



**General Terms and Conditions  
Flexibility Services Flange**

**EnergyStock B.V.**



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## 1 Definitions

*“Actual Available Working Gas”*

means the part of *Working Gas* in *kWh* available for send out by *Flange Customer* at the end of the previous *Hour*.

*“Actual Available Working Volume”*

means the part of *Contracted Working Volume* in *kWh* available for send in by *Flange Customer* at the end of the previous *Hour*.

*“Affiliated Company”*

means a company

- (a) of which fifty percent (50%) or more of the outstanding voting rights or shares are directly or indirectly owned by a *Party*, or
- (b) which directly or indirectly owns fifty percent (50%) or more of the outstanding voting rights or shares of a *Party*, or
- (c) of which fifty percent (50%) or more of the outstanding voting rights or shares are directly or indirectly owned by one and the same company which also directly or indirectly owns the majority of the outstanding voting stock of a *Party*.

*“Allocation Rules”*

means the allocation rules of the *Gas Storage Facility* as described in article 6 of Exhibit A.

*“Article”*

means an article of the main body of these *General Terms and Conditions Flexibility Services Flange*.

*“Booking Procedure”*

means Exhibit C of these *General Terms and Conditions Flexibility Services Flange*.

*“Business Day”*

refers to “werkdag” and means a day, not a Saturday or Sunday, which is neither an official holiday as meant in article 3, first paragraph, of the Dutch Act “Algemene Termijnenwet”, nor a day equal to an official holiday by virtue of the second or third subsection of the above-mentioned Act.

*“Competent Authority”*

means any local, national or supra-national agency, authority, department, inspectorate, minister, official, court, tribunal or public or statutory person (whether autonomous or not) of the Netherlands (or the government thereof) or the European Communities which has



jurisdiction over either *Party* or the subject matter of the *General Terms and Conditions Flexibility Services Flange* and any *Flexibility Services Contract Flange*.

*"Confirmation" or "Reconfirmation"*

means the message from *EnergyStock B.V.* to *Flange Customer*, as described in article 3 of Exhibit A, containing among other things the *Hourly Quantities of Gas* to be made available by *Flange Customer* to *EnergyStock B.V.* at the *Gas Storage Entry Point* based on *Flange Customer's (Re)Nomination* and the *Hourly Quantities of Gas* to be made available by *EnergyStock B.V.* to *Flange Customer* at the *Gas Storage Exit Point* based on *Flange Customer's (Re)Nomination*.

*"Contract Period"*

means the period commencing at the *Start Date* at 06:00 *LET* and expiring at 06:00 *LET* of the *Gas Day* corresponding to the *End Date*, specified in a *Flexibility Services Contract Flange*.

*"Contracted Flexibility Services"*

means the services contracted by *Flange Customer*, consisting of *Contracted Send In Capacity* and/or *Contracted Send Out Capacity* and/or *Contracted Working Volume*, as specified in one or more *Flexibility Services Contracts Flange*.

*"Contracted Send In Capacity" or "C<sub>in</sub>"*

means the part of *Send In Capacity* in *kWh per Hour* which is contracted by *Flange Customer* as specified in one or more *Flexibility Services Contracts Flange*.

*"Contracted Send Out Capacity" or "C<sub>out</sub>"*

means the part of *Send Out Capacity* in *kWh per Hour* which is contracted by *Flange Customer* as specified in one or more *Flexibility Services Contracts Flange*.

*"Contracted Working Volume"*

means the part of *Working Volume* in *kWh* which is contracted by *Flange Customer* as specified in one or more *Flexibility Services Contracts Flange*.

*"Credit Control Protocol Flange"*

means Exhibit B of these *General Terms and Conditions Flexibility Services Flange*.

*"Declaration of Acceptance" or "DoA"*

means the Declaration of Acceptance, which needs to be signed to accept the *General Terms and Conditions Flexibility Services Flange*.

*"Delivering Party"*

shall mean a third party delivering *Gas* to *Flange Customer* at the *Gas Storage Entry Point*.

*"End Date"*



means the date designated as such in a *Flexibility Services Contract Flange*.

*"EnergyStock B.V."*

shall mean EnergyStock B.V., registered at the 'Kamer van Koophandel' under number 02092814, owning and operating the *Gas Storage Facility*.

*"Flange Customer"*

means any person or entity that has fulfilled the conditions as laid down in *Article 2.1*.

*"Flange Customer Code"*

means the unique code, assigned to *Flange Customer* by *EnergyStock B.V.* used for the identification of *(Re)Nominations* and *(Re)Confirmations* related to the *Contracted Flexibility Services* of this *Flange Customer* specified in one or more *Flexibility Services Contracts Flange*.

*"EURIBOR"*

means the one-month Euro Interbank Offered Rates as set by the joint European banks and as published in the Dutch journal 'Het Financiële Dagblad' on the second *Business Day* of each month and published on Bloomberg (EUR001M <index>).

*"Euro"*

means the European currency Euro (€).

*"Euro-Cent (€ct)"*

means the applicable subdivision by one hundred (100) of the *Euro*.

*"Expert"*

means a person appointed as such under, and subject to, *Article 9*.

*"Flange Customer"*

means any person or entity that has fulfilled the conditions as laid down in *Article 2.1*.

*"Flange Customer Code"*

means the unique code, assigned to *Flange Customer* by *EnergyStock B.V.* used for the identification of *(Re)Nominations* and *(Re)Confirmations* related to the *Contracted Flexibility Services* of this *Flange Customer* specified in one or more *Flexibility Services Contracts*.

*"Flexibility Services Flange"*

means the services to be provided by *EnergyStock B.V.* to *Flange Customers*.



*"Flexibility Services Contract(s) Flange"*

means the Flexibility Services Contract(s) *Flange* between *EnergyStock B.V.* and *Flange Customer* concerning the provision of *Contracted Flexibility Services* contracted by *Flange Customer*.

*"Flexibility Services Tariff" or "FST"*

means the fee as described in a *Flexibility Services Contract Flange*.

*"Force Majeure"*

A Force Majeure situation exists if and insofar the conditions of Article 6:75 Dutch Civil Code, supplemented by the conditions stated in *Article 7.2* are met.

*"Gas"*

means natural gas including any hydrocarbons or mixture of hydrocarbons and non-combustible gases, consisting primarily of methane, which, when extracted from the subsoil of the earth in its natural state, separately or together with liquid hydrocarbons, is in the gaseous state.

*"Gas Day"*

means a period commencing at 06.00 hours *LET* on any day and ending at 06.00 hours *LET* on the following day, and the date of any *Gas Day* shall be the date of its beginning as herein defined.

*"Gas Storage Entry Gas"*

means *Quantities of Gas* made available or deemed to be made available by *Flange Customer* at the *Gas Storage Entry Point* for injection into the *Gas Storage Facility*.

*"Gas Storage Entry Point"*

means the point where *Gas* from the *National Grid* enters or is deemed to enter the *Gas Storage Facility*.

*"Gas Storage Exit Gas"*

means *Quantities of Gas* made available or deemed to be made available by *EnergyStock B.V.* at the *Gas Storage Exit Point* to be delivered into the *National Grid*.

*"Gas Storage Exit Point"*

means the point where *Gas* from the *Gas Storage Facility* enters or is deemed to enter the *National Grid*.

*"Gas Storage Facility"*

means the gas storage facility which delivers the *Flexibility Services*.



*“General Terms and Conditions Flexibility Services Flange”*

means these General Terms and Conditions Flexibility Services Flange, including its Exhibits, as amended from time to time.

*“Grid Connection Agreement” or “GCA”*

means an agreement between *EnergyStock B.V.* and an *NNO* regarding several aspects of a connection between the *Gas Storage Facility* and the neighbouring network concerned, including measurement, allocation, operational balancing, conditions to operation, arrangements with regard to installations and/or operational safety.

*“Hour”*

means the period of one clock hour commencing at the full hour.

*“Hour (t)”*

means the  $t^{\text{th}}$  *Hour* in the *Contract Period*.  $t$  is set at zero at the beginning of the first *Gas Day* of a *Year*.

*“kWh”*

means an unit of energy equivalent representing a unit of energy equal to 3,600,000 joules (3.6 MJ).

*“Lesser Rule”*

means with respect to the *Quantity of Gas* (re)nominated by *Flange Customer* and the *Quantity of Gas* (re)nominated by the relevant *Delivering Party* or *Receiving Party*, that the proper *Nomination* shall be deemed to be equal to the lowest of such *(Re)Nominations* with respect to the relevant *Pair of Flange Customer Codes*.

*“Local European Time” or “LET”*

means (LET), including daylight saving, being equal to UTC + 1 outside the daylight saving period and equal to UTC + 2 during the daylight saving period. For the avoidance of doubt, the daylight saving period starts at UTC 01:00 hours on the last Sunday in March and ends at UTC 01:00 hours on the last Sunday in October, and UTC is Coordinated Universal Time, according to ISO 8601: 1988 (E).

*“Month”*

means a period commencing at 06.00 hours *LET* on the first day of a month and ending at 06.00 hours *LET* on the first day of the following month.

*“National Grid”*

refers to “landelijk gastransportnet” as defined in article 1(n) of the Dutch Gas Act (*Gaswet*) and means a gas transmission network, excluding a grid as meant in article 18h, first



subsection of the Dutch Gas Act, exclusively or mainly designated for the purpose of or in use for the transmission of *Gas* on a national level.

"*Neighbouring Network Operator*" or "*NNO*"

means the operator of the *National Grid*, being Gasunie Transport Services B.V.

"*Nomination*" or "*Renomination*"

means a message from *Flange Customer* to *EnergyStock B.V.* stating, among other things, the *Hourly Quantities of Gas* to be made available by this *Flange Customer* to *EnergyStock B.V.* at the *Gas Storage Entry Point* and the *Hourly Quantities of Gas* to be made available by *EnergyStock B.V.* to *Flange Customer* at the *Gas Storage Exit Point*.

"*Non Usage*"

has the meaning ascribed to it in *Article 3.7.1*.

"*Non Usage Notification*"

has the meaning ascribed to it in *Article 3.7.1.5*

"*Operating Manual Flange*"

means Exhibit A of these *General Terms and Conditions Flexibility Services Flange*.

"*Operational Balancing Agreement*" or "*OBA*"

means an agreement between *EnergyStock B.V.* and the *NNO* relating to the *Gas Storage Entry Point* or the *Gas Storage Exit Point*, in which they agree that, subject to certain conditions and within certain limits, the *Quantity of Gas* of the *Proper Nomination* will be allocated to each *Flange Customer* and differences between the sum of the confirmations of all *Flange Customers* and the measured volumes which are attributable to operational constraints of the *NNO*, may be allocated to a balancing account of the *NNO*.

"*Pa*", "*J*", "*K*" and "*m*"

being units of pressure (Pascal), energy (Joule), thermodynamic temperature (Kelvin) and length (metre) respectively, which shall have the meanings ascribed to them in the publication 'International Standard ISO 1000-1992-11 00 (E), SI units and recommendations for the use of their multiples and certain other units'. The prefix "G" shall be equal to one billion (1,000,000,000), "M" shall be equal to one million (1,000,000) and the prefix "k" shall be equal to one thousand (1,000). A "bar" shall be equal to one hundred thousand (100,000) Pa. A "°C" means degree Celsius, and  $0\text{ }^{\circ}\text{C} = 273.15\text{ K}$ .

"*Pair of Flange Customer Codes*"

means the *Flange Customer Code* together with the *Flange Customer Code* of a *Delivering Party* or a *Receiving Party* under a *(Re)Nomination* made by *Flange Customer*.





*“Party” or “Parties”*

means individually *Flange Customer* or *EnergyStock B.V.* and collectively *EnergyStock B.V.* and *Flange Customer*.

*“Proper Nomination”*

means a *Nomination* or *Renomination*, which is in accordance with *Flange Customer’s* rights under the *General Terms and Conditions Flexibility Services Flange* and one or more *Flexibility Services Contracts Flange* and is made in the manner and within the time limits as set out in the *Operating Manual Flange*.

*“Quantity of Gas”*

means a quantity of *Gas*, expressed in *kWh*.

*“Receiving Party”*

shall mean a third party receiving *Gas* from *Flange Customer* at the *Gas Storage Exit Point*.

*“Reasonable and Prudent Operator”:*

means a *Party* fulfilling its obligations under the *General Terms and Conditions Flexibility Services Flange* and any *Flexibility Services Contract Flange* with that degree of diligence, skill, prudence and foresight as reasonably and ordinarily exercised by experienced operators engaged in the same line of business under the same or similar circumstances and conditions and in accordance with good operating practice.

*“Send In Capacity”*

means the total capacity, in *kWh per Hour*, which is contracted by *Flange Customers* to inject *Gas* into the *Gas Storage Facility*.

*“Send In Flow Rate”*

means a *Quantity of Gas*, in units of *kWh per Hour*, that is transported from the *National Grid* in the direction of the *Gas Storage Facility*.

*“Send Out Capacity”*

means the total capacity, in *kWh per Hour*, which is contracted by *Flange Customers* to withdraw *Gas* from the *Gas Storage Facility*.

*“Send Out Flow Rate”*

means a *Quantity of Gas*, in units of *kWh per Hour*, that is transported from the *Gas Storage Facility* in the direction of the *National Grid*.

*“Start Date”*

means a date designated as such in a *Flexibility Services Contract Flange*.



*"Storage Operator"*

means N.V. Nederlandse Gasunie operating the *Gas Storage Facility* on behalf of *EnergyStock B.V.*

*"Transferee"*

means the person or entity described in *Article 3.4.1.*

*"Usage Rights"*

are the rights to use the *Contracted Flexibility Services.*

*"Website"*

means the official website of *EnergyStock B.V.* with regard to the *Gas Storage Facility*([www.energystock.com](http://www.energystock.com)).

*"Wobbe-index"*

means the superior calorific value divided by the square root of the relative density under normal conditions, in which:

(i) the *"superior calorific value"* means the amount of energy, expressed in *MJ*, released by the complete combustion in air of one (1)  $\text{m}^3(\text{n})$  of *Gas* in such a way that the pressure of 101.325 *kPa* (1.01325 bar) at which the reaction takes place remains constant and all the products of combustion are returned to the same temperature of 298.15 *K* as the temperature of the reactants, all of these products being in the gaseous state except for water formed by combustion which is condensed to the liquid state at a temperature of 298.15 *K* (ii) the *"relative density"* means the density of *Gas* at normal conditions divided by the density of dry air (meaning air composed according ISO 6976 annex B) at normal conditions (iii) *"normal conditions"* are the conditions determined by a temperature of 273.15 *K* (0 °C) and an absolute pressure of 101.325 *kPa* (1.01325 bar).

*"Working Gas"*

means the *Quantity of Gas* that is stored in the *Gas Storage Facility* on behalf of *Flange Customers.*

*"Working Volume"*

means the total volume in *kWh* which is contracted by *Flange Customers* to store *Gas* in the *Gas Storage Facility.*

*"Year"*

means a period commencing at 06.00 hours *LET* on January, 1<sup>st</sup> and ending at 06.00 hours *LET* on the following January, 1<sup>st</sup> .

*"Zero Rule"*

means with respect to the *Quantity of Gas* (re)nominated by *Flange Customer* and the *Quantity of Gas* (re)nominated by the relevant *Delivering Party* or *Receiving Party*, that the



*Proper Nomination* shall be deemed to be equal to zero if such *(Re)Nominations* with respect to the relevant *Pair of Flange Customer Codes* are unequal.

References, in the General Terms and Conditions Flexibility Services Flange and/or Flexibility Services Contract Flange to "day", "month" and "year" are, unless otherwise stated, references to a calendar day, calendar month and calendar year respectively.



## 2 Flange Customer

2.1 An *Flange Customer* is any party that:

- (a) has accepted relevant applicable terms and conditions *Flexibility Services*,
- (b) has passed a communication test, and
- (c) has proven to the satisfaction of *EnergyStock B.V.* to be sufficiently creditworthy and shall provide satisfying surety to cover the exposure resulting from one or more agreements with *EnergyStock B.V.*

2.2 *EnergyStock B.V.* may waive in writing the applicability of one or more of the elements, in part or in whole, of *Article 2.1 (a)*, *Article 2.1 (b)* and *Article 2.1 (c)* for a specified period of time.

2.3 Any party which has fulfilled the conditions of becoming an *Flange Customer* can submit to *EnergyStock B.V.* a request for booking of *Flexibility Services*. The only document which can be used for booking requests is the applicable *Flexibility Services Contract Flange* as published on the *Website*. Any other document will not be accepted by *EnergyStock B.V.* The *Booking Procedure* describes further details of how to book *Flexibility Services*.

2.4 *EnergyStock B.V.* may accept a third party to perform on behalf of *Flange Customer* all operational communications.



