

Agreement for the PRISMA Annual Capacity Auction of March 2017

Between:

Gasunie Transport Services B.V. domiciled in Groningen, the Netherlands,
Hereinafter also referred to as *GTS*

And

....., domiciled in,
Hereinafter also referred to as *Customer*,

Collectively also called *Parties* and each of them *Party*.

WHEREAS:

- GASCADE Gastransport GmbH (*GASCADE*), Gasunie Deutschland Transport Services GmbH (*GASUNIE DEUTSCHLAND*) and ONTRAS Gastransport GmbH (*ONTRAS*) have jointly carried out a market survey under the name "more capacity" to determine the future need for new transport capacity for high caloric natural gas at the boundaries of the GASPOOL market area;
- Survey participants have expressed their interest in contracting up to 12 GWh/h long-term firm entry capacity, with a start date of 1 October 2019, in the gas transportation network operated by GTS (*GTS Network*);
- *GTS* has available firm entry capacity at **Entry Point** OUDE STATENZIJL (GUD-H) [OBEBH];
- *GTS* will offer 9,6 GWh/h new firm entry capacity at **Entry Point** Zone OUDE STATENZIJL H with a start date of 1 October 2019 (*New Entry Capacity*) in the annual capacity auction of March 2017 of gas capacity trading platform PRISMA (*PRISMA*), pursuant to the terms and conditions of this *Auction Agreement*;
- *GTS* will offer the *New Entry Capacity* on the conditions mentioned in this *Auction Agreement*;
- *GTS* will offer the available firm entry capacity at **Entry Point** OUDE STATENZIJL (GUD-H) [OBEBH] with a start date of 1 October 2017 (*Existing Entry Capacity*) in the *PRISMA* annual capacity auction of March 2017;
- *Customer* has expressed his intention to submit bids on the *New Entry Capacity* offered by *GTS* in the *PRISMA* annual capacity auction of March 2017;

NOW, THEREFORE, Parties agree as follows:

Definitions

Expressions in italics and bold refer to expressions defined in Dutch in the *Dutch Network Code*.

Expressions in italics refer to expressions defined in this *Auction Agreement*, including the following:

- a. *ACM*: the Netherlands Authority for Consumer and Markets;
- b. *Auction agreement*: this final and binding agreement between *Customer* and *GTS* regarding the *PRISMA* annual capacity auction of March 2017, including any resulting *Binding Capacity Contract*;
- c. *Binding Capacity Contract*: the agreement by which *Customer* contracts the service of *GTS* to make available, in accordance with this *Auction Agreement*, the contracted *New Entry Capacity*;
- d. *Confidential Information*: all information disclosed in connection with this *Auction Agreement*;
- e. *Dutch Network Code (GasCodes)*: the conditions established by the Dutch energy regulator *ACM* pursuant to article 12f of the Dutch Gas Act.
- f. *(to) Endeavour*: an obligation to take commercially practicable actions and to incur reasonable associated costs as far as a prudent operator would do in the given circumstances, but excluding costs that – in the reasonable expectation of *GTS* – will not be reimbursed for through the tariffs established by *ACM* pursuant to article 82 of the Dutch Gas Act;
- g. *Existing Entry Capacity*: the available firm entry capacity at **Entry Point OUDE STATENZIJL (GUD-H) [OBEBH]** with a start date of 1 October 2017. This capacity is firm capacity within the meaning of article 2(1)(16) of **Regulation 715/2009** and forms part of bundled capacity within the meaning of article 3(4) **NC-CAM**.
- h. *New Entry Capacity*: the 9,6 GWh/h new firm entry capacity at **Entry Point Zone OUDE STATENZIJL H** with a start date of 1 October 2019. This capacity is new technical capacity and firm capacity within the meaning of respectively article 2(3) of **NC-CAM** and article 2(1)(16) of **Regulation 715/2009** and forms part of bundled capacity within the meaning of article 3(4) **NC-CAM**.
- i. *PRISMA General Terms and Conditions*: the general terms and conditions for use of the *PRISMA* capacity platform;
- j. *Transmission Service Conditions*: the prevailing general terms and conditions of the *GTS* Transmission Service Conditions and its successors, including its appendices and any amendments of these terms and conditions;
- k. *Transmission Code Gas TSO*: Decision of *ACM* of April 21, 2016, reference *ACM/DE2016/202163*, regarding the adoption of the conditions as referred to in article 12b of the Dutch Gas Act and its successors.

