



## Network User Membership Agreement

*Annex I. of the Capacity Booking Rules for the European  
Union Interconnection Points of DESFA SA*



**Network User Membership Agreement for the Usage of the Capacity  
Booking Platform (Regional Booking Platform) for the European Union  
Interconnection Points of DESFA SA**

Hereinafter referred to as **Agreement**,

entered into between,

**FGSZ - Földgázt szállító Zártkörűen Működő Részvénytársaság**

Seated: H-8600 Siófok, Tanácsház u 5.

Postal address: H-8600 Siófok, Tanácsház u. 5. (P.o. Box 102.)

Account keeping financial institution: OTP Bank Nyrt.

Bank account number: HU21 1176 3945 0141 8888 0000 0000

SWIFT code: OTPVHUHB

Statistic code: 12543331-4950-114-14

VAT number: 12543331-2-14

Company registration no.: 14-10-300230 Registered at Kaposvári Törvényszék

referred to as **RBP Operator**

**and**

Seated:

Postal address:

Account keeping financial institution:

Bank account number:

Statistic code:

VAT No.:

Company registration no.:

to as **Network User Member**

referring together as: **Parties**

signed on the date and place below, with the following terms and conditions.

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## 1. Subject of the Agreement

The Regional Booking Platform (hereinafter RBP) allocates standard and non-standard bundled and unbundled capacity products on behalf of TSO Members to Network User Members all entry and exit points as listed on RBP's official website (<https://rbp.eu>) through the RBP Application, as well as it provides secondary capacity trading market and other services.

- 1.1. The RBP Operator undertakes to provide access for Network User Members to the RBP Application.
- 1.2. The RBP Operator provides Network User Members with the service to bid for capacity products as unbundled or bundled capacity product complying with the CAM NC.
- 1.3. FGSZ acts as the RBP Operator as well as TSO Member without any separate agreement. FGSZ declares that no conflict of interest exists in this regard. The Network User Member acknowledges the aforementioned declaration.
- 1.4. The Network User Member acknowledges that RBP might be expanded and developed by the RBP Operator.
- 1.5. The definitions used in the Agreement are those of the Capacity Booking Rules.

## 2. Rights and Obligations of RBP Operator

- 2.1. It is the right and the obligation of the RBP Operator to elaborate and maintain the Capacity Booking Rules, ensuring full compliance with CAM NC at all times.
- 2.2. The RBP Operator shall be obliged to provide the Network User Members upon their request with access to the RBP Application as defined in the CAM NC and the Capacity Booking Rules.
- 2.3. RBP Operator shall be obliged to automatically take into account the necessary regulatory changes when developing RBP. This shall be carried out within the framework of the RBP Operator's established development and change request protocol.
- 2.4. The RBP Operator acknowledges its obligation to ensure RBP's continuous operation: 24 hours availability per 7 days a week. The list of the hardware and software essential for the operation of the RBP as well as the BCP (Business Continuity Plan) and DRP (Disaster Recovery Plan) processes are accessible on the RBP portal under the Information Technology Provisions. The RBP Operator shall be entitled to fulfil its contractual obligations arising from this Agreement via subcontractors as well.
- 2.5. The RBP Operator's obligation to ensure RBP's continuous operation shall exist within the framework of the current state of technology and the technological availability of RBP. The RBP Operator shall be entitled to reduce or suspend the availability of different functions and services of RBP in cases of technical error or perturbation, including without limitation interruption of power supply and telecommunication networks, breakdown of RBP caused by hardware or software error within or outside of RBP. The RBP Operator shall notify immediately the affected TSO Members and Network User Members. The RBP Operator shall make all necessary efforts within the limits of what is economically justifiable in order to restore all functions and services of RBP within the

shortest possible time. Network User Members' rights and obligations using RBP shall be considered as lifted in such cases.

