

AGREEMENT ON SPECIFIC UTILISATION OF STORAGE CAPACITY

This AGREEMENT ON SPECIFIC UTILISATION OF STORAGE CAPACITY (hereinafter the “**Agreement**”) is made and entered into on [FILL IN] (the “**Effective Date**”) by and between:

POZAGAS a.s., a company existing under the laws of Slovak republic and having its registered office at Malé námestie 1, 901 01 Malacky, Slovak Republic, registered in the Commercial Register, District Court Bratislava I, section Sa, file No. 1271/B; Company ID: 31 435 688, VAT ID: SK2020357372;

hereinafter referred to as “**Storage Facility Operator**“,

and

[FILL IN]

hereinafter referred to as “**Customer**“,

and

[FILL IN]

hereinafter referred to as “**Financing Party**“,

Storage Facility Operator, Customer and Financing Party are each hereinafter referred to as a “**Party**” and jointly as the “**Parties**”.

PREAMBLE

WHEREAS the Storage Facility Operator and the Customer entered into a Contract on Access to the Storage Facility and Gas Storage dated [FILL IN] (hereinafter the “**Gas Storage Contract**”), as attached hereto as Annex 1, for the access to storage and the provision of storage services in relation to Láb 4 Natural Gas Underground Storage Facility (hereinafter the “**Storage Facility**”) and for the duration of one (1) Contract Year commencing on [FILL IN] (hereinafter the “**Storage Period**”), pursuant to the respective valid version of the “*Rules of Operation of POZAGAS a.s. stipulating general commercial terms and conditions for access to the storage facility UNGSF Láb 4 and its utilization*” (hereinafter the “**Rules of Operation**”) and the “*Technical Terms and Conditions of Access and Connection to Underground Natural Gas Storage Facility Láb 4 and Rules of Operation Thereof*” (hereinafter the “**Technical Terms and**

Conditions”) as amended from time to time, which form an integral part of the Gas Storage Contract.

WHEREAS the Parties wish to facilitate the transfer from the Customer to Financing Party of the Gas that is injected by the Customer in the Storage Facility (hereinafter the “**Gas-in-Storage**”) as well as the surrender from the Customer to Financing Party of the corresponding Working Gas Volume held by the Customer in the Storage Facility in order to use such Gas-in-Storage as potential temporary collateral for the purposes of Financing Party subject to the terms and conditions of this Agreement.

WHEREAS the title to the Gas-in-Storage transferred and corresponding Working Gas Volume surrendered from the Customer to Financing Party shall be retransferred and re-surrendered from Financing Party to the Customer upon the expiry of this Agreement at the latest, except as provided in ARTICLE 4.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Parties hereby agree as follows:

ARTICLE 1 DEFINITIONS AND INTERPRETATION

- 1.1. Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Gas Storage Agreement, Rules of Operation and Technical Terms and Conditions.
- 1.2. When a reference is made in this Agreement to Articles or Annexes, such reference shall be to an Article or Annex of this Agreement unless otherwise indicated. The headings contained in this Agreement are for convenience purposes only and shall not affect in any way the meaning or interpretation of this Agreement. The terms defined in the singular have a comparable meaning when used in the plural, and vice versa. Any reference to time in this agreement shall be a reference to the official time in the Slovak Republic.
- 1.3. Parties agree that for the purpose of this Agreement, the term “**Event of Default**” shall have the meaning ascribed to it in the Bilateral Agreement.

ARTICLE 2 SUBJECT MATTER

- 2.1. The subject matter of this Agreement shall be the transfer and retransfer of Gas-in-Storage as well as the surrender of related Working Gas Volume between the Customer and the Financing Party, subject to the terms and conditions of this Agreement and the Gas Storage Contract.
- 2.2. The commercial terms for the aforementioned transactions between the Financing Party and the Customer are not included in this Agreement, but in the bilateral Agreement for the Transfer and Retransfer of Gas-in-Storage and Working Gas Volume entered into by the Customer and the Financing Party on [FILL IN] (hereinafter the “**Bilateral Agreement**”). For the avoidance of doubt, the Customer and the Financing Party confirm

that the Storage Facility Operator is not a party to and bound by the Bilateral Agreement and that the Bilateral Agreement and any of its potential amendments does not and will not impose any obligations on the Storage Facility Operator or amend any provisions hereunder.

- 2.3. Unless otherwise provided in this Agreement or in the Gas Storage Contract, the Parties are bound to the provisions of the Rules of Operation and Technical Terms and Conditions in the respective valid version.

