

**Hub Services  
Agreement  
2005  
(HSA 2005)**

# Hub Services Agreement

**between**

**Huberator SA**

**and**

.....

PREAMBLE

This Agreement is made the .....day of ..... 200.., by and between :

**Huberator SA**, a company incorporated under the laws of Belgium with its registered office Rue Guimard 4,1040 Brussels and registered in the commercial registry in Brussels under n°0466.874.361, VAT number BE 466 874 361 (hereinafter called “the Hub Operator”) of the one part and

....., a company incorporated under the laws of..... with its registered office..... and registered in ..... under n°....., VAT number..... (hereinafter called “the Customer”) of the second part.

WITNESSETH

WHEREAS

The Customer wants the Hub Operator to provide the services defined hereunder as the Hub Services, and

WHEREAS

The Hub Operator shall provide the Hub Services in accordance with and subject to the terms and conditions of this Hub Services Agreement

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS :

Paragraph 1. The Hub Operator and the Customer hereby enter into a Hub Services Agreement which shall include the Hub Services Agreement Terms and Conditions including the Operating Procedures attached hereto as Appendix A and which are an integral part of this Hub Services Agreement.

Paragraph 2. The Hub Operator shall provide to the Customer the Hub Services in accordance with this Hub Services Agreement as from ....., which shall be the Start Date.

Paragraph 3. Hub Services Agreements to provide Hub Services at the Zeebrugge Hub shall be entered into between the Hub Operator and third parties containing with respect to said services identical terms and conditions as this Hub Services Agreement.

Paragraph 4. Address of the Customer with regard to notices under:

1) Article 8.1 of the Hub Services Agreement Terms and Conditions :

Telephone : .....

Telefax : .....

Address : .....

.....

2) Appendix A (Operating Procedures under the Hub Services Agreement Terms and Conditions) :

Telephone : .....

Telefax : .....

24hr contact telephone : .....

EDIFACT Call Number : .....

Paragraph 5. This Hub Services Agreement shall take effect on the date of signature of the Hub Services Agreement by both Parties.

Executed in two (2) originals as of the day and year first above written.

**Huberator SA**

Laurent Remy  
Key Account Manager

Rudy Van Beurden  
Managing Director

**THE CUSTOMER**

# **Hub Services Agreement Terms and Conditions**

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Appendix A      Operating Procedures

## Art. 0 DEFINITIONS

The terms below shall have the following meaning in these Hub Services Agreement Terms and Conditions:

- (1) "Additional Back-up" shall have the meaning given in Article 2.2.
- (2) "Additional Back-up and Offtake Charge" shall have the meaning given in Article 3.4.1.
- (3) "Additional Back-up Commodity Charge" shall have the meaning given in Article 3.4.4.
- (4) "Additional Back-up Fee" shall have the meaning given in Article 3.4.2.
- (5) "Additional Back-up Quantity" shall mean the quantity of Natural Gas delivered by the Hub Operator to the Customer as Additional Back-up as determined in accordance with Section 6.2.1.3.
- (6) "Additional Offtake" shall have the meaning given in Article 2.2.
- (7) "Additional Offtake Commodity Charge" shall have the meaning given in Article 3.4.5.
- (8) "Additional Offtake Fee" shall have the meaning given in Article 3.4.3.
- (9) "Additional Offtake Quantity" shall mean the quantity of Natural Gas offtaken from the Customer by the Hub Operator as Additional Offtake as determined in accordance with Section 6.2.2.3.
- (10) "Affiliated Company" shall mean :
  - a) any company which directly or indirectly holds fifty (50) per cent or more of the share capital or the votes, in a Party hereto; or

- b) any company in which one of the Parties hereto directly or indirectly holds fifty (50) per cent or more of the share capital or the votes; or
  - c) any company in which fifty (50) percent or more of the share capital or votes are held directly or indirectly by one or more company(s) which hold directly or indirectly fifty (50) per cent or more of the share capital or the votes in a Party hereto.
- (11) "Agreement" or "Hub Services Agreement" or "HSA" shall mean the Hub Services Agreement signed between the Hub Operator and the Customer including these Hub Services Agreement Terms and Conditions, Schedule 1 and Appendix A as amended from time to time by the Parties.
- (12) "APX Group" shall mean the Amsterdam Power Exchange Spotmarket B.V., registered in the commercial register of Amsterdam under number 34153887 (hereinafter referred to as APX Group).
- (13) "A-Rating" shall mean a credit rating of "A" or higher as defined by Standard and Poor's Rating Group or "A2" or higher as defined by Moody's Investor Services Inc.
- (14) "Automatic Back-up" shall have the meaning given in Article 2.2.
- (15) "Automatic Back-up and Offtake Charge" shall have the meaning given in Article 3.3.1.
- (16) "Automatic Back-up and Offtake Service Charge" shall have the meaning given in Article 3.3.6.
- (17) "Automatic Back-up Commodity Charge" shall have the meaning given in Article 3.3.4.

- (18) "Automatic Back-up Fee" shall have the meaning given in Article 3.3.2.
- (19) "Automatic Back-up Quantity" shall mean the quantity of Natural Gas delivered by the Hub Operator to the Customer as Automatic Back-up as determined in accordance with Section 6.2.1.2.
- (20) "Automatic Customer Daily Transfer Notice" shall have the meaning given in Section 2.3.
- (21) "Automatic Offtake" shall have the meaning given in Article 2.2.
- (22) "Automatic Offtake Commodity Charge" shall have the meaning given in Article 3.3.5.
- (23) "Automatic Offtake Fee" shall have the meaning given in Article 3.3.3.
- (24) "Automatic Offtake Quantity" shall mean the quantity of Natural Gas offtaken from the Customer by the Hub Operator as Automatic Offtake as determined in accordance with Section 6.2.2.2.
- (25) "Back-up Delivery Nomination" shall have the meaning given in Section 6.2.1.4.
- (26) "Back-up Redelivery Nomination" shall have the meaning given in Section 6.2.2.4.
- (27) "Balance" shall have the meaning given in Section 3.
- (28) "Booked Capacity Variable" (BCV) shall mean a variable which is determined in accordance with Article 7.2.2.
- (29) "Collateral" shall mean the security to be provided by the Customer to the Hub Operator, in accordance with Article 7.2.
- (30) "Commodity Provider" shall mean the company or companies selling Natural Gas to the Hub Operator or buying excess Natural Gas from

the Hub Operator for the purpose of the Automatic Back-up, Automatic Offtake, Additional Back-up and/or Additional Offtake.

- (31) "Counterparty" shall mean a party to a Transaction other than the Customer having also concluded a Hub Services Agreement with the Hub Operator.
- (32) "Curtailed Event" shall mean a Delivery Curtailed Event or a Redelivery Curtailed Event, as applicable.
- (33) "Customer" shall mean the company "of the second part" mentioned in the preamble to the Agreement.
- (34) "Customer Daily Transfer Notice" or "CDT" shall mean the notice by the Customer as provided under Section 2.2.1.
- (35) "Day" shall mean the period beginning at 0600 hours on a day and ending at 0600 hours on the following day and the date of any Day shall be the date of its beginning as defined herein.
- (36) "Delivery Curtailed Event" shall mean a continuous period during which the Customer, who is also a Shipper, is not delivering all or part of the quantities of Natural Gas, last confirmed by the Hub Operator before such curtailed event, to the Zeebrugge Hub. A Delivery Curtailed Event stops as soon as the Customer's deliveries have been restored.
- (37) "Delivery Month" shall mean the Month during which Natural Gas is delivered and received under a Transaction.
- (38) "Due Date" shall have the meaning given in Articles 4.2 and 4.3.
- (39) "Effective Back-up Delivery" shall have the meaning given in Section 6.2.1.4.

- (40) "Effective Back-up Redelivery" shall have the meaning given in Section 6.2.2.4.
- (41) "Effective Daily Delivery" (EDD) shall mean the sum of all Effective Hourly Deliveries for the given Day.
- (42) "Effective Daily Redelivery" (EDR) shall mean the sum of all Effective Hourly Redeliveries for the given Day.
- (43) "Effective Hourly Delivery" (EHD) shall mean the quantity determined by the Hub Operator in accordance with Section 6.1 and notified under a Hub Operator Confirmation Notice and shall be equal to the Nominated Hourly Delivery, provided that a Match for said Nominated Hourly Delivery, with respect to the relevant hour, has been confirmed under a Hub Operator Daily Matching Notice. In the case of a Redelivery Curtailment Event, the Effective Hourly Delivery shall be equal to the hourly quantity determined by the Hub Operator in accordance with Section 6.2.2.
- (44) "Effective Hourly Redelivery" (EHR) shall mean the quantity determined by the Hub Operator in accordance with Section 6.1 and notified under a Hub Operator Confirmation Notice and shall be equal to the Nominated Hourly Redelivery, provided that a Match for said Nominated Hourly Redelivery, with respect to the relevant hour, has been confirmed under a Hub Operator Daily Matching Notice. In the case of a Delivery Curtailment Event, the Effective Hourly Redelivery shall be equal to the hourly quantity determined by the Hub Operator in accordance with Section 6.2.1.
- (45) "EUR" shall mean euro.