### 3 Services, Fees and Conditions

- 3.1 *EnergyStock B.V. provides Contracted Flexibility Services to Flange Customer in accordance with the General Terms and Conditions Flexibility Services Flange and one or more Flexibility Services Contracts Flange.*
- 3.2 *The Contracted Send Out Capacity, Contracted Send In Capacity and Contracted Working Volume, Start Date, End Date and related tariffs are specified in one or more Flexibility Services Contracts Flange.*
- 3.3 *EnergyStock B.V. shall maintain a storage balance for Flange Customer showing the Actual Available Working Gas.*
- 3.4 *Transfer of Usage Rights to another Flange Customer.*
- 3.4.1 *Flange Customer can transfer Usage Rights to another party ("Transferee") that has been accepted as a Flange Customer by EnergyStock B.V. under the relevant applicable version of terms and conditions. When the Transferee uses the transferred part of the Contracted Flexibility Services, its relevant applicable version of terms and conditions will apply.*

*EnergyStock B.V. shall allow the Usage Rights to be freely tradable in bundled or unbundled units, without any undue restrictions.*

*By means of a transfer of part or all of the Usage Rights, Flange Customer passes on the rights to use part or all of the Contracted Flexibility Services to the Transferee.*

*The administrative fee for the transfer of Usage Rights, as described above, will be 150 € per transfer.*

- 3.4.2 *The registration of a transfer of part or all of the Usage Rights will take place according to the rules as provided for in the Operating Manual Flange. After registration of a transfer of part or all of the Usage Rights, component T1 of the consideration for the transferred part of Usage Rights, as provided for in Article 3.6.2, will continue to be invoiced to Flange Customer. Component T2 of the consideration for the transferred part of the Usage Rights, as provided for in Article 3.6.3, shall be invoiced to the Transferee.*
- 3.4.3 *After termination of the transfer period, the Transferee can no longer use the transferred amount of Usage Rights.*



After termination of the transfer period, *EnergyStock B.V.* will check if there is at the last *Hour* of the transfer period remaining *Working Gas* of the *Transferee* included in the part of *Contracted Working Volume* related to the transfer. Any remaining *Working Gas* of the *Transferee*, will be transferred from *Transferee* to *Flange Customer*. The registration of this transfer will take place according to the rules as provided for in the *Operating Manual Flange*.

3.4.4 In case *Flange Customer* has transferred part or all of its *Usage Rights*, all liabilities, with reference to *Article 10*, related to the *Contracted Flexibility Services* and/or the use of that *Contracted Flexibility Services* by this *Flange Customer* and/or the *Transferee* will remain with *Flange Customer*.

3.5 *EnergyStock B.V.* has the right, without any prior permission or consent of *Flange Customer* being required, to offer *Flexibility Services* and/or other services to other *Flange Customers* such as, but not limited to, interruptible services, provided however such services shall not adversely affect the *Contracted Flexibility Services* and/or other services rendered by *EnergyStock B.V.* to this *Flange Customer*.

### 3.6 Fees

3.6.1 The consideration for the *Contracted Flexibility Services* to be paid by *Flange Customer* shall exist of two components, the component T1 and the component T2.

3.6.2 The component T1 is a fixed annual fee, based on the *Flexibility Services Tariff(s)* as specified in the *Flexibility Services Contract(s) Flange*, chargeable in *Euro*. The component T1 will be passed on to *Flange Customer* in a transparent and non-discriminatory way.

3.6.3 The component T2, is a variable fee which is related to the usage of the *Contracted Flexibility Services* by *Flange Customer*, i.e energy cost and will include costs of hot standby, emission costs, taxes and other costs related to energy. The component T2 will be passed on to *Flange Customer* in a transparent and non-discriminatory way as described in the *Operating Manual Flange* and the *Flexibility Services Contract Flange*.

### 3.7 Conditions

#### 3.7.1 Non Usage

##### 3.7.1.1 Right to retrieve *Contracted Flexibility Services*

In order to prevent or remedy artificial scarcity in the *Gas Storage Facility*, *EnergyStock B.V.* has the right to retrieve part or all of *Flange Customer's Contracted*



*Flexibility Services* in case (i) *Flange Customer* does not use such services (“*Non Usage*”), (ii) the conditions set forth under *Article 3.7.1.2* are met and (iii) the provisions of *Article 3.7.1.3* do not apply.

### 3.7.1.2 Conditions for exercise of rights

A *Non Usage* situation exists if and in so far as the following conditions are fulfilled:

- (a) the *Non Usage* has lasted for a period of at least twelve (12) consecutive *Months*, and
- (b) the *Non Usage* occurs during all *Hours* and concerns more than 95% of *Flange Customer's Contracted Flexibility Services*, and
- (c) during the period mentioned under (a), *EnergyStock B.V.* has not been able to grant at least one (1) request of any other *Flange Customer* for any quantity of *Flexibility Services*.

3.7.1.3 A *Non Usage* situation will not lead to *EnergyStock B.V.* exercising its rights as set forth in *Article 3.7.1.1* against *Flange Customer*, if such situation is a result of:

- (a) *Force Majeure*, or
- (b) the *NNO's* inability to supply *Gas Storage Entry Gas* at the *Gas Storage Entry Point*, or
- (c) *EnergyStock B.V.'s* inability to intake *Gas* at the *Gas Storage Entry Point*, or
- (d) the *NNO's* inability to off take *Gas* at the *Gas Storage Exit Point*,

or

if *Flange Customer* has transferred *Usage Rights* through the transfer arrangements as provided for in *Article 3.4*, but only for the period during which such transfer is applicable.

3.7.1.4 In case *Flange Customer* has transferred its *Usage Rights* through the transfer arrangements as provided for in *Article 3.4*, *EnergyStock B.V.* may exercise its rights as set forth in *Article 3.7.1.1* against the *Transferee*, provided that the conditions set forth in *Article 3.7.1.2* sub (a) up to and including (c) directly apply to the *Transferee*.

### 3.7.1.5 Procedure for exercise of rights

*EnergyStock B.V.* shall notify *Flange Customer* in writing one (1) month in advance of its intention to retrieve *Contracted Flexibility Services* in accordance with the provisions of this *Article 3.7.1*. Such notification (the “*Non Usage Notification*”) will



take place by letter, to be sent by registered mail, clearly stating (i) the reasons why *EnergyStock B.V.* considers that the conditions of *Article 3.7.1.2* have been fulfilled, (ii) the date from which *EnergyStock B.V.* wishes to retrieve *Contracted Flexibility Services*, (iii) the quantity of *Contracted Flexibility Services* to be retrieved (which shall be a fixed figure for the whole period during which all or part of the *Contracted Flexibility Services* will be retrieved) and (iv) the period during which the *Contracted Flexibility Services* will be retrieved.

3.7.1.6 *Flange Customer* has the right to contest the statements of *EnergyStock B.V.* related to *Article 3.7.1.5* in a motivated letter, to be sent by registered mail within ten (10) *Business Days* after receipt of the aforementioned letter of *EnergyStock B.V.* If *Flange Customer* does not motivate its contestation or does not submit the necessary proof or does not contest the statements of *EnergyStock B.V.* in time or by registered letter or at all, *Flange Customer* loses all rights concerning or related to the *Contracted Flexibility Services* to be retrieved by *EnergyStock B.V.* as from the date notified by *EnergyStock B.V.*

3.7.1.7 A contestation by *Flange Customer* will only be honoured by *EnergyStock B.V.* if and insofar the contestation duly proves that the conditions set forth under *Article 3.7.1.2* do not apply or that the conditions set forth under *Article 3.7.1.3* do apply to *Flange Customer*. In case *Parties* cannot reach an agreement on whether the proof provided by *Flange Customer* is satisfactory, the *Parties* will refer the case to an *Expert* in accordance with *Article 9*. The decision of the *Expert*, if and to what extent *Flange Customer* will lose its rights concerning or related to any *Contracted Flexibility Services*, will be established on the basis of the *General Terms and Conditions Flexibility Services Flange* and the relevant *Flexibility Services Contract(s) Flange*.

