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**ORDER No. 130 of 24 June 2020**

**on measures for transmission capacity booking at the interconnection points between the Romanian Gas Transmission System and the Gas Transmission Systems of EU Member States neighbouring Romania**

ISSUER: The National Energy Regulatory Authority

PUBLISHED IN: The Official Journal of Romania No. 562 of 29 June 2020

Date of entry into force: 15 July 2020

Considering the provisions of Art. 99, letter e), l) and m), and of Art. 130, paragraph (1), letter d), d<sup>1</sup>) and q) of Electricity and Gas Law No. 123/2012, as subsequently amended and supplemented,

pursuant to Art. 5, paragraph (1), letters c) and d), and of Art. 10 paragraph (1), letter j), o), point 2 and letter q) of Government Emergency Ordinance No. 33/2007 on the organization and operation of the National Energy Regulatory Authority, approved as amended and supplemented by Law No. 160/2012, as subsequently amended and supplemented,

**the President of the National Energy Regulatory Authority issues the following Order:**

**Art. 1** – (1) The booking of the transmission capacity at the interconnection points between the Romanian Gas Transmission System and the Gas Transmission Systems of EU Member States, hereinafter referred to as *interconnection points* is made by the auctions held on the Regional Booking Platform, hereinafter referred to as *RBP*, operated by Földgázszállító Zártkörűen Működő Részvénytársaság – FGSZ Ltd., compliant with the Operational rules of the RBP and the auction calendar published annually by the European Network of Transmission System Operators for Gas - ENTSOG.

**Art. 2** – (1) The standard capacity products offered by the National Gas Transmission Company Transgaz S.A. Mediaș through auctions held on the Regional Booking Platform at the interconnection points in both transmission directions, are defined at Art. 9 of Commission Regulation (EU) No. 459/2017 of 16 March 2017 establishing a Network Code on Capacity Allocation Mechanisms in Gas Transmission Systems and

repelling Regulation (EU) No. 984/2013.

(2) The reserve price of each standard capacity product auctioned on the RBP is obtained by applying the conversion factors for the reference conditions, according to SR ISO 13443:2005 'Natural gas. Standard reference conditions', to the booking tariffs applicable during the period of use of the booked capacity to each standard capacity product at the interconnection points, approved by Order of the President of the National Energy Regulatory Authority.

**Art. 3** – (1) By derogation from the provisions of Art. 26, paragraph (1) of the Network Code of the National Gas Transmission System, approved by Order No. 16/2013 of the President of the National Energy Regulatory Authority, as subsequently amended and supplemented, the framework gas transmission contract concluded between the National Gas Transmission Company Transgaz S.A. Mediaș and the Network Users, for capacity booking at the interconnection point is included in the Annex and is supplemented by the electronic message(s) confirming the successful auction(s) on RBP, made available by the RBP operator.

**Art. 4** – (1) In order to book capacity, the network user (NU) has the obligation to conclude with the TSO a framework contract for the transmission of natural gas under which it can access one or more standard capacity products offered.

(2) The framework contract is concluded at least 14 days before the date of the first participation of the NU in an auction for capacity booking.

**Art. 5** – The National Gas Transmission Company Transgaz S.A. Mediaș has the obligation to publish on its website, in Romanian and in English, this order, the RBP Operating Rules, as well as the provisions of the interconnection agreements for the interconnection points, concluded between it and the operators of the adjacent transmission systems in the European Union member states neighbouring Romania, relevant for the development of transmission contracts.

**Art. 6** - The participation of a NU in each tender organized in accordance with the RBP Operating Rules, in order to allocate capacity at interconnection points, is subject to the validation process by the National Natural Gas Transmission Company Transgaz SA, insofar as NU submits, at least 24 hours before the opening of the auction, in the case of auctions for daily and within - day capacity products, respectively at least 5 days before the opening of the auction, in the case of other auctions, a financial participation guarantee, established in favour of the National Gas Transmission Company Transgaz SA, in order to establish the credit limit to be granted to it in order to participate in the auction for capacity booking.

**Art. 7** – (1) The Network User is entirely responsible for estimating the level of the participation guarantee based on the auction clearing price it would pay. Thus:

- a) for the standard within - day/daily/monthly capacity product the level of the guarantee is equal to the capacity requested;
- b) for the standard quarterly/annual capacity product, the level of the guarantee is equal to the monthly average value of the capacity requested.

