**Legal disclaimer**

The content of this storage contract is governed by the Czech law, as the provision of services of the gas storage operator is regulated by Act No. 458/2000 Coll., Energy Act, as well as the terms of storage operator’s energy licence.

As consequence, this sample is an unofficial translation only. Official documentation for the auction sale is drafted in Czech language. If any discrepancies arise between English and Czech wording, the Czech wording shall prevail.

If so requested by the Storage User, the storage agreement may be concluded in parallel Czech/English language version, however, even in such cases the Czech wording shall prevail in case of any discrepancies.

**Contract to store gas for reservation of annual storage capacity with fixed output**

**(sample)**

**I. Parties to the Contract**

**MND Gas Storage a.s.**

**Registered office**: Úprkova 807/6, 695 01 Hodonín

**Represented by**:

**Company ID No.**: 27732894

**Tax ID No.**: CZ27732894

**Bank account: ČSOB, a.s.**

**Account No. –** 17402743/0300

Incorporated with Regional Court in Brno, Section B, Folder 4925

(hereinafter the “**Storage Operator**“),

**Company:** [●]

**Registered office**: [●]

**Represented by/Executive head**: [●]

**Company ID No.**: [●]

**Tax ID No**: [●]

**Bank account**: [●]

Incorporated with [●], Section [●], Folder [●],

(hereinafter the “**Storage User**“),

**Hereby sign, under the Act No. 458/2000 Coll. (hereinafter as “Energy Act”) and relevant regulatory instruments to the Energy Act, all as amended and effective, this storage contract for the reservation of annual storage capacity with fixed output (hereinafter the “Contract”).**

**II. Subject Matter**

1. The subject matter of this Contract, compliant with the Rules of the Gas Storage Operator (hereinafter the “**Rules**”), is the obligation:

a) Of the Storage Operator to duly render a gas storage service for the Storage User, and this under the terms and conditions given below in this Contract and the Rules;

b) Of the Storage User to create conditions for proper rendering of the storing service by Storage Operator, and pay total price for the storing service, and this all under the terms and conditions mentioned below in this Contract and the Rules

based on the operational parameters stipulated in Article III. of this Contract reserved for the Storage User as the result of the electronic auction which took place on [●](hereinafter the “**Storage Service**“).

2. In performing this Contract, the Parties to the Contract also undertake to adhere to the provisions of the Rules which are valid and effective as of the date the Contract was signed by the Storage User, including the provisions of the Rules altered later on by the Storage Operator due to the reasons incited by the change of generally binding legal regulations or a ruling of respective state administration body. Storage User hereby declares he/she has become sufficiently familiar with the wording of the Rules valid and effective as of the date the Contract was signed, and has these at his/her disposal.

3. Should any changes to the Rules be made (pursuant to the previous point) then the decisive wording for the Parties to proceed will be the one which is in force at the time the performance is carried out, and in the event of any default in performance, then at the day the performance should have been made. In case of any variance between the wording of the Rules and of this Contract the provisions stated in this Contract shall take precedence.

**III. Storage capacities**

1. Throughout the time the Contract is effective the Storage Operator undertakes to provide the Storage User within the Storage Service the following output and the storage capacity, with the constraints stated in this Contract, Rules and generally binding legal regulations.

Daily max withdrawal output: [●] MWh per day

Daily max injection output: [●] MWh per day

Reserved storage capacity: [●] MWh

2. Injection and withdrawal curve are given in Annex No. 1 which forms integral part of this Contract.

**IV. Storage price**

1. Total annual price for Storage Services consists of the storage price which is calculated based on the unit storage price arrived at in the auction held on [●], and of the price for storage related activities.

1. **Annual storage price**

**Ps = ΔS/W + K**

Where:

**Ps** represents a unit price per storage year of provision of Storage Services, determined in CZK per 1 MWh of the reserved storage capacity per one storage year;

**ΔS/W** represents a total average of the winter bid (WB) minus summer offer (SO) indexes considering the decisive time period, and drawn from the Heren European Spot Gas Markets / Germany / NCG Price Assessment (ICIS) Report for respective day of the decisive time period, determined in CZK per 1 MWh, wherein:

* the decisive time period shall mean the first five business days (days for which the abovementioned Heren report provides respective indexes) of each of four calendar months preceding the first day of the storage year, ie. for individual storage years, the following shall apply:
  + for storage year 2017-2018 the decisive period shall be December 2016 – January / March 2017,
  + for storage year 2018-2019 the decisive period shall be December 2017 – January / March 2018,
  + for storage year 2019-2020 the decisive period shall be December 2018 – January / March 2019,
  + for storage year 2020-2021 the decisive period shall be December 2019 – January / March 2020,
  + for storage year 2021-2022 the decisive period shall be December 2020 – January / March 2021,
* for the conversion of EUR to CZK, an exchange rate announced by the Czech National Bank for each respective day which WB and SO indexes are drawn from shall be decisive, this conversion shall be done without rounding,
* the total average of the indexes for the decisive time period shall rounded up, so that the final number shall be a whole number;

**K** represents a coefficient achieved as the result of the auction held on [●] and set at “[●] CZK per 1 MWh” (in words: [●]).

For the avoidance of a doubt, the contracting parties declare, that ΔS/W parameter shall undergo an update at the beginning of each new storage year based on the values of the decisive period, whereas the K coefficient shall remain the same for each storage year – equal to the value achieved in the electronic auction.

The annual storage price shall be calculated as product of the unit price and reserved storage capacity as stipulated in Article III. Para. 1 of this Contract.

1. **Annual storage related activities price**

The annual price for the storage related activities is stipulated in CZK and for the first storage year shall be calculated according to the following equation:

Where:

**Pc** represents annual price for the storage related activities,

**C**  represents annual costs basis, set at the amount of 12 000 000 CZK,

**DTw** represents daily maximum withdrawal output for the virtual gas storage of the Storage Operator, as announced on the Storage Operator’s webpages for the respective storage year, determined in MWh per day (for conversion of cubic meters into kWh a calorific value of 10.624 shall be used),

**Dmax** represents daily maximum withdrawal or injection output of the Storage User (higher of both values shall be determinative) stated in Article III. Para. 1. of this Contract, determined in MWh per day.

For the second and the following storage years, the annual price Pc shall be recalculated based on the following formula:

**Pcr = Pcr-1 x (0,85 x PPI + 0,15 x CPI)**

**Pcr** annual price for the storage related activities for the respective storage year; in case the application of the formula results in Pcr being lower than Pcr-1, than Pcr shall equal to Pcr-1,

**Pcr-1** annual price for the storage related activities in the storage year immediately preceding the one which the calculation is made for,

**CPI** average monthly wage increase index (within branch of industry) for 1st to 4th Quarter of calendar year of just preceding year in which the price is being fixed. The index is disclosed by Czech Statistical Office [Český statistický úřad] (hereinafter the “CSU“), table “Počet zaměstnanců a průměrné hrubé měsíční mzdy podle CZ-NACE (fyzické osoby) / The number of employees and average monthly gross wages and salaries by CZ-NACE (actual persons)”, index line “B-E Industry total”,

**PPI** industrial manufacturer price index (ratio between averages of indices for the last 12 months and average of indices for the just preceding 12 months) for March of the relevant year. The index is disclosed by CSU, table “Index cen průmyslových výrobců podle sekce a subsekce CZ-CPA v České republice (podíl klouzavých průměrů) / Industrial Producer Price Index by Section and Subsection of CZ-CPA in the Czech Republic (ratio of rolling averages)”, index line “B,C,D,E TOTAL”.

2. Total annual price for the Storage Services shall amount to the sum of the annual storage price (*Ps*) and annual price for the storage related services (*Pc*).

3. Total monthly price for Storage Services, expressed in CZK per month is calculated as 1/12 of total annual price for the Storage Services.

4. Unless otherwise stated, all the price provision associated with the work “month” shall be considered for the gas month period, and those associated with the word “year” shall be considered for the storage year period.

**V. Terms of Payment**

1. Storage User shall be liable to pay for storage service on monthly basis (for each gas month of the Contract effectiveness) the back payment to Storage Operator amounting to total monthly price for storage service inclusive all taxes or fees charged in conformity with the generally binding legal regulations, calculated for the respective gas month in line with the previous Clause, based on tax certificate - invoice issued by the Storage Operator. Storage Operator shall issue the invoice for relevant gas month and send it to the Storage User no later than by 5th business day of calendar month that follows immediately the month for which such price has been fixed.

2. Storage User shall be liable to pay total monthly price for storage service for the respective gas month no later than within 15 calendar days after receipt of the relevant invoice, and this through cashless transfer to the Storage Operator’s account specified on the invoice.

1. Tax invoice shall include the elements set forth by generally binding regulations including banking institution identification and account No. to pay thereon.
2. Should there be default in payment of monetary obligations that the Contract implies, then the respective Party shall be liable to pay second Party a delay charge at the level under valid generally binding legal regulations, and unless these regulations do not specify the amount of such punitive interest, or have ceased to specify it, or such late charge is unable to determine, then at the level of 0,05% of unpaid amount per day in default or started day in default.
3. Delay charges are due within 10 calendar days after a day these are accounted for.

**VI. Duration**

1. The Contract is made and takes effect as from 1st April, 2017, at 06.00 a.m., and terminates on 1st April, 2022, at 06.00 a.m., and becomes valid on the day it is signed by both Contractual Parties.

2. Storage User undertakes to use storage services in such a way that as of the last day of Contract effectiveness he/she will have no gas stored (identified on Storage User’s account in kWh) with the Storage Operator based on this Contract.