3.7.1.8 From the moment *Flange Customer* loses any right with respect to *Contracted Flexibility Services* pursuant to this *Article 3.7.1*, *EnergyStock B.V.* shall sell the retrieved part of *Contracted Flexibility Services*, to the amount requested by and not been able to grant earlier to any other *Flange Customer*, maintaining the ratio of the retrieved part of *Contracted Flexibility Services*, directly to any other *Flange Customer*. *EnergyStock B.V.* will first offer the retrieved part of the *Contracted Flexibility Services*, on a first come, first served basis to any other *Flange Customer* or *Flange Customers* that have been denied *Flexibility Services* not more than two (2) months prior to the date of the start of the procedure by *EnergyStock B.V.* to retrieve part of the *Contracted Flexibility Services* pursuant to a *Non Usage* situation. *EnergyStock B.V.* will use a tariff based on open market conditions.

3.7.1.9 *EnergyStock B.V.* will pay to *Flange Customer* eighty percent (80%) of the revenues of the sale of the retrieved *Contracted Flexibility Services*.

3.7.1.10 Other terms and conditions





*EnergyStock B.V.*'s retrieval and release of *Contracted Flexibility Services* due to *Non Usage* shall not affect any amount payable by *Flange Customer* relating to *Contracted Flexibility Services* under the *General Terms and Conditions Flexibility Services Flange* and the relevant *Flexibility Services Contract(s) Flange* and shall not affect the rights and obligations of any *Party* under the *General Terms and Conditions Flexibility Services Flange* and the relevant *Flexibility Services Contract(s) Flange* in any other respect. Specifically, *EnergyStock B.V.* exercising any right under this *Article 3.7.1* will not be considered to have failed to fulfil a material obligation.

3.7.2 Reduction of amounts chargeable

3.7.2.1 In case of unplanned unavailability, in whole or in part, of the *Gas Storage Facility*, component T1 shall be reduced taking into account the duration and the extent of the unavailability.

For unavailability in any *Hour* on the *Gas Day*, on which the unplanned unavailability occurs, the nomination for that *Hour* as provided in the daily *Nomination* for that *Gas Day*, as specified in the *Operating Manual Flange*, will be taken into account to determine the reduction in component T1 chargeable. The reduction of the component T1 for interruptions after the aforementioned *Gas Day* shall be based upon one hundred percent (100%) of the *Contracted Flexibility Services*.

3.7.2.2 The reduction of the amounts chargeable, as described in *Article 4.5* and *Article 4.7* , for each *Hour* on the *Gas Day* in which the unavailability first occurs shall be:

$$AHT \times CF \quad , \text{ in } \text{€ per Hour}$$

where:

$$AHT = \text{Annual Hourly Tariff} = (T1/8760) \quad , \text{ in } \text{€ per Hour}$$

and:

In case of unavailability of *Send Out Capacity*:

$$CF = \text{Compensation Factor} = (|NSOC| - |ASOC|)/|CSOC| \quad , \quad 0 < CF \leq 1$$

where:

$|NSOC|$  = The absolute value of the *Quantities of Gas* to be sent out per *Hour* mentioned in the last received *Nomination* of *Flange Customer* before the unavailability of *Send Out Capacity* was announced,

$|ASOC|$  = The absolute value of allocated *Quantities of Gas* sent out per *Hour* to this *Flange Customer*,

$|CSOC|$  = The absolute value of the *Contracted Send Out Capacity* of this *Flange Customer* in *kWh per Hour*.



Or

In case of unavailability of *Send In Capacity*:

$$CF = \text{Compensation Factor} = (|NSIC| - |ASIC|)/|CSIC|, 0 < CF \leq 1$$

where:

|NSIC| = The absolute value of the *Quantities of Gas* to be sent in per *Hour* mentioned in the last received *Nomination of Flange Customer* before the unavailability of *Send In Capacity* was announced,

|ASIC| = The absolute value of the allocated *Quantities of Gas* sent in per *Hour* to this *Flange Customer*,

|CSIC| = The absolute value of the *Contracted Send In Capacity* of this *Flange Customer* in kWh per *Hour*

In the event the outcome of CF is lower than zero, the value of CF will be deemed to be zero.

The total compensation factor as stipulated in this *Article 3.7.2.2* shall not exceed 1 (one).

3.7.2.3 The reduction of the amounts chargeable, as described in *Article 4.5* and *Article 4.7*, after the first *Gas Day* for each *Hour* in which the unavailability continues to take place, shall be:

$$AHT \times CF, \text{ in } \text{€ per Hour}$$

where:

$$AHT = \text{Annual Hourly Tariff} = (T1/8760), \text{ in } \text{€ per Hour}$$

$$CF = \text{Compensation Factor} = \text{Minimum}\{UC;AF\}$$

and:

In case of unavailability of *Send Out Capacity*:

UC = % unavailable *Send Out Capacity*, and

$$AF = (|CSOC| - |ASOC|)/|CSOC|, 0 < AF \leq 1$$

where:

|CSOC| = The absolute value of *Contracted Send Out Capacity* of *Flange Customer* in kWh per *Hour*,

|ASOC| = The absolute value of allocated *Quantities of Gas* sent out per *Hour* to this *Flange Customer*.

or



In case of unavailability of *Send In Capacity*:

$$UC = \% \text{ unavailable } \textit{Send In Capacity}, \text{ and}$$
$$AF = (|CSIC| - |ASIC|)/|CSIC|, \quad 0 < CF \leq 1$$

where:

$|CSIC|$  = The absolute value of *Contracted Send In Capacity* of *Flange Customer* in *kWh per Hour*,

$|ASIC|$  = The absolute value of allocated *Quantities of Gas* sent in *per Hour* to this *Flange Customer*.

In the event the outcome of CF is lower than zero, the value of CF will be deemed to be zero.

The total compensation factor as stipulated in this *Article 3.7.2.3* shall not exceed 1 (one).

### 3.8 Cavern Shrinkage

During operation and due to geological phenomena, the geometrical volume of the *Gas Storage Facility* might shrink. *EnergyStock B.V.* has the right to correct the *Contracted Working Volume* of *Flange Customer* accordingly. The shrinkage tariff will be specified in the *Flexibility Services Contract Flange*.



## 4 Operation and Maintenance

- 4.1 The *Operating Manual Flange* will cover all items that may be necessary to facilitate the day-to-day operations of send in and send out of *Flange Customers' Working Gas*.
- 4.2 **Withdrawal and Injection Curve**  
The withdrawal curve and injection curve for *Flange Customer* is an Annex to the *Flexibility Services Contract Flange* and states the maximum net send out or send in volume per *Gas Day* for *Flange Customer*, dependent on the *Actual Available Working Gas* at the first hour of each *Gas Day*.
- 4.3 **Minimum flow requirements**
- 4.3.1 Due to minimum flow requirements a situation can occur in which for *Hour (t)* the aggregate *Nominations* of *Flange Customers* are lower than the minimum flow requirements. In such a situation *Parties* will aim to achieve an acceptable solution. If such a solution cannot be reached the overall flow will be zero.
- 4.3.2 The *Gas Storage Facility* is designed in such a way that the minimum *Send In Flow Rate* will be 341,931 *kWh* per *Hour*.
- 4.3.3 The *Gas Storage Facility* is designed in such a way that the minimum *Send Out Flow Rate* will be 293,084 *kWh* per *Hour*.
- 4.3.4 *EnergyStock B.V.* shall use reasonable endeavours to allow lower *Send In Flow Rates* and *Send Out Flow Rates* than as referred to in *Article 4.3.2* and *Article 4.3.3*.
- 4.4 **Operational margin**  
The operational margin will be as described in the *Operating Manual Flange*.
- 4.5 **Planned maintenance**  
Due to planned maintenance on the *Gas Storage Facility* the availability of *Contracted Send In Capacity* and/or *Contracted Send Out Capacity* may be reduced partly or completely.

For a maximum number of days per year as stated in the *Operating Manual Flange*, *EnergyStock B.V.* has the right to perform planned maintenance which might reduce the availability of *Contracted Flexibility Services*. The obligations of *Flange Customer* to pay the considerations as specified in *Article 3.6.1* shall remain unaffected unless *EnergyStock B.V.* is prevented from fulfilling its contractual obligations for more than the number of days per year as specified in the *Operating Manual Flange*. In such case



*Article 10.3* below will apply if the conditions of that *Article* are met. A reduction in payment of the consideration, as described in *Article 3.7.2* above shall be based on the proportional unavailability of the *Contracted Flexibility Services* during the period of planned maintenance which exceeds the specified number of days.

#### 4.6 Rolling maintenance plan

*EnergyStock B.V.* shall, via a notice and via its *Website* notify *Flange Customers* of the planned maintenance operations with an indication of the probable duration and extent of the service restrictions in accordance with the terms specified in the *Operating Manual Flange*.