(2) The participation guarantee may be in cash bank transfer to the bank account of the transmission system operator (TSO), in lei or the equivalent in euro at the exchange rate of the European Central Bank on the day of collection of the guarantee, in the form of a guaranteed account (collateral deposit) and/or letter of bank guarantee, in lei or euro equivalent at the exchange rate of the European Central Bank in the issue date of the guarantee.

(3) The National Gas Transmission Company Transgaz S.A. accepts letters of bank guarantee issued by banks having a rating issued by one of the rating agencies: Standard & Poor's, Moody's or Fitch, at least at the *investment grade* level. The equivalence between the ratings granted by other agencies is published on the website of the TSO.

(4) The participation guarantee is valid at least the 75 calendar days from the starting date of the period of use of the capacity regarding the standard capacity product requested.

(5) The National Gas Transmission Company Transgaz S.A. is entitled to retain the participation guarantee when the Network User does not establish the payment guarantee according to the framework contract.

(6) The financial guarantee is returned to the NU within maximum 5 working days from the date of establishment of the payment guarantee or from the advance payment date, if the Network User chose this payment modality, and within maximum 5 working days from the closing of the auction for capacity booking if, following the auction, the Network User did not receive transmission capacity.

(7) At the request of the NU, the financial participation guarantee may be kept by the TSO in order to establish the credit limit for its participation in other capacity auctions.

8) The credit limit granted to the Network User for the participation to the auction for capacity booking shall be equal to:

- a) the value of the financial guarantee in paragraph (1), letter a), for the within - day/daily/monthly standard capacity product;
- b) the value of the financial guarantee in paragraph (1), letter b), multiplied by the number of months related to the requested standard capacity product, for the quarterly/annual standard capacity product.

**Art. 8** – By derogation from the provisions of Art. 49 – 62 of the Network Code for the National Gas Transmission System, approved by Order 16/2013 of the President of the National Energy Regulatory Authority, as further amended and supplemented, the nomination/ renomination procedures for the quantities of natural gas at the interconnection points are established in accordance with the provisions of the Commission Regulation (EU) No. 312/2014 of 26 March 2014 establishing a network code for the balancing of gas transmission networks and shall apply on the basis of the framework contract and interconnection agreements.

(2) By derogation from the provisions of art. 69-69<sup>3</sup> of the Network Code for the

National Gas Transmission System, approved by Order 16/2013 of the President of the National Energy Regulatory Authority, as subsequently amended and supplemented the matching procedures, the rules for the allocation of gas quantities and the operational balancing, as well as the communication procedures in case of exceptional events at the interconnection points are established in accordance with the Commission Regulation (EU) No. 703/2015 of 30 April 2015 establishing a network code for the rules on interoperability and data exchange and to be applied by TSOs on the basis of the Interconnection Agreements for the interconnection points, concluded between the National Gas Transmission Company Transgaz S.A. and the operators of the adjacent transmission system of the EU Member States neighbouring Romania.

(3) Before the conclusion/amendment of the interconnection agreements for the interconnection points, the NU may submit comments on the matching procedures, the rules for allocating natural gas quantities and the operational balancing, as well as the communication procedures in case of exceptional events, within the joint public consultations organized by the adjacent TSOs in accordance with the provisions of art. 4 of the Commission Regulation (EU) no. 703/2015 of 30 April 2015 establishing a network code for the rules on interoperability and data exchange.

**Art. 9** – (1) The NU has the right either to transfer to other NUs the right to use the booked capacity, or to fully transfer the rights and obligations related to the booked capacity, deriving from the natural gas transmission framework contract.

(2) The transfers provided in para (1) may be concluded only between NUs that have an ongoing framework contract for gas transmission, for capacity booking at the interconnection points, concluded with the TSO.

(3) The nature of the capacity that is the object of the transfer - firm, interruptible - and its type - bundled, unbundled - does not change by transfer.

(4) Only the NU holding the booked capacity has the right to initiate a transfer. Transfers are made through the RBP, according to the RBP Operating Rules.

(5) The capacity booked by the NU that may be the subject of the transfer is the one related to the annual, quarterly and monthly capacity products.