ARTICLE 3

SPECIFIC UTILISATION OF STORAGE CAPACITY

- 3.1. The Parties agree that the Customer shall be entitled to transfer to the Financing Party in several instalments (each such transaction being a “**Transfer**”) and the Financing Party shall be entitled to transfer back to the Customer in several instalments (each such transaction being a “**Retransfer**”) the title on certain amounts of Gas-in-Storage (the “**Transferred Gas-in-Storage**”) and surrender the corresponding Working Gas Volume (the “**Surrendered WGV**”) available to the Customer under the Gas Storage Contract, in accordance with the Gas Storage Contract.
- 3.2. The Parties agree that, following each Transfer, as validly effected by the Parties pursuant to the Gas Storage Contract the Financing Party shall have full title to any quantity of Gas-in-Storage which has been the subject of a Transfer from the Customer to the Financing Party in accordance with the Gas Storage Contract and this Agreement.
- 3.3. The Customer and the Financing Party agree that the Transfers and /or Retransfers shall not affect the Customer’s legal position as a party to the Gas Storage Contract and its obligations thereto. In particular, the Customer shall remain obligated to pay the Price for Fixed Storage Capacity and other considerations to the Storage Facility Operator pursuant to the Gas Storage Contract (hereinafter the “**Storage Fees**”) and it remains fully liable for its obligations under the Gas Storage Contract. The Parties agree that the Financing Party shall not be liable for any of the Customer’s obligations under the Gas Storage Contract, without prejudice to any liability of the Financing Party to the Customer according to the Bilateral Contract, any other bilateral contractual arrangements between the Customer and the Financing Party relating to the subject matter of this Agreement, or any liability to the Storage Facility Operator that the Financing Party (a) may assume by operation of the Assignment (as defined in the Gas Storage Contract) or (b) has specifically assumed in this Agreement (such as the Guarantee (as defined below)).
- 3.4. In order to enable the Customer and the Financing Party to effect the transactions contemplated hereby in accordance with the terms and conditions hereof, the Storage Facility Operator hereby undertakes to set up for the Financing Party, and exclusively for the purposes of this Agreement, a storage sub-account within the Gas Stored Account of the Customer (hereinafter the “**Gas Stored Sub-Account**”), to which the Surrendered WGV as well as the corresponding Transferred Gas-in-Storage, which from time to time the Financing Party holds title of, shall be allocated.

- 3.5. In order to effect a Transfer, or Retransfer, as the case may be, the Customer shall submit to the Storage Facility Operator, by e-mail with a copy to the Financing Party, a transfer notice, in the form as set out in Annex 2, duly signed by both the Financing Party and the Customer (each a “**Transfer Notice**”). Each Transfer Notice shall specify the volumes of Gas-in-Storage to be transferred (i.e. the Transferred Gas-in-Storage) as well as the date the Transfer shall become effective (hereinafter the “**Transfer Effective Date**”). The Transfer Effective Date shall not be earlier than two (2) business days after the day the Transfer Notice has been received by the Storage Facility Operator. The effective hour of the Transfer shall always be 06:00 hours (CET/CEST) on the Transfer Effective Date. Upon the receipt of a duly signed and completed Transfer Notice, the Storage Facility Operator shall confirm the receipt of the Transfer Notice and check the prerequisites for the Transfer without undue delay. If the conditions are met, the Storage Facility Operator shall send a confirmation of the Transfer to the Customer, with a copy to the Financing Party, via e-mail and shall modify the Gas Stored Sub-Account accordingly on the Transfer Effective Date indicated in the relevant Transfer Notice. The Transfer and Retransfer shall be always associated with surrender and re-surrender of corresponding WGV automatically upon confirmation of the Transfer or Retransfer sent by the Storage Facility Operator to the Customer according to the Gas Storage Contract. The Storage Facility Operator may refuse the requested Transfers in case the quantities of Transferred Gas-in-Storage and/or related Surrendered WGV are not available and/ or either the Customer or the Financing Party does not comply with the terms and conditions of this Agreement and/or (as applicable) the Gas Storage Contract. The Storage Facility Operator shall notify such withholding of approval or refusal to the Customer and the Financing Party within one (1) business day of the receipt of the Transfer Notice; if the Storage Facility Operator fails to reply within the time period provided above, the respective Transfers shall be regarded as valid.
- 3.6. Once the Transferred Gas-in-Storage has been duly transferred pursuant to Article 3, Financing Party shall be entitled to dispose of the Transferred Gas-in-Storage only in order to request for a Retransfer by sending a Transfer Notice in the manner described in section 3.4. (which will apply mutatis mutandis to each such Retransfer).