Notifications will take place at least six (6) months in advance for fixed planned maintenance operations. Notifications will take place at least twelve (12) months in advance for non binding forecasts for maintenance operations.

When establishing the dates for planned maintenance *EnergyStock B.V.* will take into account the historical and foreseeable use of the *Gas Storage Facility* so as to minimize consequences of the unavailability of the *Gas Storage Facility*.

#### 4.7 Unplanned unavailability

In the event of unforeseen, unplanned and/or urgently necessary repair or necessary safety measures, *EnergyStock B.V.* is entitled to restrict the use of or to shut down the *Gas Storage Facility* and to perform the necessary maintenance or repair or safety measures without having to obtain the approval or consent of *Flange Customers*. In determining timing and duration of the period of restricted use or shutdown, *EnergyStock B.V.* will act as a *Reasonable and Prudent Operator* and will carry out such unplanned activities as quickly as possible and use reasonable endeavours to conduct such unplanned activities at the time of likely least interference to *Flange Customers*. The performance of these works shall release *EnergyStock B.V.* from carrying out the *Contracted Flexibility Services* under the *General Terms and Conditions Flexibility Services Flange* and any *Flexibility Services Contract Flange* insofar and for as long as such works make send in or send out of *Quantities of Gas* partly or wholly impossible or economically unreasonable. In such cases of unplanned unavailability *Article 3.7.2* above and *Article 10.3* will apply if the conditions of these *Articles* are met.



4.8 Allocation of capacity rights during unavailability

In case of planned or unplanned unavailability of the Gas Storage Facility the remaining capacity will be allocated to Flange Customers pro rata on the basis of the Contracted Flexibility Services of Flange Customers.



## 5 Measurement, Nomination and Allocation

- 5.1 The *Operating Manual Flange* covers all items concerning measurement, nomination and allocation.



## 6 Invoicing, payment and creditworthiness

### 6.1 Invoicing and payment

#### 6.1.1 *EnergyStock B.V.* will provide *Flange Customer* with the following invoices:

- (a) within each *Month*, an invoice for that *Month*, specifying component T1 of the consideration as described in *Article 3.6.2*;
- (b) after each *Month*, an invoice for the preceding *Month* or *Months*, specifying component T2 of the consideration as described in *Article 3.6.3*;
- (c) if applicable, after each *Year*, an invoice for the reimbursable or payable energy costs showing the actual energy costs during the preceding *Year*, as described in *Article 3.6.3*.

#### 6.1.2 All invoices shall be specified, containing all information reasonably necessary to enable *Flange Customer* to check the correctness of the invoice.

#### 6.1.3 Any amount due by *EnergyStock B.V.* to *Flange Customer* shall be settled with the next monthly invoice.

#### 6.1.4 Payment term

An invoice shall be paid by *Flange Customer* in such a manner that *EnergyStock B.V.* will have the money at its free disposal at an account specified by *EnergyStock B.V.* within fourteen (14) days of the invoice date. All payments shall be made in *Euro*.

#### 6.1.5 Bank

The sums to be paid by *Flange Customer* to *EnergyStock B.V.* shall be remitted to a bank to be specified by *EnergyStock B.V.* in writing. The sums to be paid by *EnergyStock B.V.* to *Flange Customer* shall be remitted to a bank to be specified by *Flange Customer* in writing.

#### 6.1.6 Overdue payments

Late payments shall bear interest as of the due date of payment at the rate of *EURIBOR* for the months to which the calculation of interest relates plus four percent (4%) per year and rounded to two (2) decimal figures.

#### 6.1.7 Disagreement over invoice

If *Flange Customer* disputes the correctness of an invoice such dispute shall not affect the obligation to pay within the specified period, except in the case of an obvious error.





Such disputes must be raised as soon as possible, but in any event within a period of two (2) years after the invoice date, or in case of tax related claims, within a period of five (5) years after the invoice date. After the end of this period an invoice can no longer be disputed. In case of an obvious error, the undisputed part of the invoice should be paid anyhow within the specified period. If all or any part of an invoice is not paid on the due date, interest shall be payable in accordance with *Article 6.1.6* .

## 6.2 Creditworthiness

- 6.2.1 Based on an analysis of the creditworthiness of a *Flange Customer* by *EnergyStock B.V.* the risk category of a *Flange Customer* is determined by *EnergyStock B.V.* *EnergyStock B.V.* may request a *Flange Customer* to provide security. All items concerning creditworthiness are covered in the *Credit Control Protocol Flange*.
- 6.2.2 In case of any changes to the financial situation of *Flange Customer* which could reasonably be relevant in respect to security to be provided by *Flange Customer*, *Flange Customer* has the obligation to inform *EnergyStock B.V.* thereof immediately.



## 7 Force Majeure

7.1 If a *Party* is unable, wholly or in part, to fulfil any obligation under the *General Terms and Conditions Flexibility Services Flange* and one or more *Flexibility Services Contracts Flange* due to *Force Majeure*, that *Party* will, by giving written notice and reasonably full particulars to the other *Party* immediately after the occurrence of such *Force Majeure*, be relieved of its obligations under the *General Terms and Conditions Flexibility Services Flange* and one or more *Flexibility Services Contracts Flange* to the extent that the fulfilment of these obligations is rendered impossible by such *Force Majeure*.

Either *Party* shall, when claiming *Force Majeure*, give the particulars of such *Force Majeure* and also notify the other *Party* if possible of the period of time which the *Party* estimates it will require to remedy the *Force Majeure* situation and shall keep the other *Party* regularly informed as to the progress of such remedy. Each *Party*, when claiming *Force Majeure*, shall use reasonable endeavours to mitigate the effects of such *Force Majeure* and to rectify the circumstances causing the failure. *Parties* shall at all times endeavour to find a mutually acceptable solution with respect to the *Force Majeure* situation.

7.2 Any failure to timely pay amounts which are owed under the *General Terms and Conditions Flexibility Services Flange* and one or more *Flexibility Services Contracts Flange* shall not be excused by *Force Majeure*, unless the payment procedure itself is affected by *Force Majeure*, the payment concerned is obstructed by law or is forbidden by any governmental authority.

7.3 Amounts that are due and payable by *Flange Customer* cannot be withheld on the grounds of *EnergyStock B.V.* claiming *Force Majeure* to the extent that those amounts are chargeable for services that were performed by *EnergyStock B.V.* prior to the occurrence of the event qualifying as *Force Majeure* or for services that are unaffected by such *Force Majeure* event.

7.4 If any *Party* claims *Force Majeure*, neither *Party* shall be entitled to terminate any *Flexibility Services Contract Flange* or terminate the obligation to perform services under the *General Terms and Conditions Flexibility Services Flange* on the grounds of such *Force Majeure* provided however, that if,

(a) in case of a *Contract Period* as specified in a *Flexibility Services Contract Flange* of three hundred and sixty five (365) days or less, a *Force Majeure* situation lasts for a period of more than twenty five (25) percent of the *Contract Period*, the *Party* who did not claim *Force Majeure* shall be entitled to terminate the *Flexibility Services Contract Flange*, provided that the *Force Majeure* situation still exists at the time of the termination; and



(b) in case of a *Contract Period* as specified in a *Flexibility Services Contract Flange* of more than three hundred and sixty five (365) days, a *Force Majeure* situation lasts for a period one hundred and eighty (180) days, the Party who did not claim *Force Majeure* shall be entitled to terminate the *Flexibility Services Contract Flange*, provided that the *Force Majeure* situation still exists at the time of the termination. Such a termination shall be made by registered letter.



## 8 Governing law and competent court

- 8.1 The *General Terms and Conditions Flexibility Services Flange* and any *Flexibility Services Contract Flange* shall be governed by and interpreted and applied in accordance with the laws of the Netherlands.
- 8.2 Any disputes arising out of or in connection with the *General Terms and Conditions Flexibility Services Flange* and any *Flexibility Services Contract Flange*, that are not to be referred to an *Expert* pursuant to the *General Terms and Conditions Flexibility Services Flange* or a subsequent agreement between *Parties* resulting thereof, shall be finally settled in accordance with the Arbitration Rules of the Netherlands Arbitration Institute ("Nederlands Arbitrage Instituut").

