

**SHARE PURCHASE AGREEMENT**

between

**GBV ZWEIUNDDREIßIGSTE GESELLSCHAFT FÜR  
BETEILIGUNGSVERWALTUNG MBH**

*as Seller*

and

**ČEPS, a.s.**

*as Purchaser*

dated 24 August 2023

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**P / R / K**

ATTORNEYS AT LAW

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THIS SHARE PURCHASE AGREEMENT (this "**Agreement**") is entered into on 24 August 2023 between:

- (1) **GBV Zweiunddreißigste Gesellschaft für Beteiligungsverwaltung mbH**, a company existing and organised under the laws of Germany, having its registered office at RWE Platz 1, Essen, postcode 45141, Germany, registered with the Commercial Register maintained by the local court of Essen, under No. HRB 27117 (the "**Seller**");

and

- (2) **ČEPS, a.s.**, a company existing and organised under the laws of the Czech Republic, having its registered office at Prague 10, Elektrárenská 774/2, postcode 10152, the Czech Republic, identification No.: 257 02 556, registered with the Commercial Register maintained by the Municipal Court in Prague, under No. B 5597 (the "**Purchaser**");

each as a "**Party**" and collectively as the "**Parties**";

#### **PREAMBLE**

- (A) The Seller owns a 100% basic ownership interest in RWE Gas Storage CZ, s.r.o., a company existing and organised under the laws of the Czech Republic, having its registered office at Limuzská 3135/12, Strašnice, 10800 Prague 10, the Czech Republic, identification number: 278 92 077, registered with the Commercial Register maintained by the Municipal Court in Prague, file number: C 124711 (the "**Target Company**");
- (B) The Target Company is a gas storage operator in the Czech Republic, operating six underground gas storage facilities located in Dolní Dunajovice, Tvrdonice, Třanovice, Štramberk, Lobodice and Háje;
- (C) The Seller enabled the Purchaser to carry out business, financial, legal, tax, and environmental due diligence in respect of the assets, liabilities and activities of, and the Seller's ownership interest in, the Target Company;
- (D) The transaction contemplated in this Agreement was approved by the Government of Czech Republic on 23 August 2023, by a resolution of the Ministry of Industry and Trade of the Czech Republic acting as sole shareholder of the Purchaser on 23 August 2023, by the Supervisory Board of the Purchaser on 23 August 2023 and by the Board of Directors of the Purchaser on 23 August 2023.
- (E) Subject to the terms and conditions hereof, the Purchaser is interested in acquiring from the Seller its 100% ownership interest in the Target Company and the Seller is interested in selling its 100% ownership interest in the Target Company to the Purchaser;

NOW, THEREFORE, in reliance upon the representations, warranties and covenants contained herein, the Parties hereto agree as follows:

## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

Unless expressly specified otherwise, capitalized terms used in this Agreement will have the meaning assigned to them throughout this Agreement.

### 1.2 General Definitions

- (a) "**Affiliate**" means in relation to any legal entity: (1) any person directly or indirectly, solely or jointly with any other person, controlling such legal entity; (2) any person directly or indirectly solely or jointly with any other person, controlled by such legal entity or a person referred to in point (1); or (3) each member of the corporate bodies of such persons;




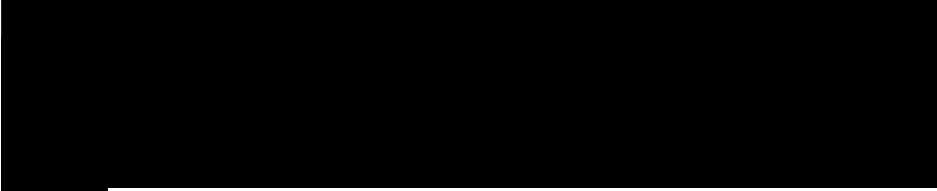

For the avoidance of doubt, up until (but excluding) the Completion Date, the Target Company is to be considered an Affiliate of the Seller whereby after (and including) the Completion Date, the Target Company is to be considered an Affiliate of the Purchaser.

- (b) "**Business Corporations Act**" means Act No. 90/2012 Coll., on Business Corporations and Cooperatives, as amended.
- (c) "**Business Day**" means any day other than Saturdays or Sundays when banks are open to the public in the Czech Republic and Essen, Germany.
- (d) "**Civil Code**" means Act No. 89/2012 Coll., the Civil Code, as amended.
- (e) "**Claim**" means any claim by the Purchaser against the Seller arising out of or in connection with this Agreement (including, without limitation, any Warranty Claim), save for any claim by the Purchaser against the Seller arising out of or in connection with Leakage.
- (f) "**Commercial Register**" means a public register of legal and natural persons maintained by a municipal or regional court in accordance with the Civil Code and Act No. 304/2013 Coll., on Public Registers of Legal Entities and Individuals, as amended.
- (g) "**Data Room**" means a virtual data room (for the avoidance of doubt, including all information in "clean team" folders) prepared by the Seller to which the Purchaser and its advisers have been given access before the Signing Date for the purpose of carrying out the due diligence of the Target Company, the contents of which are contained on a read-only USB sticks (confirmed by Intralinks and as at (last modified) 17 August 2023, 14:28:21 UTC); the Parties agree that the aforementioned USB sticks shall be distributed to the Parties as follows: (x) the Seller shall receive one (1) USB stick; and (y) one (1) USB stick shall be delivered by the Seller to the Purchaser's Attorneys on the Signing Date, **provided, however**, that the Purchaser shall ensure that Purchaser's Attorneys shall:
- (i) hold the USB stick in the escrow and release it only in accordance with this Subsection 1.2(g);

- (ii) if the Completion will occur on or prior to date which is ten (10) Business Days after the Long Stop Date (including), release the USB from the escrow to the Purchaser within one (1) Business Day after execution of the Completion protocol by both Parties in accordance with the Section 5.4;
  - (iii) if this Agreement is terminated prior to Completion or if the Completion does not occur on or prior to date which is ten (10) Business Days after the Long Stop Date (including), deliver the USB stick within five (5) business days thereafter to the Seller;
  - (iv) while holding the USB stick in escrow, the Purchaser' Attorney shall not access or copy the content of the USB stick in any way or manner whatsoever and shall adopt appropriate measures to ensure that no person (including the Purchaser) has access to the content of the USB stick in any way or manner whatsoever.
- (h) "**Disclosed**" means disclosed to the Purchaser with sufficient detail to enable a diligent and experienced purchaser assisted by professional advisors to identify the nature and scope of the matters disclosed.
- (i) "**Environment**" means the natural and man-made environment including all or any of the following: atmosphere (namely air within buildings or other natural or man-made structures, whether above or below ground), water (including surface waters, underground waters, groundwater, coastal and inland waters and water within any natural or man-made structure), land (including land under water, surface land and sub-surface land), landscape, climate and any flora, fauna, ecological systems and living organisms (including man) supported by those media.
- (j) "**Environmental Laws**" means all laws applicable to the Target Company concerning the protection of the Environment, or the generation, transportation, storage, treatment or disposal of any dangerous substance.
- (k) "**Escrow Account**" means the deposit account to be operated by the Escrow Agent pursuant to the Escrow Agreement, further details of which are set out in the Escrow Agreement.
- (l) "**Escrow Agent**" means Komerční banka, a.s., a company existing and organised under the laws of the Czech Republic, having its registered office at Prague 1, Na Příkopě 33 čp. 969, Postal Code 11407, the Czech Republic, identification number: 45317054, registered with the Commercial Register maintained by the Municipal Court in Prague, file number: B 1360.
- (m) "**Escrow Agreement**" means the agreement between the Parties and the Escrow Agent on the operation of the Escrow Account concluded between the Parties and the Escrow Agent on or around the Signing Date substantially in the form attached as Schedule 1.2(m) hereto.
- (n) "**Financial Liability**" means any financial indebtedness for or in respect of:
- (i) moneys borrowed and debit balances at banks or other financial institutions;

- (ii) any amount raised under any credit facility;
  - (iii) any amount raised pursuant to the issue of bonds, notes, debentures, loan stock or any similar instrument; or
  - (iv) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis and meet any requirement for de-recognition under local GAAP, or other than receivables discounted under the local GAAP accounting rules);
  - (v) any amount of any liability under an advance or deferred purchase agreement (save for all liabilities incurred in the Ordinary Course of Business) if (i) one of the primary reasons behind entering into the agreement is to raise finance or to finance the acquisition or construction of the asset or service in question or (ii) the agreement is in respect of the supply of assets or services and payment is due more than 120 days after the date of supply; and
  - (vi) any amount raised under any other transaction (including any forward sale or purchase, sale and sale back or sale and leaseback agreement) having the commercial effect of a borrowing or otherwise classified as borrowings under local GAAP, save for all transactions entered into in the Ordinary Course of Business;
  - (vii) in each case, save for the utilization of any existing commitments as per the Standby Facility Agreement.
- (o) "**Fundamental Warranty**" means a Seller's Warranty set out in paragraphs 1 and 2 of Schedule 6.1(a) hereto.
  - (p) "**Fundamental Warranty Claim**" means any Warranty Claim made by the Purchaser for a breach of any Fundamental Warranty.
  - (q) "**Governmental Entity**" means any state, governmental, federal, multinational, national, provincial, regional, municipal, territorial, local, foreign or other department, commission, board, bureau, agency, parliament, court, public or private tribunal, judicial, administrative or arbitral body, authority, regulator, prosecutor, state's attorney, police, official or other instrumentality thereof or any institution or a body of the European Union. For the avoidance of doubt, the definition of a Governmental Entity includes also any Tax Authority.
  - (r) "**Intellectual Property Rights**" means (i) copyright, rights related to copyright within the meaning of Section 67 et seq. of Act No. 121/2000 Coll., the Copyright Act, as amended, patents, rights to databases, domain names, rights in inventions, logos, designs, know-how, trademark rights and any rights or forms of protection of substantially the same nature and having equivalent or substantially the same effect to any of them which subsist anywhere in the world, and (ii) applications for registration and rights to apply for registration of any of the foregoing rights.



- (s) "**Land Register**" means a public list containing data on immovable property in accordance with Act No. 256/2013 Coll., On Land Register (the Land Register Act), as amended.
- (t) "**Leakage Dispute Notice**" means a written notice in writing to the Purchaser stating that there is a dispute in relation to the existence of the Leakage or to the Purchaser's calculation of the amount of the Leakage as set out in that Leakage Notice and setting out the items or amounts of Leakage which are in dispute.
- (u) "**Leakage Expert**" means
- (i)  relevant for determination of the amount of Leakage; and if it refuses to act, then
- (ii)  relevant for determination of the amount of Leakage; and if it refuses to act, then
- (iii)  relevant for determination of the amount of Leakage; and if it refuses to act, then
- (iv)  relevant for determination of the amount of Leakage.
- (v) "**Leakage Notice**" means a written notice of the occurrence of Leakage, stating in reasonable detail the nature of the Leakage and the amount claimed.
- (w) "**Long Stop Date**" means the date falling  after the Signing Date.
- (x) "**Main Business**" means the business consisting in operation of underground gas storage facilities in Dolní Dunajovice, Tvrdonice, Třanovice, Štramberk, Lobodice and Háje, in any event as conducted by the Target Company as of the Locked Box Date.

- (y) "**Purchaser's Attorneys**" means EY Law advokátní kancelář, s.r.o., a company existing and organised under the laws of the Czech Republic, having its registered office at Prague 1, Na Florenci 2116/15, Nové Město, Postal Code 110 00, Czech Republic, identification number: 09214208, registered with the Commercial Register maintained by the Municipal Court in Prague, file number: C 332679.
- (z) "**Seller's Warranty**" means a statement contained in Schedule 6.1(a) and "**Seller's Warranties**" means all those statements.
- (aa) "**Senior Employee**" means [REDACTED]
- (bb) "**Tax**" means corporate income tax, value added tax and sales tax, tax on revenue from capital, payroll tax, real estate tax, real estate acquisition tax, gift tax, excise duty, withholding tax, health insurance and social security contributions, contribution to the government unemployment policy as well as other taxes and fees paid to the bodies of the state administration or local government, customs, levies, deductions, obligation to return investment incentives and/or subsidies and other fees and taxes, including related interest and fines, surcharges and penalties, as well as their security, imposed on the Target Company by the Tax Authority and any obligations of the Target Company to pay any of the foregoing in any relevant jurisdiction.
- (cc) "**Tax Authority**" means any national tax authority, social security authority, health insurance company, customs office or another public authority that is authorized to impose or levy Tax or is authorized to issue binding opinions or conclude agreements with taxpayers in the Czech Republic, or elsewhere.
- (dd) "**Tax Warranty**" means a Seller's Warranty set out in paragraph 18 of Schedule 6.1(a) hereto.
- (ee) "**Tax Warranty Claim**" means any Warranty Claim made by the Purchaser for a breach of any Tax Warranty.
- (ff) "**Warranty Claim**" means any claim made by the Purchaser for a breach of any Seller's Warranty.

### 1.3 Interpretation

Unless stated otherwise, in this Agreement:

- (a) references to Sections, Subsections, paragraphs and Schedules are to be understood to mean Sections, Subsections, paragraphs and Schedules of this Agreement;
- (b) the use of the singular includes the plural and *vice versa*;
- (c) headings of Sections and Schedules are for convenience only and do not affect the interpretation of this Agreement;

- (d) the Schedules form part of this Agreement and have the same force and effect as if expressly set out in the body of this Agreement, and any reference to this Agreement includes its Schedules;
- (e) the words "includes" or "including" are to be construed without limitation;
- (f) the words "herein", "hereof", "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular provision;
- (g) the term "control" means, in relation to a person, (i) holding directly or indirectly, a majority of the voting rights exercisable at shareholder meetings (or a similar body) of that person; or (ii) having, directly or indirectly, the right to appoint or remove directors (or similar officers) holding a majority of the voting rights exercisable at meetings of the board of directors (or a similar body) of that person; or (iii) having directly or indirectly the ability to direct or procure the direction of the management and policies of that person, in each case whether alone or jointly with another person and whether through the ownership of shares, by contract or otherwise; "controlling" and "controlled" are to be construed accordingly;
- (h) references to a "person" include any individual, legal entity, foundation, cooperative, corporation, limited liability company, joint-stock company, any other business corporation, general, limited or other partnership, joint venture, firm, association, trust, Governmental Entity or any other body or entity (whether or not having a separate legal personality);
- (i) if this Agreement uses a Czech legal term for an act, legal action, remedy or legal proceedings, legal document, legal status, court, official or another legal concept or matter that another jurisdiction (other than the Czech Republic) does not have, such a term is to be understood to mean an expression that is the closest to the Czech legal term in the given jurisdiction;
- (j) references to times of the day are to local time in the Czech Republic unless otherwise stated;
- (k) any reference to "EUR" is to euro and "CZK" is to Czech crown;
- (l) references to any threshold or other amount in EUR or CZK set out in this Agreement do not include applicable VAT unless set out otherwise and also cover its equivalent in any other currency, where applicable;
- (m) save as specifically agreed elsewhere in this Agreement, if any amount which is expressed or calculated in accordance with this Agreement in CZK needs to be made in EUR, such amount shall be converted into EUR using the spot exchange rate of the Czech National Bank valid after 2:30 p.m. as of the fifth (5<sup>th</sup>) Business Day immediately preceding the date of the payment and if no exchange rate has been published on such date, the last previously published rate, provided, however, that:
  - (i) if any amount needs to be converted from EUR to CZK for the purpose of assessing whether any of the thresholds expressed in Section 4.2, monetary limits under paragraph 1.2 of Schedule 8.2, or minimum limits under paragraph 1.1 of

Schedule 8.2 has been exceeded, such amount shall be converted into CZK using the spot exchange rate of the Czech National Bank valid after 2:30 p.m. on the Signing Date (or, if no exchange rate has been published on such date, the last previously published rate);

- (ii) the amount of any claim for Breach of the Agreement shall be converted from CZK into EUR using the spot exchange rate of the Czech National Bank valid after 2:30 p.m. on the date on which the notice of such Breach of the Agreement has been sent to the other Party (or, if no exchange rate has been published on such date, the last previously published rate);
- (iii) rules set forth in this Subsection (m) shall apply *mutatis mutandis* for conversion of an amount in any different currency (other than CZK) into EUR with the understanding that in such a case the references to the spot exchange rate of the Czech National Bank valid after 2:30 p.m. as of a certain date shall mean references to the spot exchange rate of the European Central Bank valid after 4.00 p.m. as of such date.
- (n) any reference to the "Seller's knowledge" or expressions of similar import shall be a reference to the (i) actual knowledge of any [REDACTED], and (ii) knowledge such individual listed under (i) of this Subsection (n) ought to have after due and careful inquiry (in each case subject to applicable regulatory restrictions referred to in paragraph 13.2 of Schedule 8.2) with [REDACTED];
- (o) references to "encumbrance" mean any charge, mortgage, option, pledge, lien, equitable right, security interest of any kind, hypothecation, right of pre-emption, right of retention, personal right of enjoyment or use, license, beneficial ownership right, right of first option, right of first refusal or other right or security interest of any kind of a third party, or the obligation or commitment to create the same;
- (p) if this Agreement stipulates an obligation of a Party to ensure, procure or cause that any other person performs or refrains from performing a certain act then, unless expressly stated otherwise, it is an obligation within the meaning of Section 1769, second sentence of the Civil Code;
- (q) references to a Completion step being taken or waived will for the avoidance of doubt be construed such that the waiver is only feasible if expressly permitted, and under the conditions envisaged, in the final paragraphs of Section 5.3;
- (r) any reference to a "party" includes a reference to that party's successors and permitted assigns;
- (s) any reference to a "wilful concealment" shall be interpreted in accordance with the Czech concept of '*újma způsobená úmyslně*';
- (t) if this Agreement stipulates an obligation of a Party to provide certain information, document or other cooperation to the other Party or a third party specified therein, as the case may be, and provides that such obligation is subject to limitations prescribed

by applicable law, the Seller and the Purchaser shall not refuse to fulfil (or refuse to procure fulfilment) of such obligation on account of general fiduciary or confidentiality obligation of any director, executive, employee or other personnel of (i) the Seller (or its Affiliate) towards the Seller (or its Affiliate) or (ii) the Purchaser (or its Affiliate) towards the Purchaser (or its Affiliate), respectively, imposed by corporate, employment or similar law; **provided, however**, that such obligation shall include (to the maximum extent permitted by applicable mandatory law) (x) the obligation of the Seller to undertake (and, where applicable, ensure that the Seller's Affiliates undertake) all steps necessary to provide the Purchaser or the third party, as the case may be, with the access to the information and documentation and with the cooperation envisaged by aforementioned Sections of this Agreement and (y) the obligation of the Purchaser to undertake (and, where applicable, ensure that the Purchaser's Affiliates undertake) all steps necessary to provide the Seller or the third party, as the case may be, with the access to the information and documentation and with the cooperation necessary for the fulfilment of this Agreement, including, but not limited to, the obligation of the Seller (and the Seller's Affiliates) or the Purchaser (and the Purchaser's Affiliates) to execute any non-disclosure agreement or similar confidentiality undertaking which is required or appropriate for this purpose.

## 2. PURCHASE AND SALE

### 2.1 Purchased Share

- (a) Subject to the terms and conditions of this Agreement, the Seller hereby undertakes to sell and transfer to the Purchaser and the Purchaser hereby undertakes to purchase and acquire from the Seller a 100% basic ownership interest in the Target Company, corresponding to a contribution to the registered capital of the Target Company in the amount of CZK 5,649,575,282 (the "**Purchased Share**"). The Purchased Share is sold together with all rights attaching to it with the understanding that the Seller shall have the right to receive dividends for the accounting period ending on 31 December 2022 as envisaged in the definition of the Permitted Leakage.

### 2.2 Purchase Price

As total consideration for the Purchased Share, the Purchaser shall pay to the Seller a purchase price in EUR (the "**Purchase Price**") to be calculated as follows:

- (a) a price of EUR 360 million (in words: three hundred sixty million euro);  
minus
- (b) the amount of Leakages payable under Section 3.3, if any;  
plus
- (c) notional interest accrued on the amount set forth in Subsection (a) from [REDACTED] through the Completion Date (included) at the rate of [REDACTED] per annum calculated using the actual/360 convention.

### 2.3 Settlement of Purchase Price

The entire amount of the Purchase Price determined based on the notice envisaged in Subsection 5.3(a)(iii) below is payable by the Purchaser to the Seller on Completion in accordance with Subsection 5.3(j) below.