ARTICLE 4 EVENT OF DEFAULT

- 4.1. Upon the occurrence of an Event of Default as defined in section 1.3 of this Agreement with respect to the Customer, the Financing Party shall be entitled (but not obligated) to be assigned all (but not less than all) rights and obligations under the Gas Storage Contract, and to be transferred any volumes of Gas-in-Storage that the Customer might hold at the time under the Storage Agreement, by giving an Assignment Notice (as defined in the Gas Storage Contract) to the Storage Facility Operator in accordance with the Gas Storage Contract. The Customer and the Storage Facility Operator hereby grant their consent with such assignment. The Storage Facility Operator hereby consents with the assumption of any and all Customer’s debts arising from the Gas Storage Contract by the Financing party. Upon receipt of the Assignment Notice, all receivable and obligation arising from the Gas Storage Contract shall be immediately assigned to the Financing

Party and all rights, claims, obligations and liabilities of the Customer with respect to the Gas Storage Contract shall pass to the Financing Party and the Financing Party agrees to be bound to and to perform all of the rights and obligations of the Customer under the Gas Storage Contract as set out in the Gas Storage Contract and shall assume all rights, claims, obligations and liabilities of the Customer as if the Financing Party were the original party to the Gas Storage Contract.

- 4.2. Following delivery of the Assignment Notice, the Storage Facility Operator shall confirm receipt of the Assignment Notice.
- 4.3. In case of the Assignment (as defined in the Gas Storage Contract), the Storage Facility Operator shall have the right to require from the Financing Party the submission of the Bank Guarantee according to Article 24 of the Rules of Operation.

ARTICLE 5 GUARANTEE

- 5.1. In case the Customer fails to fulfil any of its payment obligations resulting from the Gas Storage Contract, including but not limited to its obligation to pay the relevant Storage Fees, in accordance with Section 303 of the Commercial Code (as defined in the Rules of Operation), the Financing Party shall act as a guarantor of the Customer and shall pay to the Storage Facility Operator all outstanding amounts owed to the Storage Facility Operator by the Customer (including, with limitation the Storage Fees, damages, indemnity, or unjust enrichment) but limited to an amount of EUR [FILL IN] upon receipt of a separate invoice to be issued by the Storage Facility Operator setting forth such due amounts, provided that such failure to pay is not cured by the Customer within five (5) business days of a written demand of the Storage Facility Operator. Notwithstanding anything to contrary in this Agreement, this guarantee obligation of the Financing Party is continuing obligation and will extent to the ultimate balance of all liabilities secured by the guarantee have been irrevocably and unconditionally paid and discharged in full. This guarantee obligation of Financing Party shall only apply to obligations incurred before the end of this Agreement.
- 5.2. Any lien, security or retention right on the Gas stored by Customer securing Storage Facility Operator's claims against it shall continue to be in place with respect to all Gas stored by Customer. However, Storage Facility Operator shall not acquire the Gas-in-Storage quantities transferred to Financing Party and shall not enforce its rights to withhold such Gas quantities or enforce any other retention or security right regarding the Gas-in-Storage transferred to Financing Party, provided and to the extent that Financing Party performs its guarantee obligations as described in section 5.1., including without limitation the payment of any and all outstanding Storage Fees.

ARTICLE 6 TERM AND TERMINATION

- 6.1. This Agreement shall enter into force on the Effective Date and shall remain in effect until [FILL IN] or as the case for Extension No.1 and/or Extension No.2 may be (the "**Term**"). The following provisions of this Agreement shall survive the termination of

this Agreement: Articles 5, 6, 7 and 8, and all other provisions of this Agreement that by their nature extend beyond the termination of this Agreement.

- 6.2. By the end of the Term, the Customer and the Financing Party shall have reduced the Transferred Gas-In-Storage present in its Gas Stored Sub-Account to zero (0) MWh and re-surrendered to the Customer all Surrendered WGV.
- 6.3. In the event the Gas Storage Contract is terminated earlier than as defined in section 6.1. of this Agreement, the Transferred Gas-in-Storage, which has not been previously retransferred by Financing Party to Customer, shall remain at the disposal of Financing Party even after such termination. In such case, Storage Facility Operator hereby undertakes to open new Gas Stored Account for Financing Party where all Transferred Gas-in-Storage at disposal of Financing Party shall be credited and, at standard market conditions, to provide Financing Party with the Storage Capacity necessary to allow Financing Party to promptly reduce, within a reasonable period of time from the termination date, the Storage Level of its Gas Stored Account to zero (0) MWh by withdrawing the Transferred Gas-in-Storage, provided that Financing Party meets all technical and operational requirements for withdrawal and provides Storage Facility Operator with all necessary information, documents and instructions required in order to allow Storage Facility Operator to perform its contractual obligations in connection with withdrawal.
- 6.4. For the avoidance of any doubt, section 6.3. shall only apply in case the Financing Party fulfils its obligations under section 5.1. of this Agreement.