(6) The transfer requests, for a period starting with gas day D, shall be sent in the RBP until the latest on gas day D-1, at 12.00 o'clock.

(7) The TSO refuses the transfer if the *Initial NU* has nominated this capacity for one gas day in the period for which the transfer is requested.

**Art. 10** – (1) A NU called *Initial NU* may transfer, provided that the TSO agrees, to another NU called *Beneficiary NU* the right to use the booked capacity, in whole or in part.

(2) The *Beneficiary NU* undertakes all rights and obligations arising from the transfer of the right to use the capacity, except for the obligation to pay the capacity for which it has obtained the right to use.

(3) The *Initial NU* undertakes the obligation to pay the capacity that was the subject of the transfer of the right of use to the beneficiary NU.

**Art. 11** – (1) A NU called *initial NU* may fully transfer, provided that the TSO agrees, to another NU called *Beneficiary NU* the rights and obligations related to the booked capacity, arising from the natural gas transmission framework contract, for the entire booked capacity or for part of it.

(2) The *Beneficiary NU* undertakes all rights and obligations arising from the transfer, including the obligation to pay the capacity that is the subject of this transfer.

(3) The TSO approves the complete transfer of the rights and obligations provided that the *Beneficiary NU* of the transfer establishes the financial guarantee of payment in accordance with the provisions of the framework contract, until 12.00 o'clock on the D-1 gas day.

(4) The TSO appropriately modifies the capacity booked by the NU on the basis of the framework contracts concluded with both the initial NU and the beneficiary NU.

**Art 12** - The framework contract for gas transmission capacity booking is approved at the interconnection points of the National Gas Transmission System of Romania with the gas transmission systems of the member states of the European Union neighbouring Romania, provided in the annex that is an integral part of this order.

**Art. 13** – Upon the entry into force of this order, Order No. 88/2016 of the President of the National Energy Regulatory Authority, on measures for transmission capacity booking at the interconnection points between the Romanian Gas Transmission System and the Gas Transmission Systems of EU Member States neighbouring Romania, published in the Official Journal of Romania, Part I, no 948 on 24 November 2016, is repealed, as well as Order No. 12/2013 of the President of the National Energy Regulatory Authority on the approval of the Rules regarding the provision of the backhaul natural gas transmission service, published in Official Journal of Romania, Part I, No. 138 of 15 March 2013 .

**Art. 14** – The National Gas Transmission Company Transgaz S.A. and the NUs shall carry out the provisions of this Order, and the specialist divisions within the National Energy Regulatory Authority shall monitor compliance with such provisions.

**Art. 15** – This Order shall be published in the Official Journal of Romania, Part I and it shall enter into force on 15 July 2020.

**President of the National Energy Regulatory Authority**  
**Dumitru Chiriță**

Bucharest, 24 June 2020  
No. 130

**Framework gas transmission contract  
concluded for capacity booking at the interconnection points of the National  
Gas Transmission System in Romania with the transmission systems of the EU  
Member States neighbouring Romania**

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

and

....., duly represented by....., as the user of the Natural Gas Transmission System (NTS) and the beneficiary of the transmission services, hereinafter referred to as *the Network User* or the *NU*,

hereinafter referred to individually as the *Party* and together as the *Parties*, have agreed to conclude this gas transmission contract for capacity booking at the interconnection points of the National Gas Transmission System in Romania with other gas transmission systems in EU Member States neighbouring Romania), hereinafter referred to as *interconnection points*.

**I. – Terms; applicable law and other applicable documents**

**Art. 1** - (1) The terms used in the gas transmission contract for capacity booking at the interconnection points of the National Gas Transmission System in Romania with the transmission systems of the EU Member States neighbouring Romania , hereinafter referred to as the *Contract*, are defined by Regulation (EC) No. 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No. 1775/2005, as further amended and supplemented, by Commission Regulation (EU) No. 2017/459 of 16 March 2017 establishing a network code on capacity allocation mechanisms in gas transmission systems and repealing Regulation (EU) No. 984/2013 , by Electricity and Gas Law No. 123/2012, as further amended and supplemented, and by the Network Code of the National Gas Transmission System, approved by Order No. 16/2013 of the President of the National Energy Regulatory Authority, as further amended and supplemented, hereinafter referred to as the *Network Code*.

