

## THE BURDEN SHARING AGREEMENT

concluded on [xxx] in [xxx], hereinafter also "Agreement" between:

the Government of [xxx] hereinafter referred to separately as "Contracting Party with Storage Facility" or "Party",

and

the Government of [xxx] hereinafter referred to separately as "Contracting Party without Storage Facility" or "Party",

hereinafter also collectively referred to as the "Parties",

### PREAMBLE

Whereas:

1. The Energy Community Treaty pursues the establishment of a integrated gas market based on common interest and solidarity.
2. Natural Gas is currently an essential component of the energy supply of several the Contracting Parties to the Energy Community.
3. The reliance on external sources of Natural Gas supply has, on several occasions, been the cause of major disruptions in the supply of Natural Gas in the European Union and in the Energy Community. Currently, the unprovoked aggression of the Russian Federation against Ukraine has serious impact to the supply of Natural Gas to the Contracting Parties of the Energy Community, with possible severe social consequences.
4. The Energy Community acquis implemented in the Contracting Parties of the Energy Community create common principles for energy security and security of supply, based on solidarity, regional cooperation and mutual assistance.
5. Given their different circumstances in terms of gas infrastructure, including gas storage facilities, and their ability to secure the supply of Natural Gas in emergency situations to protected customers, the Parties to this agreement have jointly decided, in a spirit of solidarity, to create mechanisms that will ensure the protection of this group of customers.

6. Having regard to the expected future membership of the Parties in the European Union and further strengthening and development of economic relations,  
the Parties have agreed as follows.

## ARTICLE 1

### SUBJECT OF THE AGREEMENT

1. This Agreement governs all individual contracts that the Economic Operator or/and the competent authority of the Contracting Party without Storage Facility shall enter for the Emergency Storage of Natural Gas in the Contracting Party with Storage Facility.
2. The Parties enter into this Agreement on the understanding that this Agreement is the reference point for individual contracts among Economic Operator or/and competent authority of the Parties that together – in the spirit of solidarity - shall form a single arrangement on the burden-sharing as referred to in Article 6c of the Regulation (EU) 2022/1032 of the European Parliament and of the Council of 29 June 2022 amending Regulations (EU) 2017/1938 and (EC) No 715/2009 with regard to gas storage as incorporated in the Energy Community.

## ARTICLE 2

### DEFINITIONS

1. Headings and titles are for convenience only and do not affect the interpretation of the Agreement.
2. Wherever a singular expression is used in this Agreement, that expression is considered as including the plural where required by the context.
3. Terms used in this Agreement shall have the following meanings:

**CPwith SF** means Contracting Party with Storage Facility, the Party to this Agreement

**CPwithoutSF** means Contracting Party without Storage Facility, the Party to this Agreement

**Damages** means any loss, cost, expenses or damage.

**Economic Operator** means natural gas undertaking being a natural or legal person carrying out at least one of the following functions: production, transmission, distribution, supply, purchase or storage of Natural Gas, including LNG, which is responsible for the commercial, technical and/or maintenance tasks related to those functions, but shall not include final customers, but shall include the entity entrusted with tasks of the Public Service Obligation, to sign and execute the Storage Contract and

the Transportation Contract, and the Supply Contract as the case might be, for the Emergency Storage in the territory of the Contracting Party with Storage Facility.

**Emergency Storage** means Natural Gas that is stored in Storage Facility by Economic Operator or/and the competent authority of the Contracting Party without Storage Facility in the territory of the Contracting Party with Storage Facility, and may be released only after prior notification of the competent authority of the Contracting Party without Storage Facility, and is released in the case of crisis situation referred to in Article 11(1), point (c) of Regulation (EU) 2017/1938, as incorporated in the Energy Community, in order to ensure supplies to Protected Customers.

**Force Majeure** means an occurrence beyond the reasonable control of the entity claiming Force Majeure which it could not reasonably have avoided or to overcome and which makes it impossible for the claiming entity to perform or procure performance of its obligations based or related to the Agreement.

