

## Framework gas transmission contract

concluded as a result of the binding open season procedure for capacity booking at the interconnection point of the national gas transmission system in Romania with the transmission system of Hungary, Csanadpalota

**The National Gas Transmission Company Transgaz S.A.**, headquartered in Mediaş, 1 C. I. Motas Square, Sibiu County, phone. 0269-803333, 0269-839031, e-mail [cabinet@transgaz.ro](mailto:cabinet@transgaz.ro), registered with the Trade Register under no. J32/301/2000, tax no. RO13068733, transfer account IBAN RO 09 RNCB 0231 0195 2531 0001, opened with B.C.R. Mediaş, as transmission service provider, hereinafter referred to as the **"transmission system operator"** or "Transgaz" or the "TSO", on one hand

and

..... (to be filled with the name and identification data of the network user: headquarter, phone, fax, e-mail, Trade Register number, tax registration code, unique registration code) ..... as the beneficiary of the transmission service, hereinafter referred to as **"network user"** or **NU**, on the other,

hereinafter referred to individually as **"Party"** and together as **"Parties"**, have agreed to conclude this gas transmission contract, hereinafter referred to as the **"Contract"** as a result of the conduct of the binding open season procedure for capacity booking on ..... (to be filled with the date of the organization of the binding open season procedure) .....

Whereas The Parties are aware that Transgaz, FGSZ Zrt. and GAS CONNECT AUSTRIA GmbH have announced an Open Season procedure for the implementation of the Romanian-Hungarian-Austrian natural gas transmission corridor, hereinafter referred to as "Project". The rules of the Open Season procedure are laid down in the Open Season Rulebook that has been published by the three companies and approved by the national regulatory authorities. The Romanian National Energy Regulatory Authority approved the Open Season Rulebook with its resolution no. ....

Whereas the Parties agree that Transgaz bases the developments necessary for the realisation of the capacities to be made available through the gas transmission system, hereinafter referred to as "Romanian National Gas Transmission System" or "NTS", on the capacity booking contracts concluded with the System Users, and therefore the termination of any of these contracts – including this Contract – would result in significant losses, costs and damage to Transgaz,

Considering that, in order to fulfil its obligations specified herein, Transgaz shall implement significant investments by constructing the Investment Project, Whereas the Parties agree that any decisions made by FGSZ Zrt. and GAS CONNECT AUSTRIA GmbH in connection with the transmission corridor regarding their own operational area or investments, or any official or legal acts regarding the same may not affect the legal relationship between Transgaz and the System User, as this Contract of the Parties shall be independent from the Hungarian and Austrian capacity booking contracts.

## **I. Terminology; applicable law and other applicable documents**

### **Art. 1**

- (1) The terms used in this Contract, are defined by Regulation (EU) No. 2017/459 of 16 March 2017 establishing a Network Code on Capacity Allocation Mechanisms in Gas Transmission Systems and repealing Regulation (EU) No 984/2013, by Electricity and Gas Law No. 123/2012, as further amended and supplemented, and by the Network Code of the National Gas Transmission System, approved by Order No. 16/2013 of the President of the National Energy Regulatory Authority, as further amended and supplemented, hereinafter referred to as the **“Network Code”**, as well as in the Open Season Procedure Rulebook.
- (2) The Contract is supplemented with the provisions of Commission Regulation (EU) No. 2017/459 of 16 March 2017 establishing a Network Code on Capacity Allocation Mechanisms in Gas Transmission Systems and repealing Regulation (EU) No 984/2013, the provisions of the Electricity and Gas Law No. 123/2012, as further amended and supplemented, the National Energy Regulatory Authority (ANRE) regulations, the Network Code, the Interconnection Agreement for the interconnection point Csanadpalota, hereinafter referred to as the **“interconnection point”**, concluded between the National Gas Transmission Company Transgaz S.A. Mediaș and FGSZ Ltd. (to be filled in with the name of the operator of the adjacent gas transmission system in Hungary), hereinafter referred to as the **“Interconnection Agreement”**, and the provisions of the Open Season Procedure Rulebook.
- (3) The Open Season Procedure Rulebook is binding for the parties. In the event of inconsistencies between the provisions of the Rulebook and the provisions of this Contract, the provisions of the Open Season Procedure Rulebook shall prevail.