The arbitral tribunal shall be composed of three (3) arbitrators. Unless otherwise agreed each *Party* shall appoint one (1) arbitrator within thirty (30) days from the dispute being referred to the Netherlands Arbitration Institute. The third arbitrator will be appointed by the first two arbitrators within thirty (30) days after the appointment of the second arbitrator. Article 14 ("List Procedure") of the Rules of the Netherlands Arbitration Institute shall only apply for the appointment of any of the arbitrators that is not timely appointed in accordance with this *Article* 8.2. The third arbitrator shall act as chairman of the board of arbitration and shall be fully educated and trained as a lawyer.

The place of arbitration shall be Amsterdam. The arbitral procedure shall be conducted in the English language. The arbitral tribunal shall decide in accordance with the rules of law ("regelen des rechts").

The ruling of the arbitral tribunal shall be legally binding between *Parties*.



## 9 Expert and disputes

- 9.1 Whenever any person is to be appointed as an *Expert* or any matter is to be referred to an *Expert* or whenever the *Parties* agree that a dispute between them shall be resolved by an *Expert*, the provisions of this *Article* shall apply.
- 9.2 **Expert**  
The language of the expert procedure shall be English. Any matter to be referred to an *Expert* shall be resolved by applying the following procedure.
- 9.3 **Appointment**  
The *Party* wishing the appointment to be made, shall give notice in writing to that effect to the other *Party* and with such notice shall give details of the matter which is proposed to be resolved by the *Expert*.

*Parties* shall meet in an endeavour to agree upon a single *Expert* to whom the matter in dispute shall be referred for determination.

If within twenty-one (21) days from the receipt of said notice *Parties* have either failed to meet or failed to agree upon an *Expert*, then the *Party* that wishes the appointment may direct the matter forthwith to the NAI ("Nederlands Arbitrage Instituut"). The NAI shall be requested to make the appointment of said *Expert* within thirty (30) days.

Upon an *Expert* being agreed or selected under the foregoing provisions of this *Article* *Parties* shall forthwith notify such *Expert* of his selection and shall request him within fourteen (14) days to inform *Parties* whether or not he is willing and able to accept the appointment.

If such *Expert* shall be either unwilling or unable to accept such appointment or shall not have informed his willingness and ability to accept such appointment within the said period of fourteen (14) days, then (unless *Parties* are able to agree upon the appointment of another *Expert*) the matter shall again be referred (by either *Party*) in the aforesaid manner to the NAI ("Nederlands Arbitrage Instituut") which shall be requested to make a further appointment and the process shall be repeated until an *Expert* is found who accepts appointment.



#### 9.4 Qualification

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

Any person appointed as *Expert* shall be entitled to act as such *Expert*, provided he shall before accepting such appointment fully disclose to *Parties* any interest or duty and any conflict of interest or potential conflict of interest, including all particulars thereof. If such disclosure has been made, any *Party* may require within five (5) days from such disclosure removal of the *Expert*, stating the reasons for such removal and such *Expert* shall be replaced in accordance with the provisions of this *Article*.

If at any time prior to the *Expert* rendering a decision on any matter, a conflict or potential conflict of interest arises, then the *Expert* will fully disclose the particulars of such fact to *Parties*. In that event any *Party* may within five (5) days from such disclosure require the removal of the *Expert* and a new *Expert* shall be appointed in accordance with the terms of this *Article*. No person shall be appointed as an *Expert* who at the time of appointment is an employee of either *Party* or of any *Affiliated Company*.

#### 9.5 Decision

The *Expert* appointed shall make his decision based on data, information and submissions supplied and made to him by *Parties* not later than thirty (30) days after his acceptance of appointment and he shall ignore data, information and submissions supplied and made after such thirty (30) days unless the same are furnished in response to a specific request from him.

If within a reasonable period (which shall not exceed ninety (90) days after the acceptance by the *Expert* of his appointment) such *Expert* shall not have rendered a decision then (at the request of either *Party*) a new *Expert* shall be appointed under the provisions of this *Article* and upon the acceptance by such new *Expert* of his appointment the appointment of the previous *Expert* shall cease. However, if the previous *Expert* shall have rendered a decision prior to the date upon which the new *Expert* accepts his appointment, such decision shall be binding upon *Parties* and the instructions to the new *Expert* shall be withdrawn.

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

Each *Party* shall bear its own costs and expenses of all counsel, witnesses and employees retained by it in connection with the *Expert* procedure, but the costs and expenses of the *Expert* shall be apportioned equally between *Parties*.



## 10 Liability

### 10.1 Liability for physical loss of Gas

Subject to Dutch mandatory law, title to (ownership of) *Flange Customer's Working Gas* shall remain with *Flange Customer*. Liability for losses and/or damages due to the physical loss of such *Working Gas*, be it partly or wholly, out of the *Gas Storage Facility* shall at all time be for the risk and account of *EnergyStock B.V.*

### 10.2 Liability for personal loss and injury

#### 10.2.1 *EnergyStock B.V.* shall indemnify and hold harmless *Flange Customer* from and against any claim or other liability resulting from any:

- (a) personal injury to; and/or
- (b) death or disease of; and/or
- (c) loss or recovery of, or destruction of and/or damage to personal property of,

any directors, officers, agents, servants and/or employees of *EnergyStock B.V.* or of any of its *Affiliates* arising in connection with the performance, mis-performance or non-performance of the obligations arising from the *General Terms and Conditions Flexibility Services Flange* and any *Flexibility Services Contract Flange*, except to the extent that such injury, death, disease, loss, destruction and/or damage results from the wilful misconduct or gross negligence of *Flange Customer*.

#### 10.2.2 *Flange Customer* shall indemnify and hold harmless *EnergyStock B.V.* from and against any claim or other liability resulting from any:

- (a) personal injury to; and/or
- (b) death or disease of; and/or
- (c) loss or recovery of, or destruction of and/or damage to personal property of,

any directors, officers, agents, servants and/or employees of *Flange Customer* or of any of its *Affiliates* arising in connection with the performance, mis-performance or non-performance of the obligations arising from the *General Terms and Conditions Flexibility Services Flange* and any *Flexibility Services Contract Flange*, except to the extent that such injury, death, disease, loss, destruction and/or damage results from the wilful misconduct or gross negligence of *EnergyStock B.V.*



**10.3 Liability for unavailability of the *Gas Storage Facility***

In case of unplanned unavailability, in whole or in part, of the *Gas Storage Facility*, which unavailability is attributable to *EnergyStock B.V.*, regardless of the cause of such attributable unavailability, *EnergyStock B.V.* will pay to *Flange Customer* an immediately payable penalty of Euro 10,000,- per 1,000,000 kWh per Hour Contracted Send Out Capacity per Gas Day for every full Gas Day (24 consecutive Hours) during which the *Gas Storage Facility* remains unavailable for *Flange Customer*. The payable penalty for unavailability for periods shorter than a full Gas Day and less than the contracted capacity of *Flange Customer* shall be pro rata to the duration and extent of the interruption. The liability of *EnergyStock B.V.* to pay any penalties in accordance with this Article 10.3 is limited to the amount as mentioned in Article 10.6. *Flange Customer* has no right to claim for any damages, losses or other compensation in addition to the penalty due by *EnergyStock B.V.* unless the unplanned unavailability is caused by gross negligence or wilful misconduct of *EnergyStock B.V.*

**10.4 Liability for disputes with third parties**

*EnergyStock B.V.* shall, in the event of any conflict or dispute, not attributable to *Flange Customer* and not caused by or related to *Force Majeure*, but related to or affecting the obligations arising from the *General Terms and Conditions Flexibility Services Flange* and any *Flexibility Services Contract Flange* and the proper and timely performance thereof by *EnergyStock B.V.*, between *EnergyStock B.V.* on the one hand and/or *MNO* and/or other *Flange Customer(s)* and/or third parties collectively referred to as "related parties" on the other hand, be liable for any and all damages or costs incurred by and expenses made by *Flange Customer* directly resulting there from or directly connected therewith. The liability of *EnergyStock B.V.* to compensate any damages and/or costs of *Flange Customer* in accordance with this Article 10.4 is limited to the amount as mentioned in Article 10.6.

**10.5 Liability for other causes**

For all losses and/or damages which are not related to or caused by physical loss of *Gas* as described in Article 10.1, personal loss and injury as described in Article 10.2, unavailability as described in Article 10.3 and/or disputes with third parties as described in Article 10.4, the following applies: Each *Party* is liable towards the other *Party* for any direct losses and/or damages incurred by the other *Party* in relation to or arising from the obligations arising from the *General Terms and Conditions Flexibility Services Flange* and any *Flexibility Services Contract Flange* if and to the extent such losses and/or damages are caused by wilful misconduct or gross negligence of such *Party*.