**Gas Storage Operator** means an Economic Operator that operates the relevant gas storage facility in the Ukraine and which acts based on a license and carries out activities of storage (injection, withdrawal) of Natural Gas in those facilities for the benefit of third parties (users).

**Natural Gas** means any hydrocarbons or mixture of hydrocarbons and non-combustible gases, consisting primarily of methane, which, when extracted from the subsoil of the earth in its natural state, separately or together with liquid hydrocarbons, is in the gaseous state and which quality meets requirements of national legislation to access the gas market or it has been agreed between transmission system operators of two Contracting Parties.

**Nomination and Allocation Arrangements** means the arrangements and procedures which are in effect at the point delivery of Natural Gas agreed by the parties for the purpose of determining the quantities of Natural Gas which flowed or are deemed to have flowed in one or both directions at such delivery point in any time unit and allocating such flow between shippers in gas pipeline system, including any arrangements and procedures for receiving and matching nominations.

**Protected Customer** as defined in point 5 of article 2 of Regulation (EU) 2017/1938, as incorporated in the Energy Community.

**Storage Contract** means the agreement on Natural Gas storage in the Storage Facility (injection, withdrawal).

**Storage Facility** as defined in point 23 of article 2 of Regulation (EU) 2017/1938, as incorporated in the Energy Community.

**Transportation Contract** means contract(s) for the provision of gas transmission services (and distribution, if relevant) concluded between the transmission system operator (and the distribution system, if relevant) of the Contracting Party with Storage Facility and Economic Operator or/and the competent authority of the Contracting Party without Storage Facility, providing access to the national transmission system of the Contracting Party with Storage Facility and ensuring the provision of gas transportation services for the Emergency Storage.

**Competent Authority** as defined in point 7 of article 2 of Regulation (EU) 2017/1938, as incorporated in the Energy Community

### **ARTICLE 3**

#### **ROLES OF PARTICIPANTS**

1. Parties shall ensure and guarantee that the competent authority of the Party shall facilitate the setting up of conditions enabling the effective implementation of this Agreement.
2. Parties shall ensure and guarantee that the competent authorities of the Party shall take effective and efficient measures to create the conditions for Economic Operator or/and the competent authority of the Contracting Party without Storage Facility to inject and store Emergency Storage in the Contracting Party with Storage Facility and withdraw and transport Emergency Storage from the Contracting Party with Storage Facility to the Contracting Party without Storage Facility in accordance with the best commercial standards ,market practices and with Energy Community law. .
3. Parties shall be responsible for implementing the Agreement with tasks and responsibilities clearly assigned to the respective actors such as the relevant ministries or central governmental bodies, national regulatory authority, transmission system operator, gas storage operator, gas undertakings, and notification of these matters to other Party to the extent relevant to the implementation of the Agreement, and without prejudice to the rules on unbundling.
4. This Agreement shall be implemented and executed by the competent authorities of the Parties in accordance with the laws of each of the Party to be determined by formally communicating the powers of the authority concerned to the other Party at the latest before a specific act is performed.
5. The Contracting Party without Storage Facility is responsible to the Contracting Party with Storage Facility for the appropriate exercise of the Emergency Storage notification and the use of the Emergency Storage for its intended purpose. The specific terms of such cooperation shall be determined by bilateral agreement between the competent authorities of the Parties.

### **ARTICLE 4**

#### **RULES OF EMERGENCY STORAGE**

1. The Contracting Party without Storage Facility designates Economic Operator or/and the competent authority of the Party to carry out tasks, as the Public Service Obligation to sign and execute the Storage Contract and the Transportation Contract for the Emergency Storage in the territory of the Contracting Party with Storage Facility.
2. The Parties ensure that they will endeavor to ensure that Economic Operator or/and the competent authorities of the Party shall conclude the Transportation Contract and the Storage Contract of the Emergency Storage with the relevant entities in the Contracting Party with Storage Facility in accordance with the best commercial standards , market practices and Energy Community law .