## **II. Scope of contract**

### **Art. 2**

- (1) The scope of the Contract, is the provision of gas transmission services, such services designating all the activities and operations carried out by the TSO for or in connection with the booking of standard annual firm transmission capacity products at the interconnection point according to the Interconnection Agreement, in line with the provisions of the Interconnection Agreement.
- (2) If the standard annual firm transmission capacity product awarded following the conduct of the binding open season procedure interconnection point capacity booking is transmission capacity booking in the exit direction from Romania, the Contract scope in paragraph (1) shall be supplemented with the activities and operations executed by the TSO for or in connection with the transmission through the National Transmission System (NTS) of the gas amounts expressed in energy units, up to the Interconnection point.
- (3) The TSO and the NU shall note that the capacity provided in Annex no 1 is booked at the interconnection point under the Contract, in accordance with the Open Season Procedure Rulebook.
- (4) The transmission capacity booked at the interconnection point is in kWh/h/year (25°C/0°C) and is the capacity allocated to the NU following the conduct of the binding open season procedure.
- (5) The gas quantities nomination/renomination and allocation procedures are compliant with the provisions of the Interconnection Agreement, published on the website of the TSO.
- (6) The commercial balancing, the invoicing of the imbalances, and the allocation to the NU of the difference between the expense and the revenue resulted from the TSO's balancing actions are performed according to the provisions of the Network Code.

### **III. Contract duration**

#### **Art. 3**

- (1) The Contract enters into force upon its signing by the Parties and it is concluded for the period between ..... and .....

### **IV. Gas metering at the NTS entry/exit points**

#### **Art. 4**

- (1) The gas quantities shall be metered and the quantities of energy entering and exiting the NTS through the interconnection point shall be determined in accordance with the Interconnection Agreement, published on the TSO's website.
- (2) The gas quantities circulated through the interconnection points shall comply with the minimum quality specifications established by the Interconnection Agreement, published on the TSO's website.

### **V. Applicable tariffs. Payment and invoicing terms and conditions**

#### **Art. 5**

- (1) The NU shall pay to the TSO the value of the transmission capacity booked based on the capacity booking tariff applicable at the moment of use of the booked capacity, plus the possible mandatory minimum premium resulted from the binding open season procedure. In the situation stipulated at Art. 2, paragraph (2) the NU shall pay the TSO additionally the volumetric component tariff applicable to the amount of gas transmitted set based on the final allocation, for the period of use of the booked capacity.
- (2) As applicable, the NU shall pay additionally to the TSO the tariffs under the Network Code. Invoices issued to this effect shall be paid within 15 calendar days from the invoice date. If the due date is a non-working day, such date is deemed achieved on the next working day.
- (3) The firm gas transmission services provided shall be invoiced in lei based on the booked capacity, the number of hours in the invoicing period and the natural gas quantities set based on the final allocations, in line with the provisions of the Interconnection Agreement, information published on the TSO's website.
  - a) The transmission services will be invoiced as follows: if the NU does not opt for the advance payment, the TSO issues and submits the NU, until the 15<sup>th</sup> of the month following the one in which they provided the transmission service, an invoice related to the transmission services provided for the previous month, drawn up in line with the provisions of this contract;
  - b) if the NU opts for the advance payment the TSO issues and submits to the NU:
    - i. minimum 5 calendar days prior to the commencement date of each month in which the services are provided, an invoice for the advance payment, whose amount is equal to the amount of the booked capacity calculated for the period of the month in which services were provided, plus, in the situation provided in art 2 par (2) of the contract, the amount of the commodity charge calculated according to the volume of the capacity under the contract for the same period of time;

- ii. within 15 working days from the end of the month in which services are provided, an invoice for the adjustment of the payment, prepared based on the monthly allocation.
- (4) Invoices issued according to par (3) shall be paid within 15 calendar days from the invoice issue date. If the due date is a non-working day, such date shall be deemed achieved on the next working day.
- (5) The advance payment of the transmission service invoices shall be made until the commencement of the transmission service based on the advance payment invoice issued in this respect.
- (6) The payment obligation shall be deemed met at the date of entry of the relevant total amounts to the TSO's account.