1. *PRISMA* annual capacity auction of March 2017

- 1.1 *GTS* will offer the *New Entry Capacity* in the *PRISMA* annual capacity auction of March

2017, pursuant to the terms and conditions of this *Auction Agreement*. The *New Entry Capacity* will be marketed in accordance with the applicable *PRISMA General Terms and Conditions*.

- 1.2 *GTS* will offer the *Existing Entry Capacity* in the *PRISMA* annual capacity auction of March 2017. The *Existing Entry Capacity* will be marketed in accordance with the applicable *PRISMA General Terms and Conditions*.

2. Capacity contract

- 2.1 If *GTS* accepts a bid submitted by *Customer* on the *New Entry Capacity* in the *PRISMA* annual capacity auction of March 2017, *Parties* automatically enter into a *Binding Capacity Contract* on the terms and conditions of this *Auction Agreement*. Once *Parties* have entered into a *Binding Capacity Contract*, this contract forms part of this *Auction Agreement*.
- 2.2 Once *Parties* have entered into a *Binding Capacity Contract*, *PRISMA* will send *Customer* an email confirming the contracted service.

3. Condition

- 3.1 The rights and obligations of *Parties* under a *Binding Capacity Contract*, with the exception of the other rights and obligations under this *Auction Agreement*, are subject to satisfaction of the condition that the *GTS* board of directors has taken the decision to invest in the network expansion required for the *New Entry Capacity*.
- 3.2 The *GTS* board of directors will ultimately decide on 17 July 2019 whether to invest in the network expansion required for the *New Entry Capacity*. This decision is at the sole discretion of the *GTS* board of directors.
- 3.3 The investment decision of article 3.1 of this *Auction Agreement* is subject to satisfaction of the following conditions before 17 July 2019:
 - a) that the *Existing Entry Capacity* has been contracted in the *PRISMA* annual capacity auction of March 2017.
 - b) that *GTS* has obtained all unconditional decisions and approvals from *ACM* and other authorities as well as all necessary unconditional internal approvals. These decisions and approvals are at the sole discretion of *ACM* and the respective entities.
 - c) that the *GASUNIE DEUTSCHLAND* board of directors has taken the decision to expand the network, as referred to in Chapter 2, article 3(1) paragraph e of Annex 2 to the General Terms and Conditions of *GASUNIE DEUTSCHLAND*.
- 3.4 If the condition of article 3.1 of this *Auction Agreement* is met before 18 July 2019:
 - a) this *Auction Agreement*, with the exception of the *Binding Capacity Contract* and articles 5 and 10 of this *Auction Agreement*, will automatically be terminated (Dutch: "ontbonden") from the date this condition is met; and
 - b) *GTS* will transfer the contracted *New Entry Capacity* from **Entry Point** Zone OUDE STATENZIJL H to **Entry Point** OUDE STATENZIJL (GUD-H) [OBEBH] on the day following the day this condition is met. If *GTS* transfers the contracted *New Entry Capacity* to **Entry Point** OUDE STATENZIJL (GUD-H) [OBEBH], the *Binding Capacity Contract* is automatically amended, as a result of which the contracted *New Entry Capacity* and all associated rights and obligations, in derogation of the definition of *New Entry Capacity* in this *Auction Agreement*, relate to **Entry Point**

OUDE STATENZIJL (GUD-H) [OBEHBH].

- 3.5 If the condition of article 3.1 of this *Auction Agreement* is not met before 18 July 2019, this *Auction Agreement* will automatically be terminated (Dutch: "ontbonden") from 18 July 2019.
- 3.6 *GTS* will inform *Customer* on 18 July 2019 at the latest whether the condition of article 3.1 of this *Auction Agreement* has been met.
- 3.7 *GTS* will not be liable for any direct, indirect or consequential damage incurred by *Customer* as a result of the termination (Dutch: "ontbinding") of this *Auction Agreement* in whole or in part, unless any direct damage is caused by wilful misconduct or gross negligence of *GTS*, as referred to in article 8 of this *Auction Agreement*.

