

Agreement on the access to the balancing market with regulating energy (hereinafter Agreement)

concluded according to Article 269 (2) of Act no. 513/1991 Coll., Article 50 of Act no. 458/2000 Coll. (Energy Act), in the original wording, and according to Decree issued by Energy Regulatory Office (hereinafter ERU) on Rules of the electricity market and the pricing policies for the activities of Electricity market operator, a.s. (hereinafter OTE) in the original wording.

Article 1 Contractual parties

a) Electricity market operator, a.s. (OTE)

Sokolovská street 192/79, 186 00 Prague 8,
company inscribed in Commercial register administered by Municipal court in Prague,
section B., insertion 7260,
represented by:
Ing. Jiří Šťastný, General manager
IČ (identification no.): 26463318
DIČ (taxpayer identification no.): CZ26463318
account no. – settlement account for imbalances: 275868540207/0100
tel.: +420 296 579 160
fax: +420 296 579 180

hereinafter OTE

b) Company name

company Headquarters - address
company inscribed in Commercial register administered by District court in,
section, insertion
represented by:

IČ (identification no.):
DIČ (taxpayer identification no.): CZ
banking connection:
account no.:
Holder of : electricity trade license no....., electricity distribution license no.
....., electricity generation license no.,
tel.:
fax:
Registration number of SZ (Subject of settlement):

hereinafter VT Participant

Article 2

Term definition

- a) Terms as used in the Agreement shall be determined according to the provisions of Act no. 458/2000 Coll. (Energy Act) in the original wording and according to ERU Decree on Rules of the electricity market and the pricing policies for the activities of Electricity market operator, a.s. (hereinafter OTE) in the original wording.
- b) Terms used:
 - i. Business terms – Business terms of market operator (OTE)
 - ii. PpS - ancillary services
 - iii. PPS – transmission system operator
 - iv. VDT - intra-day electricity market organized by OTE for Subjects of settlement (SZ)
 - v. VT – balancing market with regulating energy organized by OTE for PPS (according to the Agreement) with the aim of covering further needs of the regulating energy
 - vi. Grid code – rules for the grid management of the Czech Republic power system laid down by Decree no. 220/2001 Coll.

Article 3

Subject of the Agreement

The Electricity market operator binds itself by this Agreement on the access to the balancing market with regulating energy to enable the VT Participant a free-of-charge access to the balancing market with regulating energy and to settle financially realized business transactions according to the Rules of the electricity market. Approved OTE Business terms form an integral part of the Agreement. The access to the VT market involves exertion of the following OTE activities in favour of the VT Participant:

- i. reception of the VT Participant's offer of supply/demand of the regulating energy,
- ii. confirmation of the acceptance of the VT Participant's offer of supply/demand of the regulating energy,
- iii. reception of the PPS acceptance,
- iv. reception confirmation of the PPS acceptance, or reception confirmation of the PPS non-acceptance (including justification of the non-acceptance),
- v. periodical publication of the trading results per each individual VT Participant – his traded volumes and accepted trading prices with information whether or not the busy hour/session was terminated,
- vi. publication of the final trading results per each individual VT Participant – his traded volumes and marginal prices,
- vii. reception and solution of possible claims,
- viii. application of the trading results into the system of imbalance settlement by adjustment of the real values and of the business transactions made on VT,

- ix. financial settlement of the business transactions made by VT Participant on VT,
- x. issuance of the respective document for an invoice make-out,
- xi. make-out of the invoice for a different taxpayer

Article 4 **Price**

- a) Prices of the regulating energy resulting from the offers accepted in the respective busy hour on VT by PPS, shall be used in the calculation of the marginal price of the regulating energy for the respective busy hour along with the prices of the regulating energy activated within the framework of provision of PpS. After the marginal price is determined by PPS, the VT Participant's price of the regulating energy traded on VT in the respective busy hour shall be calculated as the product of the marginal price of the regulating energy determined by PPS in the respective busy hour and of the regulating energy quantity accepted by PPS.

Article 5 **Rights and obligations of the contractual parties**

- a) Rights and obligations of the contractual parties non-stated in the Agreement or Business terms (in particular in section 5 - as attached to the Agreement by Annex no.1) shall be governed by generally binding legal regulations.
- b) Based on the VT Participant's request and his delivery of completed form 'Application of registration of the authorized person of market participant' (as specified in the OTE Business terms), OTE is obliged to enable VT Participant to have a secured access to the OTE information system. The secured access shall be provided according to the respective provisions of the OTE Business terms (www.ote-cr.cz).
- c) OTE is obliged to inform VT Participant on all amendments to the OTE information system in deadlines corresponding to the importance of such amendments.
- d) While on the balancing market (VT), VT Participant is further obliged to comply with the Grid code as well as with the Rules of Transmission system operation and the Rules of Distribution systems operation.
- e) OTE is obliged to ensure financial settlement of VT. The settlement shall be independent of real values of electricity supplies/demands.
- f) VT Participant is obliged to pay to OTE the price of the electricity traded on VT (the price is determined by Article 4), providing the price is a VT Participant's commitment. OTE is obliged to pay to VT Participant a price (determined by Article 4), providing the price is an OTE commitment.
- g) VT Participant is obliged to make contractual advance payments to OTE. The advance payments amount shall arise from the evaluation of supplies/demands in accordance with the Agreement per each busy day (with the evaluation made public on the following working day).

- h) VT Participant is obliged to settle to OTE all due amounts resulting from the monthly clearance, providing a difference is produced between the advance payments and the monthly clearance.
- i) According to the Agreement, OTE is obliged to make contractual advance payments (determined according to the VT evaluation) to VT Participant. The advance payments amount shall arise from the evaluation of supplies/demands in accordance with the Agreement per each business day (with the evaluation made public on the following working day).
- j) OTE is obliged to settle to VT Participant all due amounts resulting from the monthly clearance according to Article 6 of the Agreement, providing a difference is produced between the advance payments and the monthly clearance.
- k) The contractual parties are obliged to purchase at their own costs a HW support enabling them to access to VT.

Article 6

Payment conditions and billing

- a) According to Business terms and by 10 days at the latest from the conclusion of the Agreement, VT Participant is obliged to arrange collection rights to his account with a bank or its branch located in the Czech Republic in favour of OTE and to deliver to OTE a document evidencing the existence of the collection rights. OTE shall keep the collection rights to the respective account in order to ensure due payments from VT Participant arising from Article 4 of the Agreement.
- b) Based on the data delivered by PSS on quantity and price of the regulating energy for the previous day (or previous non-working days), both the payment and collection orders in favour of (or) to the debit of VT Participant shall be made by OTE because of the advance payments. PSS shall be responsible for the correctness of the data on quantity and price of the regulating energy. The due date of collection orders shall be fixed at the latest to the first working day following the business day to which relate the delivered data. There are two principal exceptions to the due date fixation: case of a delayed report by PSS on the data on quantity and price of the regulating energy and, case of communication failure with the OTE bank – in such a case, the due date of collection orders shall be fixed to the second working day following the business day relevant for the data report. The due date of the OTE payment orders for the daily clearance of the regulating energy shall be fixed to the fifth working day following the business day to which relate the delivered data. Again, there are two principal exceptions to the due date fixation: case of a delayed report by PSS on the data on quantity and price of the regulating energy and, case of communication failure with the OTE bank – in such a case, the due date of the OTE payment orders shall be fixed to the sixth working day following the business day relevant for the data report.
- c) Daily clearance of VT as performed according to Business terms per individual days of the respective month shall be handled by advance payments. Each month, an aggregate invoice shall be made out for the advance payment

clearance according to Article 21 (1), Article 21 (11) and Article 26 (2) of Act no. 235/2004 Coll., see Letter f.

