

**General  
Conditions for Storage Access  
("GCSA")**

**Date: February 2024**

**of bayernugs GmbH**

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## **§ 1 General**

The General Conditions for Storage Access ("GCSA") of bayernugs GmbH ("bayernugs") govern the contractual provisions for access to the storage facility of bayernugs as well as the associated ancillary services.

The GCSA shall apply exclusively. The general business conditions of the Storage Customer shall not become part of the contract without bayernugs' express written consent thereto; this shall also apply if bayernugs does not expressly object and/or provides or accepts services despite conflicting, different, supplementary or deviating general business conditions of the Storage Customer.

## **§ 2 Definitions**

In terms of definitions and interpretation, the Electricity and Gas Supply Act (*Gesetz über die Elektrizitäts- und Gasversorgung*) of 07 July 2005 ("EnWG") as amended from time to time shall apply to any storage access and contracts concluded for that purpose, unless otherwise agreed below and/or in Annex 2 or in any individual contract.

All elements apply as a general rule, unless agreed otherwise, in accordance with the SI standards.

All definitions shall apply to both the singular and the plural and without regard to gender.

## **§ 3 Storage and Applicable Conditions**

(1) bayernugs operates the Wolfersberg underground natural gas storage facility (hereinafter referred to as the "Storage Facility") constructed in an abandoned natural gas deposit in lithothamnian limestone. Storage contracts relate exclusively to this Storage Facility, unless otherwise stipulated therein. The storage capacities in the Storage Facility may be used by the Storage Customer in accordance with the terms and conditions of the Storage Contract, this GCSA and the operational requirements set out in Annex 1 (hereinafter referred to as the

"Operating Manual"), which form an integral part of this Agreement, shall be used. In the event of any conflicts in relation to the above elements, the above order of precedence shall apply.

(2) The Storage Facility is connected to the H-gas transport system of the network operator, bayernets GmbH (hereinafter referred to as the "Network Operator") in the Trading Hub Europe market area.

## **§ 4 Storage Access and Conclusion of Contract**

Storage access shall be granted to the Storage Customer by bayernugs on a non-discriminatory basis on the basis of these GCSA.

## **§ 5 Prequalification and Auction Procedures**

Prequalification and auction procedures are subject to the respective applicable provisions on prequalification and auction procedures. Such are not regulated in these GCSA.

## § 6 Performance Obligations

- (1) bayernugs shall be entitled to both accept and inject quantities of gas from the Storage Customer and mix such with quantities gas of other storage customers as well as to withdraw and provide quantities of gas which have been mixed with quantities of gas from other storage customers.

The separation or identification of such quantities of gas need not be maintained.

- (2) The Storage Customer undertakes to designate those quantities of gas intended for injection, including the required propellant gas quantity in accordance with § 6 (3) of the GCSA, in accordance with

the specifications of the Operating Manual. The Storage Customer shall also be obliged to designate the same amount to the Network Operator.

- (3) The Storage Customer shall provide at the transfer point in accordance with § 11 of the GCSA the quantities gas intended for injection and, in addition, for each MWh of gas to be injected, a quantity of gas corresponding to 2% of the quantity of gas to be injected. No additional storage capacities are required for the additional gas to be provided.

- (3a) The Storage Customer shall ensure the following level requirements (as a percentage of the working gas volume of the gas storage facility) during injection and withdrawal:

- on 01 May: 5 per cent,
- on 01 June: 10 per cent,
- on 01 September: 75 percent,
- on 01 October: 85 percent,
- on 01 November: 95 percent and
- on 01 February: 30 percent.

The Federal Ministry of Economics and Climate Protection (*Bundesministerium für Wirtschaft und Klimaschutz*) may, by statutory order, without the consent of the Federal Council (*Bundesrat*), establish regulations deviating herefrom concerning the relevant set dates and level specifications vis-à-vis storage system operators. Such regulations shall automatically apply to bayernugs as soon as they come into effect and shall also apply to the Storage Customer as a new requirement within the meaning of this provision. The same shall apply accordingly to any changes concerning the relevant requirements by law or other legal provisions at national and EU level.

- (4) bayernugs undertakes to accept the quantities of gas duly designated by the Storage Customer and made available at the takeover point in accordance with § 11 GCSA simultaneously and in a thermal equivalent manner and to inject such, minus the quantity of propellant gas to be made available by the Storage Customer in accordance with the above paragraph (hereinafter "working gas volume"). Upon taking over those quantities gas, bayernugs shall have fulfilled its obligations to accept and inject the gas.

- (5) The Storage Customer undertakes to designate the quantities of gas intended for withdrawal and to take over the gas quantities provided by bayernugs at the transfer point in accordance with § 11 GCSA simultaneously and in a thermal equivalent manner. The Storage Customer shall also be obliged to designate the same amount to the network operator. bayernugs may waive the designation by way of a separate agreement.

For any withdrawal, the Storage Customer shall provide bayernugs from the working gas volume injected on its behalf with a quantity of heating gas of 0.1 % of the quantity of gas to be withdrawn. This amount of heating gas is already included in the quantity of gas according to (3) which has to be additionally provided.

- (6) bayernugs undertakes to withdraw the quantities of gas duly designated by the Storage Customer and to make such available at the transfer point, provided that the Storage Customer has previously made available the gas quantities intended for withdrawal plus the propellant gas quantity and heating gas quantity for injection. Upon provision of the gas quantities at the transfer point, bayernugs shall have fulfilled its obligations for withdrawal and delivery.
- (7) The Storage Customer shall be obliged to duly designate the quantities of gas to be accepted or provided by bayernugs in accordance with the regulations on such designation in the Operating Manual (Annex 1).

The Storage Customer shall also be obliged to designate the same amount to the network operator.

- (8) The Storage Customer shall provide the duly designated quantities of gas at the takeover point and take delivery at the transfer point .