- 2.6. The RBP Operator shall operate RBP as stipulated in the Capacity Booking Rules and the Information Technology Provisions.
- 2.6.7. Network User Members access RBP on a certificate-based, personalised access. Legal or natural persons willing to apply for Network User Member representative or Network User Member controller access to RBP's services, as stipulated in the Capacity Booking Rules, shall complete the Network User Member Registration Form available on RBP Portal accordingly.
- 2.6.8. Network User Members' access to the capacity auctions of TSO Members depends on the validation by the respective TSO Member(s), according to the Capacity Booking Rules and the relevant national regulatory framework of the TSO Member.
- 2.6.9. The RBP Operator acknowledges and provides that Network User Members' access rights to RBP and bidding rights on the relevant RBP auctions validated by relevant TSO Members at the network point cannot be denied by the RBP Operator itself.
- 2.6.10. The RBP operator guarantees that from RBP no harmful content will enter into the Network User Members' information systems. RBP is free from any malevolent software (virus malware, spyware etc.) and it is protected by professional anti-virus and firewall solutions as detailed in the Information Technology Provisions.
- 2.6.11. The RBP operator guarantees the management and protection of all confidential or sensitive data. Confidential information shall only be accessible by the relevant Party or Parties and the relevant TSO Member(s).
- 2.6.12. In case of allocating unbundled capacities, the RBP Operator shall act according to the relevant TSO Member's decision.
- 2.6.13. In case of allocating bundled capacities, the RBP Operator shall process unbundled firm capacities uploaded by TSO Members who provide capacity at a specific IP, and bundle them into bundled capacity according to the Capacity Booking Rules Capacity Booking.
- 2.6.14. The RBP Operator acting as the agent of the TSO Member(s) shall organize and conduct ascending clock and uniform price capacity auctions in accordance with the Capacity Booking Rules and the Auction Calendar. The RBP Operator shall publish the agreed Auction Calendar on the RBP Portal and in the RBP Application as well.
- 2.6.15. In the ascending clock and uniform price capacity auctions, the RBP Operator acts as the agent of the TSO Member(s). Acting within this role, the RBP Operator offers the capacity products to Network User Members and announces the result of the auctions on behalf of the TSO Member(s).
- 2.6.16. The RBP Operator shall keep the RBP Application in appropriate conditions to receive, check and process auction bids from validated Network User Members as detailed in the Capacity Booking Rules.
- 2.6.17. The RBP Operator shall allocate capacities to Network User Members according to the result of the relevant ascending clock auction (annual yearly, annual quarterly, rolling quarterly and rolling monthly auctions) or uniform price auction (rolling day-ahead and within-day auctions).

- 2.6.18. The RBP Operator provides secondary capacity trading and other services for the Network User Members, if applicable.
- 2.6.19. The RBP Operator shall announce the results of the capacity auctions and inform the Network User Members and TSO Member(s) according to the Capacity Booking Rules.
- 2.21. The Auction Result Confirmation shall be considered the only official and authentic way of announcement of the capacity allocated via the given auction. The RBP Auction Confirmation shall be a document digitally signed by RBP Operator. All relevant terms and conditions other than those disclosed in the Auction Result Confirmation are subject to the applicable national regulation of the relevant TSO Member
- 2.6.19.22. The RBP Operator shall keep an archive of data and documents generated during the registration, and auction processes relevant to the Network User Members, including the Auction Result Confirmations for 15 calendar years, at least.
- 2.6.19.23. Network User Members shall be informed of the list of TSO Members, network points and capacity products allocated via the RBP. This information shall be available on the RBP Portal.
- 2.6.19.24. The RBP Operator, as agent of the TSO Members operates the RBP Application and shall be in charge of the regular operation of the auction processes, including the announcement of the results as well. Except for the TSO Member operating the RBP, the RBP Operator shall not be responsible for any question and decision within the authority of the TSO Members, and shall expressly not be responsible for contractual terms and conditions established between the TSO Members and Network User Members.

### 3. Capacity Booking Rights and Obligations of Network User Members

- 3.1. Legal entities and natural persons shall be entitled to register themselves on RBP as Network User Member. By signing the present Agreement, the Applicant Network User expressly accepts and agrees with the terms and conditions stipulated in the Capacity Booking Rules
- 3.2. Should the registration data of the Network User Member change, it is to be provided to the RBP Operator without undue delay.
- 3.3. Registered Network User Member shall be entitled to register their representatives (natural persons) acting on behalf of the respective Network User Member on the RBP.
- 3.4. Registered Network User Member shall undergo a validation procedure conducted by TSO Member(s) in order to be able to participate in capacity auctions.
- 3.5. Network User Member validated by the relevant TSO Member(s) operating a given entry/exit point - let it be either physical or virtual - shall be entitled to access the capacity auctions run for the relevant entry/exit point and place, modify and withdraw bids for the relevant auctions run by the RBP Operator. Network User Member's bidding activity shall be limited by the financial limit set by the relevant TSO Member(s).
- 3.6. Once the relevant bidding round closes, and Network User Members have valid bid or bids, such bid(s) shall become irrevocable binding commitments to book capacity to the

- amount requested per announced price, provided the clearing price of the auction is that announced in the relevant bidding round.
- 3.7. The Network User Member accepts that capacity products shall be offered and allocated on the RBP Application via the applicable auction procedures.
  - 3.8. Network User Member shall guarantee that from the Network User Member's information systems no harmful content will enter into RBP Operator's information systems and no activity reducing the business and IT operations of RBP is undertaken by the Network User Member.

#### 4. Development and Change Request Management on RBP

- 4.1. Network User Members and TSO Members of the RBP have the right to request development of new functions or to propose changes to existing functions with regard to the functionality and services of the RBP.
- 4.2. TSO Members or Network User Members may submit such requests individually or collectively at any time.
- 4.3. Change requests submitted by Network User Members shall be approved first by the respective TSO Member(s) and then processed by the RBP Operator. No change shall be implemented by the RBP Operator before the above mentioned approval is granted.
- 4.4. The RBP Operator is obliged to examine the development or change request and provide information in written form about its:
  - a) feasibility,
  - b) implementation time,
  - c) cost.
- 4.5. The TSO Member(s) or Network User Member(s) shall decide and notify the RBP Operator in a written notice whether to sustain their development or change request or to abandon it based on the information provided by the RBP Operator.
- 4.6. The costs of the development or change request shall be attributed individually or collectively, as appropriate, to the TSO Member(s) or Network User Member(s) submitting and sustaining the development or change request, unless such development or change is considered to be reasonable according to current market criteria. In such cases other TSO Member(s) or Network User Member(s) may join the financing.
- 4.7. The RBP Operator shall define an Annual Development Plan to address and schedule the general development needs and specific TSO Members' and Network User Members' requirements. Development and change requests have to be sent to the RBP Operator by the 30th of September of each calendar year in order to be included in the next Annual Development Plan. RBP Operator shall finalise the Annual Development Plan by the 31st of December of each calendar year. The Annual Development Plan shall consist of:
  - a) the reasoning for the proposed changes,

- b) the technical prerequisites of the implementation (if any),
  - c) the implementation time,
  - d) the cost and benefit analysis, and
  - e) a proposal of cost allocation based on the cost and benefit analysis
- 4.8. If the implementation of the Annual Development Plan would result in an increase of the RBP access and usage fee, the TSO Member shall be entitled to approve the final version of the Annual Development Plan. In case there is no increase of RBP access and usage fee, the Annual Development Plan shall be considered as automatically accepted.
- 4.9. TSO Members and Network User Members of the Regional Booking Platform have the right to request development of new functions or to propose changes to existing functions with regard to the functionality or services of the Regional Booking Platform outside the Annual Development Plan as well.
- 4.10. Upon the receipt of any change request, in each and every case, the RBP Operator shall prepare a feasibility study if the change request was not already scheduled in the Annual Development Plan. The TSO Member(s) or Network User Member(s) shall decide and notify the RBP Operator in a written notice whether to sustain their development or change request or to abandon it, based on the information provided by the RBP Operator. The feasibility assessment shall contain:
- a) the technical prerequisites of the implementation (if any),
  - b) the implementation time,
  - c) the cost and benefit analysis, and
  - d) a proposal of cost allocation based on the cost and benefit analysis. Functions that can be attributed to one or a limited number of individual beneficiaries and / or that are not prescribed by European regulations are financed by the originator(s) of the development request.
- 4.11. The RBP Operator is obliged to examine the development or change request and provide information in written form about the its:
- a) feasibility,
  - b) implementation time,
  - c) cost.
- 4.12. No expansion and development of the RBP, that adversely affects the platform's functionalities used by the TSO Member, shall take place without the prior agreement of the TSO Member.