### 2.4 Other rules related to payments

(a) Any payment that any Party is to receive under this Agreement or in connection therewith must be made in immediately available funds by bank transfer on the due date for payment to the bank account:

(i)

[REDACTED]

(ii)

[REDACTED]

(b) Any payment under or in connection with this Agreement will be deemed to have been made in time if the amount due has been credited to the payee's account by and including the due date.

(c) If a Party fails to pay any amount payable under or in connection with this Agreement when due, then interest will accrue on such overdue amount at the default interest rate per annum of 6.6 % during the period from (and including) the applicable due date, until (but excluding) the day the overdue amount is paid in full using the actual/360 convention.

## 3. **LOCKED BOX**

### 3.1 The Locked Box Date

The locked box date is: 00:00 am CET on 1 January 2023 (the "**Locked Box Date**").

### 3.2 Leakages and Permitted Leakages

(a) Subject to Completion taking place, the Seller warrants vis-à-vis the Purchaser that no Leakages (as such term is defined in Schedule 3.2 hereto and, for the avoidance of doubt, except for the Permitted Leakages) have occurred from the Locked Box Date to the Signing Date and undertakes to ensure that, from the Signing Date until Completion, no Leakages will occur, in each case if such Leakages are not fully settled or otherwise compensated as of the Completion at the latest only.

(b) In the event of any Leakage which is prohibited by Section 3.2(a) above, the Seller undertakes to the Purchaser to notify the Purchaser in writing within ten (10) Business Days (and in any event before the Completion) after it becomes aware of any matter or circumstance that could reasonably give rise to Leakage which is reasonably expected to exist as of the Completion (i.e., not to be settled or otherwise compensated as of the

Completion at the latest), including reasonable details of the Leakage concerned and an estimate of the quantum of such Leakage.

### 3.3 Leakage Compensation

- (a) The Purchaser may give the Seller a Leakage Notice from, and up to [REDACTED] after, Completion (for the avoidance of doubt, a Leakage Notice may not be given to the Seller prior to or during Completion). Within [REDACTED] Business Days after the date of receipt of any Leakage Notice, the Seller may either: (i) accept in writing the amount of Leakage specified in the Leakage Notice in whole or in part (such accepted amount and/or any amount of leakage notified by the Seller in accordance with Section 3.2(b), the "**Agreed Leakage Amount**"); or (ii) deliver a Leakage Dispute Notice disputing the amount of Leakage specified in the Leakage Notice in whole or in part (including in respect of any amount not accepted from the previous subsection (i)) (such disputed amount, the "**Disputed Leakage Amount**"). The Seller may notify the Purchaser of any Leakage before Completion by a written notice, and if such Leakage is agreed by the Purchaser, such Leakage will be deemed an Agreed Leakage Amount (this is without prejudice to (i) the Seller's right to serve the Leakage Notice in respect to any other Leakage after Completion or (ii) the Purchaser's right to serve after Completion a Leakage Notice in respect to the same matter giving rise to Leakage notified by the Seller prior to Completion, if the Purchaser comes to believe after Completion that the extent of the Leakage exceeds the notified amount).
- (b) In the event of any Leakage which is prohibited by Section 3.2(a) above and is existing as of the Completion and subject to the other Subsections of this Section 3.3, the Seller will reimburse the Purchaser for the amount in cash by payment in EUR equal to the aggregate of:
- (i) an amount or value of such Leakage received by it or any of its Affiliates or in respect of which it or any of its Affiliates has or will have benefited, net of any Tax deduction or other benefit available to the Target Company in respect of such Leakage and any amount in respect of VAT which is recoverable as input Tax by the Target Company in respect of such Leakage; and
  - (ii) interest on the above at a rate of [REDACTED] % per annum (accruing on a daily basis using the actual/360 convention) from (and including) the date the Leakage occurred to (and excluding) the date of payment to the Purchaser,

either:

- (i) by deduction from the Purchase Price as set forth in Section 2.2 above if the Leakage is determined as an Agreed Leakage Amount before Completion, or
- (ii) if the Leakage is not determined pursuant to Subsection (i) above before Completion, within fifteen (15) Business Days of the amount of Leakage being otherwise determined (whether as an Agreed Leakage Amount or by the Leakage Expert), in accordance with this Section 3.3, however, in any case no earlier than within fifteen (15) Business Days after Completion Date.

If the Seller does not deliver a Leakage Dispute Notice within the relevant period referred to in Section 3.3(a), then the Leakage specified in the Leakage Notice shall be deemed to be an Agreed Leakage Amount and become payable by the Seller within the fifteen (15) Business Day period referred to in Subsection (ii) above.

- (c) If the Seller delivers a Leakage Dispute Notice within the relevant period referred to in Section 3.3(a) then:
  - (i) the Purchaser shall make available, and the Purchaser shall procure that the Target Company makes available to the Seller, such information, records or documents requested by the Seller as may be reasonably requested for the purpose of reviewing the items identified in the Leakage Notice; and
  - (ii) the Seller and the Purchaser shall use reasonable endeavours to negotiate in good faith for a period of fifteen (15) Business Days to agree the Disputed Leakage Amount.
- (d) To the extent that the Seller and the Purchaser cannot reach agreement on the Disputed Leakage Amount within the fifteen (15) Business Days period referred to in Subsection 3.3(c)(ii), either of the Parties may refer the dispute to the Leakage Expert pursuant to Subsection 3.3(f) below.
- (e) Each Party shall bear its own costs with respect to the finalisation of calculation of any Disputed Leakage Amount. The costs of the Leakage Expert shall be borne by the Parties as set out in Subsection 3.3(f)(viii).
- (f) The Parties must procure that the Leakage Expert is appointed no later than ten (10) Business Days following the expiry of the fifteen (15) Business Days period referred to in Subsection 3.3(c)(ii) and acts on the following basis when resolving a dispute referred for resolution by the Leakage Expert for determination in accordance with Subsection 3.3(d):
  - (i) the terms of reference for the Leakage Expert must be limited to determining the amount of Leakage arising from the matters claimed in the Leakage Notice having due regard to the matters set out in the Leakage Dispute Notice;
  - (ii) the Leakage Expert shall act as an expert and not as an arbitrator;
  - (iii) the item or items in dispute must be notified to the Leakage Expert in writing as soon as reasonably practicable upon the Leakage Expert's appointment;
  - (iv) the Leakage Expert decides the procedure to be followed in the determination of the amount of Leakage;
  - (v) the Leakage Expert shall be entitled (to the extent it considers it appropriate) to base his determination on the information provided under Subsection 3.3(f)(ix) and on the accounting and other records of the Target Company;
  - (vi) the Leakage Expert shall (a) decide only those items in dispute, (b) make all determinations solely based on the presentations of the Seller and the Purchaser



- and not by independent review and (c) not assign a value greater than the greatest value for an item claimed by either the Seller or the Purchaser or smaller than the smallest value for such item claimed by either the Seller or the Purchaser;
- (vii) the decision of the Leakage Expert shall, in the absence of fraud or manifest error, be final and binding on the Parties;
  - (viii) fees and expenses of the Leakage Expert shall be paid equally by the Parties;
  - (ix) each of the Parties shall, promptly upon request from the Leakage Expert, respectively provide or procure the provision to the Leakage Expert of: (A) all such information and assistance (including assistance from its employees); and (B) access to books and records of account, documents, files, working papers and information stored electronically, as the Leakage Expert shall reasonably require in order to make his determination; and
  - (x) the Leakage Expert shall be instructed to resolve on the matter(s) as soon as reasonably practicable within a period agreed by the Parties, and in the absence of such agreement, no later than thirty (30) calendar days after the Leakage Expert is appointed.
- (g) If the Parties fail to appoint the Leakage Expert within the time period mentioned above, either Party may initiate proceedings pursuant to Section 11.13.
  - (h) The Purchaser will not be entitled to any double recovery for the Seller's liability in respect of a Leakage and any other compensation for a Breach of the Agreement or otherwise in connection with this Agreement (for the avoidance of doubt, to the extent that such Leakage constitutes a breach of any of the Seller's obligations or warranties under this Agreement).
  - (i) No Claim may be brought against the Seller in respect of any Leakage unless the Purchaser will have given the Seller written notice of such Leakage with the specification thereof on or before [REDACTED] anniversary of the Completion Date.
  - (j) The Seller's liability for Leakage pursuant to this Section 3.3 and for a breach of undertakings in Section 3.2 (a) above shall not be subject to the limitations set forth in Schedule 8.2, except for the limitation set forth in paragraph 1.2(a) of such Schedule 8.2.
  - (k) If any amount of any Leakage is expressed or calculated in CZK, such amount shall be converted into EUR using the spot exchange rate of the Czech National Bank valid after 2:30 p.m. on the day on which the respective Leakage occurred, or, if no exchange rate has been published on such date, the last previously published rate. If any amount needs to be converted from EUR into CZK for the purpose of assessing whether any of the thresholds expressed in paragraph 1 or 2 of Schedule 3.2 in CZK has been exceeded, such amount shall be converted into CZK using the spot exchange rate of the Czech National Bank valid after 2:30 p.m. on the day on which the respective action set forth in paragraph 1 or 2 of Schedule 3.2 occurred, or, if no exchange rate has been published on such date, the last previously published rate. Rules set forth in this Subsection 3.3(k)

shall apply mutatis mutandis for conversion of an amount in any different currency (other than CZK) into EUR with the understanding that in such a case the references to the spot exchange rate of the Czech National Bank valid after 2:30 p.m. as of a certain date shall mean references to the spot exchange rate of the European Central Bank valid after 4.00 p.m. as of such date.

#### **4. STEPS TO BE TAKEN ON OR AFTER SIGNING**

##### **4.1 Validity of the Agreement**

This Agreement becomes valid on the day it is signed by the Parties (the "**Signing Date**"). This Agreement becomes binding upon its publication in the Register of Contracts pursuant to Act No. 340/2015 Coll. On Special Conditions of Effectiveness of Certain Contracts, Publication of these Contracts and the Register of Contracts, as amended (the "**Act on Register of Contracts**"). The Purchaser shall submit an electronic image of the signed Agreement (including metadata prescribed by the Act on Register of Contracts) to the administrator of the Register of Contracts and provide proof thereof to the Seller on the Signing Date without undue delay after conclusion of the Agreement. Should the Purchaser fail to fulfil its obligation to submit an electronic image of the signed Agreement for publication, pursuant to the Act on Register of Contracts, the Seller is entitled to submit the Agreement for publication in the Register of Contracts.

##### **4.2 Interim Covenants**

- (a) Subject to Subsection (b) and applicable law (including antitrust law and gas market unbundling rules), the Seller shall procure that the Target Company will not undertake any of the acts or matters specified in this Subsection (a) in the period from the Signing Date until Completion unless a prior written consent (e-mail is sufficient) of the Purchaser is obtained (such consent not to be unreasonably withheld, conditioned or delayed and which shall be deemed granted if the Purchaser has not given written notice of disapproval within ten (10) Business Days of receipt by the Purchaser of the request for approval). The acts and matters referred to in this Subsection (a) are to:
- (i) approve any material changes to the Target Company's constitutional documents, changes in the registered capital of the Target Company, issuance of convertible bonds, a transfer of the registered office of the Target Company outside the Czech Republic,
  - (ii) merge, de-merge, convert, consolidate, spin-off or otherwise restructure the Target Company;
  - (iii) establish any subsidiary or acquire shares or an ownership interest in another entity or get into a similar position in relation to a trust fund;
  - (iv) enter into liquidation by the Target Company;
  - (v) make, pay or declare any dividend or other distribution of capital (whether in cash or in kind and whether actual or deemed), except as provided for in the definition of the Permitted Leakage;

- (vi) sell, donate or encumber any of the Storage Facilities, or otherwise dispose of the Storage Facilities, or attempt to transfer the Storage Facilities to a third party;
- (vii) create or agree to create [REDACTED]
- (viii) to operate the business of the Target Company outside its Ordinary Course of Business. For the purposes of this Agreement the "**Ordinary Course of Business**" means conducting business in all material respects in an ordinary manner substantially consistent with past practices, taking into account practices common in the industry in which the Target Company operates, in order to maintain the going-concern value of the Target Company;
- (ix) create, issue, repurchase or redeem any class of share or loan capital;
- (x) dispose of [REDACTED];
- (xi) make any material change in: (i) any method of accounting or accounting practice or policy used by the Target Company in the preparation of its financial statements, or (ii) the Tax filing position of the Target Company, other than such changes as are consistent with changes required by applicable accounting standards or applicable law or otherwise applying generally to Seller and/or its Affiliates;
- (xii) change the statutory auditor except for the change to the group auditor (or any affiliate thereof) of the Seller's group;
- (xiii) enter into any new [REDACTED] and which have been Disclosed in the Data Room;
- (xiv) grant or issue any mortgage, charge, debenture or other security or give any guarantee save for in the Ordinary Course of Business and save as imposed by operation of law or a decision of a Governmental Entity;
- (xv) [REDACTED]
- (xvi) [REDACTED]

(xvii) start, discontinue, compromise or settle litigation or arbitration proceedings or any action, demand or dispute or waive a right in relation to litigation or arbitration proceedings, each for an amount exceeding EUR 500,000 in each case, save for customary debt collection in the Ordinary Course of Business;

(xviii) enter into an agreement, arrangement or obligation [REDACTED]

(xix) change its residence for Tax purposes or establish a presence for any Tax purpose in any jurisdiction other than its jurisdiction of incorporation;

(xx) materially amend, modify or terminate any [REDACTED]

(xxi) subject to [REDACTED]

or

(xxii) agree, conditionally or otherwise, to do any of the foregoing.

(b) This Section 4.2 shall not operate so as to restrict or prevent:

(i) the undertaking of any matter necessary for the fulfilment of agreements or other contractual obligations of the Target Company existing on the Signing Date and Disclosed in the Data Room;

(ii) the entering into one or several termination agreements in relation to the intra-group agreements set out in Subsection 5.3(c);

(iii) the undertaking of any matter reasonably necessary in an emergency or disaster situation with the intention of minimising any adverse effect on the business of the Target Company (and, subject to applicable law, of which the Purchaser will be notified without undue delay after the Seller becomes aware of such matter);

(iv) the undertaking of any matter reasonably necessary to ensure compliance with applicable laws or judgement, order or ruling of any Governmental Entity;

(v) any matter required, permitted, envisaged or contemplated under the terms of this Agreement;

(vi) any matter under the transitional services agreements (the "**Transitional Service Agreements**") (including, for the avoidance of doubt, their execution, amendments or termination) concluded by the Target Company on or around the Signing Date substantially in the form agreed between the Parties on or around

the Signing Date (email confirmation of the Parties being sufficient for these purposes and – for the avoidance of doubt – by executing such confirmation each Party also confirms that it has sufficiently acquainted itself and is familiar with each of the Transitional Service Agreements);

- (vii) any matter under the agreements and arrangements (including, for the avoidance of doubt, their execution, amendments or termination) disclosed in the Data Room;
  - (viii) any matter made or agreed to be made on terms Disclosed in the business plan of the Target Company made available to the Purchaser in the Data Room (Data Room document no. 1.1.1.1 titled "2022.02 - Dvorak – CIM"); or
  - (ix) any matter undertaken at the written request of, or with the prior written consent of, the Purchaser.
- (c) The Purchaser will not be entitled to recover any Compensation under any Seller's Warranty to the extent any amount was already recovered as a result of a breach of the Seller's obligation under Subsection 4.2(a).

#### 4.3 Condition Precedent

Completion of the sale and purchase of the Purchased Share pursuant to this Agreement is in all respects conditional upon fulfilment of the condition precedent set out below (the "**Condition Precedent**"):

- (a) the Purchaser obtaining the required Merger Control Approval(s) for the transaction contemplated in this Agreement in accordance with Section 4.4 below.

#### 4.4 Merger Control Approvals

- (a) The Purchaser undertakes to, at its own cost and without undue delay after the Signing Date, take all steps necessary for obtaining a final and binding decision (or decisions) of the Czech Office for the Protection of Competition and/or any other competent competition authority (each a "**Competition Authority**") approving the transactions contemplated by this Agreement (provided that the approval(s) by the Competition Authority (i) must be without any obligations or conditions, or (ii) may contain only obligations and conditions which are not required to be implemented before Completion and which would not otherwise hinder or delay Completion) or the decision of such Competition Authority confirming that such transactions do not need to be approved by them, or lapse of a statutory period of time having the same effect (each a "**Merger Control Approval**"). For this purpose, the Purchaser is obliged to, in particular:

- (i) duly make all appropriate submissions, notifications, and filings within twenty (20) Business Days after the Signing Date;
- (ii) provide the Seller as soon as possible, in any event within fifteen (15) Business Days after the Signing Date with (non-confidential) English language draft of the submissions, notifications, filings and with (non-confidential versions of)

any subsequent draft documents at least five (5) Business Days prior to their submission;

- (iii) promptly (but in any case, within five (5) Business Days) provide to the Seller an English language summary (and, in case of written communication, a copy thereof in the original language) of any communications with the Competition Authority, or a full English translation of any request for information, documents or other input to be provided by the Seller;
  - (iv) regularly review with the Seller the progress of any notifications or filings with a view to obtaining the Merger Control Approval or any consent or action from the Competition Authority at the earliest reasonable opportunity.
- (b) The Seller undertakes to reasonably cooperate with the Purchaser and to procure reasonable cooperation of the Target Company in connection with the preparation of any filing to the Competition Authority (including, to the extent permitted by applicable law, providing the Purchaser all necessary information, assistance and administrative cooperation in a timely manner) and the Purchaser is obliged to take reasonable account of comments provided by the Seller on any of the filings and on any documents to be provided by the Purchaser to the Competition Authority in connection therewith. In relation to any confidential information concerning the Seller or its Affiliates or competitively sensitive information, the obligation of the Seller or the Target Company to provide any necessary information will also be deemed fulfilled if such information is provided directly to the Competition Authority.
- (c) The Purchaser is obliged to offer (and not to withdraw) all such undertakings to the Competition Authority as may be required to secure the satisfaction of the Merger Control Approval to warrant Completion before the Long Stop Date with the understanding that such undertakings may include any condition, obligation, undertaking or modification (including any requirement to divest or restructure) relating in any manner whatsoever to the Purchaser, its Affiliates or the Target Company, or any business, activities or assets of the Purchaser, its Affiliates or the Target Company.

#### 4.5 Cooperation and Notification Obligations

The Parties undertake to act in such a way that all the arrangements contemplated in this Agreement are duly fulfilled. Without prejudice to the generality of the foregoing, the Parties have agreed:

- (a) to fully cooperate with each other, and if required by the laws of Germany or the Czech Republic, with all Governmental Entities, and to refrain from any act that might prevent the completion of the transaction contemplated by this Agreement;
- (b) the Purchaser shall act and procure that third parties act in such a way that the Condition Precedent – the fulfilment of which the Purchaser is obliged to procure – is fulfilled as soon as possible, but no later than on the Long Stop Date;
- (c) to duly notify each other of the progress of the fulfilment of all steps required for Completion and of major obstacles or delays and of the existence or occurrence of facts

that could adversely affect the Completion or the fulfilment of any Condition Precedent; and

- (d) the Seller shall provide the Purchaser with a draft of a notice under Subsection 5.3(a)(iii) without undue delay after the exact date of the expected Completion Date will be determined between the Parties, but no later than within three (3) Business Days before such expected Completion Date.

#### 4.6 Non-Fulfilment by Long Stop Date

If the Condition Precedent is not satisfied on or before 5:00 p.m. local time in Essen and Prague on the Long Stop Date, then, unless the Parties agree otherwise in writing the Seller may terminate this Agreement by notice in writing to the Purchaser.

### 5. **COMPLETION**

#### 5.1 Completion

The transfer of the Purchased Share and the payment of the Purchase Price in accordance with the arrangements set out in Section 5.3 below ("**Completion**") will take place at the offices of [REDACTED] at 9:00 a.m. on the day which is no later than ten (10) Business Days after the day on which the Condition Precedent will have been fulfilled, or, as the case may be, any other place, day and time agreed by the Parties in writing acting in good faith (such day as the "**Completion Date**").

#### 5.2 Deposits to Escrow

No later than one (1) Business Day prior to the Completion Date, the Purchaser shall pay in immediately available funds to the Escrow Account the Purchase Price in accordance with Section 2.3 above. To avoid any doubt, the Purchase Price is deemed to be paid to the Seller when it is credited to the Seller's bank account pursuant to Clause 5.3(j) (i.e., not at the moment when it is credited to the Escrow Account).