(2) The Contract is supplemented with the provisions of Commission Regulation (EU) No. 2017/459 of 16 March 2017 establishing a network code on capacity allocation mechanisms in gas transmission systems and repealing Regulation (EU) No. 984/2013,

Regulation (EC) No. 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005, as further amended and supplemented, the provisions of the Civil Code, Electricity and Gas Law No. 123/2012, as further amended and supplemented, the National Energy Regulatory Authority (*ANRE*) regulations, and the provisions of the interconnection agreements for the interconnection points, concluded between the National Gas Transmission Company Transgaz S.A. and the transmission systems operators in the EU Member States neighbouring Romania , hereinafter referred to as *interconnection agreements*, and the Operational Rules of the Regional Booking Platform, hereinafter referred to as *RBP*.

## **II. Scope of Contract**

**Art. 2** - (1) The scope of the Contract is the provision of gas transmission services, such services designating all the activities and operations carried out by the TSO for or in connection with the booking of standard transmission capacity products at the interconnection points according to the interconnection agreements.

(2) If the standard transmission capacity product awarded at the interconnection points is transmission capacity booking in the exit direction from Romania, the Contract scope in paragraph (1) shall be supplemented with the activities and operations executed by the TSO for or in connection with the transmission through the National Gas Transmission System (*NTS*) of the gas amounts expressed in energy units, up to the Interconnection points.

(3) The transmission capacity booked at the interconnection points is expressed in kWh/h (25°C/0°C) or in kWh/day (25°C/0°C).

(4) The capacity allocated to the NU following the auctions held compliant with the Operational Rules of the Regional Booking Platform, is the one indicated in the electronic message(s) confirming the successful auction(s).

(5) The provisions of this Contract shall be supplemented with the electronic confirmation(s) of the successful auction(s) on the RBP, made available by the RBP operator.

(6) The commercial balancing, the invoicing of the imbalances and the allocation to the NU of the difference between the expense and the revenue resulted from the TSO's balancing actions are performed according to the provisions of the Network Code.

## **III. – Contract duration**

**Art. 3** - (1) The Contract shall enter into force at its date of signature by the Parties.

(2) The Contract is concluded for the period starting on dd/mm/yyyy - and ending on 1/10/yyyy.

(3) The duration of the booked capacity products is indicated in the electronic confirmation(s) of the successful auction(s) and shall fall within the contract validity.

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

**Art. 4** - (1) The gas quantities shall be metered and the quantities of energy entering and exiting the NTS through the interconnection points shall be determined in accordance with the interconnection agreements.

(2) The gas quantities circulated through the interconnection points shall comply with the minimum quality specifications established by the interconnection agreements.

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

##### **A. General provisions**

**Art. 5** - (1) The NU shall pay to the TSO the value of the transmission capacity booked based on the capacity booking tariff applicable at the moment of use of the booked capacity, plus the potential premium resulted from the auction. In the situation stipulated at Art. 2, (2), the NU shall pay the TSO additionally the commodity tariff applicable to the amount of gas transmitted, set based on the final allocation, for the period of use of the booked capacity.

(2) As applicable, the NU shall pay additionally to the TSO the tariffs under the Network Code. Invoices issued to this effect shall be paid within 15 calendar days from the invoice date. If the due date is a non-working day, such date is deemed achieved on the next working day.

(3) The firm gas transmission services provided shall be invoiced in lei, based on the booked capacity, the number of hours in the invoicing period and the natural gas quantities set based on the final allocations, in line with the provisions of the interconnection agreement.

(4) The interruptible gas transmission services provided shall be invoiced in lei, based on the booked capacity, the number of hours in the invoicing period in which the transmission services were not limited/interrupted and the gas quantities, according to the final allocations compliant with the interconnection agreements.

(5) The payment method as well as the designation of the agreed banks for the banking operations shall be agreed in compliance with the applicable laws.

(6) Invoices issued according to par (3) and (4) shall be paid by the date established in the Contract. If the due date is a non-working day, such date shall be deemed achieved on the next working day.

(7) The advance payment of the transmission service invoices shall be made until the commencement of the transmission service based on the advance payment invoice issued in this respect.



(8) The payment obligation shall be deemed met at the date of entry of the relevant total amounts to the TSO's account.