## 5. Fees and Expenses

Capacity allocation via auctions and related information provision services on RBP are free of charge for registered Network User Members, according to their access rights,

In case the operation of RBP shall be expanded with further functions and services, the RBP Operator, in accordance with the decision of the TSO Members, shall be entitled to propose fees for additional functions and services.



## 6. Provisions for Operating Hardware and Software Solutions, IT Security and Copyright

- 6.1. The RBP Operator shall ensure the continuous availability and protection of the RBP Application and the RBP Portal and its system elements as well as the confidentiality, integrity and availability of data processed and handled on the RBP Application.
- 6.2. While carrying out this responsibility, the RBP Operator shall act as detailed in Information Technology Provisions.
- 6.3. The general structure, software, texts, know-how and more generally all information and content disclosed under this Agreement are the property of FGSZ Ltd. or FGSZ Ltd has the exclusive rights to use or exploitation.
- 6.4. Any unlicensed use, modification, reproduction, distortion, of all or part of RBP Application and the RBP Portal, constitutes an infringement that may involve legal proceedings.
- 6.5. This Agreement does not grant any license for the use of general structure, software, texts, know-how and more generally any information content belonging to the property of FGSZ Ltd or is in FGSZ Ltd's exclusive rights to use or exploit according to paragraph 6.3.

## 7. Limitation of Liability

- 7.1. The Parties expressly acknowledge, accept and agree that:
- The RBP Operator is liable for conducting capacity allocation procedures and communicating the results thereof to the TSO Member and the Network User Member(s),
  - The RBP Operator is not liable for any subject contractual or otherwise legal relationship between the TSO Member and Network User Member(s) and the TSO Member and other TSO Member(s), and/or its Network User Member(s)
  - The RBP Operator is not liable for any subject contractual or otherwise legal relationship between the upstream TSO Member providing the exit capacity part of the bundled capacity product and Network User Member for the exit point and between the downstream TSO Member providing the entry capacity part of the bundled capacity product and Network User Member for the entry point
  - Each Party's liability is to be interpreted exclusively in the context mentioned in Article 7.1. a)–c).
- 7.2. It is the Network User Member's responsibility to ensure the safe operation of its own information technology systems and the protection of the data stored therein.
- 7.3. Notwithstanding the provisions of paragraphs 2.4, 2.5 and 2.10 of the present agreement, the RBP Operator shall not be liable:
- for any damage as a result of Force Majeure as per article 10 hereof
  - in case of:
    - RBP malfunction / RBP maloperation / RBP misuse, upon proof that it has been the result of an action or omission solely attributable to the Network User Member,
    - delay of information transmission by the Network User Member, upon declaration that it has not been the result of an action or omission solely attributable to the RBP Operator,

- computer viruses, upon declaration that it has not been the result of an action or omission solely attributable to the RBP Operator,
- software error outside of RBP, Internet network, or other error of technical kind, upon declaration that it has been the result of an action or omission which is not attributed to the RBP Operator,
- power line or system error, upon declaration that it has been the result of an action or omission which is not attributed to the RBP Operator.

7.4. With the exception of wilful misconduct, gross negligence or criminal offence, neither party shall be liable for any indirect or consequential damages (loss of profit, loss of use, loss of business opportunities, etc).

7.5. With the exception of wilful misconduct, gross negligence or criminal offence, either Party shall be held liable for direct damages. Said liability shall not exceed the amount EUR 80.000 (eighty hundred thousand euro) per year.

7.6. In case of termination of present Agreement under article 8.2.3., the terminating Party has the right to compensation for any damages, said liability being up to EUR 80,000

## **8. Term and Termination of Agreement**

8.1. Present Agreement is signed for indefinite period. The entry into force of the Agreement is the date indicated below as signature date by the Parties.

8.2. Termination

8.2.1. Termination by mutual agreement

The Parties may terminate this Agreement at any time by written agreement upon mutually agreed terms and conditions; provided that any such termination is lawful.

8.2.2. Ordinary Termination

Either Party may terminate this Agreement without cause by sending a written notice of termination to the RBP Operator 30 days prior to the intended termination date.

8.2.3. Extraordinary Termination

The Network User Member or the RBP Operator may terminate the Agreement by giving a written notice of termination upon the occurrence of any of the following events, unless such event results from an event of Force Majeure:

- a) Repeated or major breach or non-performance of the obligations of this Agreement, or the Capacity Booking Rules,
- b) The dissolution of Network User Member,
- c) If the Network User Member disagrees with the amendment of the RBP Capacity Booking Rules, in this case the Network User Member shall have the right to terminate the present Agreement by giving a written notice within 15 days from publishing the modification of the Capacity Booking Rules on the RBP Portal. The effective date of

termination in this case shall be on the day when the modification of the Capacity Booking Rules enters into force.

- d) The termination shall only be valid in relation of the RBP Operator and the Network User Member that submits the termination notice or whose membership is terminated. The effective day of the termination - unless otherwise stated - shall be 15<sup>th</sup> calendar day following the receipt of the notice. After receipt of the termination notice the relevant Network User Member shall not be entitled to take part in any further capacity auction on RBP.

## 9. Force Majeure

- 9.1. An event of force majeure is an event or circumstance which is beyond the control and without the fault or negligence of the party affected and which by the exercise of reasonable diligence the party affected was unable to prevent provided that event or circumstance is limited to the following:
- a) riot, war, invasion, act of foreign enemies, hostilities (whether war be declared or not) acts of terrorism, civil war, rebellion, revolution, insurrection of military or usurped power, requisition or compulsory acquisition by any governmental or competent authority;
  - b) ionising radiation or contamination, radio activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive assembly or nuclear component;
  - c) earthquakes, flood, fire or other physical natural disaster, but excluding weather conditions regardless of severity; and
  - d) strikes at national level, or strike by labour not employed by the affected party, its subcontractors or its suppliers and which affect an essential portion of the works but excluding any industrial dispute which is specific to the performance of the works or this contract."
- 9.2. In case of Force Majeure,
- a) If the fulfilment becomes impossible due to causes for which none of the Parties is responsible, the Agreement shall not terminate automatically. The Party, which first becomes aware of the cause, shall be obliged to inform the other Party in written form immediately, explaining the cause and circumstances, and initiate consultation within 8 days.
  - b) The Parties shall record the minutes of the consultation, in which they register their agreement containing the efforts to be made to remedy the cause of Force Majeure, their responsibilities and if possible, the required period of time for the action.
  - c) Unless agreed in written form by the Parties, the required period of time to remedy the cause of the Force Majeure shall be added to the above consultation deadlines.
  - d) In case the Force Majeure is expected to last longer than 30 days, and no agreement is reached, the Agreement shall terminate on the following calendar day.
  - e) In case when no agreement is reached between the Parties in the consultation, the Parties shall proceed with the settlement related to the termination of the Agreement without any undue delay, if required.

- f) The Party shall be obliged to demonstrate a written notice issued by the competent authority about the Force Majeure upon the request of the other Party.
- g) Parties shall be obliged to immediately inform each other in a written form about the expected occurrence of the Force Majeure or the impossibility of the fulfilment, and its expected timeframe. The Party providing no or delayed information shall be held liable for any damages arising from the lack of timely information about the Force Majeure even in the case when none of the Parties, or the other Party is held responsible for the Force Majeure.

## 10. Confidential Information

By signing and fulfilling the present Agreement, the Parties declare that all information or data coming to their knowledge in any way regarding the other Party and its activities shall be considered as business secret, which they are not allowed to disclose to any Third Party, except the information accessible to the relevant TSO Member(s) as stipulated herein and the Capacity Booking Rules. The Parties shall not make such information accessible and cannot use the information for purposes other than the fulfilment of the present Agreement.

The said confidentiality obligations do not include information:

- a) which is accessible for the public, or which shall become public beyond the competence of the receiving Party in the future,
- b) which have already been provably known by the receiving Party prior to the Agreement, or
- c) which have become known by the receiving Party through a Third Party not bound by a confidentiality agreement regarding the Party that the information refers to,
- d) which was required to be disclosed pursuant to laws, market regulations, ordinances of competent authorities or courts, up to the preset limit and predefined entities.