#### 5.3 Completion Steps

At Completion, the following steps will be taken in the following sequence:

- (a) the Seller delivering to the Purchaser:
  - (i) the original (or a verified copy) of an extract from the German Commercial Register in respect of the Seller, including the Apostille, with an official translation into the Czech language, no older than two (2) months;
  - (ii) the original (or a verified copy) of all powers of attorney granted to representatives of the Seller to sign the Transfer Deed, this Agreement and any other documents envisaged in it, including verified signatures and the Apostille, with an official translation into the Czech language;
  - (iii) the original (or a verified copy) of a notice specifying the calculation of the Purchase Price to be paid by the Purchaser on the Completion Date, such

calculation shall include in particular: (1) amount of the interest accrued between 1 March 2023 and Completion Date in accordance with Subsection 2.2(c); and (2) (if any Leakage is determined as an Agreed Leakage Amount between the Locked Box Date and Completion Date) the type and the relevant amount of such Leakage;

(iv) the original [REDACTED]

(b) the Purchaser delivering to the Seller:

(i) documents evidencing that Condition Precedent under Subsection 4.3(a) has been fulfilled;

(ii) the original (or a verified copy) of an extract from the Commercial Register in respect of the Purchaser, no older than two (2) months;

(iii) the original (or a verified copy) of all powers of attorney granted to representatives of the Purchaser to sign the Transfer Deed, this Agreement and any other documents envisaged in it, including verified signatures and the Apostille, with an official translation into the Czech language;

(iv) the confirmation issued by the Escrow Agent (in a form reasonably acceptable for the Seller) confirming that the amount of the Purchase Price (as specified in the notice under Subsection 5.3(a)(iii) above) has been credited to the Escrow Account and - as of the Completion Date – is available to be released in full from the Escrow Account to the Seller in accordance with the terms of the Escrow Agreement;

(c) [REDACTED]

(i) [REDACTED]

(ii) [REDACTED]

(iii) [REDACTED]

(iv) [REDACTED]



- (d) without prejudice to Section 9.1, the Seller signing (or causing a designated Affiliate of the Seller to sign) and causing the Target Company to sign one or several arrangements pursuant to which all licences granted to the Target Company by the Seller or its Affiliate and giving the Target Company the right to use any Intellectual Property Rights (x) containing the names "Rheinisch-Westfälisches Elektrizitätswerk" or "RWE" or expressions containing or derived from or confusingly similar with such names or (y) containing any distinctive mark, style or logo used by the RWE group, will be terminated;
- (e) the Seller, acting as the sole shareholder of the Target Company,
  - (i) approving the transfer of the Purchased Share contemplated hereunder (if applicable), the transfer of the Transferred IP Rights (if applicable), as well as any other actions to be taken by the Target Company or its directors at or around Completion and requiring an approval of the General Meeting of the Target Company;
  - (ii) acknowledging the resignation of the Seller's nominee under Subsection (a)(iv),
  - (iii) appointing to the vacant position(s) of a director (in Czech: "*jednatel*") in the Target Company the representatives of the Purchaser which have been notified by the Purchaser to the Seller at least ten (10) Business Days prior to Completion;
  - (iv) changing the business name of the Target Company to a new business name compliant with Section 9.1 below, namely Gas Storage CZ, s.r.o.;
- (f) the Parties executing five (5) counterparts of a transfer deed substantially set out in Schedule 5.3(f) hereto (the "**Transfer Deed**") and in the form required by a notary (for the purpose of the direct registration of new directors, business name and shareholder into the Commercial Register) and will having their signatures thereon verified; with the understanding that all counterparts of the signed Transfer Deed will be kept by the Seller until the time specified under Subsection (h) below, and neither (the directors of) the Target Company nor any of the Parties may request that any changes be made in the Commercial Register on the basis thereof until the time specified under Subsection (k) below;
- (g) the Seller causing RWE Aktiengesellschaft and its Affiliates to (re)pay to the Target Company all amounts (if any) outstanding as of the Completion Date under any and all upstream loan instruments issued by RWE Aktiengesellschaft or its Affiliates into which the Target Company invests its surplus cash from time to time;
- (h) the Seller delivering four (4) counterparts of the Transfer Deed executed by the Seller and Purchaser to the Escrow Agent;
- (i) the Escrow Agent transferring the Purchase Price from the Escrow Account to the Seller's bank account;
- (j) the Purchase Price being credited to Sellers' bank account;

- (k) the Escrow Agent delivering three (3) counterparts of the executed Transfer Deed to the Purchaser;
- (l) the Purchaser submitting the Transfer Deed for publication in the Register of Contracts, whereas the Transfer Deed shall be redacted (if necessary) in accordance with Subsection 7.2(b);
- (m) the Purchaser causing the Target Company to:
  - (i) confirm the delivery of the Transfer Deed to the Target Company (on all five (5) counterparts of the Transfer Deed executed by the Seller and Purchaser);
  - (ii) register the Purchaser in the list of shareholders of the Target Company as the sole shareholder of the Target Company; and
  - (iii) deliver to a notary a submission for direct registration of changes under Subsections (a)(iv), (e) and (f) above into the Commercial Register and the notary delivering the extract from the Commercial Register reflecting such changes to the Target Company and the Parties.

Any Completion step set out in this Section 5.3 may be waived by way of a written agreement of both Parties.

#### 5.4 Completion Protocol

Following the execution or waiver (as the case may be) of all the Completion actions set out in Section 5.3 above, the Seller and the Purchaser will sign a Completion protocol confirming the execution, or waiver, of the aforementioned Completion actions.

#### 5.5 Non-occurrence of Completion

If a Party causes Completion not to occur as a result of a breach of its obligation to (i) attend Completion on the date set forth in this Agreement or otherwise agreed by the Parties, or (ii) carry out a Completion step on the Completion Date then, unless the fulfilment of such a Completion step is mutually waived by the Parties, the other Party will not be obliged to complete this Agreement and may choose to (in addition and without prejudice to all other rights or remedies available to it):

- (a) fix a new time and place for Completion (which shall be no later than five (5) Business Days after the original date on which Completion should have occurred and with the provisions of Section 5.3 above applying to Completion as so deferred *mutatis mutandis*); or
- (b) proceed to Completion as far as applicable (without limiting its rights and remedies under this Agreement); or
- (c) provided that new date for Completion was fixed pursuant to Subsection (a) above and such new Completion did not occur, to terminate this Agreement in accordance with Subsection 10.1(c).

Irrespective of the choice of the injured Party pursuant to the above, a breach of the Party's obligation consisting in its failure to participate in Completion or failure to fulfil a Completion step as described above, will also always be deemed to be a breach hereof and therefore also a Breach of the Agreement under Section 8.1 below.

## **6. THE SELLER'S REPRESENTATIONS AND WARRANTIES**

### **6.1 General**

- (a) The Seller represents and warrants to the Purchaser that:
  - (i) each of the Fundamental Warranties set out in paragraphs 1 and 2 of Schedule 6.1(a) is in all material aspects true and accurate as at the Signing Date and as at the Completion Date;
  - (ii) each of the Seller's Warranties other than those mentioned in paragraph (i) above of this Section 6.1(a) is in all material aspects true and accurate as at the Signing Date.
- (b) Each of the Seller's Warranties is made subject to information Disclosed in the Data Room, contained in this Agreement or of which the Purchaser was actually aware of or was deemed to be aware of pursuant to Section 11 of Schedule 8.2. To avoid any doubt, the Purchaser will not be entitled to claim that any fact, matter or circumstance causes any Warranty Claim, if such fact, matter or circumstance could have been ascertained from the information Disclosed in the Data Room, or of which the Purchaser was actually aware of or was deemed to be aware of pursuant to Section 11 of Schedule 8.2.

## **7. PURCHASER'S REPRESENTATIONS AND WARRANTIES**

### **7.1 General**

The Purchaser represents and warrants to the Seller that each individual representation and warranty set out in this Section 7 below is true and accurate as at the Signing Date and as at the Completion Date.

### **7.2 Purchaser's Personal Warranties**

- (a) The Purchaser is a company duly established and validly existing under the laws of the Czech Republic and registered for VAT purposes under VAT ID CZ25702556. The Purchaser enters into this Agreement on its own account and does not act as a trustee, agent or representative of any other person.
- (b) The Purchaser and persons acting on its behalf have obtained all the necessary consents and approvals and have the power to execute this Agreement and any other documents to be executed by the Purchaser pursuant to or in connection with this Agreement, to perform its obligations under this Agreement and any such other documents and to consummate the transactions contemplated hereby. The Purchaser warrants that the transactions contemplated in this Agreement are not subject to or conditional upon (i) an approval of the Czech Ministry of Industry and Trade (the "**FDI Authority**") under

Act No. 34/2021 Coll., on screening of foreign investments (the "**FDI Act**"), or (ii) a notification of the FDI Authority under Sec. 10(5) of the FDI Act. This Agreement (assuming its due execution on behalf of the Seller), constitutes legally binding and enforceable obligations for the Parties upon its publication in the Register of Contracts pursuant to Act on Register of Contracts. The Parties have agreed that certain provisions of this Agreement contain information that cannot be provided in accordance with the regulations governing free access to information, or that they represent a trade secret, and which are subject to the discretion to redact their content before possible publication in the Register of Contracts according to the Act on Register of Contracts. The Parties have agreed that those provisions of this Agreement, which have been agreed between the Parties together with all contents of Schedules to the Agreement constitute information that cannot be disclosed under the free access to information regulations or that represent trade secrets. In the Register of Contracts, the Agreement will be published in a version in which such information will be redacted.

- (c) Without prejudice to the generality of the foregoing, neither the execution of this Agreement, nor the consummation of transactions contemplated to take place on Completion, will, require any consent or approval, preparation of any official valuation or conducting any procurement or tender procedure under the laws governing the management of state assets, state aid, public procurement and budgeting rules in any jurisdiction.
- (d) Neither the Purchaser nor any of its Affiliates has, within the last three (3) years prior to the Signing Date, received or applied for any foreign subsidy within the meaning of the Regulation (EU) 2022/2560 of the European Parliament and of the Council of 14 December 2022, on Foreign Subsidies Distorting the Internal Market, and the transactions envisaged by this Agreement are not subject to review or approval under this Regulation.
- (e) Neither the execution nor the consummation of the transactions contemplated in this Agreement will violate (i) any agreement or instrument to which the Purchaser is a party, or (ii) the constitutional documents of the Purchaser, or (iii) any regulations binding upon the Purchaser or any of its Affiliates (including, if applicable, those governing the permitted investments, as well as the risk profile, quality, liquidity, profitability and composition of the investments of the Purchaser and/or any of its shareholders).
- (f) No insolvency proceedings have been commenced or are threatened against the Purchaser nor has an insolvency administrator, liquidator or similar officer been appointed with respect to the Purchaser's business, assets or undertakings (or any part thereof). No notice has been given or filed with the court by the Purchaser of an intention to appoint such insolvency administrator, liquidator or similar officer. The Purchaser is not insolvent or unable to pay its debts as they become due. No resolution has been passed for the winding up or dissolution of the Purchaser, and no application for a temporary protection against creditors has been filed or is intended to be filed by the Purchaser.
- (g) This Agreement (or the transactions contemplated herein) does not curtail the Purchaser's creditors, nor does it establish rights for them from a contestable legal act

within the meaning of Section 589 et seq. of the Civil Code and provisions of Section 111(3), Section 235 *et seq.* and Section 246(2) of Act No. 182/2006 Coll., on Bankruptcy and Methods of its Resolution (Insolvency Act), as amended, or equivalent provisions in any other jurisdiction.

- (h) The Purchaser is not a designated target, or otherwise a subject, of Sanctions (including without limitation as a result of being (x) owned or controlled directly or indirectly by any person which is a designated target of Sanctions, or (y) organised under the laws of, or a resident of, any country that is subject to general or country-wide Sanctions). For the purposes of this Agreement, "**Sanctions**" means any economic or financial sanctions, trade embargoes or similar measures adopted, enacted, administered, or enforced by any legislative, regulatory, judicial, enforcement or executive body, agency or authority of (i) the European Union, (ii) any member state of the European Union from time to time, (iii) the United Nations, (iv) the United States of America (including the U.S. Department of the Treasury, the U.S. Department of State, or the U.S. Department of Commerce), unless this constitutes a violation of any applicable blocking law, or compliance with such sanctions constitutes a violation of any applicable blocking law, (v) the United Kingdom (including His Majesty's Treasury) or (vi) Japan.

### 7.3 Funds

- (a) The Purchaser has or, as the case may be, will at the Completion Date have sufficient liquid funds at its disposal for the payment of the Purchase Price pursuant to the provisions hereof.
- (b) The funds referred to in Subsection (a) do not originate from criminal activity, their use in accordance with this Agreement is not a part of any money laundering activity and the proceeds of the investment of such funds hereunder will not be used for the purposes of terrorist financing. The terms "criminal activity", "money laundering" and "terrorist financing" when used herein have the meaning defined in Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, as amended.

### 7.4 Purchaser's Awareness

- (a) The Purchaser has sufficient knowledge and experience in financial and business matters to be capable of evaluating the merits and risks of its investment in the Target Company.
- (b) The Purchaser relies only on representations, warranties, undertakings or obligations expressly given by the Seller in this Agreement. The Purchaser does not rely on any other representations, warranties, undertakings or obligations.
- (c) The Purchaser is aware that the Target Company is a beneficiary of certain policies of insurance (including mandatory insurance) which will cease if and when the Target Company ceases to be controlled by the Seller, i.e. with effect as of Completion, and acknowledges that it is solely responsible for negotiating and securing a replacement cover.

## 7.5 No Awareness of Breach of the Agreement

Neither the Purchaser nor any of its Affiliates or their advisers are aware of any fact, matter, event or circumstance which is or could form the subject matter of a Claim under a Breach of the Agreement (as defined in Section 8.1 below).

## 7.6 Limitations

The limitations in Schedule 8.2 shall apply to breach of any representation or warranty made by the Purchaser *mutatis mutandis*.

# 8. REMEDIES

## 8.1 Breach of the Agreement

In the event that (i) any representation or warranty made by the Seller in Section 6 above is untrue or inaccurate in any material respect or by the Purchaser in Section 7 above is untrue or inaccurate or (ii) either the Seller or the Purchaser breaches any of its obligations under this Agreement (each such event or breach a "**Breach of the Agreement**"), the infringing Party is obliged to, subject to Section 8.2 below, compensate the injured Party as follows (the "**Compensation**"):

- (a) in case of Breach of the Agreement by the Seller, the Seller will pay to the Purchaser (and not the Target Company) an amount necessary to put the Purchaser and/or the Target Company in the financial position it would have been in if the Breach of the Agreement by the Seller had not occurred;
- (b) in case of Breach of the Agreement by the Purchaser, the Purchaser will pay to the Seller an amount necessary to put the Seller in the financial position it would have been in if the Breach of the Agreement by the Purchaser had not occurred.

In each case, the Compensation shall be paid in EUR and the Compensation will consist of, *inter alia*, damages (necessary and reasonable costs, expenses, fines, default interest, taxes, etc.) with reasonably expended costs incurred by advisers, sustained or increased liabilities, impaired value of assets. However, the Compensation to be payable by the Seller under (a) above will not include any unforeseen damages, any indirect or consequential losses or damages (such as loss of income or lost profit), loss of goodwill or punitive or exemplary damages or non-material damage (in Czech: "*nemajetková újma*").

## 8.2 Seller's Limitation of Liability

- (a) The Seller will not be responsible for a Breach of the Agreement in accordance with Section 8.1 above if or to the extent, limitations set forth in Schedule 8.2 hereto apply.
- (b) All limitations of Seller's liability in relation to Warranty Claims (but not for any other Breach of the Agreement) provided under the applicable laws are hereby excluded to the maximum extent permitted.

### 8.3 Exclusive Nature of Remedies

The Parties have agreed that the remedies explicitly set out in this Agreement are the only substantive law remedies that:

- (a) are available to the Purchaser in the event that any representation or warranty made by the Seller under Section 6 above is untrue or inaccurate in any material respect or any other obligation under this Agreement is breached by the Seller;
- (b) are available to the Seller in the event that any representation or warranty made by the Purchaser under Section 7 above is untrue or inaccurate or any other obligation under this Agreement is breached by the Purchaser; and

no Party will have the right to claim any discounts, damages, unjust enrichment or other amounts or to assert other substantive law remedies (as opposed to procedural remedies) under any applicable legislation. In accordance with section 1916 (2) of the Civil Code, the Parties hereby expressly waive their rights in respect of defective supplies by the other Party except those specified herein. By agreeing specific contractual remedies, the Parties replace and exclude the application of general legal remedies relating to defects in the subject matter of the purchase, in particular (without limitation) the remedies and claims referred to in sections 1914 to 1925, 1977 to 1979, 2099 to 2117 of the Civil Code. To the extent permitted by the Civil Code, all rights of withdrawal, rescission, repudiation and all rights to claim discounts or damages are expressly excluded unless otherwise provided in this Agreement. The Parties undertake that they will not in any way challenge the exclusive nature of remedies agreed in this Section 8.3 nor the limitations of Seller's liability and Purchaser's liability pursuant to Schedule 8.2 hereto and confirm that nothing in this Section 8.3 shall operate to limit or extinguish availability of the remedies explicitly set out in this Agreement. For the avoidance of doubt, nothing in this Section 8.3 is to limit the ability of either Party to seek injunctive relief from an applicable arbitration tribunal or court of law, specific performance of the defaulting Party (such as request for substitution of expression of will of the defaulting Party (in Czech: "*nahrazení projevu vůle*")) or to seek other procedural remedies.

## 9. POST-COMPLETION OBLIGATIONS

### 9.1 Use of RWE's Names/Logos

- (a) After the Completion Date, the Purchaser shall ensure that the Target Company refrains from using the names "*Rheinisch-Westfälisches Elektrizitätswerk*" or "*RWE*", or names containing or derived from or confusingly similar with such names for any purpose (collectively the "**RWE Names/Logos**") in each case no later than six (6) months following Completion or within the period stipulated in Subsection 9.2(a).
- (b) The Target Company may continue to use those RWE Names/Logos during the rebranding period that are in use by the Target Company as of the Completion, in each case solely in the same manner that such RWE Names/Logos are being used by the Target Company immediately prior to the Completion.

- (c) Any rights granted to the Purchaser and the Target Company under this Section 9.1 are granted without further consideration and any fee payable is understood to be factored in the Purchase Price.

## 9.2 Transferred IP Rights, Wrong Pockets

- (a) If any Intellectual Property Rights owned or registered in the name of the Target Company (x) containing the names "Rheinisch-Westfälisches Elektrizitätswerk" or "RWE" or expressions containing or derived from or confusingly similar with such names or (y) containing any distinctive mark, style or logo used by the RWE group (the "**Transferred IP Rights**"), have not been vested to the Seller (or its designated Affiliate) by virtue of transactions carried out under this Agreement, the Seller may give written notice of this to the Purchaser at any time in the period of twenty-four (24) months following the Completion Date. If such notice is given:
  - (i) the Purchaser shall, as soon as reasonably practicable, transfer or procure the transfer of such Intellectual Property Rights to the Seller or, at the Seller's direction, to or its designated Affiliate, for no consideration, and the Seller shall accept, or procure that its designated Affiliate shall accept, such transfer;
  - (ii) each Party shall provide such assistance to the other Party (or, as the case may be, Parties), as is reasonably requested for the purposes of this Section 9.2.
- (b) Without undue delay after the transfer of the Transferred IP Right pursuant to Subsection (a) above, the Seller will, or will cause its designated Affiliate to, register the transfer of the Transferred IP Rights from the Target Company to the Seller or to its designated Affiliate, as the case may be, with the respective bodies and/or registers.
- (c) The Purchaser will cooperate, and will cause the Target Company to cooperate, with the Seller and with any relevant public bodies and/or registers, as may be required, and will do and execute all other reasonable acts, deeds and things necessary to allow the registration pursuant to Subsection (b) above and will abstain from any actions that could prevent it.

## 9.3 Access to Information

- (a) After the Completion Date and for a period of ten (10) years following Completion and subject only to restrictions pursuant to applicable legal law, the Purchaser agrees to provide and cause the Target Company and its employees and auditors to provide, the Seller and the auditor and duly authorized advisers of the Seller or any of its Affiliates with reasonable access (upon reasonable notice, during normal business hours and at the cost of the Seller) to books of account, tax returns, financial and other records (including accountant's work papers), correspondence and documentation, employees and auditors of the Target Company in whatever form relating to the business of the Target Company prior to the Completion, and allow them to make copies of such documents, as reasonably necessary in connection with any (de)consolidation, (Tax) audit, (Tax) investigation, (Tax) dispute or (Tax) litigation affecting the Seller or its Affiliate, or for the purposes of preparing or verifying any consolidated financial information of the Seller or its Affiliate.



- (b) After the Completion Date and for a period of ten (10) years following Completion, the Seller undertakes to provide reasonable assistance to the Purchaser or the Target Company in case any support from the Seller will be required in order to defend historical transfer prices applied prior to Completion if those are questioned by the relevant authorities during a future Tax audit.

#### 9.4 Insurance Policies

On or without undue delay after the Completion Date (but no later than within the time period set forth in the respective insurance policy), the Purchaser shall, and shall cause the Target Company, as the case may be, to notify the transaction under this Agreement (and relating change in the control of the Target Company) to all respective insurers under the insurance policies of the Target Company Disclosed in the Data Room (if and to the extent such notification is required under the terms of the respective insurance policy).

#### 9.5 Personal Data

The Purchaser acknowledges that – after the Completion Date – the Seller or its respective Affiliates may retain personal data acquired by them prior to the Completion Date where required or permitted by applicable laws or regulations.

#### 9.6 No Claims Against Directors

- (a) The Purchaser agrees not to raise and shall procure that none of its Affiliates (including the Target Company) will raise, save in the case of fraud, any claims against any person who was a director of the Target Company prior to the Completion Date;
- (b) If the Purchaser, any of its Affiliates (including the Target Company) or any of their assignees assert any claim of the nature described in Subsection (a), the Purchase Price shall be deemed to be increased with the amount of the claim thus asserted (whether paid or not) and payable upon demand of the Seller.

#### 9.7 No Subrogation

Save in the case of fraud, the Seller shall have no right of subrogation or other recourse towards the Target Company or its respective directors, officers, employees, Affiliates, agents, representatives, assigns or successors for any claim under and/or in connection with this Agreement asserted by the Purchaser. The Seller agrees not to raise and shall procure that none of its Affiliates will raise, save in the case of fraud, any claims against the Target Company and its directors, officers, employees, agents, representatives, assigns or successors, it has or may have against the Target Company or its directors, officers, employees, agents, representatives, assigns or successors.

#### 9.8 Non-solicitation

For a period of [REDACTED] from the Completion Date, the Seller shall, except with the prior consent of the Purchaser, refrain from employing or offering employment to any Senior Employee (with the exception of [REDACTED] provided that this provision shall not prevent the Seller nor any of its Affiliates from (i) making any general advertisement to the public (including any recruitment efforts conducted by any recruitment agency) of

employment by the Seller or any of its Affiliates to which any person referred to in this Section 9.8 responds; (ii) hiring any person who contacts the Seller (or any of its Affiliates) on his or her own initiative and without any direct or indirect solicitation from the Sellers (or any of its Affiliates) or (iii) hiring any person who approaches the Seller (or any of its Affiliate) on an unsolicited basis in response to a general public advertisement including any recruitment efforts conducted by any recruitment agency, provided that neither the Seller nor any of its Affiliate has directed (directly or indirectly) such recruitment efforts at such person.

## **10. TERMINATION OF THE AGREEMENT**

### **10.1 Termination Prior to Completion**

Prior to Completion taking place, this Agreement may be terminated solely:

- (a) by an agreement of both Parties made in writing; or
- (b) by the Seller in accordance with Section 4.6;
- (c) by the injured Party in accordance with Section 5.5(c).

### **10.2 Effect of Termination**

Termination of this Agreement shall take immediate effect upon delivery of a termination notice to the other Party pursuant to Subsection 10.1(b) or Subsection 10.1(c), or on the signing of a mutual written consent pursuant to Subsection 10.1(a).

### **10.3 Consequences of Termination**

Upon termination of this Agreement pursuant to Section 10.1 above:

- (a) except for this Section 10, Section 1 (*Definitions and Interpretation*), Section 8 (*Remedies*), Section 11 (*Miscellaneous*) and any other provisions expressly or by implication provided to come into effect on or to continue in effect after the termination hereof, all provisions of this Agreement will lapse and will cease to have effect; but
- (b) neither the lapsing of those provisions nor their ceasing to have effect will affect any accrued rights or liabilities of any Party in respect of damages for non-performance or breach of any obligation under this Agreement falling due for performance prior to such lapse and cessation.

### **10.4 No Other Termination**

Neither Party is entitled to rescind, withdraw from or otherwise unilaterally terminate (and each Party waives its right to request declaration of invalidity of) this Agreement (or any rights and obligations hereunder) or the Transfer Deed (or any rights and obligations thereunder) for reasons of error (in the sense of Section 583 of the Civil Code), nonconformity, hidden defects or for any other reason, regardless of the degree of violation, other than reasons set forth in Section 10.1 above. The Parties expressly exclude the application of section 2110, sections 2002 *et seq.*, as well as other provisions of the Civil Code to the extent that they are in conflict with the preceding sentence. In particular, neither Party

shall be entitled in any circumstances to rescind or terminate this Agreement after Completion.

## **11. MISCELLANEOUS**

### **11.1 Costs and Expenses**

Except as expressly provided otherwise in this Agreement, each Party will bear its own costs and expenses, including any Tax, and fees of its counsel, consultants, advisers, accountants and other representatives incurred in connection with the negotiation and execution of this Agreement and each other agreement, document and instrument contemplated by this Agreement and the consummation of the transactions contemplated hereby and thereby, in being understood that in no event shall the Target Company bear any of such costs and expenses unless and to the extent defined as a Permitted Leakage. The costs of the services provided by the Escrow Agent shall be borne by the Purchaser.

### **11.2 Confidentiality**

- (a) Each Party shall (i) treat as strictly confidential all information obtained or received by it as a result of entering into or performing its obligations under this Agreement and relating to the negotiations relating to the conclusion of this Agreement or the other Party or its Affiliates, and shall (ii) not, except with the prior written consent of the Seller (if the disclosure relates to Seller or, prior to Completion, the Target Company) or the Purchaser (if the disclosure relates to the Purchases or, on or following the Completion, the Target Company) (which shall not be unreasonably withheld or delayed), publish, use, exploit or otherwise disclose for any purpose (other than for which it was provided) to any third party any such confidential information.
- (b) However, no confidentiality obligation shall apply under Subsection (a) if and to the extent that (i) the disclosure is required by relevant court, applicable law, applicable listing or financial reporting rules (including standard disclosure to other capital market participants or to Parties' parent companies for the purposes of consolidation of accounting), government action or by any regulatory or supervisory body; (ii) the information has been obtained from a source unrelated to the other Party which is lawfully in possession of that information and has the lawful right to disclose or use it; (iii) the information is or becomes publicly available other than as a consequence of unauthorised disclosure in breach of this Agreement; (iv) (subject to any limitations prescribed by generally applicable laws) the information is disclosed to a Party's Affiliate or directors, officers, managers, employees, agents, representatives, insurers, counsels, advisers, auditors or other professional advisers, provided that the disclosing Party shall procure that such persons are bound by a duty of confidentiality at least equivalent to that set out in this Section 11.2 and do not disclose the confidential information to any third party or use or exploit it for any purpose (other than for which it was provided); or (v) (subject to any limitations prescribed by generally applicable laws) the disclosure is reasonably made within due pursuit or exercise of any rights required for preservation of the lawful interests of that Party.
- (c) Each Party shall undertake and maintain adequate security measures to prevent unauthorised third parties from obtaining access to the confidential information in

possession of that Party. The obligations contained in this Section 11.2 shall remain in full force and effect notwithstanding any termination of this Agreement.

### 11.3 Announcements

- (a) The initial announcement about the transactions contemplated by this Agreement shall be a joint announcement in the form agreed by both Parties.
- (b) The Parties undertake (i) to provide to each other for approval at least three (3) Business Days prior to its distribution any announcements to shareholders, employees, customers, suppliers or other authorities or to the media or otherwise, which a Party may desire to make regarding the subject matter of this Agreement, and (ii) not to make any such voluntary announcement without the prior written consent of the other Party (which consent must not be unreasonably withheld or delayed). To the extent legally permitted, the Parties undertake to provide to each other for review and comments at least three (3) Business Days (if possible) prior to its distribution any announcements to shareholders, employees, customers, suppliers or other authorities or to the media or otherwise, which the Party is obliged to make regarding the subject matter of this Agreement.
- (c) Nothing in this Section 11.3 shall restrict the making by any Party (even in the absence of agreement by the other Party) of any statement or disclosure:
  - (i) which may be required by law, or called for by the requirements of any applicable stock exchange, listing authority or regulatory authority; or
  - (ii) of information that is or becomes within the public domain through no fault of that Party.

### 11.4 Notices


- (a) Unless expressly set out otherwise in this Agreement, any notice or other communication to be given under this Agreement must be in English and in writing and must be delivered or sent by registered post or courier (and for information purposes only, also via e-mail but not any other form of electronic communication) to the Party to whom it is to be given at its address appearing in this Agreement as follows:

- (i) Seller's contact details:

GBV Zweiunddreißigste Gesellschaft für Beteiligungsverwaltung mbH  
c/o RWE Aktiengesellschaft  
RWE Platz 1  
D-45141 Essen  
Germany

- (ii) Purchaser's contact details:

ČEPS, a.s.  
Elektrárenská 774/2,  
10152 Czech Republic



- (b) The Parties will communicate to each other any change of their respective addresses set forth in this Section 11.4 as soon as possible. Until such communication, the address set out hitherto will be relevant.
- (c) Any notice or other communication in writing will be deemed to have been given (i) if delivered, on the date of delivery; or (ii) if sent by registered post, on the third day after it was put into the post (if the envelope reached the intended address but irrespective of whether the envelope has reached the addressee). In proving the giving of a notice or other communication, it will be sufficient to prove that delivery was made or that the envelope containing the communication was properly addressed and posted via registered post or via courier, as the case may be.
- (d) This Section 11.4 will not apply in relation to the service of any claim form, notice, order, judgment or other document relating to or in connection with any proceedings, suit or action arising out of or in connection with this Agreement, in which case the applicable procedural rules will apply.

#### 11.5 Remedies and Waivers

Unless specifically agreed otherwise herein:

- (a) no delay, failure or omission by a Party in exercising any right, power or remedy provided by law or under this Agreement or any other documents referred to in it will (i) affect that right, power or remedy; or (ii) operate as a waiver of it; and
- (b) the single or partial exercise of any right, power or remedy by a Party provided by law or under this Agreement will not preclude any other or further exercise of it or the exercise of any other right, power or remedy.

#### 11.6 Severability

The unenforceability, illegality or invalidity of any provision of this Agreement will not affect the enforceability, legality or validity of any other provision of this Agreement. In the event that any such provision is or becomes invalid for any reason, the Parties undertake to consult and agree on a legally acceptable manner of giving effect to the commercial objectives of such provision.

#### 11.7 Entire Agreement

This Agreement supersedes and replaces any and all agreements, understandings and declarations of intent between the Parties and embody all of the agreements of the Parties with respect to the subject matter of this Agreement.

#### 11.8 Amendments, Assignment, Successors

- (a) No amendment, supplement, change or other modification hereof will be effective unless the same is in writing and signed by both Parties.
- (b) Neither Party may assign, transfer, encumber or declare a trust of, its rights under this Agreement or this entire Agreement without the prior written consent of the other Party.
- (c) All of the terms, provisions and conditions of this Agreement will be binding upon and inure to the benefit of the Parties and their universal successors.

#### 11.9 No Set Off

The Parties hereby explicitly agree that save as otherwise expressly provided in this Agreement they will not apply any right of set off in respect of any amounts payable under this Agreement, whether they arise under applicable law or contract.

#### 11.10 Counterparts

This Agreement is executed in two (2) counterparts in the English language. Each Party is to receive one (1) counterpart.

#### 11.11 Governing law

This Agreement and any amendments thereto, as well as any non-contractual obligations arising out of or in connection with this Agreement, will be governed by, interpreted and construed in accordance with, the substantive laws of the Czech Republic. The Parties exclude the application of the UN Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG).

#### 11.12 Exclusion of statutory provisions

Unless expressly provided in this Agreement, each Party itself assumes the risk of a change in circumstances (hardship) within the meaning of section 1765(2) of the Civil Code; sections 1765(1), 1766 and 1788(2) of the Civil Code do not apply to this Agreement. The Parties have agreed that section 557 of the Civil Code will not apply to this Agreement. For the purposes of the Agreement, the Parties hereby declare that they are entrepreneurs entering into the Agreement in connection with their business activities. The Parties have agreed to waive their mutual right to assert that this Agreement unduly curtails their rights and sections 1793 to 1795 of the Civil Code will not apply. The Parties agree that neither this Agreement nor any amendment hereto may be entered into by accepting an offer subject to modifications and supplements; section 1740(3) of the Civil Code will not apply.

#### 11.13 Dispute Resolution

All disputes arising out of or in connection with this Agreement shall be finally settled under the Rules of Arbitration (Vienna Rules) of the Vienna International Arbitral Centre (VIAC) of the Austrian Federal Economic Chamber by three arbitrators appointed in accordance with the said Rules. The language of the arbitral proceedings shall be English and the place of arbitration will be Vienna, Austria.

IN WITNESS WHEREOF, this Agreement has been signed by or on behalf of each of the Parties hereto according to their own free will and in full understanding of the transactions regulated in this Agreement on the date first above written.

*[The signature page follows after the last Schedule]*

**SCHEDULE 1.2(M)**  
**FORM OF ESCROW AGREEMENT**

*[Enclosed overleaf]*



**Komerční banka, a.s.**, a bank and a company incorporated and existing under the laws of the Czech Republic, having its registered office at Prague 1, Na Příkopě 33/969, Post Code: 114 07, Czech Republic, identification number (IČO): 45317054, registered in the Commercial Register maintained by the Municipal Court in Prague, file No.: B 1360 (the “**Bank**”)

and

**GBV Zweiunddreißigste Gesellschaft für Beteiligungsverwaltung mbH**, a company incorporated and existing under the laws of Germany, having its registered office at RWE Platz 1, Essen, post code 45141, Germany, registered in in the Commercial Register maintained by the local court in Essen under File No. HRB 27117

(the “**Transferor**”)

and

**ČEPS, a.s.**, a company incorporated and existing under the laws of the Czech Republic, having its registered office at Praha 10, Elektrárenská 774/2, Postal Code 10152, identification number (IČO): 25702556, registered in the Commercial Register maintained by the Municipal Court in Prague, file No.: B 5597

(the “**Transferee**”)

(the Bank, the Transferor and the Transferee jointly the “**Contractual Parties**”)

hereby enter, in accordance with Section 1746(2) of the Act No. 89/2012 Coll., the Civil Code, as amended (the “**Civil Code**”), into this agreement on escrow of a purchase price for a transfer of ownership interest (the “**Agreement**”).

Pursuant to Section 1751 of the Civil Code, the integral part of this Agreement shall be: the General Business Terms and Conditions of the Bank in the version dated 7 March 2023 (the “**General Conditions**”). By signing the Agreement, the Transferor and Transferee affirm to have been familiarised with the contents and meaning of the General Conditions and they agree expressly with their content.

The Transferor and the Transferee hereby represent that the Bank has notified them on the provisions referring to the General Conditions and sufficiently explained their meaning. The Transferor and Transferee acknowledge that in addition to the Agreement, they shall also be bound by the General Conditions and accept that the failure to honour duties and/or terms set forth therein may have the same legal consequences as the failure to honour the duties and/or terms arising from the Agreement. However, in case of any discrepancies between this Agreement and the General Conditions, the provisions of this Agreement prevail.

**The Transferor and the Transferee further confirm that, before the execution of this Agreement, the Bank has informed them about the Deposit Insurance System before the execution of the Agreement, as well as of the Information Overview that is available at the website [www.kb.cz/pojistenivkladu](http://www.kb.cz/pojistenivkladu).**

Article 28 of the General Business Terms and Conditions governs the necessary consents of the Transferor and Transferee, in particular consent to the processing of Personal Data. The Transferor and Transferee are entitled to withdraw these consents in writing at any time. Capitalised terms used herein shall have the meaning as defined in this document or as ascribed to their Czech equivalent defined in the General Conditions.

Provisions of Sections 1799 and 1800 of the Civil Code governing adhesion contracts shall not apply to the contractual relationship arising from the Agreement.

If one contracting party consists of several Transferors or Transferees, they shall be hereinafter referred to together as the Transferor or Transferee (in singular) which, however, shall always refer to all the Transferors jointly, or all the Transferees jointly, unless otherwise indicated in this Agreement.

## 1. Subject Matter of the Agreement

- 1.1 The Transferor and the Transferee are unanimous in stating that they entered into the Share Purchase Agreement, (hereinafter the “SPA”), which sets forth certain terms and conditions of the purchase by the Transferee of the Transferor’s ownership interest (in Czech: *podíl*) in the following business company:

Business name of the company: **RWE Gas Storage CZ, s.r.o.**

Registered office: **Limuzská 3135/12, Strašnice, 10800 Prague 10, the Czech Republic**

Company ID (IČO): **278 92 077**

A business company incorporated and existing under the laws of the Czech Republic, registered in in the Commercial Register maintained by the **Municipal Court in Prague, file number: C 124711,**

(the “**Company**”)

equal to **100 %** share in the Company’s registered capital

(the “**Share**”).

Under SPA, the Transferor and the Transferee shall enter into a transfer deed substantially in the form attached hereto as Annex 1 (*Transfer Deed*), based upon which the Share shall be transferred from the Transferor to the Transferee and which shall be signed by the authorised representatives of the Transferor and the Transferee with their signatures being officially certified (hereinafter the “**Transfer Deed**”). For the avoidance of doubt, the Transfer Deed does not need to include the confirmation of the Company of the delivery of the Transfer Deed to the Company.

- 1.2 In this Agreement, the Transferor and Transferee agree on terms, conditions and manner in which the Bank shall hold in escrow (administer) and pay out the purchase price for the Share (the “**Escrow Amount**”), which the Transferee is obliged to pay to the Transferor pursuant to the SPA and the Transfer Deed in the amount as specified in the Pre-Completion Date Notice under Article 2.1 below.
- 1.3 The Contractual Parties agree that the Escrow Amount shall be deposited in the account specified in Article 2.2 below and the Bank shall release the Escrow Amount from its escrow only under the terms and conditions and in the manner set forth herein.

## 2. Rights and Obligations of the Contractual Parties

- 2.1 The Transferor shall deliver to the Bank the notice (hereinafter the “**Pre-Completion Date Notice**”), in which the Transferor is obliged to specify (i) the amount of the Escrow Amount and (ii) the business day, which must not occur earlier than 2 (two) business days upon the reception of the Pre-Completion Date Notice by the Bank, on which the Transfer Deed will be executed by the Transferor and the Transferee and on which the funds held on the Escrow Account shall be released by the Bank and credited to the Transferor’s Account (hereinafter the “**Completion Date**”). The fulfilment of this obligation is a condition precedent for the release of the funds from the Escrow Account.
- 2.2 The Transferee hereby undertakes to deposit the Escrow Amount into an EUR account [REDACTED] (the “**Account**” or the “**Escrow Account**”) as follows:
- a) The amount as specified in the Pre-Completion Date Notice shall be credited to the Account by a cashless transfer of the Transferee’s own funds, at least one (1) business day before the Completion Date, but not later than on [REDACTED]
- 2.3 Provided that the Escrow Amount is not credited to the Account no later than on [REDACTED] in full in the amount as specified in the Pre-Completion Date Notice, this Agreement will automatically terminate as at such date and the Bank will proceed in accordance with Article 2.10 below. If only part of the Escrow Amount has been credited to the Account and, subsequently, this Agreement was terminated pursuant to the foregoing sentence, the Bank shall pay back the said part of the Escrow Amount within **2 (two)** Business Days by crediting it to the accounts from which the said part of the Escrow Amount has been transferred.

- 2.4 The Bank shall receive the Escrow Amount into its custody as soon as it is credited to the Account. On (i) the day of the crediting to the Account of the whole Escrow Amount and (ii) the Completion Date until 9am CET, the Bank shall inform the Transferee and Transferor in writing (via e-mail on the contact e-mail addresses of the Contractual Parties as set below) that the Escrow Amount has been credited to the Account in full, the Escrow Amount (or any part thereof) has not been released from the Escrow Account and that there is no restriction preventing the Bank from releasing the Escrow Amount in full to the Transferor in accordance with this Agreement. In case of need and upon written request of any of the Contractual Parties, the Bank shall issue to the Transferee and Transferor a written confirmation that the Escrow Amount has been credited to the Account in full, no later than upon 5 business days upon receiving the above-mentioned request.
- 2.5 The Contractual Parties shall not be entitled to dispose of the Escrow Amount in any other way but under the terms and conditions and in the manner set forth herein. The Contractual Parties have agreed that the funds deposited in the Escrow Account shall bear interest of [REDACTED]. The interest will be payable by the Bank to the Transferee to the Transferee's Account No.: [REDACTED] within ten (10) Business Days from the date of release of the Escrow Amount to any of the *Contractual Parties* pursuant to this Agreement. [REDACTED]. *The Bank shall use such published rate for the relevant one-day period on the date of the Drawdown or on the date of the Interest Rate Update. In case that such date is not the Business Day, the Bank shall use the [REDACTED] on the immediately preceding Business Day.* The Contractual Parties agree that the interest under this Article 2.5 can never be a negative value. Therefore, if the €STR rate is less than 0.75 % p.a., the interest applicable under this Article 2.5 shall be deemed to be zero (0).
- 2.6 The Bank hereby undertakes to pay out the Escrow Amount in the manner specified below provided that it receives **originals or certified (notarised) copies** of all the following documents specified below as follows:
- The Bank shall release the Escrow Amount from the Account by transferring it to the account of the Transferor IBAN: [REDACTED], maintained by [REDACTED] (or any other bank account notified by the Transferor to the Bank in writing no later than 1 (one) Business Day prior to the relevant payment date) (i) on the same Business day (provided that the Documents are submitted to the Bank not later than until 11 AM) or (ii) the next Business day (provided that the Documents are submitted to the Bank after 11 AM) following **the moment of the submission of four (4) counterparts of the Transfer Deed with certified signatures of both the Transferor and the Transferee** (all the aforesaid documents are herein jointly referred to as the "**Documents**"). The Bank is in particular obliged to ensure that, on the respective Business Day, the Escrow Amount will be credited to the Bank's nostro account with the [REDACTED] or with another relevant bank, as applicable, and shall provide the Transferor and its bank with all reasonable cooperation to ensure that the Escrow Amount is credited to the Transferor's bank account as soon as practicable on such Business Day.
- 2.7 In case the condition of the Article 2.6 of this Agreement has been fulfilled and the Escrow Amount has been credited to the account of the Transferor, the Bank will deliver three (3) counterparts of the Transfer Deed to the Transferee without undue delay upon receiving written confirmation (via e-mail on the contact e-mail address as set herein) from the Transferor that the Escrow Amount has been successfully credited to the Transferor's Account. The Transferor is obliged to provide the Bank with a written confirmation that the Escrow Amount has been credited to the Transferor's Account. Such confirmation shall be issued without undue delay on the day on which the Escrow Amount has been credited to the Transferor's Account, or on the next Business Day, as practicable.
- 2.8 The Bank shall check whether the documentation presented to the Bank pursuant to Article 2.6 above formally appears to be the Documents and is duly signed. The Bank shall not examine the authenticity, correctness and/or truthfulness of the presented documentation, nor shall it check whether it complies with law. The Bank shall also not examine the authenticity of signatures on the documents submitted to the Bank or the capacity of signatories who signed the documents submitted to the Bank.
- 2.9 If, having examined the submitted documentation, the Bank decides that the documentation cannot be considered as the Documents or that it fails to meet other terms and conditions set forth under Article 2.8

above, it shall not pay out the Escrow Amount. In such case, the Bank shall forthwith notify the Transferor and Transferee in writing, asking them to submit documents which will comply with the Bank's requirements for Documents and to do so by the Deadline specified below (at the latest).

- 2.10 If the Bank fails to receive all the Documents by [REDACTED] at the latest (the "**Deadline**"), it shall credit the Escrow Amount to the accounts from which the relevant part of the Escrow Amount has been transferred to the Account, and shall do so within 5 (five) Business Days of the lapse of the Deadline.
- 2.11 The Bank may only credit the Escrow Amount to the accounts specified in the foregoing Article before the lapse of the Deadline in case that: no SPA has been executed; or the SPA is cancelled by the Transferor or the Transferee, however, only on condition that the Bank receives a written approval concerning the aforesaid circumstances from the Transferor and Transferee, with officially authenticated (notarised) signatures.
- 2.12 The Bank's obligation to pay out the Escrow Amount pursuant to this Agreement shall be limited by the available amount thereof deposited by the Transferee into the Account. No provision of this Agreement shall be construed or interpreted as an obligation of the Bank to make any payment from its own funds. The Bank shall make no assignment/transfer of the Escrow Amount pursuant to this Agreement if such an assignment/transfer should be inconsistent with law or a legally binding decision or ruling of public authorities, law court, or court of arbitration, and/or with any other binding judgment. The Bank shall transfer all the positive balance remaining in the Escrow Account after the amount as specified in the Pre-Completion Date Notice has been paid (comprising any possible overpayments) to the Transferee's Account, no later than within 5 (five) Business days upon transferring the amount as specified in the Pre-Completion Date Notice pursuant to Article 2.6 of this Agreement.
- 2.13 In case the Escrow Amount is deposited in the Account throughout the dates 31 December 2023 and 1 January 2024 (i.e. the Escrow Amount is deposited in the Account cross the end of the calendar year), the Transferee undertakes to pay the Bank the amount corresponding to 0,2 % (flat) of the Escrow Amount, not later than 5 (five) Business Days upon the end of the calendar year (this amount is equal to the contribution of the Bank to the Crisis Resolution Fund (Resolution Fund) from the Escrow Amount on the basis of Act No. 374/2015 Coll. on recovery and resolution procedures in the financial market). The Contractual Parties agree that if the Transferor is in delay with the payment of such fees, the Bank may deduct the fee under this Article 2.13 from any bank account (other than the Account) of the Transferee kept with the Bank; however, the Bank **is not allowed** to deduct the flat fee from, or offset it against, the Escrow Amount or any other funds on the Account, or block in any way the release of the Escrow Amount to the Transferor once the agreed conditions for such release are fulfilled.

### 3. Fee for the Services

- 3.1 The Bank shall charge a fee of [REDACTED] for the execution of this Agreement. The fee shall become due and payable upon the execution of the Agreement, no later than within 5 Business Days from the date of this Agreement, and shall be paid by the Transferee by transfer to the following account of the Bank: account No.: 1 [REDACTED].
- 3.2 The fact that the Escrow Amount might not have been paid out in the manner envisaged herein for whatever reason, or that this Agreement has ceased to be effective, shall not prejudice the Bank's right to be paid the fee agreed-upon under this Agreement.

### 4. Final Provisions

- 4.1 The Bank shall not make any claims as to the Escrow Amount with respect to either the Transferor or the Transferee in order to settle any contractual relationship between the Bank and either the Transferor or the Transferee, with the exception of the Bank's claim for the fee for the services referred to in Article 3 above.
- 4.2 The following Contact Addresses have been agreed pursuant to the General Conditions:

**Transferor:**

**e-mail:** [REDACTED] or [REDACTED]

**Transferee:**

**e-mail:** [REDACTED] or [REDACTED]

or any other e-mail address notified to the Bank by the either of the Contractual Parties in writing.

**Bank:**

**e-mail:** [REDACTED] or [REDACTED]

- 4.3 This Agreement is executed in [three (3)] original counterparts of which each party shall obtain one (1) original counterpart.
- 4.4 The content of this Agreement may only be changed and/or amended by written amendments upon mutual consent of the Contractual Parties. Provisions of Article 31 of the General Conditions governing changes/amendments to the General Conditions and other documents referred to therein shall not be prejudiced by this clause.
- 4.5 This Agreement and any rights and obligations arising under or in connection with it, including any non-contractual obligations arising under or in connection with this Agreement, shall be governed by and interpreted in accordance with the laws of the Czech Republic.
- 4.6 The courts of the Czech Republic shall have the exclusive jurisdiction to settle any disputes arising under or in connection with this Agreement. All disputes arising under or in connection with this Agreement (including a dispute relating to any non-contractual obligation arising under or in connection with this Agreement) shall be finally decided by the District Court in Prague 1, Czech Republic, unless the law provides that another court of the Czech Republic is exclusively competent.
- 4.7 This Agreement becomes valid as of the date of its execution by the last party and binding and effective upon its publication in the Register of Contracts pursuant to Act No. 340/2015 Coll. On Special Conditions of Effectiveness of Certain Contracts, Publication of these Contracts and the Register of Contracts, as amended (the "Act on Register of Contracts"). The Transferee shall submit an electronic image of the signed Agreement (including metadata prescribed by the Act on Register of Contracts) to the administrator of the Register of Contracts and provide proof thereof to the Transferor and the Bank on the date of signing of this Agreement without undue delay after conclusion of the Agreement. Should the Transferee fail to fulfil his obligation to submit an electronic image of the signed Agreement for publication, pursuant to the Act on Register of Contracts, the Transferor or the Bank are entitled to submit the Agreement for publication in the Register of Contracts.
- 4.8 The Transferee declares and represents that entering into this Agreement does not require any form of public procurement proceedings (in Czech *zadávací řízení*) under Act 134/2016 Coll., the public procurement act (the "Public Procurement Act") and that the Transferor complied with all obligations under the Public Procurement Act, including the principles under Sec. 6 paragraphs 1 to 3 of the Public Procurement Act.
- 4.9 The Contractual Parties agree that the following provisions of the General Conditions are explicitly excluded and do not apply to this Agreement: Articles 6.2, 12, 13, 14, 15, 18.2, 18.3, 24.2, 25.1, 26.2 and 31.

## Annex 1 - Form of Transfer Deed

### VZOR SMLOUVY O PŘEVODU PODÍLU

("Smlouva")

uzavřená mezi smluvními stranami

(1) **GBV Zweiunddreißigste Gesellschaft für Beteiligungsverwaltung mbH**, společnost existující a založená podle německého práva, se sídlem RWE Platz 1, Essen, PSČ 45141, Německo, zapsaná v obchodním rejstříku vedeném místním soudem v Essenu pod číslem HRB 27117 (dále jen "**Prodávající**"); a

(2) **ČEPS, a.s.**, společnost existující a založená podle českého práva, se sídlem Praha 10, Elektrárenská 774/2, PSČ 10152, Česká republika, IČO 25702556, zapsaná v obchodním rejstříku vedeném Městským soudem v Praze, sp zn. B 5597 (dále jen "**Kupující**")

(Prodávající a Kupující dále společně také jako "**Strany**" nebo jednotlivě "**Strana**")

### PREAMBULE

(A) Prodávající je vlastníkem 100 % základního obchodního podílu na společnosti **RWE Gas Storage CZ, s.r.o.**, se sídlem Limuzská 3135/12, Strašnice, 108 00 Praha 10, IČO 278 92 077, zapsané v obchodním rejstříku vedeném Městským soudem v Praze pod sp. zn. C 124711 ("**Cílová Společnost**").

(B) Prodávající si přeje převést na Kupujícího svůj základní podíl na Cílové Společnosti ve výši 100 % odpovídající vkladu do základního kapitálu Cílové Společnosti ve výši 5.649.575.282,- Kč ("**Podíl**") a Kupující si

### TRANSFER DEED FORM

("Deed")

concluded by and between

(1) **GBV Zweiunddreißigste Gesellschaft für Beteiligungsverwaltung mbH**, a company existing and organised under the laws of Germany, having its registered office at RWE Platz 1, Essen, postcode 45141, Germany, registered with the Commercial Register maintained by the local court of Essen, under No. HRB 27117 (hereinafter referred to as the "**Seller**"); and

(2) **ČEPS, a.s.**, a company existing and organised under the laws of the Czech Republic, having its registered office at Prague 10, Elektrárenská 774/2, postcode 10152, the Czech Republic, identification No.: 257 02 556, registered with the Commercial Register maintained by the Municipal Court in Prague, under No. B 5597 (the "**Purchaser**").

(the Seller and the Purchaser also jointly as the "**Parties**" or individually as a "**Party**")

### PREAMBLE

(A) The Seller owns a 100% common ownership interest in **RWE Gas Storage CZ, s.r.o.**, a company existing and organised under the laws of the Czech Republic, having its registered office at Limuzská 3135/12, Strašnice, 10800 Prague 10, the Czech Republic, identification number: 278 92 077, registered with the Commercial Register maintained by the Municipal Court in Prague, file number: C 124711 (the "**Target Company**");

(B) The Seller wishes to transfer to the Purchaser its 100% basic ownership interest in the Target Company corresponding to a contribution to the registered capital of the Target Company in the amount of CZK 5,649,575,282 (the "**Purchased Share**") and the Purchaser

přeje od Prodávajícího Podíl nabyt ("**Převod Podílu**").

wishes to acquire the Purchased Share from the Seller (the "**Purchased Share Transfer**").

(C) Strany před uzavřením této Smlouvy uzavřely smlouvu o koupi Podílu (Share Purchase Agreement) ("**SPA**"), která stanoví některé podmínky Převodu Podílu neuvedené v této Smlouvě. Strany si však přejí, aby k samotnému Převodu Podílu z Prodávajícího na Kupujícího došlo na základě této Smlouvy.

(C) Prior to entering into this Deed, the Parties entered into the Share Purchase Agreement (the "**SPA**") which sets forth certain terms and conditions of the Purchased Share Transfer not expressly stipulated herein. However, the Parties wish that the actual transfer of ownership to the Purchased Share from the Seller to the Purchaser took effect on the basis of this Deed.

## **1. PŘEDMĚT SMLOUVY**

## **1. SUBJECT OF THE DEED**

1.1 Prodávající tímto převádí Kupujícímu a Kupující tímto od Prodávajícího nabyvá vlastnické právo k Podílu.

1.1 The Seller hereby transfers to the Purchaser and the Purchaser hereby acquires from the Seller the ownership of the Purchased Share.

1.2 Kupující zaplatí Prodávajícímu kupní cenu (Purchase Price), jak je tato stanovena v SPA, a to způsobem a ve lhůtách tam stanovenými.

1.2 The Purchaser is obligated to pay to the Seller the Purchase Price as defined in the SPA, and in the manner and time periods stipulated therein.

## **2. PROHLÁŠENÍ KUPUJÍCÍHO**

## **2. PURCHASER'S DECLARATIONS**

2.1 Kupující prohlašuje, že souhlasí se zápisem své osoby jakožto společníka Cílové Společnosti do obchodního rejstříku.

2.1 The Purchaser consents to its entry into the Commercial Register as a shareholder of the Target Company.

2.2 Kupující si je vědom, že okamžikem nabytí Podílu přistupuje k zakladatelské listině Cílové Společnosti, a prohlašuje, že přijímá její obsah a veškerá práva a povinnosti pro Kupujícího z ní plynoucí.

2.2 The Purchaser is aware of the fact that, with effect as of acquiring the Purchased Share, it accedes to the founding deed of the Target Company, and confirms its acceptance of the terms as well as the rights and obligations arising out of such articles of association.

## **3. OSTATNÍ UJEDNÁNÍ**

## **3. OTHER PROVISIONS**

3.1 Veškerá další práva a povinnosti Stran týkající se Převodu Podílu nebo s takovým převodem související jsou obsahem SPA. SPA komplexně upravuje práva a povinnosti Stran v souvislosti s Převodem Podílu realizovaným touto Smlouvou, včetně (nikoli však výlučně) prohlášení Prodávajícího ve vztahu ke stavu Podílu a Cílové Společnosti a úpravy vzájemných odpovědnostních nároků Stran; uzavření této Smlouvy nemá vliv na platnost a účinnost SPA.

3.1 All other rights and obligations of the Parties pertaining to the Purchased Share Transfer or connected therewith are stipulated in the SPA. The SPA set forth a detailed set of rights and obligations of the Parties relating to the Purchased Share Transfer consummated by this Deed, including (without limitation) warranties of the Seller as to the quality of the Purchased Share and the Target Company and the Parties' mutual claims and liabilities; the conclusion of this Deed has no effect on the validity and effectiveness of the SPA.

3.2 Žádná ze Stran nesmí jednostranně odstoupit či jinak tuto Smlouvu jednostranně ukončit, ledaže se tak stane v důsledku odstoupení od SPA, a to z důvodů a za podmínek upravených v SPA. Strany tímto vylučují aplikaci všech dispozitivních ustanovení zákona č. 89/2012 Sb., občanský zákoník, či jiných právních předpisů, které by kterékoli Straně umožňovaly odstoupit či jinak jednostranně ukončit tuto Smlouvu (jinak, než v důsledku odstoupení od SPA z důvodů uvedených v SPA).

#### 4. ZÁVĚREČNÁ UJEDNÁNÍ

4.1 Tato Smlouva nabývá platnosti okamžikem jejího podpisu poslední ze Stran a účinnosti uveřejněním v registru smluv v souladu se zákonem č. 340/2015 Sb., o zvláštních podmínkách účinnosti některých smluv, uveřejňování těchto smluv a o registru smluv (zákon o registru smluv), ve znění pozdějších předpisů ("**Zákon o registru smluv**"). Kupující je povinen předložit správci registru smluv elektronický obraz textového obsahu Smlouvy (včetně metadat předepsaných Zákonem o registru smluv) a doklad o tom předložit Prodávajícímu v den podpisu této Smlouvy bez zbytečného odkladu po jejím uzavření. Nesplní-li Kupující svou povinnost předložit elektronický obraz textového obsahu Smlouvy k uveřejnění, je v souladu se Zákonem o registru smluv oprávněn předložit Smlouvu k uveřejnění v registru smluv Prodávající.

4.2 Je-li nebo stane-li se některé z ujednání této Smlouvy neplatným, zdánlivým, neúčinným nebo nevymahatelným, není tím dotčena platnost, účinnost nebo vymahatelnost ostatních ujednání popř. Smlouvy jako celku. Strany se takové neplatné, zdánlivé, neúčinné nebo nevymahatelné ujednání zavazují bez zbytečného odkladu nahradit v souladu s článkem 4.3 této Smlouvy platným, nikoli zdánlivým, účinným a vymahatelným ujednáním, které se co možná nejvíce blíží původní vůli Stran, jakož i významu a hospodářskému účelu nahrazovaného ujednání, příp. uzavřít novou smlouvu.

3.2 Neither Party may withdraw from or otherwise unilaterally terminate this Deed other than by withdrawing from the SPA, on the grounds set forth therein. The Parties hereby exclude application of any and all non-mandatory provisions of Act No. 89/2012 Coll., the Civil Code, and other statutes which would otherwise entitle either Party to withdraw from or otherwise unilaterally terminate this Deed (other than by withdrawing from the SPA on the grounds set forth therein).

#### 4. FINAL PROVISIONS

4.1 This Deed becomes valid upon its execution by the last Party and binding and effective upon its publication in the Register of Contracts pursuant to Act No. 340/2015 Coll. On Special Conditions of Effectiveness of Certain Contracts, Publication of these Contracts and the Register of Contracts, as amended (the "**Act on Register of Contracts**"). The Purchaser shall submit an electronic image of the signed Deed (including metadata prescribed by the Act on Register of Contracts) to the administrator of the Register of Contracts and provide proof thereof to the Seller on the date of signing of this Deed without undue delay after conclusion of the Deed. Should the Purchaser fail to fulfil his obligation to submit an electronic image of the signed Deed for publication, pursuant to the Act on Register of Contracts, the Seller is entitled to submit the Agreement for publication in the Register of Contracts.

4.2 Should any provision of this Deed become or be held invalid, ostensible, ineffective, or unenforceable, such invalidity, ostensible nature, ineffectiveness, or unenforceability will only affect that provision and will not affect the validity, effectiveness, ostensible nature or enforceability of the remaining provisions of this Deed. Regardless of the foregoing, the Parties shall replace, without delay and in accordance with Clause 4.3 hereof, the erroneous provision with a correct one that most closely approximates, to the fullest extent permitted by law, the Parties will, as well as purpose and economical effects



of the erroneous provision, including a conclusion of a new agreement.

- 4.3 Tato Smlouva může být měněna, doplňována, ukončována či jakkoli jinak upravována pouze na základě písemného dodatku podepsaného každou ze Stran po jejich vzájemné dohodě.
- 4.3 This Deed may be changed, supplemented, terminated or otherwise amended only on the basis of a written amendment signed by each of the Parties following their mutual agreement.
- 4.4 Tato Smlouva a veškeré její dodatky, jakož i veškeré mimosmluvní závazky vyplývající z této Smlouvy nebo v souvislosti s ní, se řídí hmotným právem České republiky, interpretují se a vykládají se v souladu s ním.
- 4.4 This Deed and any amendments thereto, as well as any non-contractual obligations arising out of or in connection with this Deed, will be governed by, interpreted and construed in accordance with, the substantive laws of the Czech Republic.
- 4.5 Veškeré spory vzniklé z této Smlouvy nebo v souvislosti s ní budou s konečnou platností rozhodovány podle Pravidel rozhodčího řízení (Vídeňská pravidla) Vídeňského mezinárodního rozhodčího centra (VIAC) Rakouské spolkové hospodářské komory třemi rozhodci jmenovanými v souladu s uvedenými pravidly. Jazykem rozhodčího řízení bude angličtina a místem rozhodčího řízení bude Vídeň, Rakousko.
- 4.5 All disputes arising out of or in connection with this Agreement shall be finally settled under the Rules of Arbitration (Vienna Rules) of the Vienna International Arbitral Centre (VIAC) of the Austrian Federal Economic Chamber by three arbitrators appointed in accordance with the said Rules. The language of the arbitral proceedings shall be English and the place of arbitration will be Vienna, Austria.
- 4.6 Tato Smlouva je vyhotovena v pěti (5) stejnopisech. Kupující a Společnost dostanou každá po jednom (1) stejnopisu, dva (2) stejnopisy dostane Prodávající (z čehož jeden přenechá Escrow Agentovi) a jeden (1) stejnopis bude podán k příslušnému soudu za účelem zápisu změn týkajících se Cílové společnosti do obchodního rejstříku.
- 4.6 This Deed has been executed in five (5) originals. The Purchaser and the Target Company shall receive one (1) original, two (2) originals shall be received by the Seller (of which one shall be provided to the Escrow Agent), and one (1) original shall be filed with the respective court for the purpose of registration of the changes in the Target Company's entry in the Commercial Register.
- 4.7 V případě rozporu mezi českým a anglickým zněním této Smlouvy je rozhodující znění české.
- 4.7 In the event of any discrepancies between the Czech and English versions of the Deed, the Czech version shall prevail.

V / In \_\_\_\_\_ dne/on \_\_\_\_\_ [2023]

GBV Zweiunddreißigste Gesellschaft für Beteiligungsverwaltung mbH

\_\_\_\_\_  
Jméno/Name: [...]

\_\_\_\_\_  
Jméno/Name: [...]

Pozice/Position: [...]

Pozice/Position: [...]

ČEPS, a.s.

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Jméno/Name: [...]

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Jméno/Name: [...]

Pozice/Position: [...]

Pozice/Position: [...]

Shora uvedená účinná smlouva o převodu podílu byla společností RWE Gas Storage CZ, s.r.o. doručena níže uvedeného dne. *The above-mentioned effective transfer deed was delivered to RWE Gas Storage CZ, s.r.o. on the date set out below.*

V / In \_\_\_\_\_ dne/on \_\_\_\_\_ [2023]

**RWE Gas Storage CZ, s.r.o.**

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Jméno / Name: [...]

Funkce / Position: jednatel / executive director

**Transferor:**

In Prague, on 24 August

**GBV    Zweiunddreißigste    Gesellschaft    für**  
**Beteiligungsverwaltung mbH**

---

Name: [REDACTED]  
Title: [REDACTED]

---

Name: [REDACTED]  
Title: [REDACTED]

**Transferee:**

In Prague, on 24 August

**ČEPS, a.s.**

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Name: [REDACTED]  
Title: [REDACTED]

---

Name: [REDACTED]  
Title: [REDACTED]

**Bank:**

In Prague, on 24 August

**Komerční banka, a.s.**

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Name: [REDACTED]  
Title: [REDACTED]

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Name: [REDACTED]  
Title: [REDACTED]

**SCHEDULE 3.2**  
**LOCKED BOX DEFINITIONS**

1. **"Leakage"** means any of the following actions having taken or taking place between the Locked Box Date and Completion:
  - 1.1. any dividend or any other equity distribution declared, paid or made by the Target Company to the Seller or any of its Affiliates;
  - 1.2. the Target Company granting or committing to any payments to the Seller or any of its Affiliates in respect of share capital decreases;
  - 1.3. any payments being made by the Target Company to the Seller in respect of any securities issued by the Target Company and held by the Seller, including such securities being redeemed, purchased or repaid by the Target Company;
  - 1.4. any waiver or release by the Target Company of any amount or monetary obligation owed to the Target Company by the Seller or any of its Affiliates;
  - 1.5. any sale or purchase of assets with a value exceeding [REDACTED] in aggregate or for which no adequate consideration is received, made by the Target Company to the Seller or any of its Affiliates;
  - 1.6. any payments (whether in cash or in-kind) resulting from the performance of any cash pooling involving pooling of bank accounts of the Target Company with participation of a bank (performing such pooling of accounts) to a bank account of the Seller or any of its Affiliates (other than the Target Company);
  - 1.7. any payments of or incurring any obligation to pay any costs by the Target Company of third party advisers to the Seller or any of its Affiliates (other than the Target Company itself) including legal, consulting, accounting or other professional charges, fees, expenses in connection with the transactions contemplated in this Agreement including any such third party costs incurred in connection with the negotiation, preparation, execution and carrying into effect of any of the documents related to the transactions contemplated in this Agreement;
  - 1.8. any payments, creation of claims, assumption of debt, granting of guarantees or other collateral, and waivers of claims of the Target Company to (including commitments and decisions to undertake any of the foregoing) to or for the benefit of the Seller or any of its Affiliates exceeding [REDACTED] in aggregate or for which no adequate consideration is received;
  - 1.9. any agreement or arrangement made or entered into by the Target Company to do or give effect to any matter referred to above,

provided, in each case, that such action does not fall under the definition of a Permitted Leakage pursuant to paragraph 2 below.

2. **"Permitted Leakage"** means (i) any action listed in this paragraph 2 below, and (ii) any Leakage otherwise expressly permitted in this Agreement, including any matter undertaken in compliance with interim covenants set forth in Section 4.2:
- 2.1. any discharge of a liability reflected or referenced to in the Accounts, shown as a debt, provision or liability;
  - 2.2. a dividend for the fiscal year ending 31 December 2022 in the amount of CZK 363,118,582.60 which has already been paid by the Target Company to the Seller;
  - 2.3. repayment of any amounts drawn by the Target Company, and payment of interests accrued, after the Locked Box Date under the Standby Facility Agreement (whether by transfer of a sum of money or by way of set-off);
  - 2.4. investments by the Target Company of its surplus cash into upstream loan instruments issued by RWE Aktiengesellschaft or its Affiliates on condition that such cash will be repaid in full (whether by transfer of a sum of money or by way of set-off) no later than on the Completion Date;
  - 2.5. payments under service agreements and other contracts between the Target Company and the Seller and/or its Affiliates Disclosed in the Data Room and not exceeding the amount shown therein or calculated pursuant to the rules contained therein;
  - 2.6. payments under storage contracts between the Target Company and the Seller and/or its Affiliates made in the Ordinary Course of Business;
  - 2.7. payments under agreements on supply of natural gas used for the operation of the Target Company and its equipment (including, in particular, gas for heating and powering the Target Company's technical equipment) made between the Target Company and the Seller and/or its Affiliates in the Ordinary Course of Business;
  - 2.8. payments under and in compliance with the Transitional Service Agreements;
  - 2.9. any costs not exceeding [REDACTED] in total incurred by the Target Company in connection with organising and populating a Data Room, the payment of transaction bonuses or similar fees, salaries or other remuneration to directors, employees and/or other personnel of the Target Company in connection with the transaction envisaged by this Agreement, entering into appropriate non-disclosure arrangements, obtaining compliance advice and providing relating services, cooperation and support in connection with the change of ownership envisaged under this Agreement and which were compensated to the Target Company by the Seller or its Affiliates prior to or after the Completion Date;
  - 2.10. any payment, transfer, acquisition, assumption, transaction, agreement or amendment made or agreed to be made or liability, cost or expense incurred or assumed or agreed to be incurred or assumed relating to any derivative transactions of the Target Company intended to hedge against currency risks, interest rate risks, volatility risks, commodity risks or credit risks Disclosed in the Data Room;

- 2.11. any sale of assets made by the Target Company to the Seller or any of its Affiliates or any acquisition of assets made by the Target Company from the Seller or any of its Affiliates, in each case in the Ordinary Course of Business;
- 2.12. any payment, transfer, acquisition, assumption, transaction, agreement or amendment made or agreed to be made or liability, cost or expense incurred or assumed or agreed to be incurred or assumed at the written request of, or with the prior written consent of the Purchaser
- 2.13. any Taxes and documented reasonable costs incurred by the Target Company directly and exclusively due to any of the events set out in paragraphs 2.1 through 2.12 above.

**SCHEDULE 5.3(C)(IV)  
ARRANGEMENTS TO TERMINATE AT COMPLETION**

**A. SLAs with the Target Company as recipient**

No.	Provider	Recipient	Contract	Start Date	Data Room ref.	Notes
1	[REDACTED]	Target Company	[REDACTED]	[REDACTED]	5.5.3.4	[REDACTED]
2	[REDACTED]	Target Company	[REDACTED]	[REDACTED]	5.5.3.6	[REDACTED]
3	[REDACTED]	Target Company	[REDACTED]	[REDACTED]	5.5.3.22	[REDACTED]
4	[REDACTED]	Target Company	[REDACTED]	[REDACTED]	5.5.3.23	[REDACTED]
5	[REDACTED]	Target Company	[REDACTED]	[REDACTED]	5.5.3.23	[REDACTED]
6	[REDACTED]	Target Company	[REDACTED]	[REDACTED]	5.5.3.24	[REDACTED]
7	[REDACTED]	Target Company	[REDACTED]	[REDACTED]	5.5.3.9 and 5.5.3.23	[REDACTED]
8	[REDACTED]	Target Company	[REDACTED]	[REDACTED]	5.5.3.25	[REDACTED]
9	[REDACTED]	Target Company	[REDACTED]	[REDACTED]	5.5.3.26	[REDACTED]

10		Target Company			5.5.3.26	
11		Target Company			5.5.3.26	
12		Target Company			5.5.3.27	

**B. SLAs with the Target Company as provider**

No.	Provider	Recipient	Contract	Start Date	Data Room ref.	Notes
1	Target Company				5.5.3.15	
3	Target Company				5.5.3.16 through 5.5.3.21	



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**C. Financing Agreements**

No.	Provider	Recipient	Contract	Date	Data ref.	Room	Notes
1	[REDACTED]	Target Company	[REDACTED]	[REDACTED]	3.6.9.9		[REDACTED]
2	[REDACTED]	Target Company	[REDACTED]	[REDACTED]	3.6.9.26		[REDACTED]
3	[REDACTED]	Target Company	[REDACTED]	[REDACTED]	3.6.9.6		[REDACTED]
4	[REDACTED]	Target Company	[REDACTED]	[REDACTED]	3.6.9.8		[REDACTED]
5	[REDACTED]	Target Company	[REDACTED]	[REDACTED]	3.6.4.4		[REDACTED]
6	[REDACTED]	Target Company	[REDACTED]	[REDACTED]	3.6.4.2		[REDACTED]
7	[REDACTED]	Target Company	[REDACTED]	[REDACTED]	3.6.4.3		[REDACTED]

**SCHEDULE 5.3(F)**  
**FORM OF TRANSFER DEED**

*[Enclosed overleaf]*

## VZOR SMLOUVY O PŘEVODU PODÍLU

("Smlouva")

uzavřená mezi smluvními stranami

(1) **GBV Zweiunddreißigste Gesellschaft für Beteiligungsverwaltung mbH**, společnost existující a založená podle německého práva, se sídlem RWE Platz 1, Essen, PSČ 45141, Německo, zapsaná v obchodním rejstříku vedeném místním soudem v Essenu pod číslem HRB 27117 (dále jen "**Prodávající**"); a

(2) **ČEPS, a.s.**, společnost existující a založená podle českého práva, se sídlem Praha 10, Elektrárenská 774/2, PSČ 10152, Česká republika, IČO 25702556, zapsaná v obchodním rejstříku vedeném Městským soudem v Praze, sp zn. B 5597 (dále jen "**Kupující**")

(Prodávající a Kupující dále společně také jako "**Strany**" nebo jednotlivě "**Strana**")

### PREAMBULE

(A) Prodávající je vlastníkem 100 % základního obchodního podílu na společnosti **RWE Gas Storage CZ, s.r.o.**, se sídlem Limuzská 3135/12, Strašnice, 108 00 Praha 10, IČO 278 92 077, zapsané v obchodním rejstříku vedeném Městským soudem v Praze pod sp. zn. C 124711 ("**Cílová Společnost**").

(B) Prodávající si přeje převést na Kupujícího svůj základní podíl na Cílové Společnosti ve výši 100 % odpovídající vkladu do základního kapitálu Cílové Společnosti ve výši 5.649.575.282,- Kč ("**Podíl**") a Kupující si přeje od Prodávajícího Podíl nabýt ("**Převod Podílu**").

(C) Strany před uzavřením této Smlouvy uzavřely smlouvu o koupi Podílu (Share Purchase

## TRANSFER DEED FORM

("Deed")

concluded by and between

(1) **GBV Zweiunddreißigste Gesellschaft für Beteiligungsverwaltung mbH**, a company existing and organised under the laws of Germany, having its registered office at RWE Platz 1, Essen, postcode 45141, Germany, registered with the Commercial Register maintained by the local court of Essen, under No. HRB 27117 (hereinafter referred to as the "**Seller**"); and

(2) **ČEPS, a.s.**, a company existing and organised under the laws of the Czech Republic, having its registered office at Prague 10, Elektrárenská 774/2, postcode 10152, the Czech Republic, identification No.: 257 02 556, registered with the Commercial Register maintained by the Municipal Court in Prague, under No. B 5597 (the "**Purchaser**").

(the Seller and the Purchaser also jointly as the "**Parties**" or individually as a "**Party**")

### PREAMBLE

(A) The Seller owns a 100% common ownership interest in **RWE Gas Storage CZ, s.r.o.**, a company existing and organised under the laws of the Czech Republic, having its registered office at Limuzská 3135/12, Strašnice, 10800 Prague 10, the Czech Republic, identification number: 278 92 077, registered with the Commercial Register maintained by the Municipal Court in Prague, file number: C 124711 (the "**Target Company**");

(B) The Seller wishes to transfer to the Purchaser its 100% basic ownership interest in the Target Company corresponding to a contribution to the registered capital of the Target Company in the amount of CZK 5,649,575,282 (the "**Purchased Share**") and the Purchaser wishes to acquire the Purchased Share from the Seller (the "**Purchased Share Transfer**").

(C) Prior to entering into this Deed, the Parties entered into the Share Purchase Agreement

Agreement) ("**SPA**"), která stanoví některé podmínky Převodu Podílu neuvedené v této Smlouvě. Strany si však přejí, aby k samotnému Převodu Podílu z Prodávajícího na Kupujícího došlo na základě této Smlouvy.

(the "**SPA**") which sets forth certain terms and conditions of the Purchased Share Transfer not expressly stipulated herein. However, the Parties wish that the actual transfer of ownership to the Purchased Share from the Seller to the Purchaser took effect on the basis of this Deed.

## **1. PŘEDMĚT SMLOUVY**

- 1.1 Prodávající tímto převádí Kupujícímu a Kupující tímto od Prodávajícího nabyvá vlastnické právo k Podílu.
- 1.2 Kupující zaplatí Prodávajícímu kupní cenu (Purchase Price), jak je tato stanovena v SPA, a to způsobem a ve lhůtách tam stanovenými.

## **2. PROHLÁŠENÍ KUPUJÍCÍHO**

- 2.1 Kupující prohlašuje, že souhlasí se zápisem své osoby jakožto společníka Cílové Společnosti do obchodního rejstříku.
- 2.2 Kupující si je vědom, že okamžikem nabytí Podílu přistupuje k zakladatelské listině Cílové Společnosti, a prohlašuje, že přijímá její obsah a veškerá práva a povinnosti pro Kupujícího z ní plynoucí.

## **3. OSTATNÍ UJEDNÁNÍ**

- 3.1 Veškerá další práva a povinnosti Stran týkající se Převodu Podílu nebo s takovým převodem související jsou obsahem SPA. SPA komplexně upravuje práva a povinnosti Stran v souvislosti s Převodem Podílu realizovaným touto Smlouvou, včetně (nikoli však výlučně) prohlášení Prodávajícího ve vztahu ke stavu Podílu a Cílové Společnosti a úpravy vzájemných odpovědnostních nároků Stran; uzavření této Smlouvy nemá vliv na platnost a účinnost SPA.
- 3.2 Žádná ze Stran nesmí jednostranně odstoupit či jinak tuto Smlouvu jednostranně ukončit, ledaže se tak stane v důsledku odstoupení od SPA, a to z důvodů a za podmínek upravených v SPA. Strany tímto vylučují aplikaci všech dispozitivních ustanovení zákona č. 89/2012

## **1. SUBJECT OF THE DEED**

- 1.1 The Seller hereby transfers to the Purchaser and the Purchaser hereby acquires from the Seller the ownership of the Purchased Share.
- 1.2 The Purchaser is obligated to pay to the Seller the Purchase Price as defined in the SPA, and in the manner and time periods stipulated therein.

## **2. PURCHASER'S DECLARATIONS**

- 2.1 The Purchaser consents to its entry into the Commercial Register as a shareholder of the Target Company.
- 2.2 The Purchaser is aware of the fact that, with effect as of acquiring the Purchased Share, it accedes to the founding deed of the Target Company, and confirms its acceptance of the terms as well as the rights and obligations arising out of such articles of association.

## **3. OTHER PROVISIONS**

- 3.1 All other rights and obligations of the Parties pertaining to the Purchased Share Transfer or connected therewith are stipulated in the SPA. The SPA set forth a detailed set of rights and obligations of the Parties relating to the Purchased Share Transfer consummated by this Deed, including (without limitation) warranties of the Seller as to the quality of the Purchased Share and the Target Company and the Parties' mutual claims and liabilities; the conclusion of this Deed has no effect on the validity and effectiveness of the SPA.
- 3.2 Neither Party may withdraw from or otherwise unilaterally terminate this Deed other than by withdrawing from the SPA, on the grounds set forth therein. The Parties hereby exclude application of any and all non-mandatory provisions of Act No. 89/2012 Coll., the Civil

Sb., občanský zákoník, či jiných právních předpisů, které by kterékoli Straně umožňovaly odstoupit či jinak jednostranně ukončit tuto Smlouvu (jinak, než v důsledku odstoupení od SPA z důvodů uvedených v SPA).

#### 4. ZÁVĚREČNÁ UJEDNÁNÍ

4.1 Tato Smlouva nabývá platnosti okamžikem jejího podpisu poslední ze Stran a účinnosti uveřejněním v registru smluv v souladu se zákonem č. 340/2015 Sb., o zvláštních podmínkách účinnosti některých smluv, uveřejňování těchto smluv a o registru smluv (zákon o registru smluv), ve znění pozdějších předpisů ("**Zákon o registru smluv**"). Kupující je povinen předložit správci registru smluv elektronický obraz textového obsahu Smlouvy (včetně metadat předepsaných Zákonem o registru smluv) a doklad o tom předložit Prodávajícímu v den podpisu této Smlouvy bez zbytečného odkladu po jejím uzavření. Nesplní-li Kupující svou povinnost předložit elektronický obraz textového obsahu Smlouvy k uveřejnění, je v souladu se Zákonem o registru smluv oprávněn předložit Smlouvu k uveřejnění v registru smluv Prodávající.

4.2 Je-li nebo stane-li se některé z ujednání této Smlouvy neplatným, zdánlivým, neúčinným nebo nevymahatelným, není tím dotčena platnost, účinnost nebo vymahatelnost ostatních ujednání popř. Smlouvy jako celku. Strany se takové neplatné, zdánlivé, neúčinné nebo nevymahatelné ujednání zavazují bez zbytečného odkladu nahradit v souladu s článkem 4.3 této Smlouvy platným, nikoli zdánlivým, účinným a vymahatelným ujednáním, které se co možná nejvíce blíží původní vůli Stran, jakož i významu a hospodářskému účelu nahrazovaného ujednání, příp. uzavřít novou smlouvu.

4.3 Tato Smlouva může být měněna, doplňována, ukončována či jakkoli jinak upravována pouze na základě písemného dodatku podepsaného každou ze Stran po jejich vzájemné dohodě.

Code, and other statutes which would otherwise entitle either Party to withdraw from or otherwise unilaterally terminate this Deed (other than by withdrawing from the SPA on the grounds set forth therein).

#### 4. FINAL PROVISIONS

4.1 This Deed becomes valid upon its execution by the last Party and binding and effective upon its publication in the Register of Contracts pursuant to Act No. 340/2015 Coll. On Special Conditions of Effectiveness of Certain Contracts, Publication of these Contracts and the Register of Contracts, as amended (the "**Act on Register of Contracts**"). The Purchaser shall submit an electronic image of the signed Deed (including metadata prescribed by the Act on Register of Contracts) to the administrator of the Register of Contracts and provide proof thereof to the Seller on the date of signing of this Deed without undue delay after conclusion of the Deed. Should the Purchaser fail to fulfil his obligation to submit an electronic image of the signed Deed for publication, pursuant to the Act on Register of Contracts, the Seller is entitled to submit the Agreement for publication in the Register of Contracts.

4.2 Should any provision of this Deed become or be held invalid, ostensible, ineffective, or unenforceable, such invalidity, ostensible nature, ineffectiveness, or unenforceability will only affect that provision and will not affect the validity, effectiveness, ostensible nature or enforceability of the remaining provisions of this Deed. Regardless of the foregoing, the Parties shall replace, without delay and in accordance with Clause 4.3 hereof, the erroneous provision with a correct one that most closely approximates, to the fullest extent permitted by law, the Parties will, as well as purpose and economical effects of the erroneous provision, including a conclusion of a new agreement.

4.3 This Deed may be changed, supplemented, terminated or otherwise amended only on the basis of a written amendment signed by each

of the Parties following their mutual agreement.

- 4.4 Tato Smlouva a veškeré její dodatky, jakož i veškeré mimosmluvní závazky vyplývající z této Smlouvy nebo v souvislosti s ní, se řídí hmotným právem České republiky, interpretují se a vykládají se v souladu s ním.
- 4.4 This Deed and any amendments thereto, as well as any non-contractual obligations arising out of or in connection with this Deed, will be governed by, interpreted and construed in accordance with, the substantive laws of the Czech Republic.
- 4.5 Veškeré spory vzniklé z této Smlouvy nebo v souvislosti s ní budou s konečnou platností rozhodovány podle Pravidel rozhodčího řízení (Vídeňská pravidla) Vídeňského mezinárodního rozhodčího centra (VIAC) Rakouské spolkové hospodářské komory třemi rozhodci jmenovanými v souladu s uvedenými pravidly. Jazykem rozhodčího řízení bude angličtina a místem rozhodčího řízení bude Vídeň, Rakousko.
- 4.5 All disputes arising out of or in connection with this Agreement shall be finally settled under the Rules of Arbitration (Vienna Rules) of the Vienna International Arbitral Centre (VIAC) of the Austrian Federal Economic Chamber by three arbitrators appointed in accordance with the said Rules. The language of the arbitral proceedings shall be English and the place of arbitration will be Vienna, Austria.
- 4.6 Tato Smlouva je vyhotovena v pěti (5) stejnopisech. Kupující a Společnost dostanou každá po jednom (1) stejnopisu, dva (2) stejnopisy dostane Prodávající (z čehož jeden přenechá Escrow Agentovi) a jeden (1) stejnopis bude podán k příslušnému soudu za účelem zápisu změn týkajících se Cílové společnosti do obchodního rejstříku.
- 4.6 This Deed has been executed in five (5) originals. The Purchaser and the Target Company shall receive one (1) original, two (2) originals shall be received by the Seller (of which one shall be provided to the Escrow Agent), and one (1) original shall be filed with the respective court for the purpose of registration of the changes in the Target Company's entry in the Commercial Register.
- 4.7 V případě rozporu mezi českým a anglickým zněním této Smlouvy je rozhodující znění české.
- 4.7 In the event of any discrepancies between the Czech and English versions of the Deed, the Czech version shall prevail.

V / In \_\_\_\_\_ dne/on \_\_\_\_\_ [2023]

GBV Zweiunddreißigste Gesellschaft für Beteiligungsverwaltung mbH

\_\_\_\_\_  
Jméno/Name: [...]

Pozice/Position: [...]

\_\_\_\_\_  
Jméno/Name: [...]

Pozice/Position: [...]

ČEPS, a.s.

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Jméno/Name: [...]

Pozice/Position: [...]

---

Jméno/Name: [...]

Pozice/Position: [...]

Shora uvedená účinná smlouva o převodu *The above-mentioned effective transfer deed was*  
podílu byla společností RWE Gas Storage CZ, *delivered to RWE Gas Storage CZ, s.r.o. on the date*  
s.r.o. doručena níže uvedeného dne. *set out below.*

V / In \_\_\_\_\_ dne/on \_\_\_\_\_ [2023]

**RWE Gas Storage CZ, s.r.o.**

---

Jméno / Name: [...]

Funkce / Position: jednatel / executive director



**SCHEDULE 6.1(A)**  
**SELLER'S WARRANTIES**

1. Seller's Personal Warranties

- 1.1. The Seller is a company duly established and validly existing under the laws of Germany and is considered a tax resident for the purposes of the German tax law and beneficial owner of the shares and Purchase price. The Seller enters into this Agreement on its own account and does not act as a trustee, agent or representative of any other person.
- 1.2. The Seller and persons acting on its behalf have obtained all the necessary corporate consents and approvals and have the power to execute this Agreement and any other documents to be executed by the Seller pursuant to or in connection with this Agreement, to perform its obligations under this Agreement and any such other documents and to consummate the transactions contemplated hereby. This Agreement (assuming its due execution on behalf of the Purchaser) constitutes legally binding and enforceable obligations for the Seller.
- 1.3. Neither the execution nor the consummation of the transactions contemplated in this Agreement will violate (i) any agreement or instrument to which the Seller is a party, or (ii) the constitutional documents of the Seller, or (iii) the regulations bounding upon the Seller (including those governing the permitted investments, as well as the safety, quality, liquidity, profitability and composition of the investments of the Seller and/or any of its shareholders).
- 1.4. No insolvency proceedings have been commenced or are threatened against the Seller nor has an insolvency administrator, liquidator or similar officer been appointed with respect to the Seller's business, assets or undertaking (or any part thereof). No notice has been given or filed with the court by the Seller of an intention to appoint such insolvency administrator, liquidator or similar officer. The Seller is not insolvent or unable to pay its debts as they become due. No resolution has been passed for the winding up or dissolution of the Seller, and no application for a temporary protection against creditors has been filed or is intended to be filed by the Seller.
- 1.5. This Agreement (or the transactions contemplated herein) does not curtail the Seller's creditors, nor does it establish rights for them from a contestable legal act within the meaning of Sections 589 et seq. of the Civil Code and provisions of Section 111(3), Sections 235 et seq. and Section 246(2) of Act No. 182/2006 Coll., on Bankruptcy and Methods of its Resolution (Insolvency Act), as amended, or equivalent provisions in any other jurisdiction.

2. Target Company and Purchased Share

- 2.1. The Target Company is a company validly established and existing under the laws of the Czech Republic.
- 2.2. No insolvency proceedings have been commenced or are threatened against the Target Company nor has an insolvency administrator, liquidator or similar officer been appointed with respect to the Target Company's assets (or any part thereof). The Target

Company is not insolvent or unable to pay its debts as they become due. No resolution has been passed for the winding up or dissolution of the Target Company, and no application for a temporary protection against creditors has been filed or is intended to be filed by the Target Company.

- 2.3. The Target Company is not insolvent or unable to pay its debts as they become due in any relevant jurisdiction.
- 2.4. The Seller is the sole owner of the Purchased Share, while its transferability and the voting rights related to it are not restricted in any way.
- 2.5. The Purchased Share represents a 100 % stake in registered capital and voting rights in the Target Company and such registered capital has been fully paid up. The voting rights and the right to share in profits are associated with the Purchased Share, as stipulated by legal regulations and the Target Company's constitutional documents. No contribution to the registered capital or outside the registered capital provided by the Seller to the Target Company has been returned nor is there a decision or another document relating to such a return. The Purchased Share is not represented by a share certificate (in Czech: *kmenový list*).
- 2.6. There are no pre-emptive or option rights to the Purchased Share nor any outstanding securities or rights convertible into the Purchased Share or any participation in the Target Company's registered capital. The Purchased Share is not limited by any encumbrance except the rights and obligations set forth in the Target Company's constitutional documents. No third party is entitled to require the transfer of the Purchased Share, nor does any right of first refusal exist with respect to the Purchased Share (or parts thereof). No claim of any third person asserting the ownership of, or the right to be transferred, the Purchased Share (or parts thereof) has been delivered to the Seller or the Target Company.

### 3. Corporate Matters

- 3.1. The Target Company's constitutional documents contain all the requirements stipulated by law, contain up-to-date data, are complete and with the exceptions contemplated in this Agreement, no steps have been taken to amend or replace them. All information presented about the Target Company in the Commercial Register is up to date and complete.
- 3.2. Neither the Target Company nor its bodies have made any decision or proposal on (i) increase or decrease of the registered capital of the Target Company, (ii) transformation pursuant to Act No. 125/2008 Coll., or (iii) any changes that are entered in a Commercial Register without such entry being made.
- 3.3. The Target Company (i) does not own any shares, stakes, ownership interests or participating securities in another corporation, (ii) does not act as a member of a corporate body in another corporation, and (iii) has no branches, organizational units or any other similar long-term representation outside the Czech Republic.

4. Accounts and Liabilities

- 4.1. All accounts, books, ledgers and other financial records of the Target Company have been properly maintained and audited (if applicable) and contain accurate records of all matters required by applicable laws in order to give a true and fair view, in all material respects, of matters which ought to appear in them.
- 4.2. The financial statements for the accounting period ending on 31 December 2022 (the "**Accounts**"), were Disclosed in the Data Room and have been prepared in accordance with local GAAP consistently applied and give a true and fair view, in all material respects, of the assets liabilities and financial results of the Target Company as at the date to which they have been prepared.
- 4.3. Except for the liabilities reflected in the Accounts, the Target Company had no other liabilities or contingent liabilities that should have been reflected in the Accounts (including liabilities/debts arising from promissory notes, guarantees, factoring or financial leasing). The Target Company is not a creditor of any outstanding loans or credits.
- 4.4. The Target Company is under no obligation arising out of any liability (including statutory liability), financial securities, indemnity (except for the usual indemnity promises for breach of its own obligations that are part of agreements concluded within the Ordinary Course of Business), debt assumption or letter of credit. The Target Company did not issue bonds or promissory notes and did not guarantee any promissory notes.

5. Ownership of Storage Facilities

- 5.1. The Target Company is the sole owner of real estate comprising six underground gas storage facilities located in Dolní Dunajovice, Tvrdonice, Třanovice, Štramberk, Lobodice and Háje, as registered on title deeds (in Czech: "*list vlastnictví*") of the Target Company Disclosed in the Data Room folder number 10.6, subject to changes and disposals (including sale or other transfers) from time to time in the Ordinary Course of Business (the "**Storage Facilities**"), including all of their material components and accessories (such as wells, compressors and gathering stations), except for such components and accessories rented to the Target Company under rental and lease contracts that were Disclosed in the Data Room.
- 5.2. The title to the Storage Facilities is not limited in any way and the Storage Facilities are not encumbered with the exception of (i) any rights of third parties registered in the Land Register, (ii) the rights existing by law, administrative decisions and protective zones pursuant to the applicable legal regulations, (iii) rights of third parties (tenants) based on rental and/or lease contracts that were either (x) Disclosed in the Data Room or (y) with respect to which the annual remuneration does not exceed [REDACTED] per rental and/or lease contract.
- 5.3. To the Seller's knowledge, (i) no court proceedings are being conducted with respect to the Storage Facilities under which the Target Company's title to the Storage Facilities could be affected or the title to the Storage Facilities could be restricted; and (ii) there are no court proceedings concerning borders, rights (neither for the benefit

nor to the debit of the Storage Facilities) or court proceedings otherwise concerning the Storage Facilities.

5.4. To the Seller's knowledge:

- (a) No Storage Facility (or any part thereof) is subject to any execution, arbitration, insolvency, enforcement proceedings or any other judicial or administrative proceedings.
- (b) There are no grounds for any third party to withdraw from any acquisition titles (unless such right of withdrawal is already statute-barred) as a result of which the Target Company would lose its title to the Storage Facilities and there are no proceedings in which third parties would claim ownership or any other legal title to any Storage Facility.
- (c) No Storage Facility (or any part thereof) is subject to a restitution claim of a former owner or the former owner's successor (including a restitution claim that may be exercised by churches or religious societies) and no Storage Facility (or any part thereof) is subject to any expropriation proceedings.
- (d) There are no decisions of any public authorities with respect to the Storage Facilities under which the Purchaser or the Target Company would be obliged to pay any amounts other than (i) those ensuing from the legal regulations (including but not limited to Tax and municipal charges) and (ii) usual payments necessary for the day-to-day operation and use of the Storage Facilities.

6. Condition of Storage Facilities

- 6.1. The Storage Facilities were built and, to the Seller's knowledge, are operated in all material aspects in accordance with the applicable legal regulations of the Czech Republic.
- 6.2. To the Seller's knowledge, each Storage Facility is in good condition and properly maintained, subject to usual wear and tear, erosion and deterioration.
- 6.3. Access for pedestrians and vehicles is established to each Storage Facility directly from the public road either (i) through the land owned by the Target Company or (ii) through a third-party land in which case the access is established either (a) via the appropriate lease, easement or other title or (b) under applicable energy law (directly by operation of law).
- 6.4. Each Storage Facility is connected to the gas transmission network and/or the gas distribution network in the Czech Republic. All connections up to the transfer point are owned by the Target Company. If such a connection is led over or under the lands owned by other persons, the Target Company has all the rights necessary for such a permanent connection, subject to changes and disposals from time to time in the Ordinary Course of Business.

7. Compliance with Laws

- 7.1. To the Seller's knowledge, the Target Company conducted prior to the Signing Date its Main Business in all material respects in accordance with applicable laws.
- 7.2. The Target Company is not, or was not during the [REDACTED] prior to the Signing Date, subject to any investigation by any Governmental Entity nor did it receive during the [REDACTED] prior to the Signing Date any written notice or written communication from any Governmental Entity stating that it is in material violation of any material laws.

8. Environmental

- 8.1. During the [REDACTED] prior to the Signing Date, no written complaints or written notices from Governmental Entities or any other third parties have been received by the Seller or the Target Company which are outstanding at the Signing Date, and which allege a breach by or liability of the Target Company under any Environmental Law.
- 8.2. To the Seller's knowledge, the Target Company is operating its business and has fully and timely complied during [REDACTED] prior to the Signing Date with all obligations applicable to it under the Environmental Laws. To the Seller's knowledge, there are no circumstances which may give rise to any liability, obligation or duty of the Target Company under the applicable law insofar as it relates to environmental matters (including decommissioning, rehabilitation or reclamation).

9. Events since Locked Box Date

- 9.1. Save as set out in Schedule 6.1(a)9, since the Locked Box Date, the Target Company:
- (a) has operated its business in the Ordinary Course of Business and without any material interruption or material alteration in the nature or manner of its Main Business;
  - (b) has not entered into any new loan agreement or any other credit facility or otherwise incurred any new indebtedness, or assumed or incurred any other Financial Liability; except that it may have borrowed or otherwise utilised the unused facilities under the loan agreements or other credit facilities existing as at the Signing Date and which have been Disclosed in the Data Room;
  - (c) has not disposed of any asset having a net book value exceeding [REDACTED] or any assets having a net book value exceeding, in aggregate, [REDACTED], save for disposals in the Ordinary Course of Business;
  - (d) has not incurred capital expenditures exceeding by more than [REDACTED] the amounts Disclosed in the Data Room (Data Room document no. 1.1.1.1 titled "2022.02 - Dvorak – CIM", p. 85); and
  - (e) has not agreed, conditionally or otherwise, to do any of the foregoing.

10. Material Contracts

10.1. "Material Contract" means [REDACTED]  
[REDACTED]

(a) [REDACTED]

(b) Disclosed in the Data Room under the following Data Room document numbers:  
[REDACTED]; and

(c) [REDACTED]

10.2. Each Material Contract was either (i) Disclosed in the Data Room or (ii) the overview of its key commercial terms (on an anonymous basis not specifying the identity of the customer) was Disclosed in the Data Room, provided that such Material Contract listed in the aforementioned overview was concluded in a form corresponding in all material aspects to the templates of gas storage contracts used by the Target Company and Disclosed in the Data Room (Data Room documents no. 5.1.4.4 to 5.1.4.8).

10.3. To the Seller's knowledge, each Material Contract is legally binding on the parties to it in accordance with its terms and conditions.

10.4. The Target Company is not in breach of any Material Contract and the Target Company has not given written notice to any counterparty to a Material Contract that such counterparty is in breach of the relevant Material Contract.

10.5. No counterparty to any Material Contract has, within the last [REDACTED] prior to the Signing Date, given written notice of its intention to terminate any Material Contract.

11. Disputes and Proceedings

11.1. The Target Company is not involved as a claimant (other than as claimant in the collection of debts arising in the Ordinary Course of Business) or, to the Seller's knowledge, as a defendant or other party, in any court litigation or arbitration, or any other type of dispute, material claim, alternative dispute proceedings, administrative proceeding or prosecution concerning an amount exceeding in [REDACTED] [REDACTED] as of the Signing Date.

11.2. To the Seller's knowledge, no third party has notified the Target Company in writing of its intention to initiate legal, arbitration or administrative proceedings against the Target Company with a material adverse impact on the Target Company's operation and there is no dispute between the Target Company and a third party that could result in the initiation of such proceedings.

12. Permits, Licences or Authorizations

12.1. The Target Company has all permits, licences and authorizations required in order to own and operate the Storage Facilities, all such permits, licences and authorizations are in force and effective and the Target Company has not received any written notification of termination, revocation or withdrawal of such permits, licences or authorizations.

12.2. To the Seller's knowledge, the Target Company has not violated any of the material terms and conditions stipulated by such permits, licences or authorizations set out in paragraph 12.1 above and the Storage Facilities have been operated in accordance with such permits, licences and authorizations. For the purposes of this paragraph 12.2, the material terms and condition stipulated by the permits, licences or authorizations shall mean the terms and conditions whose violation leads to termination of the permits, licences or authorization necessary for operating of the Main Business of the Target Company in the Ordinary Course of Business and thereby preventing the Target Company from conducting its Main Business in the Ordinary Course of Business.

13. Employment

13.1. Save as Disclosed in the Data Room, the Target Company is not a party to any other collective agreement and has no standing arrangement with any employee representative body.

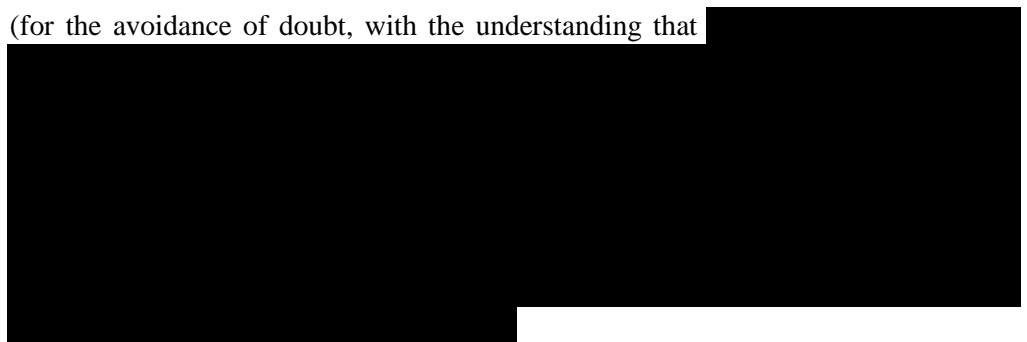
13.2. To the Seller's knowledge, the Target Company has materially complied with any applicable collective bargaining agreements in respect of employee remuneration.

14. Insurance

14.1. The Data Room contains an accurate and complete list of the insurance policies maintained by the Target Company and:

- (i) these insurance policies are valid and effective, and the Target Company is not in default with any payment of premiums under these policies,
- (ii) there are no special circumstances (for the avoidance of doubt, exclusions contained in an insurance policy are not to be understood as such special circumstances) that could, in relation to any such insurance policy, cause that the insurer could avoid the fulfilment of its obligations

(for the avoidance of doubt, with the understanding that



15. Personal Data Protection

15.1. To the Seller's knowledge, during the [REDACTED] prior to the Signing Date, the Target Company has complied and is operating its business in all material respects, with all material requirements of applicable European Union and Czech laws and regulations relating to data protection and privacy.

16. Intellectual Property Rights

16.1. To the Seller's knowledge,

- (a) the Target Company does not violate any third party's Intellectual Property Rights and no claim of such violation has been brought against the Target Company;
- (b) other than as Disclosed in the Data Room (Data Room document no. 7.6.44 titled "Mining survey documentation - ownership of map data and software licenses") all Intellectual Property Rights used by the Target Company are the sole property of the Target Company or the Target Company holds a valid licence to them; and
- (c) there is no unauthorized use of the Intellectual Property Rights of the Target Company by any third party.

17. IT Systems

17.1. All IT systems used by the Target Company are owned by or licensed to the Target Company (or the Target Company has other legal title to them).

18. Taxes

18.1. The Target Company is not and has not at any time since its incorporation been a resident of any jurisdiction other than that of the Czech Republic and is duly registered for the purposes of all Taxes for which it must be registered. The Target Company does not have a permanent establishment (or permanent base) for the purposes of Taxes in any other country and has no obligations, in relation to Taxes, in any country other than the Czech Republic. The Target Company does not and has never carried on any business outside the country of the Czech Republic in a manner that would result in a permanent establishment being created as defined in the relevant double taxation conventions (as well as local regulations or OECD guidelines) that would not have been properly established, disclosed or managed in accordance with the relevant regulations of the country in which the establishment was incorporated.

18.2. The Target Company has in all material respects, and within the appropriate time limits, made all notifications, submissions and Tax returns it has been required to submit, the information in such notifications, submissions and Tax returns have been true, accurate and complete in accordance with applicable laws.

18.3. The Target Company has paid all due Taxes for which it has been liable to pay, made all withholdings and deductions relating to Tax it was supposed to make. The Target

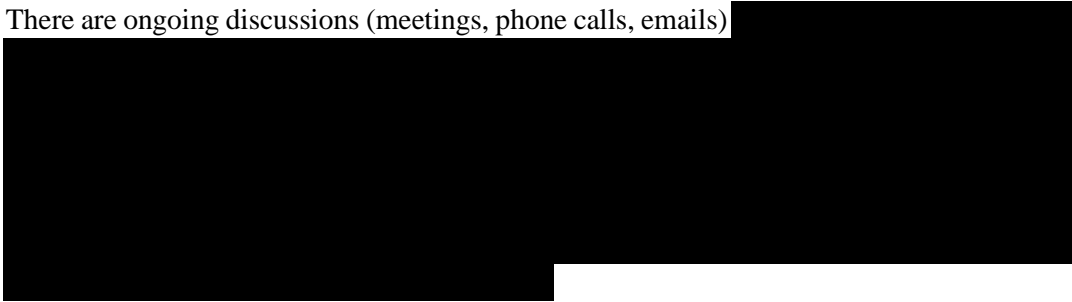


Company has not been, and is not, under any liability to pay any penalty, fine, surcharge or interest in respect of any Tax.

- 18.4. The Target Company is not involved in any pending Tax audit (including any investigation by, inspection by or questionnaire from any Tax Authority) or other unresolved dispute in relation to Taxes, nor, so far as the Seller is aware, is any dispute, investigation or non-routine enquiry likely to be, raised or commenced by any Tax Authority in respect of the Target Company.
- 18.5. The Target Company has maintained (or its service providers have maintained) all material records in relation to Tax which it is required to maintain on a proper basis (including, without limitation, the documents related to acquisition prices of fixed assets as well as the documents related to adherence to the arm's length principle in the intra-group transactions including those which were factually provided, received, or consumed by the Target Company). The Target Company has (or its service providers have) in its possession sufficient documents and records evidencing the correctness and completeness of all filed returns, information, notices and payments and sufficient documents, consents and permits entitling to Tax deductions and/or reliefs claimed in the filed returns.
- 18.6. No inspections or investigations have taken place at the Target Company in respect of Tax matters since 2018 which have not been Disclosed to the Purchaser.
- 18.7. The Target Company has not been engaged in or it has not been a party to, any transaction or series of transactions or any scheme or other arrangement of which the main purpose or object or one of the main purposes or objects is to evade or avoid a liability to Tax or which contains one or more of the hallmarks set forth in Annex IV to the Council Directive 2018/822/EU of 25 May 2018.
- 18.8. No act or transaction has been effected by the Target Company which could be the subject of any dispute with any Tax Authority or courts in respect of the actual content of the act in law or other fact decisive for Tax purposes being only formally in accordance with the law while in fact deviating from it (substance-versus-form) or in respect of the abuse of law.
- 18.9. The Target Company is, to the extent that it is required to be registered, a registered person for the purposes of the relevant VAT or turnover tax applicable in any relevant jurisdiction and has never been treated as a member of a group for such value added or turnover tax.
- 18.10. The Target Company has not participated in a transaction that could result in value added tax not being lawfully collected or in a transaction that has been part of fraud with respect to collection of VAT.
- 18.11. The Target Company has applied sufficient procedures to verify that none of its suppliers have participated in a transaction that could result in VAT not being lawfully collected.
- 18.12. To the Seller's knowledge, all Tax filings (including Tax returns) are true, up-to-date, correct and in possession of the Target Company.

**SCHEDULE 6.1(A)9**  
**DISCLOSURE ON EVENTS SINCE LOCKED BOX DATE**

- There are ongoing discussions (meetings, phone calls, emails)



**SCHEDULE 8.2**  
**LIMITATION OF THE SELLER'S LIABILITY**

1. Limitation on Quantum and General Limitations

1.1. The Purchaser will only be entitled to a Claim if:

- (a) the amount of Compensation in relation to any individual Claim exceeds (an equivalent in any currency of) [REDACTED]; and
- (b) the aggregate amount of the liability of the Seller for all Claims not excluded under paragraph (a) above exceeds (an equivalent in any currency of) [REDACTED] [REDACTED] in which case the Purchaser will be entitled to claim all amounts resulting from those Claims (and not just the amount exceeding this threshold).

1.2. The total aggregate liability of the Seller in respect of:

- (a) all Claims (including, for the avoidance of doubt, any Claim referred to in paragraphs (b) and (c) below) shall not exceed [REDACTED];
- (b) all Fundamental Warranty Claims shall not exceed [REDACTED] [REDACTED]; and
- (c) all Warranty Claims (other than Fundamental Warranty Claims but including Tax Warranty Claims) shall not exceed [REDACTED] [REDACTED];

provided, however, that the total aggregate liability of the Seller under or in connection with this Agreement, whether for Breaches of this Agreement or otherwise (for the avoidance of doubt, including compensation for Leakage, if any), will in no event [REDACTED].

1.3. The Seller will only be liable in respect of any claim if and to the extent that such claim is admitted by the Seller or proven in arbitration proceedings pursuant to Section 11.13 above.

1.4. Save for the case of fraud, the Purchaser agrees and undertakes that it has no rights against and will not make any claim against any employee, director, agent, officer or adviser of the Seller or any of its Affiliates on whom it may have relied before agreeing to any term of this Agreement and any other agreement or document entered into pursuant to this Agreement or entering into this Agreement or any such other agreement.

1.5. The Purchaser acknowledges and agrees that the Seller does not give or make any warranty as to, and shall have not liability for, the accuracy of the forecasts, estimates, projections or statements of intent provided to the Purchaser (however so provided) prior to, on or after the Signing Date, including (without limitation), within the information Disclosed in the Data Room.

1.6. The Purchaser will not be entitled to claim under any Breach of the Agreement (including any Warranty Claim) to the extent that within [REDACTED] following receipt by the Seller of notification thereof under paragraph 2.1 below the matter giving rise to such claim is remedied to the reasonable satisfaction of the Purchaser.

2. Time Limits

2.1. If the Purchaser or the Target Company becomes aware of any fact, matter or circumstance which is reasonably likely to give rise to any Claim under this Agreement, the Purchaser shall give a written notice (specifying in reasonable detail the fact, matter or circumstance (to the extent known) which could give rise to the potential Claim, the nature of the potential Claim and the amount likely to be claimed in respect thereof) to the Seller as soon as reasonably practicable after becoming aware of that likely Claim, however no later than within [REDACTED] of the Purchaser or the Target Company becoming so aware (this is without prejudice to the shorter deadline in paragraph 4.1(a) of this Schedule).

2.2. Any failure by the Purchaser to give notice in respect of a Claim within the [REDACTED] period specified in paragraph 2.1 of this Schedule 8.2 shall not, for the avoidance of doubt, prevent the Purchaser from making any Claim, but the Seller shall not be liable for any losses in respect of any such Claim to the extent that they are increased, or are not reduced, as a result of such failure.

2.3. In any event, the liability of the Seller in respect of all Warranty Claims and all other Claims shall terminate on the date which is [REDACTED] after the Completion Date, save in respect of:

(a) a Fundamental Warranty Claim, where it shall terminate on the date which is [REDACTED] after the Completion Date, or

(b) a Tax Warranty Claim, where it shall terminate on the date which is [REDACTED] after the Completion Date,

except in respect of any Warranty Claims of which notice is given to the Seller pursuant to paragraph 2.1 of this Schedule 8.2 before the relevant date.

2.4. Any Warranty Claim, which has been duly notified prior to the expiration of the time limitations pursuant to paragraph 2.3, shall (if such claim has not been previously satisfied, settled or withdrawn) be deemed to have been withdrawn (and no new Warranty Claim may be made in respect of the facts giving rise to such withdrawn Claim) unless legal proceedings (in accordance with Section 11.13 above) in respect of such Warranty Claim have been commenced within [REDACTED] of the service of notice by the Purchaser given to the Seller pursuant to paragraph 2.1 of this Schedule 8.2.

3. No Liability for Contingent or Non-quantifiable Claims

If any Warranty Claim or other Claim arises by reason of some liability of the Target Company or the Purchaser which, at the time such Warranty Claim is notified to the Seller, is contingent only or otherwise not capable of being quantified, then the Seller will not be under any obligation to make any payment in respect of such breach or claim unless and until such liability ceases to be contingent or becomes capable of being quantified. So long as such Warranty Claim or any other Claim will have been notified to the Seller in accordance with paragraph 2 above, then the time period for commencing the legal proceedings will commence on the date that the contingent liability becomes an actual liability, or the liability is capable of being quantified.

4. Third-party Claims

4.1. Upon the Target Company, the Purchaser or any of its Affiliates becoming aware of any claim, action or demand against it or any other matter likely to give rise to a Warranty Claim (a "**Third-Party Claim**"), the Purchaser is obliged to:

- (a) as soon as reasonably practicable but not later than [REDACTED] thereafter notify the Seller by written notice in accordance with paragraph 2.1;
- (b) appoint, in each case to represent the Target Company in connection with the Third-Party Claim, reputable professional advisers of at least [REDACTED] standing with publicly declared expertise in the relevant subject matter;
- (c) to the extent reasonably practicable, consult with the Seller in relation to the conduct of any dispute, defence, compromise or appeal of the Third-Party Claim, although, for the avoidance of doubt, the final decision in respect of all relevant matters shall rest with the Target Company;
- (d) in case of any submission, filing or any material correspondence which relates or is likely to relate to the assessing, contesting, defending, compromising or appealing such Third-Party Claim, send (as soon as is reasonably practicable) a draft of the submission, filing or material correspondence, (in the form intended to be sent to the respective authority), to the Seller and reflect all reasonable comments of the Seller thereto provided within [REDACTED] days of the receipt of that draft by the Seller;
- (e) the Seller will be entitled to participate in all negotiations and correspondence with the third party and to Purchaser is obliged to keep the Seller reasonably informed of the progress of all matters relating to the Third-Party Claim and that the Seller receives, as soon as reasonably practicable after receipt thereof by the Purchaser or the Target Company, copies of, or extracts from, all written correspondence with and other documents received in connection with the Third-Party Claim;
- (f) as soon as reasonably practicable, make available any relevant information and access to personnel, premises, documents and records of the Target Company (upon reasonable advance notice and during normal business hours) to the Seller, its Affiliates and their advisers (who will have the right to make copies of any such relevant documents and records and make inquiries with the relevant personnel) as the Seller may reasonably request in writing for assessing, contesting, disputing, defending, compromising or appealing the Third-Party Claim;
- (g) take (or, as appropriate, shall procure, the Target Company shall take) such action as the Seller may reasonably request to assess, avoid, dispute, resist, mitigate, settle, compromise, defend or appeal such Third-Party Claim or any adjudication with respect to that Third-Party Claim;
- (h) make no admission of liability, agreement, settlement or compromise with any third party in relation to any such Third-Party Claim or adjudication, without the prior written consent of the Seller (such consent not to be unreasonably conditioned, withheld or delayed);

- (i) at the reasonable request of the Seller (which shall not be rejected, delayed or conditioned by the Purchaser, unless the Purchaser demonstrates that such actions requested would result in a material detriment to the business of the Purchaser or the Target Company), allow the Seller to take the sole conduct of such actions as reasonably appropriate in connection with any such assessment or claim in the name of the Purchaser or the Target Company and in that connection appoint and instruct such solicitors or other professional advisers as the Seller may reasonably nominate to act on behalf of the Purchaser or the Target Company, as reasonable appropriate with regard to all relevant circumstances which might affect the Target Company and the Purchaser, but to act in accordance with the Seller's reasonable instructions; give or cause to be given to the Seller, its Affiliates and their advisers all such assistance as they may reasonably require in avoiding, disputing, resisting, settling, compromising, defending or appealing any such claim;
- (j) take all reasonable actions to mitigate any loss suffered by the Purchaser or any of its Affiliates or the Target Company in respect of which a claim could be made under the Breach of the Agreement.

5. No Liability if Loss is Otherwise Compensated

5.1. The Seller will not be liable for any Claim to the extent that:

- (a) the same loss has been recovered by the Purchaser under any other Claim, the Leakage mechanics, or other term of this Agreement or any other document entered into pursuant hereto and accordingly the Purchaser may only recover once in respect of the same loss; or
- (b) the subject of the Claim has been or is made good or is otherwise compensated for without cost to the Purchaser or any of its Affiliates.

5.2. In calculating the liability of the Seller for any Claim, there must be taken into account the amount by which any Tax for which the Target Company or the Purchaser is now or in the future accountable or liable to be assessed is reduced or extinguished as a result of the matter giving rise to such liability.

5.3. If the Seller has made any payment to the Purchaser or the Target Company in connection with any Warranty Claim and the liability of the Seller is reduced according to the above provisions or otherwise after the date of this payment, then the Purchaser will repay, or will cause the Target Company to repay (as the case may be), to the Seller without undue delay the reduction amount.

5.4. To avoid any doubt, a breach of the Seller's Warranty may not be interpreted as a breach of any obligation hereunder and in the event of a breach of the Seller's Warranty the Purchaser can only assert a Warranty Claim rather than a Claim for any other type of a Breach of the Agreement.

6. Recovery from Insurers and Other Third Parties

6.1. If, in respect of any matter which would give rise to a Claim, either the Target Company or the Purchaser or any of its Affiliates is entitled to claim under any policy of insurance (or the Target Company could have been entitled to claim if after the Completion Date

insurance had been maintained on terms similar to that in force in relation to the Target Company immediately prior to Completion), then no such matter will be the subject of a Claim.

- 6.2. Where the Target Company or the Purchaser or any of its Affiliates is at any time entitled to recover from some other person (other than an insurer under an insurance policy referred to in paragraph 6.1 above) any sum in respect of any matter giving rise to a Claim, the liability of the Seller will be reduced by all amounts recovered from such other person.
- 6.3. The Purchaser must take, and must procure that the Target Company takes, all reasonable steps to enforce its claims referred to in paragraphs 6.1 and 6.2 prior to taking action against the Seller (other than to notify the Seller of the Claim against the Seller) and so long as such Claim will have been notified to the Seller in accordance with paragraph 2 above, then the time period for commencing the legal proceedings will commence on the date that the corresponding claim or entitlement against a third party is finally settled or finally determined.
- 6.4. If:
  - (a) the Seller has made any payment to the Purchaser or the Target Company in connection with any Claim (the "**Damages Payment**"); and
  - (b) the Purchaser or the Target Company subsequently recovers from some other person any sum in respect of any matter giving rise to such Claim, (the "**Third-Party Sum**");

then the Purchaser shall repay to the Seller [REDACTED] following receipt of the Third-Party Sum by it or the Target Company, and amount equal [REDACTED]  
[REDACTED]

## 7. Acts in the Sphere of the Purchaser

- 7.1. The Seller will not be liable for any Claim to the extent that such Claim would have not arisen but for:
  - (a) any act, omission, transaction, or arrangement carried out at the request of or with the consent of the Purchaser before the Completion Date or under the terms of this Agreement or any other agreement contemplated by it (including the disclosure of any information to the Purchaser or its Affiliates);
  - (b) any voluntary act, omission, transaction, or arrangement carried out by the Purchaser or any of its Affiliates or by the Target Company on or after the Completion Date; or
  - (c) any admission of liability made in breach of the provisions of this Schedule 8.2 after the Signing Date by the Purchaser or on its behalf or by the Target Company on or after the Completion Date.

The Seller will not be liable for any Claim which would not have arisen but for any reorganisation (including a cessation of the whole or part of any business) or change in ownership of the Target Company after the Completion Date or change in any accounting basis on which the Target Company values its assets or any accounting

basis, method, policy or practice of the Target Company which is different from that adopted or used in the preparation of the Accounts, save when such act, omission, transaction or arrangement is required in order to observe the applicable law or is in accordance with the Target Company's past practise (including any contractual commitment of the Target Company entered into prior to the Completion).

8. The Accounts

8.1. The Seller will not be liable for any claim in respect of any Claim to the extent that:

- (a) [REDACTED]
- (b) [REDACTED]
- (c) [REDACTED]
- (d) [REDACTED]
- (e) [REDACTED]
- (f) [REDACTED]

9. Future Legislation

9.1. The Seller will not be liable for any Warranty Claim to the extent that the Seller's liability occurs or is increased directly or indirectly as a result of:

- (a) any legislation enacted after the Signing Date;
- (b) the withdrawal of any extra-statutory concession or other formal agreement or arrangement currently granted by or made with any Governmental Entity (whether or not having the force of law);
- (c) any change after the Signing Date of any interpretation of any legislation upon a resolution of the Supreme Court, Supreme Administrative Court or the Constitutional Court of the Czech Republic or in the enforcement policy or practice of the relevant authorities, including any change of the published practice of the Czech Tax Authorities.



10. Mitigation by the Purchaser

The Purchaser must, and must cause the Target Company to, at their own costs, mitigate any loss or damage arising as a result of any of Breach of the Agreement and will not be entitled to claim any Compensation to the extent the respective loss or damage has been incurred in violation of this mitigation obligation.

11. Purchaser's Knowledge

Without prejudice to paragraph 12 below, the Seller will not be liable for any Claim in relation to any matter forming the basis of a Claim which the Purchaser (or any of its directors or employees or any of its advisers acting for the Purchaser in connection with this Agreement), was actually aware of, or fails to be aware of with gross negligence, on or prior to Signing Date. The Purchaser is deemed to be actually aware solely of any publicly available information contained not later than 48 hours before the Signing Date in the electronic versions of the Commercial Register or the Land Register.

12. Disclosure

The Purchaser will not be entitled to claim that any fact, matter or circumstance causes any Claim, if such fact, matter or circumstance was Disclosed to the Purchaser in the Data Room.

13. No limit on fraud

13.1. Nothing in this Agreement shall limit or exclude the liability of the Seller arising out of fraud, or wilful concealment by the Seller.

13.2. The Purchaser acknowledges that:

- (a) 
- (b) 
- (c) 

14. Claim to be reduction of the Purchase Price

Any payment made by the Seller or any other person in respect of any claim in relation to any Breach of the Agreement is to be deemed a reduction of the Purchase Price.

**SIGNATURE PAGE**

**GBV Zweiunddreißigste Gesellschaft für Beteiligungsverwaltung mbH**

Name: [REDACTED]  
Position: [REDACTED]

Name: [REDACTED]  
Position: [REDACTED]

*[certified signatures]*

**ČEPS, a.s.**

Name: [REDACTED]  
Position: [REDACTED]

Name: [REDACTED]  
Position: [REDACTED]

*[certified signatures]*