

TERMS AND CONDITIONS
OF THE MARCH 2017 NEW CAPACITY AUCTION

1. PREAMBLE

- 1.1 The company eustream, a.s., having its registered office at Votrubova 11/A, 821 09 Bratislava, Slovak Republic, registered in the Commercial Register of the Bratislava I District Court, Section: Sa, file No. 3480/B, IČO (Identification Number): 35 910 712, is a transmission system operator authorized to carry out the transmission of natural gas in the territory of the Slovak Republic (“**EUSTREAM**”).
- 1.2 During December 2016 and in parallel to the network development planning procedure, EUSTREAM initiated a process of a non-binding market survey in order to assess market demand for cross-border capacities of the transmission network (“**Market Survey**”). The Market Survey followed the official results of similar market surveys performed by the Gaspool market area TSOs (more-capacity.eu) and the Czech TSO (capacity4gas). These surveys indicated a need for a coordinated extension of transmission capacity across several transmission networks. Results of the Market Survey confirmed the need of new transmission capacity between the Slovak and Czech transmission systems.
- 1.3 By the procedure specified in these TC, EUSTREAM will determine the level of binding demand of network users for the New capacity. New capacity will not exist at the time of its allocation. EUSTREAM has not made a Final Investment Decision on the necessary network expansion measures to create the New capacity. Subject to specific conditions, construction and commissioning of the necessary infrastructure, the allocated New capacity will become accessible to network users.
- 1.4 These TC apply to New capacity. Existing technical capacity continues to be offered and allocated according to standard commercial and technical rules defined in the relevant legislation, Operational order, and existing contractual arrangements with network users, except for specific rules under these TC related to existing capacity allocated together with New capacity.

2. DEFINITIONS

For the purposes of these TC, the following definitions shall apply:

- (a) **Auction** means the capacity allocation mechanism on the PRISMA web-based booking platform as specified under Clause 5.1 of these TC.
- (b) **Confirmation on capacity granting** has the meaning assigned to it in the Framework contract.
- (c) **Entry point(s)** has the meaning assigned to it in the Framework contract.
- (d) **Exit point(s)** has the meaning assigned to it in the Framework contract.
- (e) **Final Investment Decision** means positive or negative decision adopted by EUSTREAM regarding the Network expansion.
- (f) **Framework contract** means the framework contract between EUSTREAM and the network user on access to the transmission network and gas transmission.
- (g) **New capacity** means the new capacity of EUSTREAM exceeding the level of – 696,8 GWh/D (the existing technical capacity) at the Entry point Lanžhot to be offered in a capacity auction at the PRISMA web-based booking platform in March 2017.
- (h) **Financial guarantee** means the financial guarantee regulated by Article 12 (*Financial guarantee*) of the Framework contract, as such Article 12 has been amended and/or supplemented by these TC.
- (i) **Individual contract** means a contract for the New capacity concluded under Article 7.2 of these TC, the subject matter of which is the provision of access to the transmission network and transmission of natural gas from the Entry point Lanžhot to Exit point(s), forming an integral part of , and being governed by and construed in accordance with, the Framework contract.
- (j) **Interconnection point** has the meaning assigned to it in the Framework contract.
- (k) **NET4GAS** means gas transmission system operator in the territory of the Czech Republic.
- (l) **NET4GAS network expansion** means the NET4GAS transmission network expansion measures leading to the increase of technical (exit) capacity on the Czech side of the Interconnection point Lanžhot.
- (m) **Network expansion** means the EUSTREAM network expansion measures as specified in Clause 4 of TC.

- (n) **Operational order** means the operational order of EUSTREAM, laying down commercial conditions for access to the transmission system and gas transmission and connection to the transmission system, approved by RONI and published on the official EUSTREAM website, as amended from time to time, which applies between the EUSTREAM and network users always in its then-effective version.
- (o) **Price decision** means the applicable EUSTREAM price list approved and issued by RONI, valid for the respective capacity allocation procedure.
- (p) **Procedure** means the process specified in Clause 3.1 of these TC.
- (q) **Relevant existing capacity** means the capacity under Clause 11.4 of these TC.
- (r) **Relevant project** means a new project or new capacity available which is required for the relevant network user to be able to carry out gas transmission from the point of start of such transmission to the Entry point Lanžhot and which is agreed between the network user and EUSTREAM in the Special withdrawal right agreement pursuant to Clause 11.3 of these TC
- (s) **RONI** means the Regulatory Office for Network Industries (*Úrad pre reguláciu sieťových odvetví*), an authority of state administration for regulation of network industries with its competence for the whole Slovak Republic.
- (t) **Single Upcoming Gas Year** means a single gas year following the gas year during which the network user requests to withdraw with respect to such a single gas year from the allocated capacities subject to these TC, as further specified in these TC.
- (u) **Special withdrawal right** means the withdrawal right of the network user under Clause 11.3 of these TC.
- (v) **TC** means these Terms and Conditions of the March 2017 New capacity auction. Subject to Clause 6.1(c), this term also means an agreement between the network user and EUSTREAM supplementing the Framework contract.