Confidentiality obligations shall not be affected by the termination or expiry of the Agreement. The provisions of the present Article shall continue to be in force for 5 years after the termination or expiry of the present Agreement.

## 11. Governing Law

The rights and obligations of the Parties under this Agreement shall be governed by the laws of Switzerland.

## **12. Dispute Resolution**

If any dispute, controversy or claim of any kind whatsoever ("Dispute") shall arise between the Parties in connection with or arising from this Agreement, the Parties shall attempt to settle them in good faith.

The Parties agree that disputes related to the present Agreement that cannot be settled in good faith shall be referred to the exclusive jurisdiction of the Swiss Chamber of Commerce, Zürich.

## **13. Representation and Warranties**

Each of the Parties hereby represents and warrants to the other Party that:

- a. It is duly incorporated and existing under the Laws of its jurisdiction and has all requisite legal power and authority to execute this Agreement and carry out the terms, conditions and provisions hereof, and that there are no proceedings pending, or to the best of its knowledge, threatened of liquidation.
- b. To have been obtained all regulatory licenses required for lawful operation at the time of signing the Agreement.
- c. There are no actions, suits, or proceedings pending or, to the Party's knowledge, threatened, against or affecting the Party before any court or administrative body or arbitral tribunal that might adversely affect the ability of the Party to meet and carry out its obligations under this Agreement, and
- d. the present Agreement has been duly authorised according to the Party's corporate regulations, and constitutes the legal, valid and binding obligations of such Party, enforceable in accordance with the terms hereof and does not contravene any provision of, or constitute a default under any other agreement or instrument to which it is a party or by which it or its property may be bound or any of the laws.

## **14. Notices**

Unless expressly otherwise provided for in this Agreement, all notices or other communications - excluding the documents generated by the RBP Application - to be given or made hereunder shall be in writing, shall be addressed for the attention of the person indicated below and shall be delivered personally or sent by prepaid post or by fax. All notices given by fax shall be confirmed in writing delivered or sent as aforesaid but the failure to give such confirmation shall not invalidate the original notice. The language of all notices shall be English.

- a. In case of the RBP Operator:

Address: Tanácsház utca 5, Siófok 8600

Fax No.: +36-84-505-592

Attention: FGSZ Ltd., RBP Operation

b. In case of the Network User Member:

Address:

Fax No.:

Attention:  (name),  (title)

or other addresses and fax numbers as any Party previously notified the other Party.

All notices shall be effective upon actual receipt.

#### **15. Severability of Provisions**

If any provision of this Agreement becomes invalid, void or unenforceable, such invalidity, voidness or unenforceability shall only apply to that provision, and shall not render the entire Agreement or any other provision hereof invalid, void or unenforceable and all other provisions hereof shall remain in full force and effect unless the Parties would not have entered into this Agreement without such invalid, void or unenforceable provisions.

#### **16. Waiver**

No waiver by either Party of its rights related to the event in which the other Party fails to perform any of the provisions of this Agreement:

- a. shall operate or be construed as a waiver of its rights in the event of any other or further default whether of a like or a different character; or
- b. shall not be effective unless made in writing in the form of a declaration on waiver and duly executed by a duly authorized representative of the Party making such waiver

Neither the failure by either Party to insist on any occasion on the performance of the terms, conditions and provisions of the present Agreement nor time or other indulgence granted by one Party to the other shall act as a waiver of rights.

#### **17. Amendment**

This Agreement may only be amended or modified with mutual agreement by a written instrument signed by both Parties.

#### **18. Entire Agreement**

This Agreement represents the entire understanding between the Parties in relation to this subject matter hereof. All prior written or oral understandings, offers or other communications of any kind pertaining to the subject matter which is dealt with in this Agreement are superseded.

**19. Assignment**

Neither Party may assign its rights or transfer its obligations hereunder

**20. Other Contractual Arrangements**

The Parties shall be entitled to enter into contractual arrangements with other parties only to the extent that such arrangements do not prevent them from fulfilling their obligations hereunder

**21. Number of Copies**

The present Agreement has been duly signed in two (2) originals; each Party shall be entitled to one one (1-1) original.

Dated: ,

On behalf of the RBP Operator:

On behalf of the Network User Member: