



THE BALTIC PIPE PROJECT

OS 2017 CAPACITY AGREEMENT

DRAFT FOR MARKET CONSULTATION

6th December 2016

DRAFT FOR MARKET CONSULTATION

entered into on in Warsaw, by and between :

....., entered into at
number kept by
Tax Identification Number (NIP):;
Statistical number (REGON):, with share capital of PLN..... and the paid up
capital in the amount of.....,
represented by :

1.
2.

hereinafter referred to as the "System User"

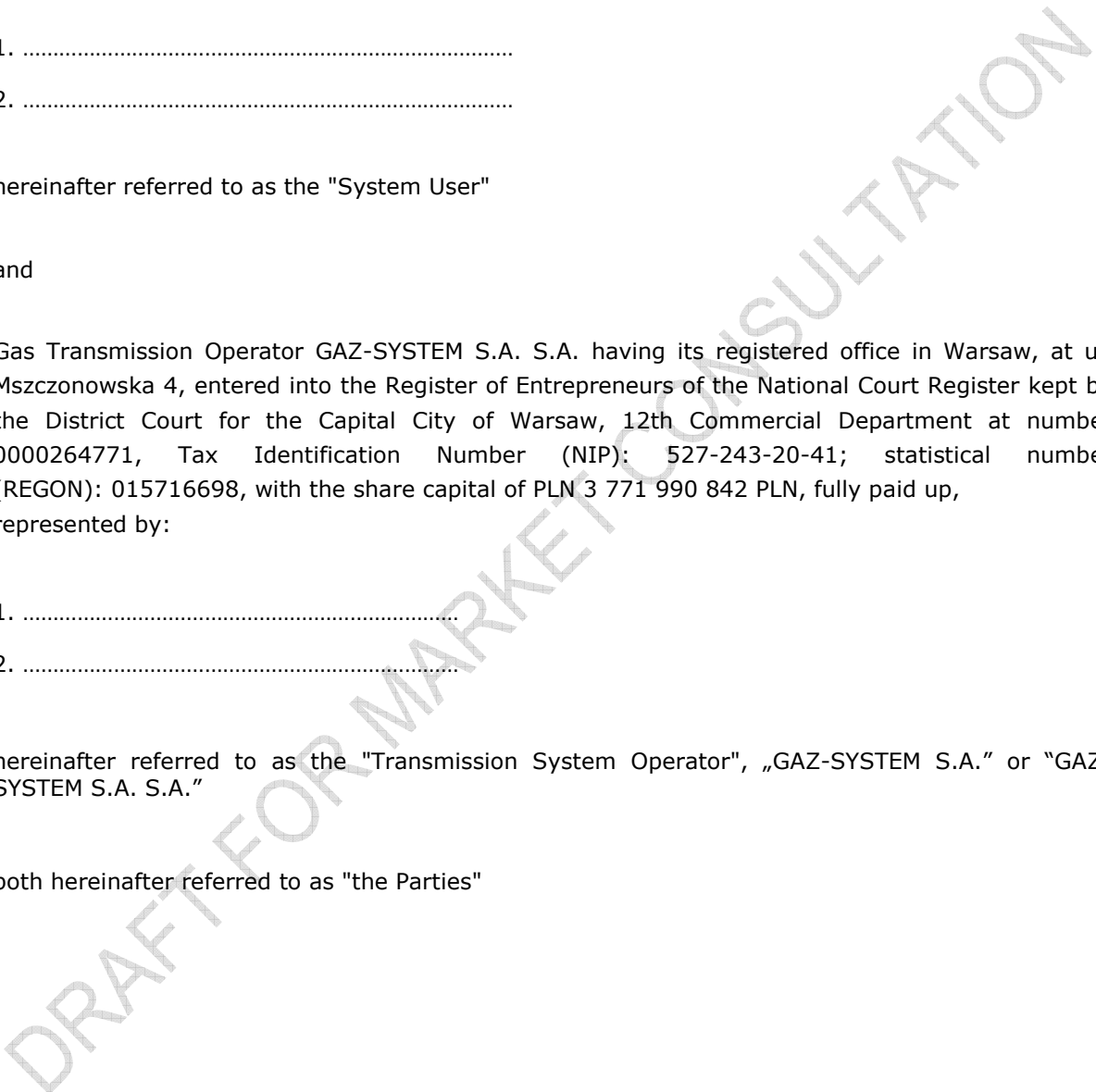
and

Gas Transmission Operator GAZ-SYSTEM S.A. S.A. having its registered office in Warsaw, at ul. Mszczonowska 4, entered into the Register of Entrepreneurs of the National Court Register kept by the District Court for the Capital City of Warsaw, 12th Commercial Department at number 0000264771, Tax Identification Number (NIP): 527-243-20-41; statistical number (REGON): 015716698, with the share capital of PLN 3 771 990 842 PLN, fully paid up,
represented by:

1.
2.

hereinafter referred to as the "Transmission System Operator", „GAZ-SYSTEM S.A.” or “GAZ-SYSTEM S.A. S.A.”

both hereinafter referred to as "the Parties"



Whereas:

1. GAZ-SYSTEM S.A., together with the Danish transmission system operator, Energinet.dk (hereinafter referred to as "Energinet.dk") consider an implementation of an infrastructure project consisting of five components: (i) a Danish upstream tie-in from the Norwegian system in the North Sea to the Danish landing point (or the existing Danish infrastructure), (ii) expansion of the existing west-east capacity in the Danish onshore transmission system, (iii) a compressor station Zealand located on the Danish shore, (iv) an offshore transmission interconnector from Denmark to Poland with the onshore pipeline and the gas receiving terminal, and (v) expansion of GAZ-SYSTEM's S.A. owned Polish onshore transmission system (hereinafter referred to as „Baltic Pipe“). The goal of the Baltic Pipe Project is to connect the production of gas in Norway with the demand for gas in Poland through the Danish offshore and onshore transmission grid and the subsea pipeline between Denmark and Poland;
2. one of the conditions for a positive final investment decision and construction of the Baltic Pipe Project is the reservation by the system users of such amount of bundled capacity of the interconnection point connecting the Polish and Danish transmission systems, created within the Baltic Pipe, which will justify incurring the high costs of building the new transmission infrastructure by GAZ-SYSTEM S.A. and Energinet.dk;
3. the present agreement, concluded in the form of a conditional capacity allocation and transmission ability allocation (PP/PZ) (hereinafter referred to as "Conditional PP/PZ") is concluded as a part of the Open Season 2017 jointly conducted by GAZ-SYSTEM S.A. and Energinet.dk, in the course of which, to a Participant in the Open Season 2017, as a result of the submitted order, the bundled capacity of the Interconnection Point Baltic Pipe was allocated;
4. on the Parties concluded a transmission contract No. (hereinafter: "Transmission Agreement");
5. the Parties has decided to conclude the Conditional PP/PZ taking into account the fact that on the basis of the commitments arising from the System User's Conditional PP/PZ, the GAZ-SYSTEM S.A. conducted a financial analysis of the Baltic Pipe, made a decision on the implementation of the Baltic Pipe Project and begun to incur costs aimed at the implementation of the Baltic Pipe Project;
6. due to the considerable costs of implementation of the Baltic Pipe Project, i.e. the costs of design, construction, commissioning and commencement of operation, the purpose of the Conditional PP/PZ is to cover of those costs of implementation of the Baltic Pipe Project from the transmission fees paid by the System User in exchange for gas transmission services provided by GAZ-SYSTEM S.A. in the Interconnection Point Baltic Pipe. The Parties are aware that the GAZ-SYSTEM S.A. in case of improper performance of the Conditional PP/PZ by the System User may claim reimbursement of expenses incurred for the implementation of the Baltic Pipe Project;
7. the commencement of providing gas transmission services will begin after the Baltic Pipe is built and commissioned along its entire length;

the Conditional PP/PZ was concluded with the following wording:

1 DEFINITIONS

- 1.1 The Parties declare that, unless otherwise defined in the Conditional PP/PZ, any terms defined in the Transmission Agreement, Tariff of GAZ-SYSTEM S.A., TNC of GAZ-SYSTEM S.A. or in the Open Season 2017 Rules (hereinafter the "Rules") have the same meaning in the Conditional PP/PZ.
- 1.2 In case of any discrepancies between the provisions of the Conditional PP/PZ and (i) the Transmission Agreement, or (ii) the TNC of GAZ-SYSTEM S.A., the provisions of the Conditional PP/PZ shall prevail.