### **B. The yearly, quarterly and monthly product**

**Art. 6.** — (1) Invoices issued for the transmission service shall be paid within 15 calendar days from the date of issuance.

(2) The transmission services shall be invoiced as follows:

a) If the NU chooses not to make an advance payment, the TSO shall issue and send the NU until day 15 of the month following month following the month for which it provided the transmission service an invoice for the transmission services provided for the previous month, prepared according to the Contract;

b) If the NU chooses to make an advance payment, the TSO shall issue and send the NU:

(i) an advance payment invoice the value of which is equal to the value of the capacity booked, calculated for the service provision month to which, in the situation foreseen at Art 2 (2) of the Contract, the commodity component value calculated at the contractual level of the capacity for the same period is added, at least 5 calendar days before the start date of each services provision month;

(ii) a payment settlement invoice prepared on the basis of the monthly allocation within 15 working days from the end of the service provision month.

### **C. The daily and within-day product**

**Art. 7.** — (1) Invoices issued according to paragraph (2) (a) shall be paid within 5 days, and invoices issued according to paragraph (2) (b) within 15 days from the date of issuance.

(2) The transmission services shall be invoiced as follows:

a) On the day following the transmission service provision day the TSO shall issue and send the NU, an invoice for the capacity booked to which the commodity component value calculated at the level of the daily allocation is added, prepared according to the provisions of the Contract;

b) Within 15 working days from the end of the service provision month the TSO shall issue and send the NU a payment settlement invoice for the transmission services provided prepared on the basis of the final allocation.

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

**Art. 8.** TSO shall be entitled to:

a) receive the value of services provided and of the delay penalties;

b) execute the payment guarantee submitted by the NU in case of failure to pay the invoices issued until their maturity date;

- c) limit or interrupt the transmission services, with a prior notice of 3 calendar days, if the payment obligations are not fulfilled according to the terms and conditions of the Contract;
- d) limit or to interrupt the transmission services, if the NU fails to comply with the provisions of Chapter VIII - Guarantees;
- e) limit or interrupt the transmission services, if the NU fails to comply with the provisions of the documents under Art. 1 (2), with a prior notice of at least 3 days;
- f) refuse to take over in the NTS the gas non-compliant with the minimum quality specifications established under the applicable laws;
- g) invoice to the NU the value of the transmission services provided under the scope of the Contract, based on the capacity booking tariff applicable at the moment the booked capacity may be used, plus the premium resulted from the auction, and the volumetric tariff applicable for the period the booked capacity may be used for the amount of gas transmitted delay penalties;
- h) limit or interrupt, as appropriate, the transmission services for the execution of unplanned maintenance works, notifying the NU of such limitation or interruption within maximum 6 hours from the TSO becoming aware of the necessity of such works;
- i) limit or interrupt, as appropriate, the transmission services for the execution of planned maintenance works, notifying the NU at least 5 working days prior to such limitation/interruption;
- j) all other rights according to the documents under Art. 1 (2).

**Art. 9. —** (1) The TSO, acting correctly and prudently, shall have the right to limit/interrupt the interruptible transmission capacity booked by the NU to ensure the safe and balanced operation of the NTS if the total nominations exceed the amount of gas which can circulate through interconnection points.

(2) The reasons for the interruptions may include, without limitation, the following: gas quality, pressure, temperature, flow profile, use of firm contracts, maintenance work, upstream or downstream restrictions.

(3) The TSO shall notify the NU of such limitation/interruption of the interruptible transmission capacity, in the conditions established in paragraphs (1) and (2) and in compliance with the provisions of the interconnection agreement; the notification shall indicate the reason(s) for the interruption.

**Art. 10 –** The TSO shall:

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

- c) enable NU's access to the data/documents substantiating an invoice when the NU is disputing such invoice;
- d) takeover, transmit and deliver the confirmed quantities, expressed in energy units to the NU according to the interconnection agreement and in compliance with the quality specifications established by it;
- e) answer and settle the NU's complaints regarding the transmission services, according to the applicable laws;
- f) initiate the amending and/or supplementing of the Contract in case of modification of the circumstances which are at the basis of its signature;
- g) all the other obligations under the documents at Art. 1 (2).