- d) Regulating energy sold by VT Participant through VT shall be invoiced once in a month under conditions described thereafter.
- e) Based on the settlement of possible claims and/or delivery of the corrected data on quantity and price of the regulating energy, OTE shall make a monthly evaluation of the regulating energy. The corrected data on quantity and price of the regulating energy shall be delivered by PPS which remains responsible for the data. The monthly evaluation shall mean the count of all days of reception of either claims or corrected real values. The new regulating energy amount as well as new the payment level for this energy shall be the result of the said evaluation. The monthly evaluation of the regulating energy shall be a base for a make-out of the respective invoice. In case of reception of a payment by OTE (case of VT Participant's commitment), the respective invoices shall be made out and dispatched by OTE to VT Participant by the eighth working day following the month for which the invoices are made out. In case of settlement of the payment by OTE (case of the OTE commitment), the relevant materials for making out of the invoices shall be issued and dispatched by OTE to VT Participant to the e-mail address of the person authorized for communication by the eighth working day following the month for which the invoices are made out. VT Participant shall make out the respective invoices according to the relevant materials delivered by OTE by the fifteenth calendar day following the month for which the invoices are made out.
- f) Based on results of the monthly clearance, an aggregate invoice shall be issued according to Article 26 (2) of Act no. 235/2004 Coll. Statement of received advance payments (acc. to Letter c) will appear on the invoice.
- g) The aggregate monthly clearance (evaluation) of the regulating energy shall be made public by OTE on the OTE web site by 16:00 p.m. time of the eighth working day following the evaluated (cleared) month time period.
- h) Depending on the kind of individual errors, VT Participant or OTE shall correct or reissue the respective invoice. The original due date deadline shall be suspended, providing the defected invoice is turned back (refused) with justification. The new due date deadline shall be stated on the corrected invoice.
- i) According to the Agreement, payments for the regulating energy shall be non-cash transferred to the account of the opposite contractual party which is to be recipient of the respective amount paid. Payments to the VT Participant's debit shall be effected by collection (encashment) from his account in favour of the OTE account no. 275868540207/0100.
- j) The invoice made out in accordance with the provisions of Article 26 (1) of Act no. 235/2004 Coll. on Value added tax and Act no. 563/1991 Coll. on the Accountancy in the wording of later changes and amendments, shall be issued by VT Participant in case of the OTE commitment to make a payment to VT Participant. OTE shall make out the invoice in case of the VT Participant's commitment to make a payment to OTE.
- k) According to the provisions of Article 28 (2) of Act no. 235/2004 b. on Value added tax in the wording of later changes and amendments, the invoice must include information on the regulating energy quantity in accordance with the

rules for the transmission system operation, unless otherwise agreed between the contractual parties. The total of the payments per both contractual parties shall be the base of the value added tax calculation.

- l) Value added tax as rated by law shall be added to the invoiced price of the regulating energy by the contractual party issuing the respective invoice.
- m) The last calendar day of the respective month for which the clearance is made shall be taken for the date of provision of the taxable supply, following the provisions of Article 21 (11) of Act no. 235/2004 Coll. on Value added tax.
- n) The due date of collection orders from the monthly evaluation of the regulating energy, shall be fixed to the first working day following the termination of the monthly evaluation. There are two principal exceptions to the due date fixation: case of a delayed report by PPS on the data on quantity and price of the regulating energy and, case of communication failure with the OTE bank – in such a case, the due date of collection orders shall be fixed to the second working day following the termination of the monthly evaluation. The due date of the OTE payment orders from the monthly evaluation of the regulating energy shall be fixed to the fifth working day following the termination of the monthly evaluation. Again, there are two principal exceptions to the due date fixation: case of a delayed report by PPS on the data on quantity and price of the regulating energy and, case of communication failure with the OTE bank – in such a case, the due date of the OTE payment orders shall be fixed to the sixth working day following the termination of the monthly evaluation.

Article 7 Claims

- a) It is possible to claim values/procedures applied in connection with organizing of VT by OTE according to the Agreement.
- b) Providing VT Participant does not agree with the quantity and price of the regulating energy determined by PPS, the same shall lodge his claim against PPS. In case of a claim, OTE shall assist in providing of the respective data relating to the VT Participant's claim.