- (46) "Excess Gas" shall mean the quantities of Natural Gas offtaken by the Hub Operator to balance the Customer's position on the Zeebrugge Hub Trading Platform in accordance with Section 2.3.
- (47) "Fluxys Transmission System" shall mean the Natural Gas transmission system in Belgium, which is operated by Fluxys S.A. which, for the avoidance of doubt, excludes the Interconnector terminal at Zeebrugge.
- (48) "Force Majeure" shall have the meaning given in Article 9.
- (49) "Hourly Quantity" means the Quantity agreed under a Transaction between the Customer and a Counterparty for a given hour of a given Day.
- (50) "Hub Back-up Code" shall have the meaning given in Section 2.1.
- (51) "Hub Code" shall have the meaning given in Section 2.1.
- (52) "Hub Operator" shall mean Huberator SA or any of its permitted successors or assigns in its role as operator of the Zeebrugge Hub.
- (53) "Hub Operator Confirmation Notice" shall mean the notice by the Hub Operator as provided under Section 2.4.2.
- (54) "Hub Operator Daily Matching Notice" shall mean the notice by the Hub Operator as provided under Section 2.4.1.
- (55) "Hub Platform Code" shall have the meaning given in Section 2.1.
- (56) "Hub Services" shall have the meaning given in Article 2.2.
- (57) "Hub Services Fee" shall mean either the Hub Services Fee A referred to under Article 3.1.1 or the Hub Services Fee B referred to under Article 3.1.2.
- (58) "Imbalance" shall have the meaning given in Section 3.

- (59) "Interconnector" shall mean the Natural Gas transmission system from and including the Interconnector terminal at Bacton to and including the Interconnector terminal at Zeebrugge.
- (60) "Interconnector Zeebrugge Terminal Fluxys" (IZTF) shall mean the terminal, part of the Fluxys Transmission System, immediately downstream of the Interconnector when the Natural Gas flows from the Interconnector to the Fluxys Transmission System.
- (61) "Joule" (J) shall be identical with the definition of the derived "SI unit of quantity of heat J" as defined in ISO 1000 SI units and recommendations for the use of their multiples and of certain other units and "megajoule" or "MJ" shall mean one million ( $10^6$ ) joule and "gigajoule" or "GJ" shall mean one thousand (1,000) megajoule. For the avoidance of doubt, all energy values at the Zeebrugge Hub are deemed to be calculated using gross calorific value measurements, where the products of combustion are cooled to 25° Celsius.
- (62) "Match" shall have the meaning given in Section 4.1.1.
- (63) "Mismatch" shall have the meaning given in Section 4.1.1.
- (64) "Month" shall mean the period beginning on the first Day of a calendar month and ending on the first Day of the next succeeding calendar month.
- (65) "Natural Gas" shall mean any hydrocarbon or mixture of hydrocarbons and non-combustible gases which, when extracted from the subsoil of the earth in its natural state separately or together with liquid hydrocarbons, is in the gaseous state.

- (66) “Nominated Daily Delivery” (NDD) shall mean the sum of the Nominated Hourly Deliveries for a given Day.
- (67) “Nominated Daily Redelivery” (NDR) shall mean the sum of the Nominated Hourly Redeliveries for a given Day.
- (68) “Nominated Hourly Delivery” (NHD) shall mean the quantity of Natural Gas nominated by the Customer in accordance with Section 2.2.1 for receipt from a Counterparty at the Zeebrugge Hub for one hour of a Day, expressed in gigajoules and equal to the sum of all Natural Gas title transfer obligations under Transactions for delivery by said Counterparty to the Customer minus the sum of all Natural Gas title transfer obligations under Transactions for receipt by the same Counterparty from the Customer for said hour, provided the net result is positive.
- (69) “Nominated Hourly Redelivery” (NHR) shall mean the quantity of Natural Gas notified by the Customer in accordance with Section 2.2.1 for delivery to a Counterparty at the Zeebrugge Hub for one hour of a Day, expressed in gigajoules (GJ) and equal to the sum of all Natural Gas title transfer obligations under Transactions for receipt by said Counterparty from the Customer minus the sum of all Natural Gas title transfer obligations under Transactions for delivery by the same Counterparty to the Customer for said hour, provided the net result is positive.
- (70) “Office Hours” shall mean the period between 0900 and 1700 hours on a Working Day.

- (71) "Operating Procedures" (OP) shall mean the procedures in Appendix A including all attachments thereto as may from time to time be supplemented, amended or otherwise modified as agreed between the Parties.
- (72) "Parent Company" shall mean any company which directly or indirectly holds fifty (50) per cent or more of the share capital or the votes, in the Customer.
- (73) "Party" shall mean either the Hub Operator or the Customer and "Parties" shall mean the Hub Operator and the Customer.
- (74) "Quantity" shall mean a quantity of Natural Gas expressed in Gigajoule under a Transaction.
- (75) "Reasonable and Prudent Operator" as used herein to describe the standard of care to be exercised by a Party in performing its obligations hereunder shall mean that degree of diligence, prudence and foresight reasonably and ordinarily exercised by experienced operators engaged in the same line of business under the same or similar circumstances and conditions having due consideration to the interest of the other Party under the Agreement.
- (76) "Redelivery Curtailment Event" shall mean a continuous period during which the Customer, who is also a Shipper, is not offtaking all or part of the quantities of Natural Gas, last confirmed by the Hub Operator before such redelivery curtailment event, from the Zeebrugge Hub. A Redelivery Curtailment Event stops as soon as the Customer's redeliveries have been restored.
- (77) "Rounding Charge" shall have the meaning given in Article 3.2.

- (78) "Rounding Fee" for a given Month shall be the Monthly average of the Dow Jones Zeebrugge Index for Natural Gas (ZIG) for every Day of said Month.
- (79) "Rounding Quantity" shall have the meaning given in Section 5.1 and 5.2.
- (80) "Shipper" shall mean any company holding capacity rights in the Fluxys Transmission System for delivery or redelivery of Natural Gas to or from the Zeebrugge Hub.
- (81) "Shortfall Gas" shall mean the quantities of Natural Gas delivered by the Hub Operator to balance the Customer's position on the Zeebrugge Hub Trading Platform in accordance with Section 2.3.
- (82) "Signatories" shall mean the companies having signed an HSA which is still effective at the moment when a notice for amendment to the Agreement in accordance with Article 6.2 is being sent.
- (83) "Start Date" shall mean the date defined in the Hub Services Agreement from which the Hub Operator shall provide the Hub Services to the Customer.
- (84) "Tendering Process" shall mean a process organised by the Hub Operator in order to obtain offers from parties for the delivery and / or offtake of quantities of Natural Gas to or from the Hub Operator for the purposes of the provision of Automatic Back-up and/or Automatic Offtake in order to enable the Hub Operator to buy or to sell such quantities of Natural Gas upon the best possible market conditions available to it.

- (85) "Trade Nomination" shall mean a nomination in respect of a Transaction made under a Customer Daily Transfer Notice.
- (86) "Transaction" shall mean an oral or written agreement between the Customer and a Counterparty to undertake one or more Natural Gas title transfer obligations at the Zeebrugge Hub.
- (87) "Week" shall mean a period of seven (7) Days beginning on a Monday and ending on the next Monday.
- (88) "Working Day" shall mean any day other than a Saturday, Sunday, December 25 or January 1.
- (89) "Year" shall mean a period of twelve (12) Months starting on the Start Date or on any anniversary date thereof and ending on the next following anniversary date thereof.
- (90) "Zeebrugge Hub" shall be a point marked as such within the IZTF located downstream of the metering facilities within the IZTF when the Natural Gas flows from the Interconnector into the Fluxys Transmission System.
- (91) "Zeebrugge Hub Trading Platform" shall mean the trading platform, if any, offered by the joint venture between the Hub Operator and APX Group, and which may be a Counterparty to the Customer.
- (92) "ZIG Day-ahead" means the Zeebrugge Day-ahead Base Index for Natural Gas expressed in EUR/GJ or such other currency or unit which the Parties may agree, as published by Dow Jones. It shall be the applicable index for any hour on a Weekday except if any such Day is a Friday or a Monday which is a public holiday in England and Wales.

(93) "ZIG Weekend" means the Zeebrugge Weekend Base Index for Natural Gas expressed in EUR/GJ or such other currency or unit which the Parties may agree, as published by Dow Jones. It shall be the applicable index for any hour on a Saturday or Sunday or on a Friday or Monday which is a public holiday in England and Wales.

The Article headings in these Hub Services Agreement Terms and Conditions are for convenience only.

A reference to the singular in these Hub Services Agreement Terms and Conditions includes a reference to the plural and vice versa unless the context requires otherwise.

Any reference to time shall be construed as whatever local time shall be in force in Belgium.

Any reference in these Hub Services Agreement Terms and Conditions to Transaction includes any permitted assignment, novation, supplement or amendment to the Transaction.

Where there are references made to laws and agreements these are the ones applicable at the time of providing the Hub Services hereunder.

For the communication of data SI-units shall be used, whenever possible.