The Storage Customer shall be entitled to withdraw gas from storage only if and to the extent that the Storage Customer has previously injected such quantities of gas to be withdrawn at least to the amount of the withdrawal. The respective current status of the storage account shall be decisive.

- (9) The designation by the Storage Customer confirmed by bayernugs shall be decisive for determining the quantities of gas to be provided and taken over.

## **§ 7 Ancillary Services**

bayernugs shall provide the following ancillary services for the storage of the quantities of gas of the Storage Customer: the receipt, verification and confirmation of designations and redesignation, metering, management of the storage account, EDP technical processing of the respective Storage Contract on the part of bayernugs.

The remuneration for these ancillary services is included in the storage fee, unless otherwise stipulated in the individual contract.

A separate fee will be charged for all other ancillary services.

## **§ 8 Duties of the Parties to Provide Information**

- (1) The Parties shall inform each other in a timely manner of all circumstances relevant to the performance of the respective individual Storage Contract.
- (2) If the Parties are unable to take over or transfer the designated gas quantities in whole or in part, temporarily or for a longer period of time at the transfer /takeover point, without any circumstances of force majeure pursuant to § 23 GCSA being present, they shall inform each other in good time, stating the extent and the expected duration of any delay. Any duty to designate/redesignate as well as any other rights and claims shall otherwise remain unaffected thereby.

## **§ 9 Grid Access and Transport**

The conclusion and carrying out of network access and transport contracts for quantities of gas to be made available for injection and/or to be taken over after withdrawal in the H-gas transport system are not covered by the related Storage Contract and these GCSA. The Storage Customer shall be responsible for such.

## **§ 10 Operating Manual**

Appendix 1 "Operating Manual" is an integral part of these GCSA. The Operating Manual contains regulations for the carrying out and execution of the respective Storage Contract.

## **§ 11 Storage Account**

- (1) bayernugs shall maintain a separate storage account for each Storage Contract of the Storage Customer.
- (2) The designated and allocated gas quantities as well as the balance of the injected and withdrawn quantities of gas in kWh are to be detailed in the storage account.
- (3) The Storage Customer can view the storage account, which is kept accurate to each gas day, on the online storage portal of bayernugs.
- (4) bayernugs may correct the gas quantities listed in the online storage portal, in particular in cases where subsequently changed quantity allocations are notified by the network operator, e.g. due to energy value corrections.

## **§ 12 Storage Account upon Ending of Storage Contract**

- (1) At the time of the ending of the Storage Contract, the Storage Customer shall ensure that the Storage Customer's storage account is balanced and shows a balance of zero (0) kWh.
- (2) The Storage Customer shall withdraw the gas quantities in accordance with the provisions of the Storage Contract and the GCSA in good time and in full.

The Storage Customer may transfer its remaining gas quantities to another Storage Customer in accordance with § 15.

- (3) In the event of any force majeure event pursuant to § 23 GCSA, which prevents the Storage Customer from properly fulfilling its withdrawal obligation, the Storage Customer shall be entitled to withdraw the gas still remaining in the Storage Facility at the time of the occurrence of the force majeure event within a reasonable period of time after the ending of the contract subject to bayernugs' ability and capacity.

The same shall apply in the event of any extraordinary termination (*außerordentliche Kündigung*), insofar as bayernugs is responsible for the reason for termination.

- (4) If any gas quantities of the Storage Customer remain in the Storage Facility at the end of the Storage Contract and the Storage Customer is not entitled to withdraw such at a later time in accordance with paragraph (3), the rights to such gas shall be transferred to bayernugs.
- (5) In the event of a transfer of the such to gas in accordance with paragraph (4), bayernugs shall pay the Storage Customer remuneration for this in the amount at the rate of 0.5 times the average EEX settlement price of the day-ahead spot market prices in the THE market area on the day on which the rights to the stored gas are transferred to bayernugs. The discount on the spot market price shall serve to compensate bayernugs for expenses incurred in connection with the remaining gas quantity. The right to provide evidence of higher or lower expenses shall remain unaffected thereby.
- (6) Any further legal claims of rights of bayernugs shall remain unaffected.

### **§ 13 Unauthorised Storage Use**

- (1) The Storage Customer shall be entitled to use the storage only in accordance with the contract.

The Storage Customer shall not be entitled to use the storage beyond this amount ("unauthorised storage use").

The Storage Customer is in particular obliged to prevent unauthorised storage use through its designations and shall not withdraw greater quantities of gas than it previously brought into storage.

- (2) Any designation that leads to unauthorised storage use shall be automatically reduced to the highest level of possible storage use permissible. The Storage Customer will receive a notification of the reduction automatically generated by the booking system.

(3) If unauthorised storage use of the Storage Facility is likely to endanger or impair the Storage Facility, the technical installations, the safety of the Storage Facility or its operation, the rights of third parties and/or the security of supply, or if such endangerment or impairment has occurred, bayernugs shall be entitled to discontinue the storage without delay insofar as this is appropriate and necessary for the elimination of the endangerment or impairment. The Storage Customer shall be informed in advance only if and to the extent that such information is possible and does not hinder or delay the elimination of the risk or impairment.

## **§ 14 Secondary Trading**

- (1) The Storage Customer may, after prior written notification to bayernugs, transfer its storage usage rights to a third party for use in accordance with the following provisions.

Storage usage rights may only be transferred for use in their entirety. Any division of storage lots is excluded.

The Storage Customer shall remain obliged to bayernugs to fulfil all contractual obligations. The Storage Customer shall be liable for the acts and omissions of the third party to the same extent it would be for its own acts and omissions.

- (2) The third party may, with the consent of the Storage Customer, exercise the rights and obligations transferred to it directly in relation to bayernugs, provided and insofar as the exercise is based on existing communication channels between bayernugs and the Storage Customer. The Storage Customer shall notify bayernugs in writing of all contact details of the third party no later than two (2) working days prior to the transfer of use.
- (3) bayernugs reserves the right to prohibit any transfer of use in individual cases, in particular in cases in which the technical performance and availability of the third party is not guaranteed or compliance requirements, in particular with regard to money laundering and sanction laws requirements, are not met by the third party.
- (4) The provisions on legal succession pursuant to § 30 shall remain unaffected hereby.

## **§ 15 Gas Transfer as between Storage Customers**

- (1) Storage customers who have storage accounts may transfer injected gas quantities from the storage account of one storage customer to the storage account of the other storage customer at any time subject to the following conditions:

- the storage accounts are storage accounts of the Storage Facility,
- the storage customer taking over the gas quantities has a working gas volume within its storage capacity of a free corresponding amount and
- the transfer takes place by transferring the gas quantities in the respective storage accounts by bayernugs and
- the transferring Storage Customer is not in default with its payment obligations under the Storage Contract.

Any transfer of gas quantities requires the concurring written declaration by the storage customers involved to bayernugs with a lead time of two (2) working days.

- (2) A transfer under paragraph (1) is not secondary trade in terms of § 14.

## **§ 16 Removal of Storage Capacity under Regulation (EC) No 715/2009**

- (1) In order to ensure maximum utilisation of storage capacities in accordance with the requirements of Regulation (EC) No 715/2009 and to prevent artificial shortages and to remedy such, bayernugs will make available unused storage capacity to third parties on a short-term, interruptible basis.
- (2) If capacities are withdrawn from the Storage Customer on the basis of paragraph 1 above, the Storage Customer shall retain all rights and obligations arising from the Storage Contract. However, the obligation to pay the remuneration pursuant to § 18 shall lapse on a pro rata basis. The application of this provision shall therefore have no effect on the Storage Customer's capacity rights.

## **§ 16a Removal of Storage Capacity under § 35b (6) sentence 1 EnWG, Continued Payment of Fees, Contractual Penalty, Fines and Other Costs**

- (1) If it becomes apparent that the level requirements pursuant to 35b (1) sentence 2 and (2) EnWG or § 35 b (3) EnWG cannot be met technically because the Storage Customer does not use the working gas volumes (storage capacities) booked by it on a firm basis, bayernugs shall be entitled to make storage capacities not used by the Storage Customer available to the manager for the market area in good time and on a pro rata basis according to the extent of the Storage Customer's non-use and to the extent necessary to achieve the level specifications by the end of the storage year.
- (2) bayernugs will notify the Storage Customer in good time prior to any imminent failure to achieve the corresponding curve for compliance with storage level requirements; however, bayernugs shall not be obliged to do so.
- (3) The Storage Customer whose storage capacities bayernugs has made available to the market area manager on the basis of the above paragraph 1 shall remain obliged to pay the fees for storage use with the exception of the variable storage fees for injection and withdrawal.

Compliance with the storage level requirements and the associated physical availability of natural gas in gas storage facilities serve to ensure security of supply in Germany. For this reason, bayernugs levies a contractual penalty in the event that the Storage Customer breaches the obligation to comply with the national and / or European Union law requirements regarding storage levels.

In addition, fines imposed on bayernugs' Storage Customer resulting from any violation by the Storage Customer as well as other costs and expenses incurred by bayernugs in connection with the withdrawal of capacity shall be charged to the Storage Customer.

This shall not apply if the Storage Customer is not responsible for the breach of duty and proves such to bayernugs.

bayernugs shall levy a contractual penalty of € 100,000 for each case of non-compliance with the storage level requirements on the respective cut-off date in accordance with § 6 (3a) of the GCSA.



Any contractual penalties levied and any costs incurred in connection with the withdrawal of capacity shall in each case be paid by the tenth (10th) banking day following receipt of the invoice with a fixed value date to the bayernugs account specified in the invoice.

The rights of bayernugs to assert further claims for damages shall remain unaffected hereby.

### **§ 17 Remuneration**

- (1) The Storage Customer shall be obliged to pay the specified remuneration to bayernugs. All remuneration amounts are net.
- (2) The Storage Customer shall pay the taxes (in particular any value added tax (*MwSt*) and, if applicable, energy tax) on these fees as well as the any fees due under public law as well as levies incumbent on it pursuant to § 18 to the respective amount stipulated by law.

### **§ 18 Taxes, Fees and Charges**

- (1) If taxes and/or fees at public law as well as levies directly connected with the services provided by bayernugs to the Storage Customer are introduced or changed, these shall in any case be borne by the Storage Customer to the extent of the change and added to the agreed charges.
- (2) If any taxes and/or fees at public law as well as levies which are to be added to the fee in accordance with paragraph (1) are abolished, such shall no longer be charged to the Storage Customer.
- (3) Any deduction or addition of taxes and/or fees at public law as well as levies shall be made with effect from the date of introduction, abolition and/or amendment.

There shall be no increase in or charging on of additional costs if the amount and time of their occurrence was specifically foreseeable at the time of conclusion of the contract or if they contradict the statutory regulations.

- (4) Adjustments under paragraphs (1) and (2) shall not generate additional profit for any party; it shall serve solely to maintain the equivalence ratio.
- (5) Paragraphs (1) to (4) shall apply correspondingly to any amendment of charges on the basis of national and/or international legal provisions, administrative acts, determinations - also in relation to individual cases - and/or orders of national and/or international courts or authorities (including ERGEG).

### **§ 19 Terms of Payment**

- (1) Unless otherwise agreed, the agreed storage fee shall be paid monthly in advance for the following month until the 10<sup>th</sup> calendar day of the previous month. If the 10<sup>th</sup> calendar day is no banking day, the term shortens to the previous banking day. If no monthly storage fee has been agreed, the agreed storage fee shall be divided into equal monthly instalments for the storage period.
- (2) If further charges are payable in addition to the storage charge, these shall be paid by the tenth (10th) bank working day after receipt of the invoice with a fixed value date to the bayernugs account specified in the invoice.

- (3) All fees shall be rounded commercially to two decimal places.
- (4) Invoices shall be issued in writing.
- (5) In the event of default in payment, bayernugs shall be entitled to demand default interest to the amount of 8 percentage points above the respective base interest rate published by the German Federal Bank in the Federal Gazette on the first banking day of the month of invoice. Further rights of bayernugs to claim arising from and in connection with the delay in payment shall remain unaffected thereby.
- (6) Any objections to the correctness of invoices shall be raised in writing by the Storage Customer without undue delay, but in any case no later than within six (6) weeks after receipt of the invoice. Failure by the Storage Customer to raise objections in due time shall be deemed to constitute acceptance. The Storage Customer's attention is hereby drawn to the legal significance of silence in this regard.
- If any objections to the correctness of invoices are based on circumstances which cannot be ascertained by the Storage Customer through no fault of the Storage Customer or on measurement results, the time limit pursuant to the preceding sentence shall commence from the time of knowledge or awareness of the reason for the objection. Such objections shall, however, be raised in writing within three (3) years at the latest, beginning from the end of the storage year in which the invoice was received, irrespective of knowledge or any need to know.
- (7) Any objections to the correctness of invoices shall not entitle the Storage Customer to defer, reduce or refuse payment, unless there are obvious errors (i.e. errors which are recognisable at first glance without further consideration of the justification of the claim, such as calculation errors), unless the objections are undisputed or their justification has been legally determined; the Storage Customer shall be entitled to pay the disputed invoice amount subject to reservation.
- The final settlement shall be made on the basis of an agreement between the Parties or a legally binding decision by the arbitral tribunal (§ 34).
- (8) The Storage Customer may set off its claims against bayernugs' claims - irrespective of the debt relationship - or assert a right of retention only if and insofar as its claims are undisputed or have been legally determined in a final and absolute judgment.
- (9) Recognised or legally established claims for repayment or additional payments will be invoiced at the next possible date.
- (10) The place of performance for payment is Munich.

## § 20 Security

### (1) Deterioration of creditworthiness

If the creditworthiness determined in the prequalification deteriorates during the term of the contract

- a) of the Storage Customer, or
- b) of the Storage Customer's collateral provider, or
- c) a legal entity which, as the controlling legal entity ("controlling legal entity"), is party to a control/profit transfer agreement within the meaning of the German Stock Corporation Act (*Aktiengesetz*, "AktG") ("control/profit transfer agreement") with the Storage Customer and the Storage Customer is a subsidiary controlled by it

on the following basis:

- a) deterioration by at least one credit rating category (based on ratings from Standard & Poor's or Moodys, or
- b) not achieving the minimum rating of S&P BBB+ / Moody's Baa1; if the collateral provider is a bank: below S&P A- / Moody's A3
- c) Deterioration of the creditreform creditworthiness index to >250 (where 100 = best value; 600 = worst value)
- d) reduction in tangible net worth (adjusted equity) and the relevant ratio is more than 25% (twenty-five percent) in any 12-month period ending on 31 December of the previous calendar year, provided that, in the case of a controlling interest, the relevant ratio is more than 25% (twenty-five percent) in any 12-month period ending on 31 December of the previous calendar year whereby for a control/profit transfer agreement or, in the case of a group consolidation, the consolidated balance sheet is the relevant variable for the tangible net worth,

bayernugs shall be entitled to demand reasonable security from the Storage Customer if bayernugs assumes in good faith that the fulfilment of bayernugs' claims is jeopardised by the deterioration in creditworthiness.

### (2) Information and notification obligations of the Storage Customer

- a) The Storage Customer shall be obliged to send the following documentation to bayernugs in writing as soon as this information is available. Documentation pursuant to paragraphs i. and ii. below shall be sent to bayernugs in writing at the latest every two years after conclusion of the contract within 180 days of the end of the relevant financial year.
  - i. the respective audited relevant annual accounts and the respective audited balance sheet accounts for the last completed financial year
  - ii. information on contingent liabilities from audited relevant financial statements and/or from a summary prepared by a certified public accountant
  - iii. any conclusion or amendment of a control/profit transfer agreement
  - iv. on request from bayernugs, all documentation relevant to a credit check

- b) The Storage Customer undertakes to supply all documentation sent to bayernugs in German or English. Insofar as the originals are neither in German nor in English, the Storage Customer undertakes to provide a certified translation at its own expense.
- c) In the event of a deterioration in creditworthiness within the meaning of § 20 (1) on the part of the Storage Customer, its collateral provider or the controlling legal entity, the Storage Customer shall be obliged to notify bayernugs of such in writing without undue delay after becoming aware of such.
- d) The Storage Customer undertakes to make all reasonable efforts to provide bayernugs with all information required by bayernugs in order to assess the financial situation of a collateral provider.

### (3) Security deposit

- a) The Storage Customer undertakes to deliver the security without delay at bayernugs' request, at the latest ten (10) working days after such request.
- b) The security can be provided by submitting an unlimited, unconditional, irrevocable and directly enforceable guarantee or in the form of a guarantee declaration.
- c) As an alternative to an unlimited guarantee or guarantee declaration, a directly enforceable guarantee or guarantee declaration from a bank with a term of 12 months and a rolling extension of a further 12 months in each case over the entire term of the contract will be accepted. The extension of the security must be sent to bayernugs at least within ten (10) working days before the end of the security period.
- d) The guarantee or guarantee declaration shall in any case contain a waiver of the defences of preclusion, contestability and set-off, unless the claims are undisputed or have been finally determined by a court of law.
- e) The guarantee or guarantee declaration must be governed in all respects by German law. The ordinary courts in Munich shall have exclusive jurisdiction for all disputes between bayernugs and the guarantor in connection with this guarantee or guarantee declaration.

### (4) Requirements for the collateral provider

The requirements for a collateral provider are an external rating of

- at least A- (Standard & Poor's), A3 (Moody's) if the collateral provider is a bank, and
- at least BBB+ (Standard & Poor's), Baa1 (Moody's), creditreform credit rating index < 250 for other collateral providers.

### (5) Rejection of a security

bayernugs shall be entitled to reject a security offered by the Storage Customer if the financial and risk situation of the security provider cannot be assessed by bayernugs due to a lack of information.

### (6) Return of the collateral

The security deposit shall be made available until the final settlement of this contract, i.e. after the end of the contract term and payment of all fees payable by the Storage Customer under the Storage Contract, but at least 7 working days after termination of the contract or after a debt-discharging legal succession pursuant to § 30, and shall thereafter be returned to the Storage Customer by bayernugs.

(7) Right of termination

bayernugs shall be entitled to terminate this contract with immediate effect,

- a) if the Storage Customer fails to provide the requested security or fails to do so within ten (10) working days of bayernugs' request for such or if the security subsequently no longer guarantees coverage of the charges payable by the Storage Customer without a replacement security being provided within a reasonable period set by bayernugs.
- b) if a Storage Customer's collateral provider withdraws, fails to recognise, revokes, rejects or repudiates, in whole or in part, or disputes the validity of any security provided by it or otherwise fails to perform its obligations under or in relation to such security and such failure continues after the expiry of any cure or remedy periods.
- c) if a controlling legal entity does not comply with the control/profit transfer agreement concluded by it in whole or in part, does not recognise, revokes, rejects or denies the effectiveness of such or otherwise does not fulfil its obligations under such control/profit transfer agreement.
- d) if the control of the Storage Customer or its collateral provider changes or if it is merged or amalgamated with another legal entity or if it transfers all or substantially all of its assets to another legal entity or if it restructures, merges, re-merges or re-incorporates into or as another legal entity or if another legal entity transfers all or substantially all of its assets to the Storage Customer or its collateral provider or if such other legal entity restructures, merges or re-incorporates into or as the Storage Customer or its collateral provider, and
  - i. the creditworthiness of the Storage Customer or its collateral provider or the resulting, continuing, transferring or successor legal entity is materially weaker than the creditworthiness of the Storage Customer or its collateral provider immediately prior to the respective transactions;
  - ii. the new, continuing, transferring or successor legal entity does not assume all obligations of the Storage Customer or the respective collateral provider under the Storage Contract or the collateral to which it or its legal predecessor was a party either by law or pursuant to a contract satisfactory to bayernugs; or
  - iii. the benefits of a security end or do not extend to the performance of the obligations under the contract by the new, continuing, transferring or successor legal entity without the consent of bayernugs.

(8) Legal consequences of termination under §20 (7) GCSA

If bayernugs terminates the contract on the basis of §20 (7) GCSA, the following legal consequences shall apply:

- a) bayernugs shall have a right to claim for damages against the Storage Customer. The amount of the right to claim for damages shall be calculated according to the amount of the storage fees which the Storage Customer would still have to pay until the contractually agreed end of the Storage Contract, unless the Storage Customer proves a lower level of damage; and
- b) with regard to the Storage Customer's gas quantities remaining in the Storage Facility, §12 (4) and (5) GCSA shall apply accordingly.

## **§ 21 Maintenance, New Construction, Modification and Extension of Storage Facility**

- (1) bayernugs shall be entitled in accordance with the following provisions to carry out maintenance (servicing, inspection and repair) of the Storage Facility, measures for the new construction, modification and expansion of the Storage Facility and necessary tests of the Storage Facility (hereinafter "measures").
- (2) Insofar as and for as long as bayernugs is unable to perform its services or is unable to perform in full due to maintenance, measures for new construction, modification and expansion or tests in accordance with paragraph (1), it shall be entitled to suspend or restrict its performance without such - subject to the provision in paragraph (4) - leading to a right to claim by the Storage Customer for a reduction in fees or claims for the provision of services.
- (3) bayernugs shall inform the Storage Customer in good time of all scheduled measures in the storage portal at [www.bayernugs.de](http://www.bayernugs.de) and by fax or email. bayernugs shall inform the Storage Customer of any non-scheduled measures as soon as possible, although bayernugs shall not be obliged to provide advance information in good time if this is not possible under the circumstances or if such would delay the elimination of interruptions that have already occurred; bayernugs shall subsequently inform the Storage Customer in such cases.
- (4) Insofar as and as long as bayernugs is not responsible for the suspension of performance, in particular due to force majeure in accordance with § 23, and a duration of 20 calendar days per storage year is not exceeded, the Storage Customer shall have no rights to claim, in particular no rights to claim for a reduction of the storage fees. In the event of a contract term of less than one year, the permissible downtime shall be reduced accordingly.

The Storage Customer shall also not be released from its payment obligations insofar as the suspension is due to maintenance, measures for new construction, modification and expansion or tests pursuant to paragraph (1), which the Storage Customer itself helped to initiate or for which it is responsible.

- (5) If the services of bayernugs are available only to a limited extent, bayernugs shall endeavour, within the framework of the operational and contractual circumstances, to maintain the storage capacities of the Storage Customer as comprehensively as possible, taking into account the interests of all storage customers. If the total storage capacities are not sufficient for all storage customers, the storage capacities held for each storage customer shall be reduced in instalments.

Reduced storage capacities held for storage customers which are not used by them shall be allocated to the other storage customers on a pro rata basis.

- (6) The rights and obligations of the respective Storage Contract shall otherwise remain unaffected.
- (7) Measures of the network operator

Insofar as and for as long as bayernugs is wholly or partially unable to fulfil its obligations arising from or in connection with the Storage Contract as a result of measures taken by the network operator for which bayernugs is not responsible, it shall be released from its obligations in whole or in part. bayernugs shall endeavour to coordinate the measures with the network operator. bayernugs shall inform the Storage Customer of the scope and probable duration of the restriction.

The rights and obligations of the respective Storage Contract shall otherwise remain unaffected.

## **§ 22 Suspension of Benefits**

- (1) If the Storage Customer fails to comply with its contractual obligations, fails to do so on time or fails to do so properly, bayernugs shall be entitled to suspend its performance in whole or in part without further prior notice if the Storage Customer has not remedied the situation within 10 calendar days of being requested to do so in writing, The request can be sent by E-mail too.

This shall apply in particular in the event of a breach of payment and designation obligations as well as in the event of unauthorised use of storage; § 14 (3) shall remain unaffected hereby.

- (2) bayernugs shall be entitled to suspend its contractual performance in whole or in part at any time without prior notice if and as long as such is necessary and objectively justified, in particular
- to prevent or avert immediate danger to persons, technical installations of bayernugs or third parties or the environment;
  - in order to avoid interference with other storage customers or disruptive effects on technical systems of bayernugs or a third party, or
  - if, as a result of a disruption or other breach of contract caused by or for which the Storage Customer is responsible, a threat to or impairment of the safety of the Storage Facility or its operation, the technical installations, the rights of third parties or the security of supply is to be expected or feared.
- (3) bayernugs shall inform the Storage Customer of the suspension and its scope and expected duration as soon as possible and shall resume its contractual performance without undue delay as soon as the reasons for the suspension have ceased to exist.
- (4) The Storage Customer shall be released from its obligation to pay fees during the suspension of bayernugs' performance, unless it is responsible for the reason for the suspension of performance. In the case of paragraph (2), the Storage Customer shall only be released from its obligation to pay fees if the suspension of services for which it is not responsible exceeds a period of 20 days per storage year. In case of storage use for less than a year, this period shall be reduced proportionally. Days on which bayernugs' performance is suspended in accordance with § 22 in the same storage year shall be taken into account.
- (5) The assertion of further rights and the provisions of the respective Storage Contract remain unaffected hereby.

## **§ 23 Force Majeure**

- (1) To the extent that and for as long as a Party is prevented from performing its obligations as a result of force majeure in accordance with paragraph 2 or any other circumstances for which it is not responsible or in relation to which performance would be unreasonable, it shall be released from these obligations. The other Party shall also be released from its counter-performance obligations accordingly.
- (2) Force majeure is an external event caused by natural forces or by the actions of a third party, and which is unforeseeable on the basis of human insight and experience, and which cannot be prevented or rendered harmless by commercially reasonable means, even by the utmost care reasonably to be expected in the circumstances, and which is not to be accepted by the operating company because of its frequency.

This includes in particular, natural disasters, terrorist attacks, power failure, strikes and lockouts, insofar as a lockout is lawful, or legal provisions or measures by the government, courts or authorities, notwithstanding whether or not such are lawful, as well as unavoidable operational disruptions and unavoidable operational restrictions.

Gas depletion due to the geological conditions of the Storage Facility shall also be deemed to be an event of force majeure.

- (3) If bayernugs uses facilities or services of a third party for the fulfilment of its contractual obligations, an event which would constitute force majeure for the third party shall also be deemed force majeure in favour of bayernugs.
- (4) The affected Party shall notify the other Party without undue delay and inform it of the reasons for the Force Majeure and its expected duration. It shall endeavour to use all reasonable means and measures to ensure that it can resume its obligations as soon as possible.

## **§ 24 Liability**

Unless otherwise provided for in this contract, the following provisions shall apply:

- (1) bayernugs shall be liable for damage arising from injury to life, body or health, unless bayernugs itself, its legal representatives or vicarious agents have acted neither wilfully nor negligently.
- (2) In the event of a breach of material contractual obligations, i.e. contractual obligations the fulfilment of which makes the proper performance of the Storage Contract possible in the first place and the observance of which the Storage Customer regularly relies and may rely, bayernugs shall be liable for damage to property and financial loss, unless bayernugs itself, its legal representatives or vicarious agents have acted neither wilfully nor negligently; insofar as bayernugs itself or its legal representatives or vicarious agents have not acted wilfully, the liability of bayernugs shall be limited to foreseeable damage typical for that type of contract.
- (3) bayernugs shall be liable for damage to property and financial loss in the event of a breach of non-material contractual obligations, unless bayernugs itself, its legal representatives or vicarious agents have acted neither wilfully nor with gross negligence; the liability of bayernugs in the event of damage to property and financial loss caused by gross negligence shall be limited to the foreseeable damage typical for that type of contract.



- (4) The above paragraphs shall also apply in favour of the legal representatives, employees and vicarious agents of bayernugs.
- (5) Liability according to mandatory provisions of the Liability Act (*Haftpflichtgesetz*) and other legal laws and regulations shall remain unaffected hereby.

## **§ 25 Insurance**

- (1) The Storage Customer shall take out and maintain adequate insurance covering the entire contractual period and covering the risks to be borne by it under the respective Storage Contract.
- (2) As a rule, the insurance shall be deemed adequate if it provides, at regular premiums for the risk to be borne by the Storage Customer, for the entire contract period cover sums in an adequate amount for personal injury, property damage and financial loss.

The scope of damage to be covered shall be governed by the generally recognised general insurance conditions for liability insurance of insurance companies authorised for the insurance industry by the Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht*).

- (3) The Storage Customer shall provide evidence of the existence of such insurance without undue delay upon request by bayernugs.

bayernugs must be notified immediately of any significant changes to the insurance. If the insurance ends before expiry of the contract term, the Storage Customer shall be obliged to notify bayernugs of the termination in writing with a notice period of one month to the time of termination and to provide evidence of the continuing appropriate insurance.

- (4) If the Storage Customer fails to provide evidence of the existence of appropriate insurance or fails to do so in good time or if significant changes occur with regard to the insurance for whatever reason with the consequence that no appropriate insurance exists, bayernugs shall be entitled to terminate the Storage Contract with immediate effect.

## **§ 26 Ending of the Storage Contract**

- (1) Storage use shall end with the termination of the underlying Storage Contract.  
The Storage Contract shall expire at the regular end of term provided for in the contract; in addition, the Storage Contract shall end in the event of a lawful extraordinary termination at the time of such termination.
- (2) Unless otherwise provided for in the individual contract, any right of ordinary termination is excluded.

## **§ 27 Extraordinary Termination**

- (1) bayernugs shall be entitled to an extraordinary termination without a period of notice, insofar as the right of extraordinary termination is provided for in individual contracts or in these GCSA together with the annexes.
- (2) Furthermore, bayernugs shall be entitled to an extraordinary termination without a period of notice if there is good cause. Such a reason exists in particular, but not exclusively, if
  - the Storage Customer repeatedly breaches contractual obligations despite a warning or finally refuses to comply with contractual obligations without a warning being required.
  - the Storage Customer repeatedly breaches material contractual obligations or contractual obligations which entitle bayernugs to suspend performance.
- (3) bayernugs shall be entitled to an extraordinary termination without a period of notice if there is a reason for termination in accordance with § 21 (7) GCSA.
- (4) bayernugs shall furthermore be entitled to terminate a Storage Contract extraordinarily if the other contractual party, its management, its employees or a third party engaged by it for the performance of the contract during the term of the business relationship in the performance of the contract
  - a) breaches any anti-corruption law including, where relevant, the UK Bribery Act 2010 and the Foreign Corrupt Practices Act (FCPA);
  - b) promises, gives the prospect of or grants unlawful advantages to officials or office holders, potential buyers or their employees or third parties; or
  - c) accepts unlawful advantages from potential buyers, their employees or third parties.

If there is a justified suspicion that breaches of a) to c) have been committed by the contractual partner, its management, its employees or by third parties engaged by it, bayernugs - insofar as the suspicion cannot be dispelled within the framework of a hearing of the other contractual party - shall also be entitled to an extraordinary termination of the contract.

- (5) Notice of termination must be given in writing, stating the reasons for termination.

## **§ 28 Confidentiality**

(1) The Parties shall keep confidential the content of the Storage Contract and all information received directly or indirectly in connection with the Storage Contract (hereinafter referred to as "Confidential Information") subject to the provisions in paragraph (2) and § 29, i.e. not disclose such or make such accessible to third parties without the prior written consent of the respective other Party. The Parties undertake to use the Confidential Information solely for the purpose of implementing this contract.

- (2) Each Party has the right to disclose Confidential Information received from the other Party without their prior written consent
- a. to an affiliated company, provided that the latter is under a similar obligation of confidentiality. Affiliated companies which are storage operators themselves shall be exempt from this obligation;
  - b. to service companies and other third parties used by the Party to fulfil the obligations of this contract, insofar as the disclosure of the Confidential Information is necessary for the performance of this contract and these companies or third parties have in turn previously undertaken to treat the information confidentially or are professionally obliged to maintain confidentiality by law;
  - c. to its agents, advisers, banks and insurance companies if and to the extent that disclosure is necessary for the proper performance of its contractual obligations and such persons or companies have in turn previously undertaken to keep the information confidential or are under a professional obligation of confidentiality; or
  - d. to the extent that such Confidential Information is
    - already legitimately known to the receiving Party at the time it received such from the other Party,
    - already in the public domain or become in the public domain otherwise than through the action or inaction of the receiving Party; or
    - is required to be disclosed by a Party pursuant to a statutory duty to disclose or statutory provision or regulatory guideline (e.g. GGPSSO) or a court or administrative order or a request by the regulatory authority (including ERGEG), in which case the disclosing Party shall inform the other Party thereof.
- (3) The obligation to maintain confidentiality shall continue to exist beyond the date of termination of the Storage Contract for a period of 5 years. Insofar as the information constitutes trade secrets of the disclosing Party within the meaning of § 2 (1) Trade Secrets Act (*GeschGehG*), the duty of confidentiality pursuant to paragraph 1 shall continue, notwithstanding paragraph 3 sentence 1, for as long as this information is a trade secret within the meaning of § 2 (1) Trade Secrets Act.
- (4) § 6a EnWG remains unaffected hereby.

## **§ 29 Data Disclosure and Processing**

If and to the extent that such is necessary for the proper performance of the respective Storage Contract, bayernugs may pass on Confidential Information to an adjacent network operator.

### **§ 30 Transfer of Rights and Obligations**

Each Party is entitled to transfer its rights and obligations under the Storage Contract to a third party with the prior written consent of the other Party. Insofar as the rights and obligations arising from a Storage Contract to which these GCSA apply are to be transferred to an affiliated company, within the meaning of § 15 et seq. of the German Stock Corporation Act (AktG), which is financially and technically capable of properly fulfilling the Storage Contract, complies with the provisions of bayernugs on prequalification and has its registered office in the same jurisdiction as the transferring contractual partner, consent shall be given in accordance with sentence 1.

### **§ 31 Amendments or Supplements to the Terms of Contract**

- (1) bayernugs shall be entitled to make amendments or additions to the GCSA at any time, also with effect in relation to all existing storage contracts.

bayernugs shall notify the Storage Customer in writing of any amendments or additions at least six weeks before such come into force, stating the date on which such come into force. Notified amendments or supplements shall be deemed to have been approved and shall become part of the contract unless the Storage Customer objects in writing within a period of 4 weeks from receipt of the notification. bayernugs shall separately draw the Storage Customer's attention to this consequence in the notification.

- (2) Notwithstanding paragraph (1), bayernugs shall be entitled to amend or supplement the terms and conditions of the Storage Contract, including the GCSA, also with effect for all existing storage contracts with immediate effect, insofar as the amendment is necessary in order to comply with relevant laws or legal ordinances, and / or legally binding requirements of national or international courts and authorities, in particular determinations - also in individual cases - of the Federal Network Agency or ERGEG, and / or the generally recognised rules of technology, or the requirements for the safety and reliability of the Storage Facility.

The same shall apply to amendments based on changes in the terms and conditions of any trading platforms or which concern regulatory subjects requiring uniform application to both existing and future contracts or in relation to the upstream gas supply network.

bayernugs shall notify the Storage Customer of the change or addition without delay.

If any amendment results in significant commercial disadvantages for the Storage Customer with regard to its Storage Contract, the Storage Customer shall be entitled to terminate this contract at the end of the month following the effective date of the amendment with a notice period of 15 working days. Compensation is excluded in such case.

- (3) bayernugs shall be entitled to unilaterally modify amendments or additions to the GCSA annexes irrespective of the provisions of the above paragraphs in order to maintain the safe and/or commercial operation of the facilities of the Storage Facility and/or to comply with technical further developments, technical regulations or specifications of national or international authorities. bayernugs shall notify the Storage Customer in writing of any changes or amendments 3 months before such come into force.
- (4) Any correction of obvious spelling and/or calculation errors does not constitute a change in contractual terms.

### **§ 32 Commercial Efficiency Clause**

- (1) If, during the term of the Storage Contract, the commercial, technical or legal circumstances underlying the Storage Contract or the GCSA change fundamentally or if unforeseen circumstances occur which have a significant commercial, technical or legal impact on the Storage Contract, for which no provisions were made in the Storage Contract or which were not considered when the contract was concluded, and if, as a result, any contractual provision becomes unreasonable for a Party, the Party concerned may demand an adjustment of the Storage Contract to the changed circumstances, taking into account all commercial, technical and legal effects on the other Party.
- (2) The Party invoking such circumstances shall set out and prove the necessary facts.
- (3) The entitlement to an adjustment exists from the time when the demanding Party has first demanded the adjustment in writing with reference to paragraph (1). If an agreement is not reached within 3 months after the first demand, either Party may seek a decision from an arbitration court (§ 34).

### **§ 33 Applicable Law**

The Storage Contract and its interpretation shall be governed exclusively by the laws of the Federal Republic of Germany, excluding the conflict of laws rules and the international treaties incorporated into the laws of the Federal Republic of Germany (e.g. United Nations Convention on Contracts for the International Sale of Goods ("CISG")), unless such are mandatory law.

### **§ 34 Settlement of Disputes, Arbitration Court**

- (1) The Parties shall endeavour to settle all disputes arising in connection with this contract by negotiation.
- (2) If a settlement by negotiation fails, all disputes arising out of and in connection with the Storage Contract shall be finally settled by arbitration to the exclusion of the ordinary courts of law.

The arbitration court may also decide on the validity of this arbitration agreement with binding effect on the ordinary courts.

Legal action in accordance with sentence 1 may be contested at the earliest after the expiry of 3 months after the first written request to amend the contract or the start of negotiations, unless the Parties agree on the impossibility of an out-of-court settlement.

- (3) The arbitration court shall be composed of three arbitrators, one of whom shall preside. The chairperson must be qualified to hold judicial office.

The arbitration court shall be constituted by the Party that has initiated the arbitral proceedings, setting out the subject matter of the dispute, nominating an arbitrator and the requesting the other Party to nominate a second arbitrator. The designated arbitrators of the Parties shall elect the chairperson.

If one of the contracting parties fails to nominate an arbitrator within four weeks, the respective other Party may request the president of the Higher Regional Court of Munich (*Oberlandesgericht München*) to propose a second arbitrator. The proposal shall be binding on both Parties. If the arbitrators have not selected a chairperson within four weeks, each Party may request the president of the Higher Regional Court of Munich to propose a chairperson. The proposal shall be binding on both Parties.

- (4) The place of arbitration shall be Munich. The competent court pursuant to §1062 of the Code of Civil Procedure (*Zivilprozessordnung*) is the Higher Regional Court of Munich. In all other respects, § 1025 to § 1065 Code of Civil Procedure shall apply to the arbitration proceedings.

### **§ 35 Severability Clause**

The invalidity or unenforceability of individual or several provisions of the Storage Contract or the GCSA shall not affect the validity of the rest of the Storage Contract or the GCSA.

The Parties undertake, in cases where no dispositive law replaces the invalid provision, to enter into negotiations in good faith with the aim of replacing any invalid or unenforceable provision with a valid or enforceable provision that comes as close as possible to the invalid or unenforceable provision in terms of its commercial purpose and result and the mutual interests of the partners, with effect from the time of the invalidity or unenforceability.

The same shall apply in the event of any omission in this contract.

### **§ 36 Written Form**

- (1) Amendments and supplements to the Storage Contract must be made in writing to be effective. This shall also apply to a waiver of compliance with the written form.
- (2) Insofar as the written form is agreed for declarations in the respective Storage Contract, a declaration by fax shall be sufficient insofar as this is subsequently confirmed in writing.
- (3) This contract, including its elements, contains all agreements between the Parties; there are no ancillary agreements.

### **§ 37 Language**

- (1) The processing and execution of the contractual relationship shall be carried out exclusively in the German language whether in written or spoken form.
- (2) Only the German language version of the contract shall be binding.

### **§ 38 Elements of the GCSA and Ranking**

The integral parts of these GCSA include the annexes in their respective valid version.

In the event of contradictions and/or loopholes, the provisions of the Storage Contract shall take precedence over those of the annexes and the GCSA. In the event of contradictions and/or loopholes, the annexes shall take precedence over the GCSA.