**VII. Special Provisions**

1. The Storage User duly notes that in line with the Czech energy legislation, the Storage Operator provides the Storage Services based on the concept of the virtual storage and thus the gas stored by the Storage User will be mixed with the gas of third parties which are or will be in the similar contractual undertaking with the Storage Operator as is the Storage User. The Storage User approves of such mode of Storage Services rendering. For the avoidance of doubt, the Contractual Parties exclude the application (even as an analogy) of Section 2420 of Act No. 89/2012, the Civil Code (hereinafter as “Civil Code” only).

2. By this Contract the Storage User grants the Storage Operator an irrevocable and irreversible right to procure the sale of unrecovered gas that had been injected into Storage Operator’s gas storage compliant to this Contract, and is present in such storage at the time such right of the Storage Operator is applied. Parties to the Contract state explicitly that such right to procure the sale, will last even after this Contract’s validity or effectiveness expire.

3. Storage Operator has the right to carry out gas sale on behalf of his/her name on account of Storage User along with the fact that the Storage Operator has at the same time the right to set off his/her claims that result from this Contract against Storage User’s claim, for paying the price for the unrecovered gas sold.

4. Storage Operator has the right to sell gas only under the conditions laid down in the Contract, in the Rules, or generally binding legal regulations.

**VIII. Final Provisions**

1. Legal relations between the Parties established by this Contract and not specially regulated therein, shall be governed relevant provisions of the Energy Act and Act No. 89/2012 Coll., Civil Code (hereinafter as “Civil Code”). Any and all dispute arising out of or in relation to this Contract shall be decided by the Czech courts, competent with regards to the seat of the Storage Operator.

2. The Parties hereby mutually declare they enter into this Contract as entrepreneurs, and they are not aware of any facts that may lead to a presumption that one of the parties could be deemed as a weaker contracting party. Under Section 1801 of the Civil Code, the Parties further mutually stipulate they consider the content of this contract not to be contradicting to usages in the gas industry.

3. Parties acknowledge the Rules shall not be considered as standard business terms of the Storage Operator in the meaning of the Section 1751 et seq. of the Civil Code, as the Rules are subject to approval or prescription by the Energy Regulatory Office under Section 97a of the Energy Act.

4. Regarding the regulated nature of the business activity of the Storage Operator and that the allocation of the storage capacity is governed by the Regulation No. 365/2000 Coll., on the Rules of the gas market, as amended, the parties mutually declare Sections 1765 and 1766 of the Civil Code shall not be applicable to this Contract. Storage User undertakes to bear the risk of change in circumstances under Section 1765, para. 2 of the Civil Code.

5. Parties undertake mutually to protect and keep in secret against third persons any confidential information.

None of the Party shall provide information without written consent from second Party, about the content of this Contract or other confidential information, and this neither in partial scope to a third party, with the exception of persons that govern, and persons governed by the identical governing person. In like manner the Parties shall protect confidential information or facts that form commercial secret of third person, that have been provided by such third party to some of the Contractual Parties by the courtesy thereof. The obligation to protect confidentiality shall last throughout the duration of the facts that form commercial secret, or duration of the interest to protect confidential information.

6. This Contract can be altered or supplemented only in the form of written sub-contracts signed by both Parties’ representatives in charge along with the fact that the way of changing or supplementing the Rules has been specified hereinafter in Clause II of the Contract, and in the Rules.

7. Storage User who is also the client (§62, Energy Act) has the right to rescind this Contract in case of not meeting contractual duties on the side of Storage Operator, or in case of not agreeing with the Storage Operator-proposed change of the terms and conditions which are not incited by the change of generally binding legal regulations, or by the ruling of relevant state administration body. The Storage Operator shall announce the proposal to alter contractual terms and conditions in writing to the Storage User at the latest 30 days before the effective day. In the event the Contract is rescinded due to a disapproval of the Storage Operator-proposed alteration of the terms and conditions, this right to rescind will terminate unless respective Storage User has not rescinded the Contract within 90 days after the day he/she learned of draft change to the terms and conditions or could have learned thereof.

8. This Contract has been made in two copies, each having the force of original copy, by one for each Contractual Party.

9. Assignment of rights and obligations arising from this Contract to a third party including their putting as a security either totally or partially, is possible only with prior written consent of the other Party.

10. Parties to this Contract, following its reading, agree with its contents and are not aware of any obstacles, claims of third parties, or of any other legal defects that would prevent them from signing it or cause invalidity or nullity thereof, and declare they signed this Contract as free act and deed in witness whereof they sign their hand.

**Annexes:**

Annex No. 1: Withdrawal curve & injection curve

In ………………………., date ………………………. In ……………………., date……………………..

On behalf of Storage Operator: On behalf of Storage User:

**Annex No. 1**