Any reference in these Hub Services Agreement Terms and Conditions to an Article is a reference to an Article of these Hub Services Agreement Terms and Conditions, unless otherwise expressly provided, any reference in these Hub Services Agreement Terms and Conditions to a Section is a reference to a Section of Appendix A of these Hub Services Agreement Terms and Conditions unless otherwise expressly provided and any reference in these Hub Services Agreement Terms and Conditions to a Paragraph is a reference to a Paragraph of the Hub Services Agreement, unless otherwise expressly provided.

## Art. 1 TRADE NOMINATIONS

1.1 The Parties will follow the procedures contained in the Operating Procedures to facilitate the day to day handling of Trade Nominations hereunder.

1.2 For the avoidance of doubt the Customer's obligations under a Transaction with a Counterparty are not affected by the submission of a Trade Nomination or as a result of the Hub Services performed by the Hub Operator. The Customer shall remain obligated to the Counterparty with whom the original obligations were created for all deliveries/receipts of Natural Gas.

## Art. 2 HUB SERVICES

2.1 Subject to all terms and conditions hereof, the Hub Operator, acting as a Reasonable and Prudent Operator, shall, as from the Start Date and until the Agreement is terminated in accordance with Art. 6, provide the Hub Services.

2.2 The Hub Services to be provided by the Hub Operator to the Customer under the Agreement shall mean all of the services including:

- a dispatching service (in accordance with Section 2),
- a balance check service (in accordance with Section 3),
- a matching service (in accordance with Section 4),
- a rounding service (in accordance with Section 5),
- services to determine the Customer's Effective Hourly Deliveries and Effective Hourly Redeliveries at the Zeebrugge Hub (in accordance with Section 6),
- Automatic Back-up, being the delivery of Natural Gas by the Hub Operator to the Customer during the first five (5) hours at the maximum following the start of a Delivery Curtailment Event (in accordance with Section 6.2.1.2),
- Automatic Offtake, being the offtake of Natural Gas by the Hub Operator from the Customer during the first five (5) hours at the maximum following the start of a Redelivery Curtailment Event (in accordance with Section 6.2.2.2),

- Additional Back-up, being the delivery of Natural Gas by the Hub Operator to the Customer as from the sixth (6<sup>th</sup>) hour following the start of a Delivery Curtailment Event, in case the Customer does not nominate and deliver enough back-up gas to keep its Effective Hourly Redeliveries whole (in accordance with Section 6.2.1.3),
- Additional Offtake, being the offtake of Natural Gas by the Hub Operator from the Customer as from the sixth (6<sup>th</sup>) hour following the start of a Redelivery Curtailment Event, in case the Customer does not nominate and offtake enough offtake gas to keep its Effective Hourly Deliveries whole (in accordance with Section 6.2.2.3),
- a Shortfall Gas service, being the delivery of Natural Gas by the Hub Operator to the Customer in order to balance the Customer's position on the Zeebrugge Hub Trading Platform (in accordance with Section 2.3),
- an Excess Gas service, being the offtake of Natural Gas by the Hub Operator from the Customer in order to balance the Customer's position on the Zeebrugge Hub Trading Platform (in accordance with Section 2.3), and
- allocation services (in accordance with Section 9)

## Art. 3 FEES & CHARGES

### 3.1 HUB SERVICES FEE

The Customer shall at least 30 days before the start of each Year notify the Hub Operator whether it wants Hub Services Fee A or Hub Services Fee B to be applicable for the next Year. In case the Customer does not notify the Hub Operator at least 30 days before the start of a Year whether it wants Hub Services Fee A or Hub Services Fee B to be applicable for the next Year, the then applicable Hub Services Fee option will remain applicable for the next Year.

#### 3.1.1 Hub Services Fee A

3.1.1.1 Subject to the provisions of Article 3.1.1.2 and Article 3.1.1.3 the Hub Services Fee payable by the Customer for a given Month shall be the greater of:

- a) 2500 EUR, or
- b)  $0.005 \times \frac{i}{i_0}$  EUR/GJ for every GJ which is nominated under a

Nominated Daily Delivery or a Nominated Daily Redelivery during the preceding Month and as long as in any Year the sum of the Nominated Daily Deliveries and the Nominated Daily Redeliveries does not exceed 12 million GJ

3.1.1.2 If in any Year the sum of the Nominated Daily Deliveries and the Nominated Daily Redeliveries is equal to or exceeds 12 million GJ but does not exceed 36 million GJ, subject to Article 3.1.1.3, then item b) of Article 3.1.1.1 shall during the remainder of that Year be replaced by:

$0.0015 \times \frac{i}{i_0}$  EUR/GJ for every GJ exceeding said 12 million GJ which is nominated under a Nominated Daily Delivery or a Nominated Daily Redelivery during the preceding Month.

3.1.1.3 If in any Year the sum of the Nominated Daily Deliveries and the Nominated Daily Redeliveries is equal to or exceeds 36 million GJ, item b) of Article 3.1.1.1 shall during the remainder of that Year be replaced by:

$0.001 \times \frac{i}{i_0}$  EUR/GJ for every GJ exceeding said 36 million GJ which is nominated under a Nominated Daily Delivery or a Nominated Daily Redelivery during the preceding Month.

3.1.1.4 In Article 3.1.1.1, 3.1.1.2 and 3.1.1.3 the following shall apply

a)  $i$  = Index of consumer prices in Belgium as published by the "Moniteur Belge" for the Month of September preceding the Month for which the Hub Services Fee is to be paid.

$i_0$  = 103.92 (value for September 1999 - base 1996 = 100)

b) If for a given Day or part thereof several Nominated Daily Deliveries or Nominated Daily Redeliveries have been nominated under several Customer Daily Transfer Notices the highest nominated figures shall apply for said Day.

### 3.1.2 Hub Services Fee B

3.1.2.1 The Customer shall pay for each Month of a given Year

$$5000 \times \frac{i}{i_0} \text{ EUR}$$

3.1.2.2 In addition to Article 3.1.2.1 the Customer shall for a given Month pay

$$0.0005 \times \frac{i}{i_0} \text{ EUR/GJ for every GJ which is nominated under a}$$

Nominated Daily Delivery or a Nominated Daily Redelivery during the preceding Month.

However, if for a given Day or part thereof several Nominated Daily Deliveries or Nominated Daily Redeliveries have been nominated under several Customer Daily Transfer Notices the highest nominated figures shall apply for said Day.

3.1.2.3 In Article 3.1.2.1 and 3.1.2.2 the following shall apply:

$i$  = Index of consumer prices in Belgium as published by the "Moniteur Belge" for the Month of September preceding the Month for which the Hub Services Fee is to be paid.

$i_0$  = 103.92 (value for September 1999 - base 1996 = 100)

### 3.2 ROUNDING CHARGE

The Rounding Charge shall be :

- the Rounding Quantities delivered to the Customer by the Hub Operator, if any, in any given Month multiplied by the Rounding Fee, minus
- the Rounding Quantities offtaken by the Hub Operator from the Customer, if any, in any given Month multiplied by the Rounding Fee.

The Rounding Charge shall be payable by the Customer to the Hub Operator when positive and shall be payable by the Hub Operator to the Customer when negative.

### 3.3 AUTOMATIC BACK-UP AND OFFTAKE CHARGE

#### 3.3.1 General

The Automatic Back-up and Offtake Charge shall be the sum of the Automatic Back-up Commodity Charge and the Automatic Back-up and Offtake Service Charge minus the Automatic Offtake Commodity Charge. The Automatic Back-up and Offtake Charge shall be payable by the Customer to the Hub Operator when positive and shall be payable by the Hub Operator to the Customer when negative.

#### 3.3.2 Automatic Back-up Fee

The Automatic Back-up Fee shall, for a Day, be either:

- (i) the fee, expressed in EUR/GJ, in respect of such Day, as specified in Schedule 1 of the Agreement. The minimum validity period for a fee or fee structure specified in Schedule 1 shall be six (6) Months. The Hub Operator shall use reasonable endeavours to put such a fee or fee structure in place; or
- (ii) §1 in the absence of any applicable fee being specified in Schedule 1 of the Agreement or in the case of a rejection of a revised Schedule 1 in accordance with Article 6.2, in respect of such Day, the quantity weighted average of the fee(s), expressed in EUR/GJ, paid by the Hub Operator to Commodity Provider(s) for such Day, plus any other reasonable fees, if any, paid by the Hub Operator (e.g. transportation fees), for every GJ delivered to the Customer

by the Hub Operator as an Automatic Back-up Quantity on such Day.

§2 It is understood that, if Hub Operator did not buy Natural Gas from Commodity Provider(s) on such Day, the Automatic Back-up Fee for such Day shall be equal, without prejudice to §3 of this Article, to the last Automatic Back-up Fee previously set in accordance with §1 of this Article.

§3 The Hub Operator will use reasonable endeavours to obtain an Automatic Back-up Quantity on the best market conditions available and in any case the applicable Automatic Back-up Fee under this sub-paragraph (ii) shall not exceed 150% of the ZIG Day-ahead for that Day or the ZIG Weekend, as applicable, last published prior to the Day on which the Automatic Back-up started. The Automatic Back-up Fee, calculated under this sub-paragraph (ii) will be published by the Hub Operator on its website as soon as possible but not later than one (1) Week after the Day on which the Automatic Back-up started. The Automatic Back-up Fee may be audited by an independent auditor in accordance with Article 3.7.