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

**Art. 11** – The NU shall be entitled to:

- a) refuse to take over at the NTS exit points gas not complying with the quality specifications set by the applicable laws;
- b) dispute the invoice issued by the TSO and request access to data/documents substantiating the relevant invoice;
- c) request the TSO to amend the Contract in case of modification of the circumstances which are at the basis of its signature;
- d) transfer to other NUs the right to use the booked capacity or to fully transfer the rights and obligations related to the booked capacity;
- e) all the other rights under the documents at Art. 1 (2).

**Art. 12** - The NU shall:

- a) pay fully and by the due date the invoices issued by the TSO according to the provisions of the Contract and of the documents at Art. 1 (2);
- b) accept the limitation/interruption of the transmission service according to the Contract;
- c) establish the guarantees under Art. 13 and Art. 14;
- d) all the other obligations under the documents at Art. 1 (2).

## **VIII. – Guarantees**

### **A. General provisions**

**Art. 13** (1) The NU may be exempted from the obligation to establish the financial guarantee under Art. 14 in favour of the TSO if:

- a) it makes the proof of a credit rating issued by one of the rating agencies Standard & Poor's, Moody's or Fitch, at least at the same level as that of the TSO, valid over the Contract duration;
- b) it pays in advance the value of the transmission services according to Art. 5, paragraph (7).

(2) If, during the execution of the Contract the NU's rating or the rating issuing agency according to the provisions of paragraph (1) (a) changes, the NU shall to notify the TSO within 3 days from the occurrence of the change and prove it complies with the contractual provisions on the establishing of the payment guarantees, within no more than 30 form the occurrence of the change.

**Art. 14** – (1) The NU shall submit the payment guarantee in the form of:

- a) bank transfer to the TSO's account in lei or in the euro equivalent at the European Central Bank the day of the collection of the guarantee; and/or
- b) a guaranteed account (collateral deposit), in lei or in the euro equivalent at the European Central Bank on the day the guarantee is issued and/or
- c) an escrow account in lei or in the euro equivalent at the European Central Bank on the day the guarantee is issued.

(2) The TSO shall accept the letter of bank guarantee issued by a bank having a rating granted by one of the rating agencies: Standard & Poor's, Moody's or Fitch, at least at the `investment grade` level. The equivalence between the ratings granted by the three agencies shall be published on the website of the TSO.

**Art. 15** – (1) If the NU provides the letter of good standing in accordance with Art 13, (1) (a), the TSO may request, in certain justified cases, the establishment of a payment guarantee according to Art. 14 or the advance payment of the payment obligations resulting from the commercial relationship with the NU. The request of the guarantee or advance payment shall be provided and explained to the NU in writing.

(2) For the transmission services a justified case is considered the situation in which a NU is in delay payment for an amount representing at least 10% of the value of the last invoice or of the value of the partial payment obligations, after the receipt of a notice from the TSO to that effect.

**Art. 16** – (1) The TSO shall be entitled to execute the guarantees under this chapter unless the NU fulfils its contract obligations completely or partly or if it delays fulfilling such obligations.

(2) Prior to executing such guarantee, the TSO shall notify the NU on the non-fulfilled obligations.

(3) The TSO shall send the guarantee execution notification within 24 hours from the expiration of the due date of the transmission services invoices.

(4) If the guarantee is executed partly or completely, the NU shall re-establish the guarantee in the amount and by the date established in the Contract.

## **B. The yearly and quarterly product**

**Art. 17.** — (1) The NU shall submit to the TSO the payment guarantee indicated in paragraph (2) within no more than 15 working days from the auction closure date.

(2) The payment guarantee provided by the NU shall be equal to twice the average value of the estimated monthly invoices for the transmission services for the following period of use. For several successive yearly capacity products or for several quarterly capacity products, the NU shall establish the payment guarantee for the first period of the first booked capacity product(s). For the following capacity products, the NU shall establish/adjust the payment guarantee at least 5 working days before the start of the period of use of the relevant products.

(3) If the level of the payment guarantee:

a) decreases by more than 5% below the level specified in paragraph (2), the NU shall supplement the financial guarantee accordingly;

b) is by more than 5% above the level specified in paragraph (2), the TSO shall return to the NU the difference between the actual level of the guarantee and the one specified in paragraph (2).