## **VI. TSO's rights and obligations**

### **Art.6.**

The TSO shall be entitled to:

- a) receive the value of services provided and of the delay penalties;
- b) execute the letter of payment guarantee submitted by the NU in case of failure to pay the invoices issued until their maturity date;
- c) limit or interrupt the transmission services, with a prior notice of 3 calendar days, if the payment obligations are not fulfilled according to the terms and conditions of the Contract;
- d) limit or to interrupt the firm transmission services, if the NU fails to comply with the provisions of Chapter VIII - 'Guarantees';
- e) limit or interrupt the transmission services, if the NU fails to comply with the provisions of the documents under Art. 1, paragraph (2), with a prior notice of at least 3 days;
- f) refuse to take over in the NTS the gas non-compliant with the minimum quality specifications established under the applicable laws;
- g) invoice the value of the 'Deficit' imbalance of the NU, including the delay penalties, based on the provisions and tariffs under the Network Code;
- h) invoice to the NU the value of the transmission services provided under the scope of the Contract, based on the capacity booking tariff applicable at the moment the booked capacity may be used, plus the possible mandatory minimum premium resulted from the binding open season procedure, and the volumetric tariff applicable for the period the booked capacity may be used for the amount of gas transmitted delay penalties;
- i) limit or interrupt, as appropriate, the firm transmission services for the execution of unplanned maintenance works, notifying the NU of such limitation or interruption within maximum 6 hours;
- j) limit or interrupt, as appropriate, the firm transmission services for the execution of the planned maintenance works;

### **Art. 7 – The TSO shall:**

- a) notify the NU with regard to possible limitations or, as appropriate, interruptions of the transmission services in case of the NU's payment default;
- b) resume the transmission services within 24 hours from the date of NU's meeting payment obligations;

- c) enable NU's access to the data/documents substantiating an invoice when the NU is disputing such invoice;
- d) takeover, transmit and deliver the confirmed quantities, expressed in energy units to the NU according to the Interconnection agreement and in compliance with the quality specifications established by it, published on the TSO's website;
- e) answer and settle the NU's complaints regarding the transmission services, according to the applicable laws;
- f) pay in full and to date the invoices issued by the NU for the value of the `Surplus` imbalance of the NU;
- g) initiate the amending and/or supplementing of the Contract in case of modification of the circumstances which are at the basis of its signature;
- h) to publish on its website relevant information from the Interconnection Agreement;
- i) to publish on its website relevant information related to the planned works, at least 30 days before the date considered for their commencement.

## **VII. NU's rights and obligations**

**Art. 8 –** The NU shall be entitled to:

- a) refuse to take over at the NTS exit point gas not complying with the quality specifications set by the applicable laws;
- b) dispute the invoice issued by the TSO and request access to data/documents substantiating the relevant invoice;
- c) invoice the value of the `Surplus` imbalance recorded, including the delay penalties, based on the provisions and tariffs under the Network Code;
- d) request the TSO to amend the Contract in case of modification of the circumstances which are at the basis of its signature;

**Art. 9 -** The NU shall:

- a) pay fully and by the due date the invoices issued by the TSO according to the provisions of the Contract and of the documents at Art. 1, paragraph (2);
- b) accept the limitation/interruption of the transmission service according to the Contract;
- c) establish accordingly the guarantees under Art. 10 and Art. 11;

## **VIII. Guarantees**

### **Art. 10**

- (1) The NU may be exempted from the obligation to establish the financial payment guarantee under Art. 11, par. (3) in the favor of the TSO if:
  - a) it makes the proof of a credit rating issued by one of the rating agencies Standard & Poor's, Moody's or Fitch, at least at the same level as that of the TSO, valid over the Contract duration;
  - b) it pays in advance the value of the transmission services according to Art. 5, paragraph (6).
- (2) If, during the execution of the Contract the NU's rating or the issuing rating agency according to the provisions of paragraph (1), letter a) changes, the NU shall notify the TSO within 3 days from the occurrence of the change and prove it complies with the provisions of Art 11, par (1), within no more than 30 consecutive days from the occurrence of the modification.