3. The Contracting Party without Storage Facility ensures and warrants that the Emergency Storage shall only be used to meet the demand not higher of the demand of Protected Customer, unless otherwise agreed by the Parties.
4. The Contracting Party with Storage Facility ensures and warrants that Emergency Storage of the Contracting Party without Storage Facility shall be made available to Economic Operator or/and the competent authority of the Contracting Party without Storage Facility at any request and under any circumstances.
5. The Contracting Party with Storage Facility ensures and warrants that:
  - a. the technical parameters of the Storage Facility and the transmission and distribution networks to which the Storage Facility is connected shall ensure that the total volume of Emergency Storage stored in the Contracting Party with Storage Facility shall be capable of being supplied to the gas network of the Contracting Party without Storage Facility
  - and
  - b. all and any agreement concluded by the Economic Operator or/and the competent authority of the Contracting Party without Storage Facility allowing the fulfilment of Emergency Storage obligation by the Economic Operator or/and the competent authority of the Contracting Party without Storage Facility shall ensure the possibility of supplying, on a continuous basis and under any conditions, the total quantities of Emergency Storage held in Contracting Party with Storage Facility, to the gas network of the Economic Operators of the Contracting Party without Storage Facility,over a period of no more than [xx] days.
6. The Contracting Party with Storage Facility ensures and warrants that transmission system operators and storage system operators comply with any independence requirements under the applicable Energy Community law.
7. The Contracting Party with Storage Facility shall endeavor to ensure that, at a minimum, the following requirements are guaranteed in the event of release of the Emergency Storage:
  - a. Upon receipt of information from the Economic Operator or/and the competent authorities of the Contracting Party without Storage Facility on the release of the Emergency Storage, the Gas Storage Operator shall be obliged to perform the execution activities and deliver Natural Gas in the quantities indicated by the above-mentioned the Economic Operator or/and the competent authorities of the Contracting Party without Storage Facility to the delivery point and in time units to enable to deliver Natural Gas to the gas network of the Contracting Party without Storage Facility in time units indicated.
  - b. In respect of each individual contract the Gas Storage Operator warrants and represents to the Economic Operator or/and the competent authority of the Contracting Party without Storage Facility that in each time unit it has the right to transfer (or cause to be transferred) to the Economic Operator or/and the competent authority of the Contracting Party without Storage Facility full entitlement to the delivered quantity of the Emergency Storage at the delivery point.
  - c. The Gas Storage Operator shall inform the Economic Operator or/and the competent authority of the Contracting Party without Storage Facility immediately of the activation of the Emergency Storage and shall provide it with all relevant information

relating to the fulfilment of the obligations, including information on the volumes of the Emergency Storage released.

- d. Once the Emergency Storage has been released, or part thereof, the Economic Operator or/and the competent authority of the Contracting Party without Storage Facility may reconstitute the Emergency Storage up to the amount agreed with the Gas Storage Operator by injecting Natural Gas into the Storage Facility within a period of [xx] months, starting from the last day of the month in which its commissioning took place.
8. The competent authorities of the Parties shall agree on the procedure for the exchange of information on the technical capability and constraints of the relevant gas infrastructure and the maximum theoretical volumes of gas relevant for the Emergency Storage, together with the certainty that there are no undue technical constraints that would make the arrangement based on this Agreement difficult. If technical or other constraints exist or may exist, the competent authorities of the Parties shall identify and agree on mutually acceptable solutions to be applied.
9. The competent authorities of the Parties shall agree on a procedure for coordination across the relevant market areas, which shall include coordination and exchange of information with transmission system operators (and distribution system operators, if relevant), national emergency coordinator (if exists), competent authorities and Economic Operators involved.

## **ARTICLE 5**

### **EMERGENCY STORAGE VOLUMES**

1. The competent authority of the Contracting Party without Storage Facility shall create and make available to the competent authority of the Contracting Party with Storage Facility, upon request, a methodology for calculating the quantity of Natural Gas necessary to ensure a continuous and uninterrupted supply to the Protected Customers which, as a minimum, ensures supply in the following circumstances: (a) extreme temperatures during a 7-day peak period occurring with a statistical probability of once in 20 years, (b) any period of 30 days of exceptionally high gas demand, occurring with a statistical probability of once in 20 years and (c) for a period of 30 days in the case of disruption of the single largest gas infrastructure under average winter conditions.
2. The Parties agree that the volume of Natural Gas regarded as the Emergency Storage covered by this Agreement shall be the maximum amount necessary for the supply of the Protected Customers, according to the methodology set out in the paragraph above, and shall not exceed:
  - a. [xxx] in the 2022 gas year
  - b. [xxx] in the 2023 gas year
  - c. [xxx] in the 2024 gas year
  - d. [xxx] in period 1 October 2025-31.12.2025
3. The competent authorities of the Parties may agree by bilateral arrangement to increase the limit specified in paragraph 2.

4. It shall not prevent the Economic Operator from storing the volume of Natural Gas higher than that specified in paragraph 2 above, but the other Party shall not be obliged to ensure that these volumes of Natural Gas benefit from privileged arrangements such as those for the Emergency Storage.
5. The Parties agree that in respect of each individual contract and each time unit of the supply period, the quantity of Emergency Storage shall be determined in accordance with 'Nomination and Allocation Arrangements' at the delivery point and the allocation statements of the relevant gas network operator.

## **ARTICLE 6**

### **PRICES AND OTHER FINANCIAL ARRANGEMENTS**

1. two Different Options:
  - a. The Contracting Party with Storage Facility ensures and warrants that all and any financial terms and conditions (including prices for Natural Gas under the trading contract) granted by Economic Operator or/and its competent authority to the Economic Operator from the Contracting Party without Storage Facility or/and the competent authorities of the Contracting Party without Storage Facility are and shall remain during the term of this Agreement at least as favorable as the financial terms and conditions granted by its Economic Operator or/and its competent authority to any other market entity, with the exception of those applied to Protected Customers in the Contracting Party with Storage Facility.
  - b. The Parties may agree that the Contracting Party with Storage Facility or its Economic Operator may apply financial terms and conditions that diverge from market conditions under this Agreement. In such a case, the Contracting Party without Storage Facility shall ensure and guarantee that the resulting benefits do not constitute an additional source of revenue for the Economic Operator of the Contracting Party without Storage Facility or that Party or its consumers, and do not affect trade within the Energy Community in a way that is incompatible with the Energy Community Treaty. If such a situation arises, the Contracting Party without Storage Facility undertakes to compensate the other Contracting Party accordingly for the Damages caused.
2. Should Natural Gas be used for any other purpose than Emergency Storage, the Contracting Party without Storage Facility ensures and warrants that the appropriate adjustment is made to prices and charges to reflect market conditions at the time of injection of Natural Gas, and that profits resulting from the withdrawal and sale of Natural Gas shall be shared between Economic Operators concerned, and state fees and taxes will be adjusted accordingly.
3. The Contracting Party with Storage Facility shall ensure that undue increases of entry and exit tariffs for transmission (and distribution capacity, if relevant) and tariffs to and from the Storage Facility for Emergency Storage is excluded.
4. The Contracting Party with Storage Facility shall ensure that between 50% and 100% discount to entry and exit tariffs for transmission capacity (and distribution capacity, if relevant) to and from Storage Facility for Emergency Storage shall apply.

## **ARTICLE 7**

### **ADDITIONAL COMPENSATION**

1. If any additional costs arise in connection with the provision of services under the Agreement, other than the price for Natural Gas, the Parties shall, in a spirit of solidarity, establish reasonable compensation arrangements.
2. Such reasonable compensation shall cover at least: (a) all relevant and reasonable costs incurred when providing solidarity, including, where appropriate, costs of such measures that may have been established in advance; (b) reimbursement for any compensation resulting from judicial proceedings, arbitration proceedings or similar proceedings and settlements and related costs of such proceedings involving the Parties providing solidarity vis-a-vis entities involved in the provision of such solidarity.
3. The reasonable compensation shall include, *inter alia*, all reasonable costs that the Party providing solidarity incurs from an obligation to pay compensation by virtue of fundamental rights guaranteed by the Energy Community law and by virtue of the applicable international obligations when implementing the Agreement and further reasonable costs incurred from payment of compensation pursuant to fair and reasonable national compensation rules.