4. *Transmission Service Conditions*

As from the date the condition of article 3.1 of this *Auction Agreement* is met, the terms and conditions of the *Transmission Service Conditions* apply to this *Auction Agreement*. Until that date, this *Auction Agreement* is solely governed by the terms and conditions of this *Auction Agreement*.

5. *Availability of contracted capacity*

- 5.1 After *GTS* has notified *Customer* that the condition of article 3.1 of this *Auction Agreement* has been met, *GTS* will *Endeavour* to make available the contracted *New Entry Capacity* on 1 October 2019.
- 5.2 If *GTS* is not able to make available the contracted *New Entry Capacity* on 1 October 2019, *GTS* will *Endeavour* to make available the contracted *New Entry Capacity* on the earliest possible date.
- 5.3 If *GTS* is not able to make available the contracted *New Entry Capacity* on 1 October 2019, the performance of the corresponding obligations of *Customer* will be suspended accordingly. In that case, *Customer* will not be entitled to terminate (Dutch: "ontbinden") this *Auction Agreement*.
- 5.4 *GTS* will immediately inform *Customer* in writing in case it becomes apparent *GTS* will not be able to make available the contracted *New Entry Capacity* on 1 October 2019.
- 5.5 *GTS* will not be liable for any direct, indirect or consequential damage incurred by *Customer* as a result of *GTS* not making available the contracted *New Entry Capacity* on 1 October 2019, unless any direct damage is caused by wilful misconduct or gross negligence of *GTS*, as referred to in article 8 of this *Auction Agreement*.

6. *Tariffs*

The tariff for the *New Entry Capacity* is the applicable entry tariff as established by *ACM* pursuant to article 82 of the Dutch Gas Act. New tariffs, established by *ACM* pursuant to article 82 of the Dutch Gas Act, apply to the *New Entry Capacity* contracted under this *Auction Agreement* from the moment these tariffs enter into force.

7. Creditworthiness

- 7.1 *Customer* will comply with the specific creditworthiness requirements in Annex 1 to the *Transmission Code Gas TSO*.
- 7.2 In particular, *Customer* will comply with the creditworthiness requirements as referred to in article B1.4 and article B1.5 of the *Transmission Code Gas TSO*. If *Customer* is to provide financial security, this financial security must continue to be valid at least two months beyond the end date of the contracted *New Entry Capacity*. In case *Parties* have entered into a *Binding Capacity Contract*, the exposure, as referred to in Annex 1 to the *Transmission Code Gas TSO*, is the equivalent of three times the maximum amount monthly invoiced to *Customer* by *GTS* for **Shippers** and the equivalent of three times the maximum amount monthly invoiced to *Customer* by *GTS* for **End Users With Exit Capacity**.

8. Liability

- 8.1 *GTS* will not be liable under any circumstances for any direct, indirect or consequential damage incurred by *Customer*, unless any direct damage is caused by wilful misconduct or gross negligence of *GTS*.
- "Willful misconduct" means an intentional or consciously reckless disregard, and "Gross negligence" means a reckless disregard, by *GTS* and/or its directors or employees of managerial or supervisory status, of any provisions of this *Auction Agreement*.
- Therefore, an intentional, consciously reckless or reckless disregard of any provisions of this *Auction Agreement* by an employee of *GTS* who is neither a director nor an employee of managerial or supervisory status is not considered to be willful misconduct or gross negligence.
- To the extent a *Party* is not liable to the other *Party* under this *Auction Agreement*, the latter shall hold harmless and indemnify the former from and against claims by third parties.
- 8.2 The limitation of liability as laid down in article 8.1 of this *Auction Agreement* is also stipulated on behalf of N.V. Nederlandse Gasunie.
- 8.3 If a *Party* is liable under this *Auction Agreement*, liability to the other *Party* is limited per event to € 2,500,000 or to the amount of the contracted service with respect to the **Entry Point** where the damage has occurred if that amount exceeds € 2,500,000, with a maximum of the amount for the service for one year.