Article 8 Delay charge

- a) In case of a delay in fulfilling of financial obligations according to the Agreement, the affected contractual party shall be entitled to claim delay charges out of the due amount from the opposite contractual party being past its due date. The delay charge shall apply to each started day past the due date and it shall be set regularly on the first working day of each calendar month at the fixed amount of $(1M \text{ PRIBOR} + 2\%) / 360$ with the validity for one respective month.
- b) For the purposes of the Agreement, 1M PRIBOR shall be defined as the interest rate of one-month deposit on Prague inter-banking deposit market. The interest rate is fixed by the Czech National Bank on a daily basis.

Article 9

Damage prevention and compensation for damage

- a) Compensation for damage is governed by the provisions of Articles 373 to 386 of Commercial Code as well as by further contractual agreements.
- b) OTE as well as VT Participant shall be entitled to claim the compensation for damage incurred to them by breaching of an obligation by the other contractual party even in case of breach of an obligation governed by contractual penalty. The entitled contractual party shall have the right to enforce the compensation for damage exceeding the contractual penalty amount.
- c) The party affected by the circumstances eliminating its liability shall be obliged to inform forthwith the other side on such circumstances in a written form. The contractual party claiming such circumstances shall submit on request of the other contractual party the evidence that such circumstances occurred.
- d) Contractual parties hereby pledge to keep informed each other on all facts believed to lead to any harm as well as to strive to avert any imminent damage.

Article 10

Resolution of disputes

- a) The contractual parties shall do their best to settle all possible disputes arising from the Agreement in a pacific manner.
- b) In case of any other than a pacific dispute settlement, any of the contractual parties may bring a suit against the other side in the general court locally competent to OTE. The amendment of local court competence shall be a matter of arrangement between the two contractual parties according to Article 89a) of Civil Procedure Code.

Article 11

Communication

- a) In Annex no. 2, the contractual parties designated authorized representatives for communication in both the contractual and operational fields. The contractual field involves in particular propositions of amendments of the Agreement including its annexes. The operational field involves in particular data report on supplies and demands, acceptances, evaluations of VT, payment system and claims. Within the framework of the Agreement, the authorized representatives listed in Annex no. 2 shall be entitled to conduct joint negotiations in competent fields in accordance with Annex no. 2. Provided that suggestions on amendment of the Agreement arise from the conclusions of such negotiations, this shall only be a suggestion on the amendment of the Agreement. The authorized representatives destined for the mentioned negotiations shall not be entitled to conduct further negotiations on amendment or cancellation of the Agreement.
- b) If the Agreement requires that relevant documents are to be delivered in a written way, registered letter or personal delivery shall apply. If the message is passed through an electronic form (e-mail, fax), this communication channel must be safe according to Business terms (www.ote-cr.cz). In case of e-mail or

fax message, the delivery date shall be the day of receipt (of e-mail or fax message). In all other cases, the delivery date shall be the day of document delivery by registered mail or the day of receipt in person.

- c) An extension of the existing cards of access rights (to the OTE information system) shall be made by OTE in order to provide VT Participant with access rights to VT as well. The list of the access cards including access rights of the individual cards and authorized representatives (for communication of Subject of settlement) or holders of the respective cards, shall be part of Annex no. 2 of the Agreement.

Article 12 Confidentiality

- a) The contractual parties mutually agree to protect and keep secret confidential information away from any third party. Unless with the prior written consent, none of the contractual parties shall not be allowed to disclose any information on the content of the Agreement (with the exception of information publicly issued) nor it shall be allowed to disclose any partial content to a third party. The contractual parties further agree to protect confidential information and facts being a part of the business secret of a third party entrusted by the third party to one of the contractual parties with the consent of further usage of such information. The commitment to keep information secret shall last within the duration of the reality relevant for the business secret or of the interest in keeping any confidential information secret. This commitment shall not apply to provision of information in case that this would be required by generally binding legal regulations.
- b) In case of a provable breach of the obligation according to Letter a) by one of the contractual parties, the other side shall be obliged to pay to the affected party and for each breach of the obligation a contractual penalty amounted at CZK 200 000 (in words two hundred thousand Czech crowns). This article shall not apply to the information duty resulting from generally binding regulations.
- c) VT Participant states that, with his consent, PPS shall be entitled to report to OTE on the information on quantity and price of the regulating energy.
- d) VT Participant declares to be aware that the access to information arising from the Agreement is further accorded to the supplier of the OTE information system. The information system supplier shall consider all relevant information secret as well.