### **Art. 11**

- (1) Upon the submission of the bid within the binding open season procedure the NU shall submit to the TSO a financial guarantee summing up 0.1% of the value of the firm capacity requested by the bid for the first 5 years in the descending order of the level of the requested capacity.
- (2) The financial guarantee established in line with par (1) is valid as of the previous bank day to the bid submission date and is terminated on 31.12.2018.
- (3) Within maximum 15 working days from the final allocation achieved in line with the binding open season procedure the NU shall submit to the TSO the payment guarantee in the amount provided in par (4).
- (4) The level of the payment guarantee established by the NU will be equal to twice the average amount of the estimated monthly invoices for the transmission services related to the following period of use.
- (5) If the level of the payment guarantee:
  - a) falls below the level provided in par (4), the NU must supplement the level of the payment guarantee accordingly;
  - b) is above the level provided in par (4), the TSO must return the NU the difference between the actual level of the guarantee and the one provided in par (4).
- (6) the level of the payment guarantee is adjusted in maximum 5 working days from the date the reduction/increase occurs as compared to the level set in line with par (4).
- (7) the payment guarantee established in line with par (4) is valid as of the bank day preceding the date the transmission service is provided and ceases to be valid in the 60<sup>th</sup> calendar day from the expiry of the contract.
- (8) the NU may avoid the option to lodge a guarantee for the provision of the transmission service by making advance payments. In this respect, the NU declares to the TSO, in writing, within maximum 7 working days since the Contract is signed, the advance payment option.
- (9) the amount of the advance payment is equal to the amount of the monthly invoice for the transmission services related to the period of use, issued in line with the provisions of art 5 par (3) letter b) point (i).
- (10) the advance payment/the advance Invoice is compensated with the settlement invoice of the month for which the payment was made.

- (11) If such payment in advance does not cover the amount of the settlement invoice of such month, the difference is paid by the NU at the due date of the invoice.
- (12) the NU may give up the option of the advance payment provided it lodges a payment guarantee under the conditions stipulated in art. 10 par (1) letter a) or art. 11 par (3)-(7) of the Contract.
- (13) The financial guarantees established in line with par (1) and (3) are submitted by the NU in the form of:
  - a) a letter of bank guarantee in lei or euro equivalent at the European Central Bank in the day the guarantee is issued; and/or
  - b) a guaranteed account (collateral deposit), in lei or in euro equivalent at the European Central Bank in the day the guarantee is issued and/or
  - c) an escrow account in lei or in euro equivalent at the European Central Bank in the day the guarantee is issued.
- (14) The TSO shall accept the letters of bank guarantee issued by a bank having a rating granted by one of the rating agencies: Standard & Poor's, Moody's or Fitch, at least at the 'investment grade' level.

#### **Art. 12**

- (1) If the NU provides the letter of good standing in accordance with Art 10, paragraph (1), letter a), the TSO may request, in certain justified cases, the establishment of a payment guarantee according to Art. 11 or the advance payment of the payment obligations resulting from the commercial relationship with the NU. The request of the guarantee or advance payment shall be provided and explained to the NU in writing.
- (2) For the transmission services a justified case is considered the situation in which a NU is in delay payment for an amount representing at least 10% of the value of the last invoice or of the value of the partial payment obligations, after the receipt of a notice from the TSO to that effect.

#### **Art. 13**

- (1) The TSO shall be entitled to execute the guarantees under this chapter unless the NU fulfills its contract obligations completely or partly or if it delays fulfilling such obligations.
- (2) Prior to executing such guarantee, the TSO shall notify the NU on the non-fulfilled obligations.
- (3) The TSO shall send the guarantee execution notification by fax within 24 hours from the expiration of the due date of the transmission services invoices.
- (4) If the guarantee is executed partly or completely, the NU shall re-establish the guarantee according to Art. 11, paragraph (5), letter a) and paragraph (4).

### **IX. Confidentiality**

#### **Art. 14**

- (1) The Parties shall keep confidential all data, documents and information obtained during the execution of the Contract.
- (2) Notwithstanding the provisions of paragraph (1), confidential data, documents and information shall not include any data, documents and information:

- a) known to a contracting Party prior to the date of disclosure by the other contracting Party, or
  - b) disclosed following receipt of the written consent of the other contracting Party for such disclosure,
  - c) which must be produced as a legal duty on disclosure.
- (3) The provisions of this Article shall be effective for a period of 5 years from Contract expiration.
- (4) Failure to comply with the obligations arising from paragraphs (1) to (3) shall hold liable the Party in default, according to the provisions of the law.