2 REPRESENTATIONS AND WARRANTIES

- 2.1 Each Party hereby represents and warrants to the other Party that:

- 2.1.1 it has the ability and authority to enter into the Conditional PP/PZ;
- 2.1.2 he has undertaken all the actions required by law in order to conclude this Conditional PP/PZ;
- 2.1.3 once the Conditional PP/PZ has been concluded, it shall constitute an effective and binding source of obligations of the Party which shall be fully enforceable in relation thereto;
- 2.1.4 both the conclusion and the performance of the Conditional PP/PZ by the Party shall not constitute any breach of any of its obligations (contractual or any other in nature), binding provisions of the law, rulings or administrative decisions binding upon the Party. Any actions in pursuance of the provisions of the Conditional PP/PZ shall not constitute a breach of the provisions of any other contracts, agreements, settlements, decrees, decisions or any other regulations binding upon the Party.

3 THE SUBJECT OF THE CONDITIONAL PP/PZ

- 3.1 The Conditional PP/PZ is an integral part of the Transmission Agreement, it constitutes the capacity (contracted capacity) allocation of the Interconnection Point Baltic Pipe (as an entry/exit point to/from transmission system owned by GAZ-SYSTEM S.A.), in line with point 3.5, and sets out detailed conditions for the provision of gas transmission services in the Interconnection Point Baltic Pipe by GAZ-SYSTEM S.A..
- 3.2 For the issues not regulated in the Conditional PP/PZ, the Transmission Agreement, Tariff of GAZ-SYSTEM S.A., TNC of GAZ-SYSTEM S.A. and Rules apply.
- 3.3 This Conditional PP/PZ shall become effective upon signature by both Parties and shall remain in full force and shall remain valid to the last day of providing the gas transmission services as determined in accordance with point 3.5.
- 3.4 The subject of the Conditional PP/PZ is:
 - 3.4.1 the allocation for the System User of the capacity (contracted capacity) of the Interconnection Point Baltic Pipe (as an entry/exit point to/from transmission system owned by GAZ-SYSTEM S.A.), as determined in point 3.5, including the System User's obligation to pay the fees for the provision of gas transmission services in the Interconnection Point Baltic Pipe;
 - 3.4.2 the obligation of the GAZ-SYSTEM S.A. to provide gas transmission services in the Interconnection Point Baltic Pipe within the scope of the capacity (contracted capacity) determined in point 3.5, in accordance with the Conditional PP/PZ, Tariff of GAZ-SYSTEM S.A., TNC of GAZ-SYSTEM S.A. and the Rules.
- 3.5 On the basis of the Conditional PP/PZ the System User, subject to the provisions of points 4.1 – point 4.6, shall have the right to use the gas transmission services in the Interconnection Point Baltic Pipe in the form of the following capacity (contracted capacity) products:

The direction of gas flow	The period of validity of the capacity (contracted capacity) product (Gas Year)	Type of capacity (contracted capacity)	The amount of capacity (contracted capacity)
Exit capacity from the Polish transmission system (PL->DK)		Firm	
Entry capacity to the Polish transmission system (DK->PL)		Firm	

- 3.6 If, as a result of a postponement of the commencement of the provision of gas transmission services in the Interconnection Point Baltic Pipe, a period of validity of the capacity (contracted capacity) product will be shorter than originally allocated to the System User in accordance with point 3.5, the gas transmission services provided by the GAZ-SYSTEM S.A. will be settled in accordance with the rules set forth in the Tariff of GAZ-SYSTEM S.A. for the yearly capacity (contracted capacity) product.

4 ENTRY INTO FORCE OF THE OBLIGATIONS SPECIFIED IN THE CONDITIONAL PP/PZ

- 4.1 The obligations of the Parties determined in point 3.4 arise under the conditions precedent that until *1ST December 2020* GAZ-SYSTEM S.A. and Energinet.dk shall take positive Final Investment Decisions *[this part will be completed by GAZ-SYSTEM S.A., at the latest in the final version of the GAZ-SYSTEM's S.A. Rules]*.
- 4.2 GAZ-SYSTEM S.A. shall take a positive Final Investment Decision, if:
- 4.2.1 the President of ERO approves the Development Plan of GAZ-SYSTEM S.A. in which the Baltic Pipe Project will be included,
 - 4.2.2 all the approvals, decisions, agreements and permits necessary for the construction and operation of the Baltic Pipe (along the entire length of the course of the Baltic Pipe) are obtained by the relevant party, i.e. GAZ-SYSTEM S.A. or Energinet.dk,
 - 4.2.3 *[this part will be completed by GAZ-SYSTEM S.A., at the latest in the final version of the GAZ-SYSTEM's S.A. Rules]*
- 4.3 GAZ-SYSTEM S.A. will continuously inform the System User on the progress of the implementation of the Baltic Pipe Project. In particular, the GAZ-SYSTEM S.A. shall without undue delay notify the System User on the fulfillment of the conditions precedent set forth in points 4.1 - 4.2.
- 4.4 The date of commencement of providing gas transmission services in the Interconnection Point Baltic Pipe specified in point 3.5 may be changed by GAZ-SYSTEM S.A. in case of delays in the implementation of the Baltic Pipe Project resulting from:
- 4.4.1 difficulties in obtaining all the necessary permissions and/or consents for access to the land where the construction works will take place, in particular due to the need of holding court proceedings with the aim of establishing the owners of the land;
 - 4.4.2 delay of any public authorities responsible for granting the permissions or administrative decisions necessary for the construction of the Baltic Pipe, beyond the periods determined in the applicable provisions of the law;
 - 4.4.3 delays in obtaining the approvals for the intersection of the Offshore Interconnector with the existing subsea infrastructure;

- 4.4.4 any actions aiming at environmental protection, undertaken as a result of an unforeseeable threat to the environment, beyond the control of GAZ-SYSTEM S.A., in particular the threat to endangered species of plants or animals discovered on the site;
- 4.4.5 appeals, prosecutions and other legal remedies submitted by the parties to administrative proceedings, including environmental organizations, causing delays in obtaining the necessary administrative permits or decisions;
- 4.4.6 unforeseeable physical conditions, i.e. natural physical conditions and man-made and other physical obstructions and pollutants, encountered at the site when executing the works aimed at implementation of the Baltic Pipe, including sub-surface and hydrological conditions but excluding climatic conditions;
- 4.4.7 geological or archaeological reasons, i.e. all fossils, coins, articles of value or antiquity, and structures and other remains or items of geological or archaeological interest found on the site which may cause a delay of Baltic Pipe construction;
- 4.4.8 exceptional temperature or climatic conditions, which were not present in the last ten years at the site;
- 4.4.9 actions of the public institutions and third persons which are extraordinary and has a material impact for fulfilment of GAZ-SYSTEM's S.A. obligations in due time and which are beyond the reasonable control of GAZ-SYSTEM S.A. and occur without the fault or negligence of GAZ-SYSTEM S.A.;
- 4.4.10 force majeure;
- 4.4.11 circumstances affecting the implementation of the Baltic Pipe Project, which are not applicable to GAZ-SYSTEM S.A.;
- 4.4.12 any change in applicable law, i.e. the law of Poland of any other country through whose territory the Baltic Pipe runs, between the date of conclusion of the Conditional PP/PZ and the date of commencement of Baltic Pipe operation, affecting the implementation of the Baltic Pipe Project;
- 4.4.13 conflict with the planned or simultaneously carried out investments or construction works of GAZ-SYSTEM S.A., caused by the reasons beyond the influence of GAZ-SYSTEM S.A.;
- 4.4.14 unforeseeable shortages in the availability of personnel or constructions materials, caused by epidemic or governmental actions.

In such case, GAZ-SYSTEM S.A. shall promptly inform the System User about a new date of commencement of providing gas transmission services in the Interconnection Point Baltic Pipe by GAZ-SYSTEM S.A.

- 4.5 Notwithstanding the provisions of point 4.4, the commencement date for providing gas transmission services in the Interconnection Point Baltic Pipe determined in accordance with the provisions of points 3.5 and 4.4, may be changed (postponed) by GAZ-SYSTEM S.A. by no more than (.....) months, i.e. until 1 October, by written notice to the System User. Such notice, specifying the cause of the postponement and the new commencement date for providing gas transmission services in the Interconnection Point Baltic Pipe will be sent to the System User at least six (6) months before the commencement date for providing gas transmission services in the Interconnection Point Baltic Pipe established in accordance with the provisions of points 3.5 and 4.4. In such case, the date will be automatically changed according to the notice of GAZ-SYSTEM S.A., and the System User will not be entitled in this respect to any claims. For the avoidance of doubt, a statement to postpone the commencement date for providing gas transmission services in the Interconnection Point Baltic Pipe may be submitted more than one (1) time, provided that the total period for which the commencement date for providing gas transmission services in the Interconnection Point Baltic Pipe will be postponed, does not exceed (.....) months. The System User shall have no claim against GAZ-SYSTEM S.A. for such postponement of the commencement date for providing gas transmission services in the Interconnection Point Baltic Pipe. *this part will be completed by GAZ-SYSTEM S.A., at the latest in the final version of the GAZ-SYSTEM's S.A. Rules*
- 4.6 For the avoidance of any doubts, a delay of the commencement date for providing gas transmission services in the Interconnection Point Baltic Pipe outside the date set forth in

point 3.5, caused by any situation determined in points 4.4 and 4.5, does not give the System User the right to terminate the Conditional PP/PZ.

5 LIABILITY

- 5.1 Subject to the provisions of points 5.2 - 5.4, the Parties shall be liable towards each other for any culpable non-performance or improper performance of the Party's obligations determined in the Conditional PP/PZ, unless the circumstances excluding the liability of the Party occur, in particular the circumstances referred to in points 4.4 and 4.5.
- 5.2 GAZ-SYSTEM S.A. shall not be liable for loss of profit of the System User, as well as for any special, indirect or consequential damages of the System User, resulting from or arising out of this Conditional PP/PZ.
- 5.3 The liability of GAZ-SYSTEM S.A. for direct losses of the System User shall be limited to PLN for the whole contractual period. *[this part will be completed by GAZ-SYSTEM S.A., at the latest in the final version of the GAZ-SYSTEM's S.A. Rules]*
- 5.4 The liability of GAZ-SYSTEM S.A. for any gas day of delay in the commencement of providing gas transmission services outside the date determined on the basis of the provisions of points 3.5, 4.4 and 4.5, shall be limited to the amount calculated in line with the following formula :

$$X = (Y - Z) * n$$

where:

X – the liability limit of GAZ-SYSTEM S.A.,

Y – the net cost of acquisition of 1 MWh, calculated on the basis of TGEgasID index (volume weighted average price from all transactions of Towarowa Giełda Energii session of the Intraday Market (RDB G), related to the given gas day), as published on the website of Towarowa Giełda Energii;

Z – the cost of acquisition of 1 MWh on the Norwegian market related to the present gas day, equal to the average purchase price of 1 MWh on the Norwegian market determined in the gas purchase contract concluded by the System User, increased by: (i) the costs of gas transportation from Norwegian sources, through the Baltic Pipe to the Polish Virtual point within the meaning of the TNC of GAZ-SYSTEM S.A., and (ii) any public fees, including customs duties. The transportation costs shall be determined on the basis of applicable tariffs or price lists, and in the absence of such, on the basis of the indicative tariff rates, as published by the relevant transmission system operators;

n - amount of MWh, the purchase of which was indispensable in the given gas day to cover the demand of consumers of the System User due to delay in the construction of the Baltic Pipe.

6 CONDITIONAL PP/PZ TERMINATION

- 6.1 The Conditional PP/PZ can be terminated only on the terms specified in this clause 6.
- 6.2 Due to the special nature of this Conditional PP/PZ, containing a commitment of GAZ-SYSTEM S.A. to implement the Baltic Pipe Project in order to provide gas transmission services in the Interconnection Point Baltic Pipe in accordance with the provisions of point 3.5 for a fixed period, subject to the provisions of points 6.5 - 6.8 of the Conditional PP/PZ, the Parties do not have the right to terminate or withdraw from the Conditional PP/PZ before the expiry of the period in which the gas transmission services should be provided to the System User in accordance with point 3.5. In particular, the Parties agree that for the termination of Conditional PP/PZ the provisions of the Transmission Agreement, TNC of GAZ-SYSTEM S.A. or Tariff of GAZ-SYSTEM S.A. do not apply.
- 6.3 If, on the basis of the generally applicable law, any change of provisions of the TNC of GAZ-SYSTEM S.A. is introduced, the obligation to apply such new provisions does not give the Parties the right to terminate the Conditional PP/PZ. The revised TNC of GAZ-SYSTEM S.A.

after its entry into force will become a part of the Conditional PP/PZ which results in a duty to apply it as amended.

- 6.4 If, on the basis of the generally applicable law, a change of the rates or prices specified in the Tariff of GAZ-SYSTEM S.A. or the conditions of application of the Tariff of GAZ-SYSTEM S.A. is introduced, the obligation to apply such new rates, prices or conditions of application in a modified form does not give the Parties the right to terminate the Conditional PP/PZ. The revised Tariff of GAZ-SYSTEM S.A. after its entry into force will become a part of the Conditional PP/PZ which results in a duty to apply it as amended.
- 6.5 The Conditional PP/PZ can be terminated by GAZ-SYSTEM S.A. if any of the conditions precedent specified in point 4.1 is not fulfilled.
- 6.6 The Conditional PP/PZ can be terminated at any time by a written agreement of the Parties.
- 6.7 Due to the fact that the Baltic Pipe Project is implemented on the request of the System User, and the Conditional PP/PZ is the basis for the implementation and securing the return of the costs of implementation of the Baltic Pipe Project, GAZ-SYSTEM S.A. and the System User may terminate the Conditional PP/PZ after the commissioning of the Baltic Pipe and the commencement of providing gas transmission services in the Interconnection Point Baltic Pipe, only for good cause as indicated below, with two (2) months' notice:
- 6.7.1 System User has the right to terminate the Conditional PP/PZ due to:
- 6.7.1.1 failure of the GAZ-SYSTEM S.A. to perform the services specified herein for the period of one hundred twenty (120) consecutive days;
 - 6.7.1.2 breach by the GAZ-SYSTEM S.A. of any material provisions of the TNC of GAZ-SYSTEM S.A., Tariff of GAZ-SYSTEM S.A. or this Conditional PP/PZ and a failure to remove such breach in a reasonable time;
- 6.7.2 GAZ-SYSTEM S.A. has the right to terminate the Conditional PP/PZ due to:
- 6.7.2.1 when the System User is in payment default for at least a three (3) months after the date such payment was due, despite a prior written notice of the intention to terminate this Conditional PP/PZ and setting of an additional deadline of sixty (60) days for the payment of the outstanding and current obligations, and the System User has failed to pay all current and outstanding obligations within the next thirty (30) days after the lapse of the deadline;
 - 6.7.2.2 a failure to provide the financial security in line with the Rules;
 - 6.7.2.3 a failure by the System User to observe the gas curtailment measures that have been introduced in accordance with the valid provisions of the law or provisions of the TNC of GAZ-SYSTEM S.A.;
 - 6.7.2.4 in case of breach by the System User of any material provisions of the TNC of GAZ-SYSTEM S.A., Tariff of GAZ-SYSTEM S.A. or this Conditional PP/PZ and a failure to remove such breach in a reasonable time.
- 6.8 Each Party shall have the right to terminate the Conditional PP/PZ immediately if circumstances of force majeure or removal of the effects of the force majeure acting on the Baltic Pipe will last for more than one hundred twenty (120) days. The Party shall have the right to terminate the Conditional PP/PZ, if the reasons which led to its termination were the result of force majeure acting on the Baltic Pipe.
- 6.9 Apart from the situations set forth in points 6.5 - 6.8, the Parties waive their right to terminate or withdraw from the Conditional PP/PZ before the expiry of the period in which the gas transmission services should be provided to the System User in accordance with point 3.5.
- 6.10 In the event of termination or expiry of the Conditional PP/PZ, in particular due to termination:
- 6.10.1 by the System User for reasons other than those specified in point 6.7.1 or 6.8, in particular: (i) in connection with the introduction of new conditions of the application of the Tariff of GAZ-SYSTEM S.A., (ii) in the cases provided for in the TNC of GAZ-

SYSTEM S.A., or (iii) in accordance with the Energy Law (i.e., Journal of Laws of 2012. Item. 1059, as amended.) or other binding provisions of law,

6.10.2 by GAZ-SYSTEM S.A. for good reason referred to in points 6.7.2.1 - 6.7.2.4,

the System User is obliged to cover the relevant fraction of the realization costs borne by GAZ-SYSTEM S.A. to implement the Baltic Pipe Project in the amount calculated in accordance with points 6.11 - 6.13. If the damage of GAZ-SYSTEM S.A. exceeds the amount of the refund calculated in accordance with points 6.11 - 6.13, the GAZ-SYSTEM S.A. has the right to claim damages exceeding the amount of the due refund.

6.11 The method of calculation of the realization costs borne by GAZ-SYSTEM S.A. to implement the Baltic Pipe Project, which the System User is obliged to cover shall be the following:

$$K = C \times M \times F$$

where:

K - the amount of expenditures incurred by GAZ-SYSTEM S.A. to implement the Baltic Pipe Project which the System User is obliged to cover, in PLN,

C - sum of the expenditures incurred by GAZ-SYSTEM S.A. and the estimated expenditures which GAZ-SYSTEM S.A. is obliged to incur to implement the Baltic Pipe Project, in PLN, in particular any damages for the contractors of the engineering and construction of the Baltic Pipe or other transmission system operators along the Baltic Pipe route,

M - ratio of the sum of capacity (contracted capacity) allocated to the System User in accordance with point 3.5 within the Procedure in the period of its duration, to the sum of the total amount of capacity of the Interconnection Point Baltic Pipe, allocated within the Open Season 2017 in the period of its duration,

F - ratio of the combined level of capacity for which realization of the Baltic Pipe Project will be economically justified, to the sum of the total amount of capacity of the Interconnection Point Baltic Pipe, offered within the Open Season 2017 in the period of its duration.

6.12 The amount of the realization costs incurred by GAZ-SYSTEM S.A. to implement the Baltic Pipe Project which the System User is obliged to cover, shall be adjusted, once when the Baltic Pipe is commissioned, proportionally to the difference, irrespective whether positive or negative, between the planned realization costs and the actual realization costs incurred by GAZ-SYSTEM S.A. to implement the Baltic Pipe Project.

6.13 If the termination of the Conditional PP/PZ by the System User is done within the period after the commencement of providing gas transmission services, the amount of the costs determined in accordance with the point. 6.11 and 6.12, will be reduced proportionally, at the time of submitting the notice of termination, in accordance with the following formula:

$$SK = K \times (1 - R/Z)$$

where:

SK - adjusted amount of the expenditures of the realization costs incurred by GAZ-SYSTEM S.A. to implement the Baltic Pipe Project, which the System User is obliged to cover, in PLN,

K - 100% of expenditures and the implementation costs incurred by GAZ-SYSTEM S.A. to implement the Baltic Pipe Project, which the System User is obliged to cover, in PLN, determined in accordance with point 6.11 and 6.12,

R - sum of capacity allocated to System User and performed in the period from commencement of transmission services of gaseous fuel, until the time of submitting the notice of termination,

Z - sum of capacity (contracted capacity) allocated to the System User in the period of its duration.

- 6.14 GAZ-SYSTEM S.A. has the right to draw against reimbursement referred to in point 6.10, the amount of the financial security submitted by the System User in accordance with the Rules.
- 6.15 For the avoidance of any doubts the Parties agree that the termination of the transmission contract concluded as the result of the Open Season 2017 with Energinet.dk does not affect the validity of the Conditional PP/PZ.

7 FINANCIAL SECURITY

- 7.1 The Parties confirm that the System User has submitted a financial security in order to secure the claims of GAZ-SYSTEM S.A. resulting from the Conditional PP/PZ in the form and in the amount determined in the Rules.
- 7.2 If the financial security was submitted by the System User in the form of a bank guarantee with expiry date shorter than two (2) months after the end of the sixth Gas Year in which GAZ-SYSTEM S.A. will provide transmission services to the System User in line with point 3.5, the System User shall be obliged to renew the submitted bank guarantee within fourteen (14) days prior to the expiry of its validity, by submitting financial security in the form compatible with the requirements of the Rules, in the amount equal to the expiring bank guarantee.
- 7.3 The Non-Secured Credit Line shall be subject to annual review by the Parties. The review shall be conducted in June, from the first calendar year from the conclusion of the Conditional PP/PZ. In case the System User's credit rating or equity capital is reduced in the given year, the relevant Participant shall be obliged to submit to GAZ-SYSTEM S.A. relevant documents evidencing its' credit rating or equity capital and to provide an additional first demand bank guarantee or cash collateral, covering any shortfall created by the change. The additional financial security shall be submitted to the GAZ-SYSTEM S.A. in line with the requirements determined in the Rules.
- 7.4 Subject to an annual review of the Non-Secured Credit Line as described in point 7.3, a financial security submitted by the System User shall be reduced by fifty per cent (50%) after the first full Gas Year of the System User obtaining gas transmission services from GAZ-SYSTEM S.A. in line with point 3.5, and by a further ten per cent (10%) in each of the following five (5) Gas Years, until being finally released.
- 7.5 Submission of financial security in accordance with the Rules, releases the System User from the obligation to submit the financial security specified in the Transmission Agreement, regarding the financial liability arising from the Conditional PP/PZ, within the period when the financial security, submitted on the basis of the Rules, is valid. After this financial security is released in total to the System User, in line with the Rules, the System User shall be obliged to submit the financial security specified in the Transmission Agreement regarding the financial liability arising from the Conditional PP/PZ as applicable at a given time.

8 SETTLEMENT

- 8.1 If the System User does not use the transmission services in the Interconnection Point Baltic Pipe provided on the basis of this Conditional PP/PZ, in particular due to a lack of supply of gas from the Norwegian sources, lack of sufficient storage capacity, lack of capacity in cooperating systems, the System User will be required to pay all the charges of a fixed nature, in accordance with the Tariff of GAZ-SYSTEM S.A. or relevant price list of GAZ-SYSTEM S.A., until the expiry of the period in which the gas transmission services should be provided to the System User in accordance with point 3.5.
- 8.2 In the absence of legal regulations concerning the fixing of tariffs, the fees for the provision of gas transmission services will be calculated according to the provisions of the Act of 10 April 1997 - Energy Law (consolidated text Journal of Laws from 2012, pos. 1059, as amended) and the Regulation of the Minister of Economy of 28 June 2013 on the detailed rules and calculating tariffs and settlements in gaseous fuels (Journal of Laws from 2013, pos. 820) as in force on the date of the Conditional PP/PZ.

9 TRANSFER OF RIGHTS AND OBLIGATIONS ARISING FROM THE CONDITIONAL PP/PZ

- 9.1 Transfer of rights and obligations arising from the Conditional PP/PZ to a third party requires for its validity the written consent of the other Party, subject to point. 9.2 and 9.3 below.
- 9.2 The GAZ-SYSTEM S.A. has the right to transfer its' rights and obligations arising from the Conditional PP/PZ on the entity acting as the operator of the transmission system on the Polish territory, on the basis of a binding decision by the President of the Energy Regulatory Office.
- 9.3 After the commissioning of the Baltic Pipe and the commencement of providing gas transmission services in the Interconnection Point Baltic Pipe, the System User shall have the right to resell or make available the capacity (contracted capacity) reserved in accordance with point 3.5, subject to the terms set forth in the TNC of GAZ-SYSTEM S.A..

10 FINAL PROVISIONS

- 10.1 As long as the present Conditional PP/PZ remains in force, neither of the Parties is entitled to terminate the Transmission Agreement. The Parties hereby agree, that the provisions of the Transmission Agreement regulating the right to terminate the Transmission Agreement do not apply within this period.
- 10.2 Any change of the Conditional PP/PZ requires an annex in writing under the pain of nullity.
- 10.3 An integral part of the Conditional PP/PZ are the Open Season 2017 Rules.

Signatures of the Parties

GAZ-SYSTEM S.A.

System User