Article 13 Validity and effective date

- a) This Agreement is concluded for an indefinite period of time and shall take effect on the day of signature by both contractual parties. The Agreement shall come into force on the effective date of Agreement on imbalance settlement between VT Participant and OTE and of arrangement of the collection rights in favour of OTE according to Article 6a) of the Agreement, however only after the day of signature by both contractual parties.

- b) OTE is entitled to withdraw from the Agreement, provided the validity of the Agreement on imbalance settlement between VT Participant and OTE is terminated.
- c) Each of the contractual parties is entitled to withdraw from the Agreement however OTE shall have to state the reason of such a withdrawal. The withdrawal notice period shall be 1 month and it shall start on the first day of the month following delivery of the written withdrawal notice to the other contractual party.

Article 14

Final provisions

- a) On the day of termination of the Agreement, all rights and obligations of the contractual parties arising from the Agreement shall be terminated with the exception of the obligations given in the respective provisions and meant to last after the termination of the Agreement.
- b) The provisions on confidentiality (protection of respective information), compensation for damage, contractual penalties and resolution of disputes shall remain in force even after the effectivity of the Agreement is terminated.
- c) The contractual parties state that if, in future, any of the provisions of the Agreement or its annexes is found void, the other provisions of the Agreement shall not be affected. Upon consideration of a void provision of the Agreement, the most proximate law provisions (to the void provision) shall be applied.
- d) The Agreement may only be altered and completed by written annexes signed by the authorized representatives of the contractual parties. The other contractual party must comment on any (annex) suggestion by 14 days as of the day of the receipt of such a suggestion. During the 14-day period, the party that raised the suggestion shall remain bound by the same.
- e) Legal relations of the contractual parties shall be governed by the Czech law. The working language is the Czech language.
- f) Apart from the provisions within the text of the Agreement, all legal relations between the contractual parties shall also be governed by Business terms. VT Participant states to have got familiar with the content of Business terms. Providing that, within the text of the Agreement, there is a different or controversial provision with the Business terms wording, the different (controversial) provision shall be given priority to Business terms.
- g) Both contractual parties fully accept all integral parts of the Agreement coming under the following Annexes:
 - i. Annex no. 1 – OTE Business terms in electronic form (www.ote-cr.cz)
 - ii. Annex no. 2 – Authorized representatives for communication in the contractual and operational fields
- h) If any of the provisions of the Agreement is replaced by a new legal regulation, the contractual parties pledge to substitute the original text by the new provision resulting from the new legal regulation or, the contractual parties shall agree to apply a provision being the most proximate to the purpose of the original

stipulation within the Agreement. The other provisions of the Agreement shall remain unchanged.

- i) The contractual parties hereby declare to have concluded the Agreement at their own free will and seriously, not under pressure or under other obviously disadvantageous conditions.
- j) The contractual parties declare to have studied in detail and understood the content of the Agreement and not to be aware of any barriers or claims of third parties nor of other legal defects that would make it impossible to conclude the Agreement or would lead to its nullity. To certify this, the authorized representatives of the contractual parties give their signatures.
- k) The Agreement is made out in duplicate, each contractual party shall receive one copy. Business terms shall enter into force and become binding for the OTE contractual partners as well as Electricity market operator on the day of approval by ERU and publication on the following website: www.ote-cr.cz. Business terms in their electronic form shall form an integral part of the contractual relations.

In Prague, on

In on

OTE - Electricity market operator, a.s.:

Company name:

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Ing. Jiří Šťastný
General manager

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