ARTICLE 7 APPLICABLE LAW AND DISPUTE RESOLUTION

- 7.1. This Agreement shall be governed by Slovak law.
- 7.2. The Parties shall use reasonable endeavors to settle any Disputes arising from or in connection with this Agreement.
- 7.3. Disputes that are not settled by an amicable agreement within sixty (60) days from the delivery of a written notice of Dispute to the other Party, which shall contain the description of the Dispute and proposals for its resolution, shall be resolved, in case that Parties shall not agree in written form otherwise, by means of arbitration conducted in the English language and decided by three (3) arbitrators.
- 7.4. The Parties shall nominate one (1) arbitrator each. The two (2) arbitrators nominated in this way shall appoint a third arbitrator, who shall act as chairman of the Court of Arbitration.
- 7.5. Arbitration proceedings shall be governed by the rules of the Court of Arbitration of the International Chamber of Commerce. The venue of the arbitration proceedings shall be in Zürich, Switzerland.
- 7.6. The ruling resulting from the arbitration proceedings shall be final and binding on all Parties.

**ARTICLE 8
MISCELLANEOUS**

- 8.1. All contractual terms and conditions of this Agreement and all information exchanged in relation hereto, as well as the provisions of the Gas Storage Contract, shall be deemed strictly confidential and it shall be inadmissible to disclose such information to any third party. The confidentiality obligations of Section 28 of the Rules of Operation shall apply accordingly.
- 8.2. All rights and obligations of the Parties not explicitly provided for in this Agreement or the Gas Storage Contract shall be governed by the valid and effective provisions of the Rules of Operation and Technical Terms and Conditions as applicable. If this Agreement regulates the mutual rights and obligations of the Parties in a manner other than the one provided for in the Rules of Operation or Technical Terms and Conditions, the provisions of this Agreement shall prevail.
- 8.3. Any and all provisions of the Gas Storage Contract and any and all provisions of the Rules of Operation not amended and not waived by this Agreement shall remain unchanged and effective.
- 8.4. Parties agree, that stipulations of this Agreement governing mutual rights and obligations in other manner than those provided for in Gas Storage Contract, Rules of Operations and/or Technical Terms and Conditions shall prevail.
- 8.5. Any communication in connection with this Agreement shall be addressed in writing and delivered by registered letters, courier service, fax or e-mail (if listed below) to:

Customer

[FILL IN]

Storage Facility Operator

Address: Malé námestie 1, 901 01 Malacky, Slovak Republic

Telephone: +421 34 772 5939

Fax: +421 34 772 2406

Attention: [FILL IN]

E-mail: [FILL IN]

Financing Party

[FILL IN]

- 8.6. Except as otherwise expressly provided herein, this Agreement may not be modified other than by a written instrument executed by duly authorized representatives of the Parties.
- 8.7. If at any time any provision, in whole or in part, of this Agreement is declared or becomes unenforceable, invalid or void for any reason or in any jurisdiction whatsoever that shall not affect or impair the enforceability, validity or legality or any other provision of the Agreement or in any other jurisdiction. The invalid, void and/or unenforceable provision shall be automatically replaced with a valid and enforceable one which meets the Parties' economic interest best.

- 8.8. No failure to exercise, nor single or partial exercise of, a power or remedy in connection with the Agreement will operate as a waiver thereof or preclude any other or further exercise of any such right or remedy. The provisions of this Agreement and the rights and remedies of Parties are cumulative, without prejudice to and in addition to any rights or remedies a Party may have at law or in equity.
- 8.9. The Parties declare that they have read the Gas Storage Contract, comprehended the content and agree with it and in evidence thereof have signed the Gas Storage Contract of their own free will.

IN WITNESS WHEREOF, and intending to be legally bound, the Parties have duly executed this Agreement by their authorized representatives as of the date first written above.

Signed for and on behalf of
[FILL IN]

Signed for and on behalf of
[FILL IN]

By:
Name:
Title:

By:
Name:
Title:

Signed for and on behalf of
[FILL IN]

By:
Name:
Title:

ANNEXES:

ANNEX 1 – Gas Storage Contract
ANNEX 2 – Transfer Notice template