## **X. Contract liability**

### **Art. 15**

- (1) The Parties agree that Transgaz shall not assume liability, and shall not be held liable for damages or any other payment towards the System User if the latter incurs damage, costs or loss due to any of the following reasons:
- a) Any Hungarian or Austrian investment part of the Romanian-Hungarian-Austrian natural gas transmission corridor fails to be constructed, is constructed with delay or not as intended, and this happens for a reason not attributable to Transgaz;
  - b) Any contract to be concluded with the license holders (system users) on the Hungarian or Austrian side and which are necessary for natural gas transmission on the Hungarian or Austrian side is failed to be concluded, is terminated or is breached by its contracting parties, and this happens for a reason not attributable to Transgaz;
  - c) Any obligation of Transgaz hereunder cannot be performed due to an action or omission by a license holder (system user) on the Hungarian or Austrian side or by any other person, or due to any force majeure event, emergency or restriction on the Hungarian or Austrian side.
- (2) Without limiting the generality of the foregoing, Transgaz shall be liable for the direct damage resulting from the failure to build the Romanian gas pipeline as part of the Project by 1 October 2022 if that happens for a reason attributable to Transgaz.
- (3) In the event of a breach of the contractual provisions, the Party in breach shall pay compensation to the other Party for their direct damages incurred due to the breach of Contract.
- (4) Failure to meet the invoice payment obligation for the transmission services incurs:
- a) the charging of a proportion of the delayed penalties calculated for the outstanding amount equal to the default interest due for the non-payment of the budgetary obligations by the due date, for each day of delay, from the 16<sup>th</sup> calendar day since the invoice issue date until its full payment, including the payment day in case of failure to meet the obligation to pay the invoice until the due date.
  - b) The withholding from the established financial guarantee, of the amount necessary to cover the total or partial failure to pay the issued invoices;
  - c) The limitation/interruption of the transmission system services, with a 3 calendar days' notice, as of the following day after the expiry of the 15 calendar days deadline in case of the total or partial failure to fulfill the payment obligations.
- (5) The failure to meet the obligation to ensure the firm capacity booked by contract entails the obligation of the TSO to pay to the NU the value of the booked firm capacity which was not ensured at the

capacity booking tariff, applicable the moment such booked capacity may be used, plus the possible mandatory minimum premium resulting from the conduct of the binding open season procedure.

#### **Art. 16**

- (1) The full or partial culpable breach of the contract obligations by the NU, other than the payment obligations, shall entitle the TSO to claim damages, proportionally with the prejudice, according to the applicable law.
- (2) The full or partial culpable breach of the contract obligations by the TSO shall entitle the NU to claim damages, proportionally with the prejudice, according to the applicable law.
- (3) In case of the termination of the Contract prior to the expiry of its validity period, out of other reasons than the ones provide in art. 19 par (1) letter c), the NU has to pay the TSO the value of the contracted capacity for the remaining period until the expiry of the Contract validity.
- (4) The debtor of the obligation shall be deemed in default by the meeting of the due dates set for the execution of contractual obligations, except as specifically set forth in this Contract.

### **XI. Force Majeure/Act of God**

#### **Art. 17**

- (1) Force majeure is an event that is external, unforeseeable, absolutely invincible and unavoidable, which exonerates the Parties from liability, according to Art. 1.351 of the Civil Code.
- (2) If the Force Majeure event does not cease within 30 days, either Party shall be entitled to request the termination of the Contract de jure, without any of the Parties being entitled to claim damages.
- (3) The Party claiming Force Majeure shall notify the other Party of such occurrence in writing, within no more than two days from the occurrence of the event, and the proof of the Force Majeure shall be communicated within maximum 15 days from such occurrence.

#### **Art. 18**

- (1) Act of God is an event which cannot be foreseen or prevented by the Party which would have been required to respond if the event had not occurred in the conditions of Art. 1.351 of the Civil Code.
- (2) The provisions of Art. 17, paragraphs (2) and (3) shall apply accordingly.