9. Force Majeure

- 9.1 Force majeure exists if the conditions of article 6:75 of the Dutch Civil Code are met. If a *Party* is unable to fulfil an obligation under this *Auction Agreement* due to force majeure, this *Party* will be relieved of those obligations. The *Party* claiming force majeure will give written notice and reasonably full particulars to the other *Party* promptly after the occurrence of force majeure, stating among other things the time which said *Party* estimates it will require to remedy the force majeure and will regularly inform the other *Party* about the progress of such remedy. If a *Party* claims force majeure under this *Auction Agreement*, the other *Party* will not be entitled, on the ground of such force majeure, to terminate (Dutch: "ontbinden") the *Auction Agreement* or to terminate (Dutch: "opschorten") the obligation to perform services under that *Auction Agreement*.
- For convenience only an unofficial translation is given hereunder of article 6:75 of the Dutch Civil Code. The official Dutch text of article 6:75 of the Dutch Civil Code applies

exclusively.

"The debtor cannot be held accountable for a shortcoming in the event it is not caused by its negligence and the accountability does not follow from the law or from a legally binding action or relevant generally held views in society."

9.2 The inability to pay any amount of money will not constitute force majeure.

10. Information

10.1 *Parties* will notify each other in a timely manner of all essential matters in relation to their rights and obligations under this *Auction Agreement*.

10.2 All notices pursuant to this *Auction Agreement* shall be made in writing, unless otherwise stipulated in this *Auction Agreement*.

10.3 *GTS* will keep *Customer* informed about the progress of the network expansion referred to in article 3.1

11. Amendment

Notwithstanding article 3.4(b) of this *Auction Agreement*, any modification of or amendment to this *Auction Agreement* shall be in writing and agreed upon and signed by *Parties*. The same applies to the waiver of the written form.

12. Severability

If a provision of this *Auction Agreement* should be totally or partially void or ineffective, this will not affect the legal status of the other provisions of this *Auction Agreement*. *Parties* undertake to replace as soon as possible any ineffective or void provision with a new and effective provision that resembles as closely as possible the economic purpose of the ineffective or void provision. In case legal proceedings are pending in which the ineffective provision is of any significance and *Parties* have not yet agreed on such new provision, *Parties* will request application of article 3:42 of the Dutch Civil code, if legally possible.

13. Assignment

The total or partial assignment of rights and/or obligations under this *Auction Agreement* requires the prior written approval of the other *Party*. Such approval may only be refused for a material reason. The approval shall be deemed to be justly refused for a material reason, if the assigning *Party* is not able to demonstrate to the reasonable satisfaction of the other *Party* that the proposed assignee has the ability to perform the obligations assigned to it. *Customer* consents to assignment of the rights and obligations of *GTS* under this *Auction Agreement* to any other party that will be appointed as the operator of the *GTS network*.

14. Waiver

14.1 No failure to exercise or delay in exercising any right or remedy arising from this *Auction Agreement* shall operate or be construed as a waiver of such right or remedy.

14.2 No waiver by either *Party* shall operate or be construed as a waiver in respect of any failure

or default not expressly identified by such written waiver, whether of a similar or a different character, and whether occurring before or after that waiver.

15. Applicable Law and Legal Process

15.1 This *Auction Agreement* is exclusively governed by the laws of the Netherlands.

15.2 All disputes relating to this *Auction Agreement* will be exclusively settled by the competent court of Noord-Nederland, location Groningen, the Netherlands.

16. Effectiveness of this *Auction Agreement*

This *Auction Agreement* becomes effective upon acceptance by *GTS* of a bid submitted by *Customer* on the *New Entry Capacity* in the *PRISMA* annual capacity auction of March 2017.

17. Confidentiality

17.1 All information disclosed in connection with this *Auction Agreement* by or on behalf of the *Party* owning or being entitled to hold such confidential information to a recipient and/or created by such recipient by using confidential information previously made available by or on behalf of the disclosing *Party* shall be held strictly confidential by the recipient and shall not be disclosed to any third party without the prior written consent of the disclosing *Party*, subject to the subsequent provisions. The *Parties* shall not use this confidential information for other purposes than the execution of this *Auction Agreement*.