**Wilful misconduct or gross negligence**

For the purpose of the *General Terms and Conditions Flexibility Services Flange* and any *Flexibility Services Contract Flange* "wilful misconduct or gross negligence" means





an intentional and conscious or reckless disregard by a *Party* or any of its *Affiliated Companies* (acting for and on behalf of a *Party*) and/or its (or such *Affiliated Company's*) officers, directors or employees of managerial or supervisory status of any provisions of the *General Terms and Conditions Flexibility Services Flange* and any *Flexibility Services Contract Flange* or, generally, of the obligations of a reasonable and prudent party. These expressions do not include an error of judgement or mistake in the exercise in good faith of a function, authority or discretion conferred on a *Party*.

#### 10.6 Limitation of liability

10.6.1 If either *Party* is found liable to the other *Party* under the *General Terms and Conditions Flexibility Services Flange* and any *Flexibility Services Contract Flange* irrespective of the cause of such liability, such *Party* will only be liable for the direct loss or damage suffered by the other *Party*, and will not be liable for any indirect or consequential damage suffered by the other *Party*.

10.6.2 All liability for losses, penalties and/or damages under the *General Terms and Conditions Flexibility Services Flange* and any *Flexibility Services Contract Flange*, with the exception of the liability set forth in *Article 10.1* and *Article 10.2*, shall at all times be limited to a maximum of Euro 100,000,- per 1,000,000 kWh per Hour Contracted Send Out Capacity per Flange Customer per occurrence. The total amount which shall be paid out by a *Party* for all losses and/or damages of the other *Party* shall never exceed the amount of Euro 400,000,- per 1,000,000 kWh per Hour Contracted Send Out Capacity per Flange Customer per Year.

10.6.3 The limitation of liability set forth in *Article 10.6.2* does not apply to direct damages that result from wilful misconduct or gross negligence.

10.7 *Parties* shall indemnify each other for and hold each other harmless from any claim by third parties, in connection with the performance of obligations under the *General Terms and Conditions Flexibility Services Flange* and any *Flexibility Services Contract Flange*.



## 11 Taxes

All amounts related to VAT and other indirect taxes as referred to in the *General Terms and Conditions Flexibility Services Flange* and any *Flexibility Services Contract Flange* are exclusive of any applicable VAT/other taxes. The VAT/other tax treatment of the *Contracted Flexibility Services* under the *General Terms and Conditions Flexibility Services Flange* and any *Flexibility Services Contract Flange* shall be determined pursuant to the VAT/other tax laws of the jurisdiction where a taxable transaction for VAT/other tax purposes is deemed to take place. In the case of VAT *Flange Customer* shall pay to *EnergyStock B.V.* an amount equal to the VAT at the rate applicable from time to time. Each *Party* shall to the extent permitted by law provide the other with any additional valid VAT invoices as required for the purposes of the *General Terms and Conditions Flexibility Services Flange* and any *Flexibility Services Contract Flange*. In the case of other taxes, if the cost of an other tax is charged or passed on by *EnergyStock B.V.* to *Flange Customer*, *Flange Customer* shall pay this amount of other tax to *EnergyStock B.V.*; provided that such amount of other tax is identified separately on the invoice issued by *EnergyStock B.V.* and confirmation is received by *Flange Customer*, where applicable, that such amount of other tax has been duly paid or accounted for to the relevant tax authority, as appropriate. For the avoidance of doubt, the tax referred to in this *Article* does not include *EnergyStock B.V.* corporate income tax and the like.



## 12 Confidentiality

12.1 *Parties* agree that the content of the *General Terms and Conditions Flexibility Services Flange* and any *Flexibility Services Contract Flange*, credit control related documents and all information obtained under the *General Terms and Conditions Flexibility Services Flange* and any *Flexibility Services Contract Flange* by a *Party* from the other *Party*, including all engineering and operational data, shall be held strictly confidential by the receiving *Party* during the term of the *General Terms and Conditions Flexibility Services Flange* and any *Flexibility Services Contract Flange* and for a period of three (3) years from the latest *End Date* of any *Flexibility Services Contract Flange*. *Parties* declare that neither they nor their legal successors shall make or have made public any information with regard to the contents of the aforementioned documents under the *General Terms and Conditions Flexibility Services Flange* and any *Flexibility Services Contract Flange* without prior written consent of the other *Party*.

However, a *Party* may make available said contents or information without such prior written consent to:

- (a) its employees or employees of *Affiliated Companies* or shareholders or members of corporate bodies of an *Affiliated Company* to the extent reasonably necessary for the approval and performance of any obligations under these conditions and any agreement there under, provided that such employees, shareholders and members shall be bound to preserve the secrecy of such information, or
- (b) any (non)governmental authority (including court and the regulatory authority) or recognised security exchange, where such disclosure is required by law, European Guidelines, order or regulation; in such case the disclosing *Party* shall inform the other *Party* in advance of such disclosure and of its extent where possible, or
- (c) banking and financial institutions and their consultants, where such disclosure is necessary in connection with financing arrangements, provided that the disclosing *Party* shall first obtain a written undertaking of confidentiality from such banking and financial institutions and their consultants, that is similar to the undertaking of confidentiality that is set forth in this *Article*, or
- (d) independent consultants or contractors nominated by a *Party* for the purpose of or in connection with the *General Terms and Conditions Flexibility Services Flange* and any *Flexibility Services Contract Flange*, provided that such *Party* shall first obtain a written undertaking of confidentiality from each consultant or contractor, that is similar to the undertaking of confidentiality that is set forth in this *Article*, or



- (e) the *NNO*, where the disclosure of *Nominations*, *Confirmations*, metering data and/or allocations, on a confidential basis, is necessary in connection with gas flow procedures at the *Gas Storage Entry Point* respectively the *Gas Storage Exit Point*.

12.2 Notwithstanding the provisions of *Article 12.1*, the *Party* receiving the information may disclose such information without the other *Party's* prior written consent, only to the extent that such information:

- (a) is already lawfully known to the *Party* receiving the information and is not subject to an undertaking of confidentiality, or
- (b) is already in the public domain other than through the act or omission of the *Party* receiving the information, or
- (c) is acquired independently from a third party that is entitled to disseminate such information at the time it is acquired by the *Party* receiving the information.

12.3 *EnergyStock B.V.* is entitled to publish on its *Website* data to provide third parties insight in the quantity of capacity available for booking and in aggregate form the level of the past usage of capacity insofar this aggregate information can be published without jeopardising confidentiality, and does not harm the commercial position of *Flange Customer*.



## 13 Assignment

Unless stated otherwise in the *General Terms and Conditions Flexibility Services Flange* and any *Flexibility Services Contract Flange*, a *Party* may assign part or all of its rights and obligations under the *General Terms and Conditions Flexibility Services Flange* and any *Flexibility Services Contract Flange*, with the prior written consent from the other *Party*, which consent shall not be unreasonably withheld or delayed. However, *Flange Customer* may only assign part or all of its rights and obligations under the *General Terms and Conditions Flexibility Services Flange* and any *Flexibility Services Contract Flange* to any person or entity that, to the satisfaction of *EnergyStock B.V.*, fulfils or has fulfilled the requirements described in *Article 2.1*. Consent shall be deemed to be reasonably withheld if in the case of any proposed assignment of obligations the *Party* making the assignment is unable to demonstrate to the reasonable satisfaction of the other *Party* that the proposed assignee has the ability to perform the obligations assigned to it. Without being limitative, such ability to perform the obligations might be dependent on the creditworthiness of the proposed assignee.



## 14 Term, suspension and termination of services

### 14.1 Duration of obligations

The obligations of *Parties* under the *General Terms and Conditions Flexibility Services Flange* shall enter into force and become effective after signing of the *DoA* and shall remain into force until *Parties* explicitly agree otherwise.

The *Flexibility Services Contract(s) Flange* shall enter into force and become effective after the(se) *Flexibility Services Contract(s) Flange* has / have been confirmed and signed by the *Parties* thereto and shall remain in force up to the latest *End Date* unless otherwise agreed upon.