3. LEGAL BASIS

- 3.1 These TC constitute specific binding rules for (i) the registration of network users willing to participate in the Auction, (ii) the Auction, (iii) the rights and obligations of network users participating in the Auction, (iv) subsequent process after the allocation of the New capacity and (v) access to the transmission network and gas transmission. .

- 3.2 With respect to allocated New capacity and subject to 6.1(c) of these TC, these TC constitute an agreement between the network user and EUSTREAM supplementing the Framework contract. This agreement enables the network user to participate in the Auction and after successful allocation of New capacity, enter into an individual contract on access to the transmission network and gas transmission. It shall become valid and enter into force after the signing by both the network user and EUSTREAM, and shall be valid for the same period as his capacity bookings in the Auction. The Framework contract validity will be automatically prolonged accordingly.
- 3.3 With respect to the matters not regulated (not supplemented or amended) by these TC, the provisions of the Framework contract, the Operational order and the Price decision apply.
- 3.4 The network user and EUSTREAM undertake to replace the invalid, inoperable or unenforceable provisions of these TC in an appropriate procedure by other provisions having the same economic results (for the avoidance of doubt, commercial and financial effects with third parties will not be taken into account).
- 3.5 These TC were approved by the RONI under the Act No. 251/2012 Coll. on Energy and Act No. 250/2012 Coll. on regulation in network industries and are based on the Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC, the Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation No 1775/2005/EC and the applicable national legislation. The specific allocation procedure complies with the rules of the Regulation (EU) No 984/2013. The abovementioned regulations and regulatory approval ensure transparency and equal treatment of all network users.

4. NETWORK EXPANSION

- 4.1 The non-binding demand for New capacity identified during the Market Survey indicates the need of transmission infrastructure expansion by the construction of a compressor station located in the western part of the Slovak republic and additional related infrastructure modifications and investments. The expansion of transmission infrastructure should increase the maximum technical entry capacity at the Interconnection point Lanžhot from 696,8 GWh/D to at least 1.294,4 GWh/D and boost

the operational flexibility of the transmission network. Entry capacity at the Interconnection point Lanzhot is foreseen to be increased and corresponding New capacity available to network users as of October 1, 2019 at the earliest.

5. DESCRIPTION OF OFFER GROUPS

5.1 The New capacity will be offered and allocated as specified under Clause 7 of these TC via PRISMA web-based booking platform in the yearly capacity auction on 6th March 2017 with respect to the Interconnection point Lanzhot. The auction will be conducted under the General Terms and Conditions of PRISMA web-based booking platform using the ascending-clock auction algorithm in accordance with Clause 17 of Regulation (EU) No 984/2013.

5.2 In the Auction, capacities will be offered in three separate offer groups:

- (a) the first offer group called “Lanzhot” consists of bundled existing capacities between NET4GAS and EUSTREAM.
- (b) the second offer group called Lanzhot 1 consists of exceeding existing capacity on NET4GAS side which was not bundled with EUSTREAM’s existing capacity and is supplemented by (and bundled with) New capacity from EUSTREAM side.
- (c) the third offer group called Lanzhot 2 consists from bundled New capacity only.

5.3 For the avoidance of doubt, offer groups Lanzhot, Lanzhot 1 and Lanzhot 2 represent existing and New capacity at the Interconnection point Lanzhot. Capacities will be marketed in offer groups because of different capacity levels on both sides of the Interconnection point Lanzhot and taking into account technical possibilities of PRISMA web-based booking platform.

5.4 A network user willing to book the capacity which exceeds the amount of the bundled existing capacity offered in the first offer group shall bid the capacity also in the next (second) offer group. In case the required capacity exceeds the amount offered in the first and second offer group, the network user shall bid the capacity also in the next (third) offer group.

5.5 The existing capacities offered in offer group Lanzhot must be booked with priority in order to ensure efficient use of the existing infrastructure before New capacities are created by means of Network expansion.

6. CONDITIONS FOR PARTICIPATION

- 6.1 A network user who intends to participate in the Auction with respect to New capacity must be registered with EUSTREAM. To register, the network user must:
- (a) have a valid Framework contract, or conclude such contract with EUSTREAM in advance before the Auction (on March 1, 2017 at the latest). The Framework contract must be valid for the entire period for which the network user intends to book the New capacity;
 - (b) deposit a Financial guarantee for the New capacity in accordance with Clause 10 of these TC;
 - (c) deliver to EUSTREAM signed TC, supplementing the Framework contract; and
 - (d) be registered on the PRISMA web-based booking platform. Network users not yet registered at PRISMA web-based booking platform must register before the Auction (on February 27, 2017 at the latest).
- 6.2 EUSTREAM will confirm the successful registration of a network user in due time following its inquiry.

7. ALLOCATION PROCEDURE

- 7.1 Allocation of the New capacities shall be made based on the results of the Auction.
- 7.2 EUSTREAM will, after the publication of the Auction results, send in an electronic form a Confirmation on capacity granting containing the relevant data. Only the Confirmation on capacity granting sent by EUSTREAM is binding. Upon sending the Confirmation on capacity granting by EUSTREAM to the respective network user, an Individual contract is entered into in accordance with these TC.
- 7.3 The information communicated by the PRISMA web-based booking platform after the finalisation of the Auction shall only be considered as information and shall be not considered as a Confirmation on capacity granting or any other type of final or binding confirmation in relation to New capacity.

8. ECONOMIC TEST AND FINAL INVESTMENT DECISION

- 8.1 The economic test will be carried out by EUSTREAM after the Auction in which New capacity was offered to network users and binding demand for New capacity was determined. EUSTREAM will analyse New capacity allocated in the Auction and the overall process of Network expansion to consider economic viability of the Network

expansion.

8.2 Based on the result of the economic test (in which the economic viability of the Network expansion was examined) EUSTREAM will adopt Final Investment Decision which might be positive - that confirms the will to initiate construction works resulting in Network expansion or negative - which declares the will to cancel the Network expansion.

8.3 Final Investment Decision will be communicated in written form to network users without undue delay after its adoption by EUSTREAM.

9. TARIFFS

9.1 Tariffs for access to the transmission network and gas transmission are determined by RONI. Tariffs are structured in a fully de-coupled entry/exit model. Current applicable tariffs are governed by the decision No. 0021/2017/P dated October 31, 2016 of RONI.

9.2 In case the allocated New capacity is not made available for use as a yearly capacity product due to a delay of the Network expansion, the network user will pay only a proportionate part of the yearly payment for the New capacity for the period during which such capacity is made available for use, taking into account yearly capacity tariff specified in the Confirmation on capacity granting under Clause 7.2 of these TC.

9.3 Before the Auction, EUSTREAM will provide interested network users with indicative calculation of tariffs based on information about the intended capacity bookings.

10. FINANCIAL GUARANTEE

10.1 The network user intending to participate in the Auction and enter into Individual contract must deposit a Financial guarantee before the Auction and maintain it for the whole duration of such contract plus two months. With this respect, Individual contracts for subsequent years shall be considered as one contract and the Financial guarantee shall be maintained for its whole duration plus two months.

10.2 The requested Financial guarantee for the participation in the Auction and Individual contract depends of the network users creditworthiness:

Rating grade (<i>n</i>)			monthly payment*
Moody's	Standard & Poor's	Fitch Ratings	

Aaa - Ba1	AAA - BB+	AAA - BB+	as per Operational order
Ba2 - Ba3	BB - BB-	BB - BB-	4
B1 - C	B+ - D	B+ - D	8
Without rating			8

** the number of monthly payments for gas transmission of the allocated yearly New capacity product with the highest amount of capacity.*

- 10.3 For the avoidance of doubt, EUSTREAM reserves the right to request before the Auction and during the Individual contract validity higher Financial guarantee from the network user than the minimum level described above.
- 10.4 EUSTREAM is entitled to (i) use the Financial guarantee in the full amount, if the network user fails to fulfil its obligations under the Individual contract, and (ii) request replacement of the Financial guarantee in case either the Financial guarantee is used for satisfaction of its due obligations or EUSTREAM reasonably believes that the creditworthiness of the issuer of the Financial guarantee or the network user has deteriorated.
- 10.5 The network user is obliged to inform EUSTREAM of any change in the network user's credit rating and/or, if it ceases to have a credit rating. If any change in the network user's credit rating occurs or if it ceases to have a credit rating or any market event detrimentally affecting (in the reasonable opinion of EUSTREAM) the creditworthiness of the network user occurs, EUSTREAM shall have the right to revise its creditworthiness assessment and the level of the Financial guarantee which the network user shall provide in connection with allocated New capacity. EUSTREAM shall notify such network user on revision of its creditworthiness assessment and the network user is obliged to adjust its Financial guarantee to the required level.
- 10.6 Notwithstanding the above EUSTREAM has at any time the right to request the network user to provide information (in whatever form) EUSTREAM deems necessary for the creditworthiness assessment and the network user is obliged to submit the required information. To the extent that such information is confidential, the

confidentiality provisions of Article 18 (*Confidentiality*) of the Framework contract shall apply.

10.7 EUSTREAM will, subject to an inquiry, help to calculate the indicative amount of requested Financial guarantee sufficient for the intended booking of the network user.

11. SPECIFIC PROVISIONS

11.1 Notwithstanding anything to the contrary in these TC (and without prejudice to withdrawal rights of the parties pursuant to these TC), the effectiveness of Individual contract(s) is subject to the fulfilment of all the following conditions:

- (a) provision of all required documents (signed Framework contract and the TC) by the network user;
- (b) confirmation and notification by EUSTREAM of the final allocation of New capacity as set forth in Clause 7.2 of these TC;
- (c) positive Final Investment Decision;
- (d) EUSTREAM having obtained all necessary permits and other authorizations (such as, without limitation, planning and construction ones) and having completed the real estate right acquisition process (including, without limitation, in relation to easements) required for the construction, commissioning and operation of the Network extension; and
- (e) Network expansion is commissioned and operational.

EUSTREAM shall notify network users without undue delay from the day of satisfaction of the foregoing conditions. EUSTREAM shall have a right to waive any particular condition set out in this Clause 11.1 of TC. The effectiveness of Individual contracts shall occur on the day the network user receives such notification of EUSTREAM on satisfaction and/or waiver of all conditions set out under this clause.

For the avoidance of doubt, the network user is not obliged to make any payments for the New capacity until the Individual contract becomes effective as specified above in this Clause 11.1 of TC.

11.2 EUSTREAM has the right to partially or fully withdraw from an Individual contract, Relevant existing capacity and/or to cancel the Network expansion :

- (a) at any time, if EUSTREAM reasonably establishes that NET4GAS network expansion or a Relevant project is not going to be put into operation on/or before the date of the start of the transmission under the respective Individual contract; or
- (b) at EUSTREAM will, at any time until January 31, 2018;

Partial withdrawal means that EUSTREAM has the right to withdraw from part of the capacity under the relevant contract regarding Relevant existing capacity and/or New capacity with respect to certain time period specified by EUSTREAM. For avoidance of any doubt, Eustream may exercise such withdrawal right repeatedly and regardless of the fact whether or not the respective Individual contract is effective.

11.3 The network user intending to book in parallel existing capacity at Entry point Lanžhot and New capacity in the Auction has the right to request from EUSTREAM before the Auction a special withdrawal right related to capacity bookings (“Special withdrawal right”). The Special withdrawal right must be agreed in writing between EUSTREAM and the network user prior to the Auction (the “**Special withdrawal right agreement**”). For the avoidance of doubt, entering into such an agreement shall be at the sole discretion of EUSTREAM. For avoidance of any doubt, the Special withdrawal right can be exercised regardless of the fact whether or not the respective Individual contract is effective.

11.4 The exercise of Special withdrawal right by the network user with respect to New capacity shall automatically trigger for the respective Single Upcoming Gas Year also the withdrawal from existing capacity at Entry point Lanžhot allocated to such network user in the Auction (“**Relevant existing capacity**”) in the ratio of two units of Relevant existing capacity to one unit of the withdrawn New capacity.

11.5 Under the Special withdrawal right, the network user can withdraw from New capacity (and if clause 11.4 is applicable from Relevant existing capacity) only for a respective Single Upcoming Gas Year, in case at least one of the Relevant projects is not commissioned or in case it is not possible for the network user to book or use the respective capacity under these Relevant projects, in each case in the extent and under the conditions specified in the Special withdrawal right agreement. The network user must provide EUSTREAM with a withdrawal request with respect to the Special withdrawal right at least 3 months before a yearly auction of standard capacity products for the Single Upcoming Gas Year for which the withdrawal is requested. In case the Relevant project is commissioned and the network user becomes able to book and use

the capacity under the Relevant project at least in the extent specified in the Special withdrawal right agreement, the network user (i) shall be obliged to book on short-term basis the capacity which has been withdrawn under the Special withdrawal right in the same capacity amount for the remaining part of the Single Upcoming Gas Year and (ii) the network user shall cease to have any further Special withdrawal rights and the Special withdrawal right shall cease to exist in its entirety (and, for avoidance of any doubt, the Special withdrawal right will not be anyhow reactivated should the situation on the side of the network user or the Relevant project change).

11.6 The Special withdrawal right will also cease to exist should the network user decide not to exercise the Special withdrawal right in any of the previous gas years, despite the fact that the conditions for exercising of the Special withdrawal right had been met with respect to any of such previous gas years.

12. OTHER SUPPLEMENTING PROVISIONS

12.1 **Liability.** In addition and without prejudice to other provisions set forth under these TC, the Operational order, the Framework contract and applicable generally binding legal regulations, EUSTREAM is not liable for any cost, damage, liability, loss, arising directly or indirectly,:

- (a) from the information (of whatever kind and in whatever form) provided by EUSTREAM (including via its representatives and/or advisors) in connection with, or from inaccuracy, incompleteness, or omissions in the contents of these TC;
- (b) out of or in connection with the Procedure;
- (c) from (i) a delay of the Network expansion (from whatever reason), or (ii) a delay or failure of (from whatever reason) performance of any obligation by EUSTREAM, in connection with the Network expansion and the New capacity, directly or indirectly, caused by other TSO, the network user, governmental body or EUSTREAM;
- (d) from unavailability and inability of the network user to use capacity of a Relevant project;
- (e) out of or in connection with (i) Network expansion cancelation (including, without limitation, in case of negative Final Investment Decision), and/or (ii) EUSTREAM's withdrawal from Individual contract(s) under Clause 11.2 and

12.4 of these TC; and

- (f) from any action or omission of any other person including any other neighbouring TSO (notably, but not exclusively, in case of such other TSO's non-compliance with applicable interconnection or other agreements and the lack of necessary exit capacity of the Interconnection point Lanžhot or delay or failure of the NET4GAS network expansion).

12.2 **Expenses.** Any expenses incurred by the network user in connection with entering into the contracts and other documents referred to in these TC and the participation in the Procedure under these TC will be borne by the network user and will not be asserted against EUSTREAM.

12.3 **Information obligation.** The network user shall inform EUSTREAM in writing without undue delay upon a request of EUSTREAM:

- (a) on the status of the Relevant project including on (potential) issues that may or will result in delay or failure thereof; and
- (b) in case any allocated capacity in a Relevant project is terminated by the relevant TSO or network user.

The network user shall notify EUSTREAM at least 1 month prior to the expected date when the Relevant projects are commissioned and the network user is able to book and use the respective capacity under these Relevant projects, in each case in the extent and under the conditions specified in the Special withdrawal right agreement.

12.4 **Network expansion cancelation.** In case of a negative Final Investment Decision, the Individual contract(s) shall cease to be valid and parties are no more bound by it.

12.5 **Costs of the Network expansion.** In case any of the Relevant projects is not commissioned in any capacity before October 1, 2026 and EUSTREAM withdraws from the Individual contract(s) in full, EUSTREAM shall have the right to request from the network user (and upon such request the network user shall be obliged to compensate) any reasonable costs of Network expansion (which include, among other, costs of material, plant and equipment, costs related to upgrading or revamping the existing infrastructure, as well as costs connected to the termination of any contractual relationship linked to such material, plant and equipment) on pro-rata basis, and taking into account the amount of capacity payments already paid by such network user under

the Individual contract(s) until the time of such compensation.

12.6 **Changes to the TC.** EUSTREAM may amend these TC at any time before the Auction.

Clause 6.1(c) shall be interpreted to refer to any such amendment of these TC.

12.7 **Clarifications.** Upon request, EUSTREAM will provide registered network users with clarifications and explanation regarding the TC.