However, a *Party* is allowed to disclose confidential information without prior consent of the other *Party* to:

- (a) its employees, directors and officers and/or employees, directors and officers of affiliated companies to the extent reasonably necessary for the approval and performance of its tasks, provided that such employees, directors and officers are bound by an obligation of confidentiality at least similar to that in this *Auction Agreement*; or
- (b) a governmental authority or the public, where such disclosure is required by law, regulation or order; or
- (c) banking and financial institutions and their consultants, where such disclosure is necessary in connection with financing arrangements, provided that it first obtains from these institutions and their consultants a written undertaking of confidentiality at least similar to that in this *Auction Agreement*; or
- (d) independent consultants or contractors nominated by a *Party*, provided that it first obtains from each consultant or contractor a written undertaking of confidentiality at least similar to that in this *Auction Agreement*; or
- (e) a person or legal entity to which any right or obligation under this *Auction Agreement* has been or will be assigned or a legal successor of a *Party*, provided that the *Party* assigning or to be legally succeeded first obtains from such assignee or legal successor a written undertaking of confidentiality similar to that in this *Auction Agreement*.

17.2 *GTS* is allowed to disclose information and data to the public, which will be based on the confidential information, for the purpose of the execution of this *Auction Agreement* without prior consent. *GTS* will disclose no information that can be traced back to *Customer*.

17.3 *GTS* is allowed to disclose confidential information without prior consent to national and

European Authorities, such as *ACM*, the Agency for the Cooperation of Energy Regulators (ACER) and the European Commission, to the extent *GTS* deems it necessary or helpful to disclose such information to obtain or keep approvals, permits and/or exemptions in relation to this *Auction Agreement*. If *GTS* discloses confidential information for this purpose, it will ask the relevant authority to treat the information confidentially.

GTS is allowed to disclose confidential information without prior consent from *Customer* to an adjacent operator only if *Customer* has explicitly indicated to be interested in capacity of the adjacent operator on an **Interconnection Point** with *GTS*. *GTS* is allowed to disclose confidential information without prior consent from *Customer* to other adjacent operators of *GTS* to the extent necessary or helpful to tune the relevant capacities and provided that the other adjacent operator is bound by an obligation of confidentiality at least similar to that in this *Auction Agreement*.

A *Party* receiving confidential information is allowed to disclose that confidential information without the other *Party's* prior written consent, to the extent such information:

- (a) is already lawfully known to the *Party* receiving the information and is not subject to an undertaking of confidentiality; or
- (b) is already in the public domain other than through the act or omission of the *Party* receiving the information; or
- (c) is acquired independently from a third party that is entitled to lawfully disseminate such information at the time it is acquired by the *Party* receiving the information.

18. Termination

18.1 Notwithstanding articles 3.4(a) and 3.5 of this *Auction Agreement*, each *Party* will only be entitled to terminate (Dutch: "ontbinden") this *Auction Agreement* if the other *Party*:

- a) is declared bankrupt (in Dutch: "in staat van faillissement verklaard") or is granted a (provisional) suspension of payment (in Dutch: "surséance van betaling") or is in a similar legal status affecting the rights of creditors generally; or
- b) in case the other *Party* is **Shipper** or **End User with Exit Capacity**, has lost his license; or
- c) does not timely provide the financial security as referred to in article 7.2 of this *Auction Agreement* and required by the *Transmission Code Gas TSO*.

18.2 If a *Party* is entitled to terminate (Dutch: "ontbinden") this *Auction Agreement* on one of the grounds referred to in article 18.1 of this *Auction Agreement*, no judicial intervention is required for such termination.

18.3 If transport capacity upstream or downstream of **Entry Point** OUDE STATENZIJL (GUD-H) [OBEBH] is not available on 1 October 2019, *Customer* will nonetheless have to fulfil its obligations under the *Binding Capacity Contract*. In that case, *Customer* is not entitled to terminate (Dutch: "ontbinden") this *Auction Agreement*.

Drawn up in duplicate

GTS

Customer

Groningen

(place)

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(date)

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(name)

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(position)

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(signature)

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