### **XII. Termination**

#### **Art. 19**

- (1) The Contract shall be terminated:
  - a) at Contract expiry according to Art. 3;
  - b) by unilateral termination, in case of withdrawal of the TSO license or initiation of bankruptcy proceedings, of the contractual partner subject to a 30 day notice period;
  - c) by unilateral termination, under the conditions of Art. 17 and Art. 18;
  - d) by unilateral termination by the NU any moment prior to 01.10.2018, by paying a penalty of 0.1% of the value of the firm capacity requested by the bid for the first 5 years in the descending order of the level of the requested capacity, within 15 days from the Contract termination notification date. If

the NU does not pay within the deadline, the TSO shall execute the guarantee established in line with art 11 par (1),

- e) by unilateral termination by the TSO any moment prior to 21.11.2018, if the result of the Economic Test conducted in line with the Open Season Procedure remains negative. This situation does not entail any payment obligation for the Parties.
  - f) by unilateral cancellation, under the conditions of Art. 1.552 of the Civil Code.
- (2) The termination of this Contract shall bear no effect on the contracting obligations arisen validly during the execution of the Contract, independent of their deadlines.

### **XIII. Amendments**

#### **Art. 20**

- (1) The Parties may amend this Contract by Addendum.
- (2) During the execution of the Contract, the Parties shall notify each other in writing, at the addresses mentioned in article 24 par (4) letter a) with regard to any change in the circumstances considered on the Contract effective date.
- (3) For this Contract, change in the circumstances shall mean the application, amendment or cancellation of a normative act regulating completely or partially the Contract or the terms and conditions of the Contract.
- (4) The notification period shall be of maximum 3 calendar days from the occurrence of the modification, unless otherwise stipulated by the Contract. Notifications will be sent in line with the provisions of art 25.

### **XIV. Applicable law and dispute settlement**

#### **Art. 21**

- (1) This Contract shall be governed by and construed in accordance with the Romanian law.
- (2) The TSO and the NU agree to amicably settle any dispute arising in relation to the validity, interpretation, execution and termination of the Contract. If not, the disputes shall be referred to the competent Romanian law courts.

### **XV. Transfer**

#### **Art. 22**

- (1) The Parties shall be entitled to transfer to a third party, totally or partially, its rights and/or obligations established by this Contract, only with the written consent of the other Party which cannot be refused without any justification.
- (2) The transfer intention notification shall be sent to the other Parties at least 5 working days prior to the intended transfer date.
- (3) The notified Parties shall send a reasoned answer within maximum 3 working days from the notification receipt date.
- (4) If the Party notified in accordance with paragraph (2) fails to answer or, as applicable, fails to send a reasoned answer, the transfer intention shall be deemed:

- a) not accepted, in the case of Contract transfer, according to the applicable law;
- b) accepted, in the case of debt transfer.

## **XVI. Final clauses**

### **Art. 23**

- (1) The Contract is concluded in Romanian language. If this Contract is executed in several languages, the Romanian language shall prevail.

### **Art 24**

- (1) Any communications between the Parties in relation to the fulfilment of this Contract shall be made in writing.
- (2) Any written document shall be registered both on transmittal and on receipt.
- (3) The communications between the Parties may be made by phone, fax and e-mail, with written confirmation of receipt.
- (4) Any notification from a Party shall:
  - a) be made in writing and delivered in person or sent by registered mail and acknowledgement of receipt or by any communication means ensuring the confirmation of receipt, at the following addresses:

#### **For the TSO:**

Address:

Email:

Contact person:

#### **For the NU:**

Address:

Email:

Contact person:

- b) be considered received, unless otherwise provided in the contents of the Contract, upon the delivery in person, if delivered in person by one of the Parties, upon receipt by the recipient, if sent by registered mail with acknowledgement of receipt or upon the receipt of the confirmation by the consignor, if the communication is made by fax (provided it was sent in a non-working day, when it will be considered received the first hour of the following working day).
- (5) the Parties agree that the non-compliance with the provisions of the preceding paragraph to be punishable by the unenforceability of that notification.
- (6) No changes to the Contact data provided in this Contract shall bind the other party only if it has been notified in advance, under the conditions mentioned above.

**Art. 25**

The cancellation or invalidity, in full or in part, of one of the clauses hereof shall not render the entire Contract null and void.

**Art. 26**

The representatives of the Parties, signatories hereof, declare that they have the capacity to execute this Contract and that they are duly authorized by each of their representative to execute and deliver this Contract.

**S.N.T.G.N. TRANSGAZ S.A.**

\_\_\_\_\_

DRAFT