(4) The payment guarantee shall be adjusted within no more than 5 working days from the date of recording of the diminishing/increasing as compared to the level specified in paragraph (2).

(5) The payment guarantee established in accordance with paragraph (2) shall be valid starting from the bank day preceding the transmission service commencement date and shall cease on the 45th calendar day following the expiry date of the Contract.

**Art. 18.** — (1) The NU may waive the option of establishing a transmission service guarantee by making advance payments. In this respect, the NU shall notify the advance payment option the TSO in writing, within no more than 7 working days after the auction closure date.

(2) The advance payment amount shall be equal to the monthly invoice amount for the transmission services for the following period of use, issued according to Art. 6 (2) (b) (i). The advance payment/advance payment invoice shall be compensated with the settlement invoice of the month for which the payment was made.

(3) If such advance payment does not cover the value of the settlement invoice for the relevant month, the difference shall be paid by the NU on the invoice due date.

(4) The NU may waive the advance payment option, subject to the provision of a payment guarantee according to Art. 13 (1) (a) or Art. 14 of the Contract.

## **C. The monthly product**

**Art. 19.** — (1) The NU has the obligation to submit to the TSO the payment guarantee in the amount indicated in paragraph (2) within no more than 5 working days from the auction closure date.

(2) The level of the payment guarantee established by the NU shall be equal to the

value of the estimated monthly invoice for the transmission services for the following period of use.

(3) If the level of the payment guarantee:

a) decreases by more than 5% below the level specified in paragraph (2), the NU shall supplement the financial guarantee accordingly;

b) is by more than 5% above the level specified in paragraph (2), the TSO shall return to the NU the difference between the actual level of the guarantee and the one specified in paragraph (2).

(4) The payment guarantee shall be adjusted within no more than 5 working days from the date of recording of the diminishing/increasing as compared to the level specified in paragraph (2).

(5) The payment guarantee established in accordance with paragraph (1) shall be valid starting from the bank day preceding the transmission service commencement date and shall cease on the 45th calendar day following the expiry date of the Contract.

**Art. 20.** — (1) The NU may waive the option of establishing a transmission service guarantee by making advance payments. In this respect, the NU shall notify the advance payment option the TSO in writing, within no more than 2 working days after the auction closure date.

(2) The advance payment amount shall be equal to the monthly invoice amount for the transmission services for the following period of use, issued according to Art. 6 (2) (b) (i).

(3) The advance payment/advance payment invoice shall be compensated with the settlement invoice of the month for which the payment was made..

(4) If such advance payment does not cover the value of the settlement invoice for the relevant month, the difference shall be paid by the NU on the invoice due date.

#### **D. The daily and within-day product**

**Art. 21.** — The auction guarantee shall become the payment guarantee.

#### **IX. – Confidentiality**

**Art. 22** - (1) The Parties shall keep confidential all data, documents and information obtained during the execution of the Contract.

(2) Notwithstanding the provisions of paragraph (1), confidential data, documents and information shall not include any data, documents and information:

a) known to a contracting Party prior to the date of disclosure by the other contracting Party, or

b) disclosed following receipt of the written consent of the other contracting Party for such disclosure, or which must be produced as a legal duty on disclosure.

(3) The provisions of this Article shall be effective for a period of 5 years from Contract expiration.

(4) Failure to comply with the obligations arising from paragraphs (1) to (3) shall hold liable the Party in default, according to the provisions of the law.

## **X. – Contract liability**

**Art. 23** - (1) Failure to meet by the due date the payment obligation for the gas transmission service invoices shall determine:

- a) delay penalties related to the unpaid amount, , calculated for the outstanding amount, equal to the default interest due for the failure to pay the budgetary obligations by the due date, for each day of delay:
  - (i) starting with the 16th calendar day from the invoice issuing date until its full payment, the payment date included, in case of failure to meet the payment obligation by the due date;
  - (ii) starting with the 6th calendar day from the invoice issuing date for the booked capacity, until its full payment, the payment date included, in case of failure to meet the payment obligation by the due date for the daily and within-day products.

b) the withholding, from the financial guarantee provided, the amount necessary to cover the total or partial payment of the issued invoices;

c) in case of total or partial failure to meet the payment obligation, the limitation/interruption of the gas transmission service, with a prior notice of 3 calendar days, starting with the day following the expiry of the period of 15 calendar days;

d) the limitation/interruption of the gas transmission service, with a prior notice of 3 calendar days, starting with the day following the day when the sum of the NU imbalances exceeds the value of the balancing guarantees.