## **ARTICLE 8**

### **INFORMATION EXCHANGE**

1. The competent authorities of the Parties or/and its Economic Operator shall agree on the procedure to be followed in the event of Emergency Storage releases (withdrawal) and transport (transmission and distribution) to the Contracting Party without Underground Gas Storage Facility.
2. The competent authorities of the Parties shall communicate to each other who is responsible for the Public Service Obligation within the scope of the Agreement, who fulfils the prerequisites of the Protected Customer, what is the volume necessary in each period to ensure the supply of Natural Gas to the Protected Customers, any changes in the internal procedures of the Party concerned which are relevant to the fulfilment of the purpose of this Agreement, as well as the information referred to in Article 3 point 3.
3. In the event of the crisis situation and/or the need to release the Emergency Storage, the competent authority of the Contracting Party without Storage Facility may request that the competent authority of the Contracting Party with Storage Facility, without undue delay, provide it with at least:
  - a. gas supply forecasts for the next three days, in million cubic meters per day (mcm/d),
  - b. forecasts of the daily gas flow at all cross-border entry and exit points of the storage facilities where the Emergency Storage is maintained,



- c. daily gas flow forecast at all cross-border entry and exit points on the interconnections between the Parties which may be used for Emergency Storage delivery,
- d. the period, expressed in days, over which it is expected that gas supplies of Emergency Storage to the Contracting Party without Storage Facility shall be delivered,
- e. information on the measures planned to be taken and already implemented by the competent authority of the Contracting Party with Storage Facility to alleviate the impediments to the supply of gas to the Contracting Party without Storage Facility in case of risks to the delivery of the requested volume of Emergency Storage to the Contracting Party without Underground Gas Storage Facility, and information on their effectiveness.

## **ARTICLE 9**

### **INSPECTIONS**

1. The Contracting Party without Storage Facility may request an inspection of the Gas Storage Facility in the Contracting Party with Storage Facility on the compliance with its stockholding obligation. In the event of an inspection, the following rules will apply:
  - a. to carry out the inspection, the competent authority of the Contracting Party without Storage Facility shall request the competent authority of the Contracting Party with Storage Facility to carry out the inspection.
  - b. the competent authority of the Contracting Party with Storage Facility shall order an inspection at the earliest possible date.
  - c. the inspection shall be carried out by the competent authority of the Contracting Party with Storage Facility. The competent authority of the Contracting Party without Storage Facility shall participate in the inspection.
  - d. the inspection shall take place in accordance with the rules of the Contracting Party with Storage Facility.
  - e. a protocol of the inspection shall be drawn up and made available to the competent authority of the Contracting Party without Storage Facility without undue delay.
2. The Parties agree that upon a reasonable request, Economic Operator from the Contracting Party with Storage Facility shall provide to the Economic Operator or/and the competent authorities of the Contracting Party without Storage Facility documentation in its possession or control that evidences quantities of Emergency Storage and use its reasonable and diligent efforts to request and acquire from the gas network operator, and shall share with the requesting entity, and additional documentation necessary to reconcile any inconsistencies related to Emergency Storage.

## **ARTICLE 10**

## **FORCE MAJEURE**

1. The Contracting Party with Storage Facility ensure that it will endeavor to ensure that its Economic Operator, in particular Gas Storage Operator or transmission system operator, affected by the Force Majeure shall immediately notify the Economic Operator or/and competent authority of the Contracting Party without Storage Facility of its occurrence and its foreseeable duration.
2. The Economic Operator or/and competent authority of the Contracting Party without Storage Facility affected by the Force Majeure shall use its best efforts to limit and overcome the effects of the Force Majeure and its impact on the performance of its obligations related to Emergency Storage under the Agreement.
3. If, as a result of the Force Majeure, the Economic Operator, in particular Gas Storage Operator or transmission system operator, is unable to perform its obligations under the relevant individual contract in whole or in part, the Contracting Party with Storage Facility may cause, in coordination with the Contracting Party without Underground Gas Storage Facility, its obligations to deliver Emergency Storage to be fulfilled by other means possible.