### 3.3.3 Automatic Offtake Fee

The Automatic Offtake Fee shall, for a Day, be either:

- (i) the fee, expressed in EUR/GJ, in respect of such Day, as specified in Schedule 1 of the Agreement. The minimum validity period for a fee or fee structure specified in Schedule 1 shall be six (6) Months, The Hub Operator shall use reasonable endeavours to have such a fee or fee structure applicable; or
- (ii) § 1 in the absence of any applicable fee being specified in Schedule 1 to the Agreement or in the case of a rejection of a revised Schedule 1 in accordance with Article 6.2, in respect of such Day, the quantity weighted average of the fee(s), expressed in EUR/GJ, paid by the Commodity Provider(s) to the Hub Operator for such Day, minus any other reasonable fees, if any, paid by the Hub Operator (e.g. transportation fees), for every GJ offtaken from the Customer by the Hub Operator as an Automatic Offtake Quantity on such Day.

§2 It is understood that, if Hub Operator did not sell Natural Gas to Commodity Provider(s) on such Day, the Automatic Offtake Fee for such Day shall be equal, without prejudice to §3 of this Article, to the last Automatic Offtake Fee previously set in accordance with §1 of this Article.

§ 3 The Hub Operator will use its reasonable endeavours to obtain an Automatic Offtake Quantity on the best market conditions available and in any case the Automatic Offtake Fee under this sub-paragraph (ii) shall not be lower than 50% of the ZIG Day-ahead for that Day or the ZIG Weekend, as applicable, last published prior to the Day on which the Automatic Offtake started. The Automatic Offtake Fee, calculated under this sub-paragraph (ii) here above, will be published by the Hub Operator on its website as soon as possible but not later than one (1) Week after the Day on which the Automatic Offtake started. The Automatic Offtake Fee may be audited by an independent auditor in accordance with Article 3.7.

#### 3.3.4 Automatic Back-up Commodity Charge

The Automatic Back-up Commodity Charge for a given Day, payable by the Customer, shall be the Automatic Back-up Fee, expressed in EUR/GJ multiplied by the Automatic Back-up Quantities delivered during the given Day.

The Automatic Back-up Commodity Charge payable by the Customer for a given Month shall be equal to the sum of the Automatic Back-up Commodity Charges for each Day of said Month.

### 3.3.5 Automatic Offtake Commodity Charge

The Automatic Offtake Commodity Charge for a given Day, receivable by the Customer shall be the Automatic Offtake Fee, expressed in EUR/GJ multiplied by the Automatic Offtake Quantities taken during the given Day.

The Automatic Offtake Commodity Charge receivable by the Customer for a given Month shall be equal to the sum of the Automatic Offtake Commodity Charges for each Day of said Month.

### 3.3.6 Automatic Back-up and Offtake Service Charge

The Automatic Back-up and Offtake Service Charge payable by the Customer for a given Month shall be the sum of the amounts payable for each Curtailment Event during said Month. For each Curtailment Event the amount payable shall be the greater of :

a) 2,000 EUR, but limited to the five (5) first Curtailment Events of each Month after which this amount becomes equal to zero (0) EUR, or

b)  $0.125 \times \frac{i}{i_0}$  EUR/GJ for every GJ which has been delivered by the Hub Operator as an Automatic Back-up Quantity or which has been offtaken by the Hub Operator as an Automatic Offtake Quantity during a Curtailment Event.

Where:

- a)  $i$  = Index of consumer prices in Belgium as published by the "Moniteur Belge" for the Month of September preceding the Month for which the Hub Services Fee is to be paid.
- b)  $i_0 = 103.92$  (value for September 1999 - base 1996 = 100).

### 3.4 ADDITIONAL BACK-UP AND OFFTAKE CHARGE

#### 3.4.1 General

The Additional Back-up and Offtake Charge shall be the Additional Back-up Commodity Charge minus the Additional Offtake Commodity Charge. The Additional Back-up and Offtake Charge shall be payable by the Customer to the Hub Operator when positive and shall be payable by the Hub Operator to the Customer when negative.

#### 3.4.2 Additional Back-up Fee

§1 The Additional Back-up Fee shall mean for a Day, the quantity weighted average of the fees, expressed in EUR/GJ, paid by the Hub Operator to Commodity Provider(s) for such Day, plus any other reasonable fees, if any, paid by the Hub Operator (e.g. transportation fees), for every GJ delivered to the Customer by the Hub Operator as an Additional Back-up Quantity and/or as Shortfall Gas on such Day.

§2 It is understood that, if Hub Operator did not buy Natural Gas from Commodity Provider(s) on such Day, the Additional Back-up Fee for such Day shall be equal, without prejudice to §3 of this Article, to the last Additional Back-up Fee previously set in accordance with §1 of this Article.

§3 The Hub Operator will use its reasonable endeavours to obtain an Additional Back-up Quantity and/or Shortfall Gas (as applicable) on the best market conditions available to it and in any case the applicable Additional Back-up Fee shall not exceed 150 % of the ZIG Day-ahead or the ZIG Weekend, as applicable, last published before the Day on

which the Additional Back-up and/or delivery of Shortfall Gas (as applicable) started in respect of that Day. The Additional Back-up Fee will be published by the Hub Operator on its website as soon as possible but not later than one (1) Week after the Day on which the Additional Back-up and/or delivery of Shortfall Gas (as applicable) started. The Additional Back-up Fee may be audited by an independent auditor in accordance with Article 3.7.

### 3.4.3 Additional Offtake Fee

§1 The Additional Offtake Fee shall mean for a Day the quantity weighted average of the fees, expressed in EUR/GJ, paid by Commodity Provider(s) to the Hub Operator for such Day, minus any other reasonable fees, if any, paid by the Hub Operator (e.g. transportation fees), for every GJ offtaken from the Customer by the Hub Operator as an Additional Offtake Quantity and/or as Excess Gas during the given Day.

§2 It is understood that, if Hub Operator did not sell Natural Gas to Commodity Provider(s) on such Day, the Additional Offtake Fee for such Day shall be equal, without prejudice to §3 of this Article, to the last Additional Offtake Fee previously set in accordance with §1 of this Article.

§3 The Hub Operator will use reasonable endeavours to take delivery of an Additional Offtake Quantity and/or Excess Gas (as applicable) on the best market conditions available to it and in any case the Additional Offtake Fee shall have a lower limit of 50 % of the ZIG Day-ahead or

the ZIG Weekend, as applicable, last published before the Day on which the Additional Offtake and/or offtake of Excess Gas (as applicable) started. The Additional Offtake Fee will be published by the Hub Operator on its website as soon as possible but not later than one (1) week after the Day on which the Additional Offtake and/or offtake of Excess Gas (as applicable) started. The Additional Offtake Fee may be audited by an independent auditor in accordance with Article 3.7.

#### 3.4.4 Additional Back-up Commodity Charge

The Additional Back-up Commodity Charge for a given Day, payable by the Customer, shall be the Additional Back-up Fee, expressed in EUR/GJ, multiplied by the sum of the Additional Back-up Quantities and the Shortfall Gas delivered by the Hub Operator during the given Day.

The Additional Back-up Commodity Charge payable by the Customer for a given Month shall be equal to the sum of the Additional Back-up Commodity Charges for each Day of said Month.

The Hub Operator will use its reasonable endeavours to secure such supply on the best market conditions available to it.

#### 3.4.5 Additional Offtake Commodity Charge

The Additional Offtake Commodity Charge for a given Day, receivable by the Customer, shall be the Additional Offtake Fee, expressed in EUR/GJ, multiplied by the sum of the Additional Offtake Quantities and the Excess Gas, offtaken by the Hub Operator during the given Day.

The Additional Offtake Commodity Charge receivable by the Customer for a given Month shall be equal to the sum of the Additional Offtake Commodity Charges for each Day of said Month.

The Hub Operator will use reasonable endeavours to secure such offtake on the best market conditions available to it.

### 3.5 INDEXATION AND PRICE REFERENCES

3.5.1 If, at any time during the term of the Agreement, the reference year or the reference prices or price indices or the basis for determining the indices according to this Art. 3 is changed, including due to any manifest error or any amendments made by the publisher of the reference price or price index, or is discontinued, the Parties shall upon request, notified by one of the Parties, adjust such indices, reference prices or price indices, or agree on a substitute index or indices, reference prices or price indices so that the same economic effect to the greatest possible extent is achieved as if the indexation, pricing reference or pricing index had continued or had remained unchanged and so that such substitute index, reference price or price index shall allow the Hub Operator to fulfil its commitments under paragraph 3 of the Hub Services Agreement.

3.5.2 If within three (3) Months from the date of the said notice no such adjustment or agreement has been reached, then (at the request of either Party) the matter shall forthwith be referred to an expert for determination in accordance with the provisions in Art. 10.

In the event that the publication of the index  $i$  is no longer based on the reference value of 1996 (basis 100), but on an up-dated reference value the base value  $i_0$  shall be adjusted so that the change in the publication of the index  $i$  does not result in a different Hub Services Fee than the one that would have existed if there had not been a change to the publication.