### 14.2 Termination

#### 14.2.1 Termination events

Each *Party* shall be entitled without judicial intervention to terminate the *Flexibility Services Contract(s) Flange* and/or to suspend any obligations under the *General Terms and Conditions Flexibility Services Flange* and the *Flexibility Services Contract(s) Flange* if the other *Party*:

- (a) is declared bankrupt (Dutch: 'in staat van faillissement verklaard') or is granted a (provisional) suspension of payment (Dutch: 'surséance van betaling') or is declared in a similar legal status affecting the rights of creditors generally, or
- (b) fails to fulfil its material obligations within a reasonable period of time after having been given notice of such failure by the other *Party* or
- (c) does not in time furnish the security mentioned in *Article 6*, or
- (c) does not immediately cease the offending activity and/or refuses to cease the offending activity and/or is directly responsible for the reoccurrence of the reason for suspension, in accordance with *Article 14.3*.

with regard to *Flange Customer*,

- (d) *Flange Customer* no longer meets one or more of the criteria stated in *Article 2.1*,

For the avoidance of doubt, *Article 14.2.1 (b)* does not apply in case the material obligation concerned is the subject of a bona fide dispute between the *Parties*.

#### 14.2.2 Notice of termination

Without prejudice to *Article 14.1*, in the case referred to under *Article 14.2.1 (a)* a *Party* shall be entitled to immediately suspend the performance of services under the



*General Terms and Conditions Flexibility Services Flange* and the *Flexibility Services Contract(s) Flange* or to terminate the *Flexibility Services Contract(s) Flange*. In the other cases mentioned in *Article 14.2*, a *Party* shall only exercise these rights after it has summoned the other *Party* in writing to remedy its default within a reasonable period and provided that the other *Party* has not so remedied its default, unless it is apparent that such summons will be of no avail. In the case referred to under *Article 14.2.1 (b)* the defaulting *Party* will have a period of ten (10) days to remedy the default. A *Party* shall notify the other *Party* by registered letter if that *Party* exercises its right to terminate a *Flexibility Services Contract Flange*. All amounts which may be owed by a *Party* to the other *Party* shall be immediately due and payable from the day of receipt of the notification.

#### 14.3 Suspension of services

*EnergyStock B.V.* is entitled to suspend *Flexibility Services* at any time without prior notice in order to:

- (a) avert or preclude immediate danger to the safety of personnel, facilities or the environment,
- (b) ensure that disturbances of *Flange Customers* or disturbing effects on facilities of *EnergyStock B.V.*, or any other third party, are prevented, or
- (c) prevent the off take of *Gas* circumventing or negatively influencing measuring equipment.

If *Flange Customer* is not responsible for the above-mentioned reasons for suspending *Flexibility Services*, then the *Flexibility Services* shall be discontinued only insofar and for as long as is absolutely necessary in order to eliminate the reasons for the suspension. If *Flange Customer* is directly responsible for the above-mentioned reasons for suspending *Flexibility Services*, *Flange Customer* shall immediately cease the offending activity upon notice from *EnergyStock B.V.* Suspension of the *Flexibility Services* may be a cause for unplanned unavailability within the meaning of *Article 4.4*.

#### 14.4 End of contractual relationship

##### 14.4.1 Gas in storage upon termination and *Non Usage*

At the end of the *Contract Period Flange Customer* must have completely removed its remaining *Working Gas* related to the relevant *Flexibility Services Contract(s) Flange*. The amount of *Working Gas* which *Flange Customer* must remove shall be calculated taking into account any amount of *Contracted Flexibility Services* lost by *Flange Customer* pursuant to *Article 3.6.1*. If the *Flexibility Services Contract(s) Flange* is/are terminated without notice or in case of *Non Usage*, *EnergyStock B.V.* shall grant *Flange Customer* a reasonable period in which *Flange Customer* has to fulfil the obligations as defined in the first sentence of this *Article*.



14.4.2 Extended period for withdrawal

If *Flange Customer* is not able to withdraw its remaining *Working Gas* by the end of the *Contract Period* or within the reasonable period as mentioned in *Article 14.4.1* due to *Force Majeure* or any failure of *EnergyStock B.V.*, *Flange Customer* has the right to withdraw its remaining *Working Gas* within a period of 14 *Gas Days* thereafter.

14.4.3 Failure of *Flange Customer* to withdraw upon termination

In cases where *EnergyStock B.V.*, as a consequence of a delayed removal of remaining *Working Gas* attributable to *Flange Customer* and after the reasonable period as referred to in *Article 14.4.1.* and 14.4.2 has expired, suffers demonstrable losses due to the inability of *EnergyStock B.V.* to sell *Flexibility Services* to a third party, *EnergyStock B.V.* is entitled to full financial compensation by *Flange Customer* of any such losses.





## 15 Miscellaneous

- 15.1 The failure at any time of either *Party* to require performance by the other *Party* of any provision under the *General Terms and Conditions Flexibility Services Flange* and any *Flexibility Services Contract Flange*, shall in no way affect the right of a *Party* to require any performance which may be due thereafter pursuant to the *General Terms and Conditions Flexibility Services Flange* and any *Flexibility Services Contract Flange*, nor shall the waiver by either *Party* of any breach of any provision under the *General Terms and Conditions Flexibility Services Flange* and any *Flexibility Services Contract Flange* be held to be a waiver of any subsequent breach of such provision.
- 15.2 Any and all modifications and supplements to the *General Terms and Conditions Flexibility Services Flange* and any *Flexibility Services Contract Flange* shall not be valid unless drawn up in writing, labelled as subsequent amendment and signed by *Parties* or their assigns or successors.
- 15.3 If one or more of the provisions of the *General Terms and Conditions Flexibility Services Flange* and any *Flexibility Services Contract Flange* should be totally or partially void or ineffective, this shall not affect the legal status of the other provisions. *Parties* undertake to co-operate in agreeing as soon as possible on an effective new provision, which approaches the economic purpose and any other effect of the ineffective or void provision as closely as possible.
- 15.4 *Parties* will at all times give to each other all such information as each *Party* may have available and as may be necessary or useful to enable *Parties* to carry out their obligations under the *General Terms and Conditions Flexibility Services Flange* and any *Flexibility Services Contract Flange* (to the extent that each *Party* is entitled to disclose such information to the other). Either *Party* shall have the right, at its own cost and by notice to the other *Party*, to nominate independent accountants, who may be assisted by a technical specialist, who are acceptable to the other *Party*, such acceptance not to be unreasonably withheld or delayed. The accountants shall have the right at reasonable hours to examine the books, records and charts of the other *Party* only to the extent necessary to verify the accuracy of any statement, charge or computation made pursuant to any of the provisions under the *General Terms and Conditions Flexibility Services Flange* and any *Flexibility Services Contract Flange* and to the extent that the auditing *Party* cannot verify such accuracy through the prudent exercise of its own internal controls. Such books, records and charts shall be preserved for a period of at least five (5) years from the latest *End Date* or the date of early termination of a *Flexibility Services Contract Flange* , provided that if such books, records or charts are related to any facts which are disputed between *Parties* within



the aforementioned period, then such books, records or charts shall be preserved until such dispute is settled.

- 15.5 The *Flexibility Services Contract(s) Flange* form(s) integral part of these *General Terms and Conditions Flexibility Services Flange*. In case of any conflict between the provisions of the main body of the *General Terms and Conditions Flexibility Services Flange* and the Exhibits to the *General Terms and Conditions Flexibility Services Flange*, the main body of the *General Terms and Conditions Flexibility Services Flange* will prevail unless explicitly agreed otherwise. In case of any conflict between the provisions of the main body of the *General Terms and Conditions Flexibility Services Flange* and *the Flexibility Services Contract Flange*, the main body of the *General Terms and Conditions Flexibility Services Flange* will prevail unless explicitly agreed otherwise.



## 16 Communication

- 16.1 For the communication of data SI-units shall be used whenever possible. All notices shall be given in the English language, unless *Parties* agree otherwise.
- 16.2 Unless otherwise stipulated in the *General Terms and Conditions Flexibility Services Flange* and the *Flexibility Services Contract(s) Flange* any notice to be given hereunder shall be in writing and shall be deemed given and effective upon receipt by the *Party* addressed, or, in case the receipt is disputed:
- (a) if posted in the Netherlands, postage prepaid, to an address in the Netherlands on the second (2<sup>nd</sup>) *Business Day* subsequent to posting, or
  - (b) if posted outside the Netherlands or to an address outside the Netherlands, via airmail and postage prepaid, on the fifth (5<sup>th</sup>) *Business Day* subsequent to posting, or
  - (c) if given by telefax or (encrypted) electronic mail on the next *Business Day* after the dispatch thereof, unless
    - in case of a telefax in which case the telefax shall be deemed to have been received upon confirmation of receipt by the recipient and
    - in case of (encrypted) electronic mail in which case the notice shall be deemed to have been received upon confirmation of receipt by the recipient.