## **ARTICLE 11**

### **LIABILITY**

1. In a situation where there are claims on the part of the Party or its Economic Operator, the competent authority of that Party shall be under an obligation to collect claims for Natural Gas and the additional costs, verify them and channel them the entity in charge in the other Party. The Parties agree on the entity in charge of collecting and channeling claims.
2. Two Different Options:
  - a. Each Party ensures and warrants that the Economic Operator based in that Party shall be liable to the other Economic Operator based in other Party for Damages, incurred by the other Party under or in connection with the Agreement, except where such Damages are due to the negligence, international default or fraud of a Party in performing its obligations under the Agreement.
  - b. Each Party agrees that it shall be liable to the other Party for Damages, incurred by the other Party under or in connection with the Agreement, except where such Damages are due to the negligence, international default or fraud of a Party in performing its obligations under the Agreement.
3. Each Party agrees that is has duty to mitigate its Damages and covenant that it shall use commercially reasonable efforts to minimize any Damages the other Party may incur under or in connection with the Agreement.
4. In the event that the Economic Operator based in the Contracting Party with Storage Facility fails to perform or improperly perform of its obligation under this Agreement or any commercial agreements concluded in relation or in execution of this Agreement which results in a failure to establish the Emergency Storage or to transport the Emergency Storage to the Contracting Party without Storage Facility as required, the Contracting Party with Storage Facility shall be obliged to do all within its reasonable powers to assist in the protection of the Protected Customer in the Contracting Party without Storage Facility, but only to the extent

that the above conduct of that Economic Operator affects the situations of above Protected Customer.

5. In the event of any misuse of the Emergency Storage, the Contracting Party without Storage Facility undertakes to take prompt and effective action to compensate the Contracting Party with Storage Facility and its Economic Operator for the resulting Damages.

## **ARTICLE 12**

### **GOVERING LAW AND DISPUTE RESOLUTION**

1. The Agreement shall be construed and governed by Austrian law, excluding any application of the "United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980".
2. Any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by the Dispute Resolution and Negotiation Center established within the Energy Community, which Rules are deemed to be incorporated by reference into this clause. The number of arbitrators shall be three, each Party having the right to nominate one arbitrator, unless the Parties agree otherwise. The arbitral tribunal shall decide *ex aequo et bono*, unless the Parties agree otherwise. The place of arbitration shall be Vienna, Austria where all hearings and meetings shall be held, unless the Parties agree otherwise. The language to be used in the arbitral proceedings shall be English. The Parties hereby expressly waive any right of appeal to any court having jurisdiction on any question of fact or law, unless the Parties agree otherwise. It is agreed that the arbitrators shall have no authority to award exemplary or punitive damages of any type under any circumstances whether or not such damage may be available under the relevant applicable law, the parties hereby waiving their right, if any, to recover such damages.

## **ARTICLE 13**

### **ENTRY INTO FORCE AND TERMINATION**

1. This Agreement shall be subject to adoption in accordance with the laws of the Party of each Contracting Party, to be determined by an exchange of notes. The Agreement will enter into force on the date of receipt of the later note.
2. Two Different Options:
  - a. This Agreement is concluded for an indefinite period and may be terminated by notification by either Contracting Party, in which case it shall cease to have effect six months after the other Party has received notification of termination.
  - b. The contract is concluded for a period until 31 December 2025. The Agreement shall cease to bind the Contracting Parties as mutually agreed.
3. At the request of one of the Contracting Parties, this Agreement may be supplemented and amended in writing by mutual consent.

4. This Agreement is drawn up on [xxx], in two copies, each in the [xxx], [xxx] and English languages, all texts being equally authentic. In the event of any divergence in the interpretation of the Agreement, the English text shall prevail.

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