In any determination to be made by an expert pursuant to this Article 3.5.2, such determination shall comply with the intention of the Parties that the Agreement shall not terminate because of any of the events mentioned in this Article 0.1, but that it is intended that such adjustments to the existing indices, reference prices and price indices be made or that such substitute indices, reference prices and price indices be used as are necessary so that the adjusted indices or the substitute indices will in effect be as nearly comparable to the effects sought from the original indices, reference prices and price indices as any reliable data then available will allow.

3.5.3 In the case where prices are published in energy units other than GJ, then the following conversion rules will be used to convert into GJ:

1 therm = 0.1055056 GJ (in case both therm and GJ are determined at the same reference temperature, being 25 degrees Celsius in Belgium); or

1 therm (UK) = 0.1053963 GJ (Zeebrugge) (to account for a 0.1% difference as a result of the fact that in the UK, energy values are determined at a reference temperature of 15 degrees Celsius, while in Belgium they are determined at a reference temperature of 25 degrees Celsius).

3.5.4 For currency conversions ECB (European Central Bank) reference rates shall be used.<sup>1</sup>

### 3.6 Taxes

The Hub Services Fee is exclusive of any taxes, duties or levies of a similar nature. The Hub Operator is entitled to add to the amount due by the Customer all taxes, duties or levies of similar nature imposed on the Hub Operator by any competent authority with respect to or affecting the Hub Services performed by the Hub Operator under the Agreement (but excluding taxes on income and profit).

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<sup>1</sup> The rates are based on a regular daily concertation procedure between central banks within and outside the System of Central Banks, which normally takes place at 1415 ECB time. Reference exchange rates are published both by electronic market information providers and on the ECB's website ([www.ecb.int](http://www.ecb.int)) shortly after the concertation procedure is completed.

### 3.7 Audit of Fees

The Customer shall have the right, at its own cost, to have the books and records of the Hub Operator, to the extent that they relate to those fees listed below, audited by an independent auditor in order to verify, subject to the conditions set out in this Article 3.7 whether the fees listed hereinafter correspond to the actual costs and revenues, if any, incurred by the Hub Operator.

- Automatic Back-up Fee, in case it has been determined in accordance with Article 3.3.2 (ii)
- Automatic Offtake Fee, in case it has been determined in accordance with Article 3.3.3 (ii)
- Additional Back-up Fee;
- Additional Offtake Fee.

For the application of this Article 3.7, the Customer shall notify the Hub Operator in writing, prior to such audit, identifying the fees it wishes to be audited and the name(s) of the auditor(s) it wants to appoint. Following receipt of such notice, the Hub Operator and the Customer 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) Working Days following receipt by the Hub Operator of the Customer's notice, unless the Customer and the Hub Operator otherwise agree. The Hub Operator can only refuse the proposed auditor(s) when the proposed auditor(s) has a conflict of interest in relation to it.

The Customer shall ensure that the auditor(s) will sign up to a confidentiality agreement to the benefit of the Hub Operator in which the auditor(s) shall undertake not to reveal identity of the parties nor the terms and conditions of an oral or written agreement between the Hub Operator and any other party. Subject to the foregoing confidentiality agreement, the auditor shall have the right to disclose its findings to the Customer.

Any adjustment to the fees previously invoiced by the Hub Operator, where determined to be so necessary as a result of an independent audit under this Article 3.7, shall be repaid by the Hub Operator to the Customer in accordance with Article 4.10.

## Art. 4 INVOICING AND PAYMENT

4.1 As from the Month following the Start Date, the Hub Operator shall on or before the tenth day of every Month render an invoice to the Customer showing the Hub Services Fee, the Rounding Charge, if any, the Automatic Back-up and Offtake Charge, if any, and the Additional Back-up and Offtake Charge, if any, to be paid or to be received, whichever is applicable, by the Customer for the previous Month.

All invoices shall include a detailed calculation of:

- a) the Hub Services Fee
- b) the Rounding Charge (positive or negative), if applicable
- c) the Automatic Back-up and Offtake Charge (positive or negative),  
if applicable
- d) the Additional Back-up and Offtake Charge (positive or negative),  
if applicable
- e) VAT, if applicable, and any other applicable taxes.

Such invoices may be rendered by telefax during Office Hours in which case the telefax shall as soon as practicable be confirmed by letter.

Where the sum of the Hub Services Fee, the Rounding Charge, the Automatic Back-up and Offtake Charge and the Additional Back-up and Offtake Charge is negative, the invoice shall be replaced by a credit note.

4.2 The Customer shall pay the Hub Operator's invoices in EUR on or before the later of:

- a) the 20<sup>th</sup> day of the Month in which the invoice was sent, or
  - b) ten (10) days after receipt of the invoice
- "the Due Date".

If the Due Date is not a Working Day, then payment shall be made on the last Working Day prior to the Due Date.

4.3 The Hub Operator shall pay to the Customer the amount on the Hub Operator's credit notes, if any, in EUR on or before the last day of the Month in which the credit note was sent, "the Due Date".

4.4 Where the Hub Operator needs information from the Customer in order to establish the invoices or the credit notes and the Customer has this information available the Customer shall make this information available to the Hub Operator within five (5) Working Days after being requested to do so by the Hub Operator.

4.5 All payments by the Customer shall be made in full by the Due Date to the Hub Operator's bank account to be specified on the invoice. If no such account and bank are specified on the invoice then payment may be made at the last specified account and bank.

- 4.6 All payments by the Hub Operator shall be made in full by the Due Date to the Customer's bank account to be specified in advance by the Customer. If no such account and bank are specified then no payment shall be made and the Hub Operator will deduct the amount due to the Customer from the invoice of the next Month.
- 4.7 If the Customer fails to pay to the Hub Operator by the Due Date any amount due, interest shall be paid by the Customer on that amount for the period starting from and including the Due Date and ending on but excluding the value date of the payment, on the basis of an annual rate corresponding to the three (3) Month EURIBOR rate as published on the EURIBOR website <sup>(2)</sup>, for the Due Date plus two hundred (200) base points.
- 4.8 If the Hub Operator fails to pay to the Customer by the Due Date any amount due, interest shall be paid by the Hub Operator on that amount for the period starting from and including the Due Date and ending on but excluding the value date of the payment, on the basis of an annual rate corresponding to the three (3) Month EURIBOR rate as published on the EURIBOR website, for the Due Date plus two hundred (200) base points.
- 4.9 If the Customer fails to pay to the Hub Operator by the Due Date any amount due the Hub Operator shall without prejudice to the provisions of

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<sup>2</sup> The link to the Euribor website is [www.euribor.org](http://www.euribor.org).

Article 4.5 be entitled to suspend the Hub Services upon five (5) days' notice subject to the Customer not having paid the amount due within said five (5) days.

4.10 If the Customer disputes an invoice, the Customer shall nevertheless pay the amount invoiced by the Hub Operator, save in the event of a manifest error on the invoice.

If the Customer pays an invoice which afterwards turns out to be incorrect (e.g. pursuant to an audit of fees conducted in accordance with Article 3.7) , the Hub Operator shall reimburse as soon as practicable the amount that was not correctly invoiced and the Customer shall have the right to charge a daily interest corresponding to the one (1) Month EURIBOR rate, as published on the EURIBOR website, for the Due Date for each day counting from the day payment was made for such part of the invoice paid by the Customer which was not correctly invoiced.

4.11 Any invoice not disputed within twelve (12) Months after the Due Date shall be considered as final between the Parties.

## Art. 5 LIABILITY AND INSURANCE

5.1 The Hub Operator shall not be liable for a failure to perform the Hub Services or for the failure of the Customer to receive or deliver Natural Gas pursuant to a Transaction save in case of gross negligence or wilful misconduct. In the event that the Hub Operator is guilty of gross negligence or wilful misconduct in failing to performing the Hub Services, then the Hub Operator shall be liable towards the Customer for such remedies as may be legally available to the Customer, including damages and restitution, subject to Article 5.4.

5.2 The Hub Services provided hereunder by the Hub Operator for the Customer are neither transportation nor transit services. The Hub Operator's purpose and function hereunder are strictly limited to facilitating execution of Transactions occurring between the Customer and a Counterparty at the Zeebrugge Hub. The Hub Operator is not an insurer, bailor, or guarantor of any of the Customer's purchase or sale contracts. In the event of a failure to perform an obligation under a Transaction by any of the parties thereto who are customers of the Hub Operator under a Hub Services Agreement and subject to Article 5.1, the Hub Operator has no liability towards the Customer being a party to said Transaction for remedies, including damages or restitution.

5.3 The Customer agrees to defend, indemnify and hold harmless the Hub Operator from any and all costs, expenses, penalties, fines, claims, liabilities, damages or judgements imposed on the Hub Operator arising out of the Customer's acts or omissions related to the Customer's obligations under the Agreement. The Hub Operator will not be indemnified in respect of any damages and liabilities relating to its own gross negligence and wilful misconduct in such damages or liability.

5.4 Neither Party shall be liable to the other for any loss of use, profits, contracts, production, revenue or for business interruption or for any consequential or indirect loss or damage of whatsoever nature and howsoever arising except in respect of gross negligence or wilful misconduct by the Party.

In case of gross negligence or wilful misconduct of the Hub Operator the damages paid by the Hub Operator shall in no event during any calendar year exceed five times said Hub Services Fees paid by the Customer under the terms of the Agreement during the last calendar year preceding the calendar year in question.

5.5 Any insurance in respect of the Parties' liabilities under the Agreement shall contain waivers of subrogation in favour of the other Party.

## Art. 6 TERM OF AGREEMENT AND AMENDMENTS

6.1 The Agreement may be terminated by either Party upon at least twelve (12) Months prior written notice with effect from any following October 1.

6.2 For any amendment to the Agreement by the Hub Operator the following shall apply:

The Hub Operator may suggest an amendment to the Agreement by written notice to the Customers including the text of the proposed amendment. A proposed amendment to Schedule 1 of the Agreement will be based on the results of a Tendering Process and will include a validity period during which the proposed amendment, if not rejected, cannot be reviewed. The validity period of such amendment shall not be less than six (6) Months after the date on which the proposed amendment, if not rejected, would become effective.

An amendment will have effect from the first Day of the Month following a minimum period of three (3) Months, or at least six (6) Months for any change to Schedule 1, after sending the notice mentioned in Article 6.2 paragraph 1, unless the Hub Operator receives written notice from at least twenty-five (25) percent of the Signatories, or twelve and a half (12.5) percent of the Signatories for any change to Schedule 1, within a six (6) week period after sending the notice mentioned in Article 6.2 paragraph 1, rejecting the amendment. However, where the Hub Operator receives written notice from at least fifty (50) percent of the

Signatories within the said six (6) week period, supporting the amendment, then the proposed amendment shall not be considered rejected.

If an amendment suggested by the Hub Operator will not have effect due to it having been rejected pursuant to Article 6.2 paragraph 2, the Hub Operator shall give written notice to the Signatories not later than five (5) Days after the end of the six (6) week period mentioned in Article 6.2 paragraph 2. Where an amendment is not rejected in accordance with Article 6.2 paragraph 2 then the Hub Operator, based on its judgement as a result of the feedback received, still has the right not to implement the amendment. In this case the Hub Operator shall also give written notice to the Signatories not later than five (5) Days after the end of the six (6) week period mentioned in Article 6.2 paragraph 2.

The Customer may terminate the Agreement in case of any effective amendment under this article upon at least one (1) Month prior written notice with effect as from the date on which the amendment becomes applicable.

6.3 A Party may terminate the Agreement forthwith on giving notice to the other Party:

6.3.1 in the event of the other Party becoming insolvent, or having a receiver, liquidator, administrator, administrative receiver or the equivalent

thereof appointed over some or all of its assets or if proceedings are commenced for its dissolution or winding up (other than a voluntary winding up for the purposes of solvent amalgamation or reconstruction);  
or

6.3.2 in the event of a material adverse change in the financial standing of the other Party when compared to such Party's financial standing as at the date of signature of the Agreement which change affects its ability to perform its financial obligations in respect of the Agreement, and such Party fails to provide reasonable security for the performance of its financial obligations in respect of the Agreement within five (5) Working Days of the other Party's request therefore.

6.4 The non-defaulting Party may terminate the Agreement by giving five (5) Working Days' notice to the other Party in the event that the other Party:

6.4.1 is materially in breach of its obligations under the Agreement and has failed to remedy the breach within five (5) Working Days of a notice from the non-defaulting Party requiring such remedy. For the avoidance of doubt, the non-provision by the Customer of information mentioned in Article 7.1, shall not constitute a material breach. However, failure by the Customer to provide, renew or sufficiently increase the Collateral, pursuant to Article 7.2, shall be a material breach.

6.4.2 fails to pay the amount specified in the Monthly invoice in accordance with Article 4.1 provided that the Party in breach has failed to remedy

the breach before expiry of the notice period. In the case of the breach being remedied, the notice is deemed not to have been given.

6.5 If it is reasonably foreseeable that the circumstances of Force Majeure affecting the Hub Operator may exceed a period of six (6) Months either Party may terminate the Agreement by giving thirty (30) days notice to the other Party.

6.6 The expiry or termination of the Agreement, however occurring, shall not affect any rights or obligations that may have accrued to either Party under these Hub Services Agreement Terms and Conditions prior to such expiry or termination.

## Art. 7 CREDIT CONTROL

### 7.1 Financial information to be provided by the Customer

In order to allow the Hub Operator to assess the creditworthiness of the Customer, the Customer will inform the Hub Operator about its financial standing before signature of the Agreement and thereafter whenever reasonably requested in writing by the Hub Operator at its sole discretion by providing the following information to the Hub Operator:

- details of the Customer's credit rating, if any, as published by Moody's Investor Services Inc. or Standard & Poors or
- the Customer's audited annual accounts of the last three years and,
- details of the Parent Company's credit rating if the Customer's Parent Company is providing Collateral, in accordance with Article 7.2.3.

## 7.2 Provision of Collateral by the Customer

### 7.2.1 Principle

Except if the Customer has either an A-Rating or is not a Shipper (in which case there will be no requirement to provide Collateral), the Customer shall, not later than five (5) Working Days before the Start Date, provide Collateral according to the provisions of Article 7.2.3 in order to cover any failure to pay the Additional Back-up Commodity Charge.

The exemptions to the requirement to provide Collateral will not be granted or may be revoked by written notice from the Hub Operator if:

- the Customer is or becomes a Shipper and its credit rating is or falls below an A-Rating; and/or
- the Customer fails to pay to the Hub Operator by the Due Date any Additional Back-up Commodity Charge due and owing by the Customer to the Hub Operator as invoiced in accordance with Article 4; and/or
- the Customer fails to provide the information mentioned in Article 7.1.

Where the exemptions are not granted or are revoked, the Customer shall be obliged to provide Collateral within ten (10) Working Days after receipt of written notice from the Hub Operator provided that the circumstances leading to the exemption not being granted or being revoked still exist at the end of such ten (10) Working Day period.

Unless the Customer is exempt from providing Collateral the Customer shall extend or renew such Collateral at the latest five (5) Working Days before its expiry date and will notify the Hub Operator thereof.

#### 7.2.2 Level of the Collateral

The level of the Collateral will be calculated according to the following formula:

$$10,000 \text{ (ten thousand) GJ} * \text{ZIG}' * 1.5 \text{ (one decimal five)} * \text{BCV}$$

where:

- ZIG' is the average ZIG Day-ahead or the ZIG Weekend, as applicable, published for the Days of the last twelve (12) Months preceding, the later of:
  - the 1<sup>st</sup> of October 2004
  - the date of a change of Collateral according to the provisions of Article 7.2.4
  
- BCV shall mean the Booked Capacity Variable and shall be
  - "0.5" for a Shipper holding capacity rights to the Zeebrugge Hub of less than 10,000 (ten thousand) GJ per hour
  - "1" for a Shipper holding capacity rights to the Zeebrugge Hub of 10,000 (ten thousand) or more GJ per hour.

### 7.2.3 Form of the Collateral

Where the Customer is under an obligation, pursuant to Article 7.2, to provide Collateral, the Customer may choose to provide such Collateral, being for an amount which is no less than the level determined in accordance with Article 7.2.2 and subject to the provisions of Article 7.2.4, in any of the following forms (or a combination of such forms):

- a deposit in cash for which the Hub Operator will define the payment details. The Hub Operator shall have the right to draw on the cash deposit in accordance with Article 7.2.5. The Hub Operator shall arrange for the deposit in cash to bear interest at the three (3) Month EURIBOR rate as published on the EURIBOR website, prevailing on the date of payment of the deposit minus ten (10) base points. The interest will be exclusively for the benefit of the Customer.
  
- an on demand bank guarantee or a letter of credit for the benefit of the Hub Operator, issued by a bank with an A-Rating, in a form to be agreed between the Parties.

The Hub Operator shall have the right to make such demand in accordance with the terms of Article 7.2.5.

- a parent company guarantee for the benefit of the Hub Operator provided by a Parent Company having an A-Rating, in a form to be agreed between the Parties. The Hub Operator shall have the right to make such demand in accordance with the terms of Article 7.2.5.
  
- proof of a control and profit transfer agreement being in place between the Customer and its Parent Company having an A-Rating. The proof will be in a form to be agreed between the Parties. The Customer will inform the Hub Operator in writing of the termination of such an agreement at the latest 2 months before such termination takes effect...

#### 7.2.4 Revision of the level of Collateral

The Hub Operator and/or the Customer may request in writing a revision of the level of the Collateral in the following events:

- the average ZIG Day-ahead or the ZIG Weekend, as applicable, published for the Days of the last twelve (12) months is ten (10) % higher or lower than ZIG'
- any change of capacity rights, held by the Customer, to the Zeebrugge Hub resulting in a change of BCV.

The level of the Collateral shall be adjusted accordingly within ten (10) Working Days after such request by the Hub Operator or the Customer as the case may be.

### 7.2.5 Use of Collateral

The Hub Operator shall be entitled to call upon the Collateral as soon as the Customer has failed to pay an Additional Back-up Commodity Charge, which was invoiced in accordance with Article 4, by the Due Date. The amount of such call shall be for an amount equal to the unpaid Additional Back-up Commodity Charge plus any accrued interest.

Where the Hub Operator draws down any amount of Collateral provided by the Customer it shall notify the Customer in writing. Within ten (10) Working Days of the Customer receiving such a notice from the Hub Operator, the Customer shall be obliged to provide further Collateral to the Hub Operator in order that the level of Collateral held by the Hub Operator is restored to the level specified in Article 7.2.2 by the end of such period.

### 7.2.6 Pay back of Cash Collateral

Where the Collateral has been provided in the form of a deposit in cash, the Hub Operator shall pay back such deposit, together with interest calculated in accordance with Article 7.2.3, at the latest fifteen (15) Working Days after the earlier of (i) the receipt of a notice by the Hub Operator from the Customer in which the Customer demonstrates, to the satisfaction of the Hub Operator, that it fulfils the conditions for an exemption to provide Collateral or (ii) the termination of the Agreement.

Alternatively, where the amount of Collateral required has been reduced in accordance with Article 7.2.4 the Hub Operator shall, within fifteen (15) Working Days after such reduction, pay back to the Customer such part of the cash deposit as is no longer required, together with interest on such part calculated in accordance with Article 7.2.3.

#### 7.2.7 Return of documents pertaining to the Collateral

The Hub Operator shall return to the Customer any and all documents provided by the Customer relating to the Collateral, other than those relating to a deposit in cash (which shall be dealt with in accordance with Article 7.2.6), at the latest fifteen (15) Working Days after the earlier of (i) the receipt of a notice by the Hub Operator from the Customer in which the Customer demonstrates, to the satisfaction of the Hub Operator, that it fulfils the conditions for an exemption to provide Collateral or (ii) the termination of the Agreement.

## Art. 8 MISCELLANEOUS

### 8.1 Notices

8.1.1 Unless otherwise expressly stated in the Agreement any notice or other communication to be given or made hereunder by one Party to the other shall be given or made in writing to the other at that Party's registered office or such other address or contact number as that Party shall notify to the other from time to time and shall be deemed to have been received;

8.1.2 if delivered by hand, on the Working Day so delivered or on the first Working Day following the date of delivery if delivered on a day other than a Working Day;

8.1.3 if sent by registered post, on the second Working Day after the day of posting or, if sent from one country to another, on the fifth Working Day following the day of posting;

8.1.4 in the case of a facsimile transmission, on the day of transmission if that day is a Working Day or on the first Working Day following the day of transmission if that day of transmission is not a Working Day and provided that a valid transmission report confirming good receipt is generated.

If a notice is sent by facsimile, the Party giving the notice shall (but without prejudice to Article 8.1.4 first paragraph), if so requested by the other Party, resend the notice as soon as practicable by post.

8.1.5 Parties may agree upon using other forms of communications than those above.

8.1.6 Notices can be given to the following addresses:

Huberator SA  
4 Rue Guimard  
1040 BRUSSELS - BELGIUM  
Telefax 32 2 556 98 96

THE CUSTOMER: address as provided under the Hub Services Agreement

## 8.2 Assignment

Neither the Hub Operator nor the Customer may, in whole or in part, assign any of its rights and obligations under the Agreement without prior written consent of the other Party.

Neither the Hub Operator nor the Customer shall withhold such consent if the assignee or successor can demonstrate meeting the technical and financial security standards that may be required by the other Party acting as a Reasonable and Prudent Operator and has expressly undertaken in writing to be bound by the terms and conditions of the Agreement.

However, the Hub Operator and the Customer shall be free to assign any of its rights and obligations under the Agreement to an Affiliated Company without the prior written consent of the other Party provided that the assignor shall remain liable for the obligations of the assignee hereunder towards the other Party.

No assignment by a Party shall be effective for the purpose of the Agreement until after written notice of such assignment has been given by the assignor to the other Party, or to his successors or assignees.

### 8.3 Confidentiality

All information obtained hereunder by one Party from the other Party shall be treated as confidential and shall not be disclosed without the prior written consent of the other Party, save that such consent shall not be required for disclosure:

- 8.3.1 to directors, employees or Affiliated Companies of either Party subject to Article 8.4 and if and only to the extent that such disclosure is required for the performance of their operations or work in relation to the Agreement, or to Counterparties provided that they in turn are required by that Party to treat the information so disclosed as confidential;
- 8.3.2 to consultants or advisors under contract with either Party, provided that they in return are required by that Party to treat the information so disclosed as confidential;
- 8.3.3 to any government department or agency having jurisdiction over that Party;
- 8.3.4 to any bank or other financial institution in relation to the financing of either Party's business activities, provided that the bank or other financial institution, as the case may be, is required by that Party to treat the information so disclosed as confidential;
- 8.3.5 to the extent required by any applicable law, judicial process or the rules and regulations of any recognised stock exchange;
- 8.3.6 to any intended assignee of the rights and interests of either Party under the Agreement provided that such intended assignee in turn is required by that Party to treat the information so disclosed as confidential; or
- 8.3.7 to the extent that such information is in or lawfully comes into the public domain other than by breach of this Article 8.

8.4 The Hub Operator shall treat the information obtained hereunder from the Customer in such a manner as to secure that the Natural Gas trading activities of Distrigas S.A. do not obtain a commercial advantage from being related directly or indirectly to the Hub Operator other than achieved through being a customer of the Hub Operator and the Hub Operator shall take all reasonable precautions in order to restrict communication of information obtained from the Customer or a Counterparty hereunder to persons engaged in the Distrigas S.A. Natural Gas trading activities to information they receive as a customer under a Hub Services Agreement.

8.5 Notwithstanding the provisions of Article 8.3 the Hub Operator shall be entitled to disclose to third parties the names of all parties including the Customer that have entered into a Hub Services Agreement and the Customer shall be entitled to disclose to third parties that it has entered into a Hub Services Agreement.

## Art. 9 FORCE MAJEURE

9.1 The expression "Force Majeure" shall mean any event or circumstances beyond the control of a Party acting in accordance with the standards of a Reasonable and Prudent Operator which causes or results in a failure by such Party to fulfil any obligation under the Agreement, other than the obligation to make money payments hereunder.

Events which, provided they fulfil the requirements stated in the preceding sentence, constitute Force Majeure, shall include, but not be limited to: forces of nature, strikes, lock-outs, acts of Government or any governmental authority or representative thereof (whether or not legally valid), wars, insurrections, riots, landslides, fires, floods, earthquakes, explosions, breakage or accidents to the Fluxys Transmission System or to the information technology systems of the Hub Operator.

Any labour dispute shall be settled at the sole discretion of the Party having such dispute.

9.2 If by reason of Force Majeure either Party is rendered unable wholly or in part to carry out its obligations under the Agreement, then the obligations of the Party concerned, as long as and to the extent that the obligations are affected by such Force Majeure, shall be suspended.

However, the Hub Services Fee shall be paid by the Customer if the Customer is affected by Force Majeure.

To the extent the Hub Operator's obligations are suspended as a result of the Hub Operator being affected by Force Majeure the Customer shall be released from its obligations under Art. 3.

9.3 A Party claiming relief on account of Force Majeure shall:

- a) forthwith notify the other Party of the event or circumstances constituting Force Majeure and shall with reasonable diligence furnish all available information on the cause of the event and estimate the time required to remedy the Force Majeure situation; and
- b) forthwith take all reasonable practicable steps to rectify the circumstances preventing the performance of its obligations immediately after those circumstances arise and to minimise the damage caused thereby.

## Art. 10 EXPERTS

### 10.1 Application

Whenever in the Agreement any person is to be appointed as an expert or any matter is to be referred to an expert and whenever the Parties agree that a point of difference between them shall be resolved by an expert the provisions of this Article shall apply unless modified by any other express provision.

### 10.2 Appointment

#### 10.2.1 Single Expert

The procedure for the appointment of an expert shall be as follows:

- a) The Party wishing the appointment to be made shall give notice in writing to that effect to the other Party and shall with such notice give details of the matter which is proposed to be resolved by the expert.
- b) For matters for which only the Hub Operator and the Customer are affected parties, the Parties shall meet in an endeavour to agree upon a single expert to whom the matter in dispute shall be referred for determination.

- c) If the matter affects more than one customer of the Hub Operator, or if, within twenty-one (21) days from the service of the said notice, the Parties have either failed to meet or failed to agree upon an expert then the matter shall forthwith be referred by the Party wishing the appointment to be made to the President for the time being of the International Chamber of Commerce in Paris who shall be requested to make the appointment of the said expert within thirty (30) days and in so doing may take such independent advice as he thinks fit.
- d) Upon an expert being agreed or selected under the foregoing provisions of this Article the Hub Operator shall forthwith notify such expert of his selection and shall request him within fourteen (14) days to indicate whether or not he is willing and able to accept the appointment.
- e) If such expert is either unwilling or unable to accept such appointment or has not indicated his willingness and ability to accept such appointment within the said period of fourteen (14) days then (unless the Parties are able to agree upon the appointment of another expert) the matter shall again be referred (by either Party) in the manner aforesaid to the President for the time being of the International Chamber of Commerce in Paris who shall be requested to make further appointment and the process shall be repeated until an expert is found who accepts appointment.

### 10.2.2 Panel of Three Experts

Notwithstanding the foregoing and only in a case where the matter affects only one customer of the Hub Operator, either Party may elect, within the aforesaid twenty-one (21) day period, by notice, to have a panel of three experts, to be appointed in accordance with the following provisions :

Each Party shall be entitled to appoint one (1) expert. The Party desiring expert determination shall give notice to that effect to the other and shall in said notice appoint the first expert to the panel.

The Party receiving said notice shall within ten (10) days, by notice to the other, appoint the second expert to the panel, and if it fails to do so within the period aforesaid, such appointment shall be made, at the request of the other Party, by the President for the time being of the International Chamber of Commerce in Paris.

The two experts so appointed shall within ten (10) days appoint the third expert to the panel and if they fail to do so within the period aforesaid such appointment shall be made at the request of either Party by the President for the time being of the International Chamber of Commerce in Paris.

If a panel of experts is appointed the further provisions of this Article shall also apply to such panel of experts. The panel of experts shall make decisions by majority vote.

### 10.3 Qualification

#### 10.3.1 Qualifications of Expert

No person shall be appointed to act as the expert under this Article unless he is qualified by education, experience and training to determine the matter in dispute.

#### 10.3.2 Conflicting Interest

Any person appointed as an expert shall before accepting such appointment fully disclose any interest or duty he has or may have which conflicts or may conflict with his function under such appointment, and he shall also fully disclose any such interest or duty incurred at any time before he gives his determination under such appointment, provided always that no person shall be appointed an expert who at the time of appointment is an employee of either Party or of any Affiliated Company of either Party or of any company with which either Party has a direct significant financial interest.

### 10.4 Decision

#### 10.4.1 Representations, Data and Information

The expert so appointed shall promptly fix a reasonable time and place for receiving submissions or information from the Parties and said expert may make such other enquiries and require such other evidence as may be necessary for determining the matter.

All information and data submitted by either Party as confidential shall be and remain confidential to the expert, provided that if the other Party desires to do so it may have an internationally recognized independent expert advisor examine said confidential material and advise said Party professionally without compromising said confidentiality. Both Parties shall have the opportunity to make representations to the expert.

#### 10.4.2 Substitution of Expert

If within a reasonable period (which shall not exceed three (3) Months after the acceptance by an expert of the appointment unless otherwise agreed by both Parties) such expert shall not have rendered a decision then (at the request of either Party) a new expert shall be appointed under the provisions of this Article and upon the acceptance of appointment by such new expert the appointment of the previous expert shall cease, provided that if the previous expert shall have rendered a decision prior to the date upon which the new expert accepts his appointment then such decision shall be binding upon the Parties and the instructions to the new expert shall be withdrawn.

#### 10.4.3 Competence

The expert shall be deemed not to be an arbitrator but shall render his decision as an expert and the law or legislation relating to arbitration shall not apply to such expert or his determination or the procedure by which he reaches his determination.

#### 10.4.4 Determination

The determination of the expert shall be made in writing and contain the reasons for it and shall be final and binding upon the Parties save in the event of fraud, manifest error or failure by the expert to disclose any relevant interest or duty in accordance with Article 10.3.2 hereof.

#### 10.4.5 Costs and Expenses

Each Party, together with all affected parties, shall bear the costs and expenses of all counsel witnesses and employees retained by it but the costs and expenses of the single expert shall be apportioned equally between the Parties.

However, if under this Article 10 a Party elects to have a panel of three (3) Experts rather than a single expert, then the Party so electing shall, unless otherwise agreed, bear the full costs and expenses of the first and third Expert and one half of the costs and expenses of the second Expert.

## Art. 11 DISPUTES

11.1 Except as provided under Art. 10, all claims, disputes and other matters arising out of or relating to the Agreement which, in the opinion of one of the Parties, the Parties are unable to resolve by mutual agreement, shall exclusively and finally be settled by arbitration in Geneva, Switzerland, in accordance with the Rules of Arbitration of the International Chamber of Commerce in Paris as from time to time in effect, or in the absence of any applicable rule, with the procedural laws of the Canton of Geneva, Switzerland.

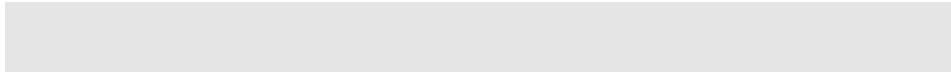
Unless otherwise agreed by the Parties such arbitration shall be conducted by three (3) arbitrators, one (1) selected by each Party and the third arbitrator nominated by the arbitrators so selected within thirty (30) days after the appointment of the second arbitrator. The third arbitrator shall act as chairman of the board of arbitration and shall be a fully qualified and trained lawyer.

The arbitration proceedings shall be conducted in the English language. Any arbitral award shall be enforceable in accordance with the rules of the New York convention of 1958 on the recognition and enforcement of foreign arbitral awards.

Judgement upon the awards rendered may be entered in any court or other authority having jurisdiction, or application may be made to said courts or other authority for a judicial acceptance of the award and an order of enforcement, as the case may be.

Art. 12 APPLICABLE LAW

12.1 The Agreement shall be governed by and construed in accordance with Belgian law.



**SCHEDULE 1      AUTOMATIC BACK-UP AND OFFTAKE FEE**

**A. Fees for the period “1 January 2005, 06h00 until 1 October 2005, 06h00”.**

**A.1 Automatic Back-up Fee**

The Automatic Back-up Fee for a given Day, payable by the Customer shall be equal to  $\text{Max} (\text{SMP}_{\text{BUY}}, P_{\text{ZH}(\text{D}-1)})$ , expressed in EUR/GJ, for every GJ which is delivered as an Automatic Back-up Quantity during the given Day.

Where:

$\text{SMP}_{\text{BUY}}$  shall be the System Marginal Buy price of the On-the-day Commodity Market as published by Energy Argus Daily - European Natural Gas in pence/therm for the day on which Automatic Back-up is provided by the Hub Operator and converted into EUR/GJ by the Hub Operator in accordance with Article 3.5.3 and 3.5.4.

$P_{\text{ZH}(\text{D}-1)}$  shall be the ZIG Day-ahead for that Day or the ZIG Weekend, as applicable, last published prior to the Day on which the Automatic Back-up started and expressed in EUR/GJ.

## **A.2 Automatic Offtake Fee**

The Automatic Offtake Fee for a given Day, receivable by the Customer shall be equal to  $\text{Min} (\text{SMP}_{\text{Sell}}, P_{\text{ZH(D-1)}})$ , expressed in EUR/GJ, for every GJ which is offtaken as an Automatic Offtake Quantity during the given Day.

Where:

$\text{SMP}_{\text{SELL}}$  shall be the System Marginal Sell price of the On-the-day Commodity Market as published by Energy Argus Daily - European Natural Gas in pence/therm for the day on which automatic offtake is provided by the Hub Operator and converted into EUR/GJ by the Hub Operator in accordance with Article 3.5.3 and 3.5.4.

$P_{\text{ZH(D-1)}}$  shall be the ZIG Day-ahead for that Day or the ZIG Weekend, as applicable, last published prior to the Day on which the Automatic Offtake started and expressed in EUR/GJ.

**B. Fees for the period “1 October 2005, 06h00 until 1 January 2007, 06h00”**

**B.1 Automatic Back-up Fee**

The Automatic Back-up Fee for a given Day, payable by the Customer shall be equal to the lesser of :

- i) one point five zero (1.50) times  $P_{ZH(D-1)}$  or
- ii) one point twenty-five (1.25) times  $\text{Max}(SMP_{\text{Buy}}, P_{ZH(D-1)})$ ,

expressed in EUR/GJ, for every GJ which is delivered as an Automatic Back-up Quantity during the given Day.

Where:

$SMP_{\text{Buy}}$  shall be the System Marginal Buy price of the On-the-day Commodity Market as published by Energy Argus Daily - European Natural Gas in pence/therm for the day on which Automatic Back-up is provided by Huberator and converted into EUR/GJ by Huberator in accordance with Article 3.5.3 and 3.5.4 of the HSA2005.

$P_{ZH(D-1)}$  shall be the ZIG Day-ahead for that Day or the ZIG Weekend, as applicable, last published prior to the Day on which the Automatic Back-up started and expressed in EUR/GJ.

## **B.2 Automatic Offtake Fee**

The Automatic Offtake Fee for a given Day, receivable by the Customer shall be equal to the highest of :

- i) zero point five zero (0.50) times  $P_{ZH(D-1)}$  or,
- ii) zero point seventy-five (0.75) times  $\text{Min}(SMP_{\text{Sell}}, P_{ZH(D-1)})$ ,

expressed in EUR/GJ, for every GJ which is offtaken as an Automatic Offtake Quantity during the given Day.

Where:

$SMP_{\text{SELL}}$  shall be the System Marginal Sell price of the On-the-day Commodity Market as published by Energy Argus Daily - European Natural Gas in pence/therm for the day on which automatic offtake is provided by Huberator and converted into EUR/GJ by Huberator in accordance with Article 3.5.3 and 3.5.4 of the HSA2005.

$P_{ZH(D-1)}$  shall be the ZIG Day-ahead for that Day or the ZIG Weekend, as applicable, last published prior to the Day on which the Automatic Offtake started and expressed in EUR/GJ.

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