(2) If the due date is a bank holiday, the dates indicated in paragraph (1) shall be shifted accordingly.

**Art. 24** - (1) The full or partial culpable breach of the contract obligations by the NU, other than the payment obligations, shall entitle the TSO to claim damages, proportionally with the prejudice, according to the applicable law.

(2) The full or partial culpable breach of the contract obligations by the TSO shall entitle the NU to claim damages, proportionally with the prejudice, according to the applicable law.

(3) The debtor of the obligation shall be deemed in default by the meeting of the due dates set for the execution of contractual obligations, except as specifically set forth in this Contract.

## **XI. – Force Majeure/Act of God**

**Art. 25** - (1) Force majeure is an **event** that is **external**, unforeseeable, absolutely invincible and unavoidable, which exonerates the Parties from liability, according to Art. 1351 of the Civil Code.

(2) If the Force Majeure event does not cease within 15 days, for the monthly contracts, and within 30 days for the quarterly and annual contracts, either Party shall be entitled to request the termination of the Contract de jure, without any of the Parties being entitled to claim damages.

(3) The Party claiming Force Majeure shall notify the other Party of such occurrence in writing, within no more than 5 days from the occurrence of the event, and the proof of the Force Majeure shall be communicated within maximum 30 days from such occurrence.

**Art. 26** - (1) Act of God is an event which cannot be foreseen or prevented by the Party which would have been required to respond if the event had not occurred in the conditions of Art. 1351 of the Civil Code.

(2) The Parties are released from liability when the performance of an obligation has become impossible due to circumstances that are not attributable to the party that would have fulfilled it.

## **XII. – Termination**

**Art. 27** - (1) The Contract shall be terminated:

- a) at Contract expiry according to Art. 3;
- b) by the execution of the contractual obligations;
- c) by default termination of the balancing and access to the virtual trading point (VTP) contract concluded between the TSO and the NU
- d) by the agreement of the Parties;
- e) by unilateral termination, in case of bankruptcy, dissolution or liquidation, as applicable, of the contractual partner based on a prior notice;
- f) by unilateral termination, under the conditions of Art. 25 and Art. 26;
- g) by termination, under the conditions of Art. 1552 of the Civil Code.

(2) The termination of the Contract shall bear no effect on the contracting obligations arisen validly during the execution of the Contract, independent of their deadlines.

(3) If the Contract is terminated before the expiry of the term of validity, according to (1) (c), the NU shall pay the TSO the value of the contracted capacity products for the remaining period until the expiration of the contract validity period.

## **XIII. – Notifications**



**Art. 28** - (1) During the execution of the Contract, the Parties shall notify each other, at the address indicted in the preamble of the Contract with regard to any change in the circumstances considered at its signature.

(2) For this Contract, *change in the circumstances* shall mean the application, amendment or cancellation of a normative act regulating completely or partially the Contract.

(3) The notification period shall be of maximum 5 calendar days from the occurrence of the modification, unless otherwise stipulated by the Contract.

(4) The notifications between the Parties may also be sent by fax or e-mail, conditional on the written confirmation of the receipt.

(5) Any written document shall be registered when sent as well as when received.

#### **XIV. – Applicable law and settlement of the disputes**

**Art. 29** - (1) The Contract shall be governed by and construed in accordance with the Romanian law.

(2) The Parties agree to amicably settle any dispute arising in relation to the validity, interpretation, execution and termination the Contract. If not, the disputes shall be referred to the competent Romanian law courts.

#### **XV. – Transfer of Contract**

**Art. 30** - (1) Neither Party shall be entitled to transfer to a third party in any way, totally or partially, its rights and/or obligations established by this Contract except with the written consent of the other Party, which cannot be refused without any justification

(2) The transfer intention notification shall be sent to the other Parties at least 10 working days prior to the intended transfer date.

(3) The notified Parties shall send a reasoned answer within maximum 5 working days from the notification receipt date.

#### **XVI. – Final clauses**

**Art. 31** – The Contract is concluded in Romanian and may be amended or supplemented by written addendum.