of confidentiality; or
 - (b) any governmental or regulatory authority or recognised security exchange, where such disclosure is required by law, order or regulation; in such case the disclosing Party will, if not prohibited by such law, order or regulation, inform the other Party in advance of such disclosure and of its extent; or
 - (c) banking and financial institutions and their consultants, where such disclosure is necessary in connection with financing arrangements, provided that such Party shall first obtain a written undertaking of confidentiality from such banking and financial institutions and their consultants, that is similar to the undertaking of confidentiality that is set forth in this Article; or
 - (d) independent consultants or contractors nominated by a Party, provided that such Party shall first obtain a written undertaking of confidentiality from each consultant or contractor, that is similar to the undertaking of confidentiality that is set forth in this Article; or
 - (e) any person or legal entity to which pursuant to Article 17 "Assignment" any right or obligation under this Agreement has been or will be assigned or any legal successor of a Party, provided that the Party assigning or to be legally succeeded shall first obtain a written undertaking of confidentiality from such assignee or legal successor, that is similar to the undertaking of confidentiality that is set forth in this Article.
- 16.4 Despite the provisions of Article 16.3, the Party receiving information may disclose such information without the other Party's prior written consent but only to the extent that such information is:
- (a) already lawfully known to the Party receiving the information and is not subject to an undertaking of confidentiality, or

- (b) already in the public domain other than through the act or omission of the Party receiving the information, or
- (c) acquired independently from a third party that is entitled to disseminate such information at the time it is acquired by the Party receiving the information.

17 ASSIGNMENT

- 17.1 Each Party may only assign the Agreement, or rights and obligations under the Agreement with the prior written consent from the other Party, which consent shall not be unreasonably withheld or delayed. Consent shall, among others, be deemed to be reasonably withheld if, in the case of any proposed transfer of obligations, the Party making the transfer is unable to demonstrate to the reasonable satisfaction of the other Party that the proposed transferee has the ability to perform the obligations transferred to it.

18 AUDIT

- 18.1 GTS shall have the right, at its own cost, to have the capability and performance of Supplier under this Agreement (and solely in respect to this Agreement) audited by an independent auditor in order to verify whether Supplier can meet or has met his obligations under this Agreement.
- 18.2 For the application of this Article, GTS shall notify Supplier in writing, prior to such audit, the wish of an audit and the name(s) of the auditor(s) it wants to appoint. Following receipt of such notice, Parties shall seek to agree upon a mutually convenient time for the audit to take place which in any event shall take place not later than twenty (20) Banking Days following receipt by Supplier of GTS's notice, unless Parties agree otherwise. Supplier can only refuse the proposed auditor(s) when the proposed auditor(s) has (have) a conflict of interest in relation to it.
- 18.3 GTS shall ensure that the auditor(s) will be subject to an obligation of confidentiality by professional confidentiality or on terms no less onerous than those set out in this Agreement to the benefit of Supplier in which the auditor(s) shall undertake not to reveal the identity of the Parties nor the terms and conditions of an oral or written agreement between a Party and any other party. Subject to the foregoing confidentiality agreement, the auditor(s) shall have the right to disclose his (their) findings to GTS.

19 MISCELLANEOUS

- 19.1 This Agreement contains the entire understanding of the Parties with respect to the subject matter thereof, supersedes any and all prior agreements of the Parties and there are no oral promises or representations affecting it.
- 19.2 Any and all modifications and supplements to this Agreement, including its appendices, if any, shall not be valid unless drawn up in writing and signed by all Parties or their assigns or successors.
- 19.3 The failure at any time of either Party to require performance by the other Party of any provision of this Agreement shall in no way affect the right of a Party to require any performance which may be due thereafter pursuant to such provision, nor shall the waiver by either Party of any breach of any provision of this Agreement be taken or held to be waiver of any subsequent breach of such provision.
- 19.4 If one or more of the provisions of this Agreement should be totally or partially void or ineffective, this shall not affect the legal status of the other provisions. Parties undertake to cooperate in creating an effective new provision which approaches the economic purpose and any other effect of the ineffective or void provision as closely as possible.

This agreement is signed by:

<<Supplier>>

By:

Signature:

Date:

<<Supplier>>

By:

Signature:

Date:

Gasunie Transport Services B.V.

By: Bart Jan Hoevers,
Managing Director GTS

Signature:

Date: