

# **Subscription Agreement**

## **Appendix C : Specific Conditions**

**(Horizon 2035 Project)**

## 1 DESIGNATED COUNTERPARTS AND POINTS OF CONTACT

Operator	Shipper (Capacity Holder)
<p>ELENGY 11 avenue Michel Ricard - TSA 90100 92 276 Bois Colombes cedex France</p>	
<ul style="list-style-type: none"> <li>• Signatory of the Subscription Agreement : <i>[to be filled in with Mr. Pierre Cotin or Mr. Thierry Trouvé]</i> <i>[title to be filled]</i> 11 avenue Michel Ricard - TSA 90100 92276 Bois Colombes cedex Tel. : <i>[to be filled]</i> e-mail : <i>[to be filled]</i></li> </ul>	<ul style="list-style-type: none"> <li>• Signatory of the Subscription Agreement :</li> </ul>
<ul style="list-style-type: none"> <li>• Points of contact : <ul style="list-style-type: none"> <li>➤ Commercial : Sébastien Cuvelette Account Manager 11 avenue Michel Ricard - TSA 90100 92276 Bois Colombes cedex Tel. : +33 (0) 1 46 52 34 22 Fax : +33 (0) 1 46 52 35 42 e-mail : sebastien.cuvelette@elengy.com</li> <li>➤ Operational : DSDC Engineer on duty: Tél. : +33 (0) 6 85 11 28 37 Fax : +33 (0) 1 46 52 35 42 e-mail : operations@elengy.com</li> <li>➤ Fos Tonkin LNG Terminal Tél : +33 (0) 4 42 47 76 62 Fax : +33 (0) 4 42 46 76 63</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• points of contact : <ul style="list-style-type: none"> <li>➤ Commercial :</li> <li>➤ Operational :</li> </ul> </li> </ul>
<ul style="list-style-type: none"> <li>• Billing: Lilian Novoli Chargé de Mission 11 avenue Michel Ricard - TSA 90100 92276 Bois Colombes cedex Tél. : +33 (0) 1 46 52 34 34 Fax : +33 (0) 1 46 52 35 42 e-mail : lilian.novoli@elengy.com</li> </ul>	<ul style="list-style-type: none"> <li>• Billing:</li> </ul>

Administrative details of the Shipper	
Billing address:	..... ..... ..... .....
Intra-Community VAT Number:	.....

Shipper's bank details	
Name of bank:	.....
Address of bank:	..... ..... .....
County of incorporation of bank:	
o Bank code:	.....
o Branch code:	.....
o Account number:	.....
o Account identification particulars:	.....
o Swift code:	.....
o IBAN code:	.....

## 2 GUARANTEE

Amount of Guarantee
EUR .....

### 3 UNLOADING DETAILS

Port of Unloading *	Port of Marseille
Port Authority *	Grand Port Maritime de Marseille (GPMM)
Reference Line indicating the boundary of entry to the channel leading to the Port of Unloading *	Line through Omega Buoy located at 43° 12' N, 5° 01,8' E
Length of arrival slot*	6 hours

### 4 VALIDITY START AND TERMINATION DATES AND DATE OF FIRST UNLOADING OPERATION

Validity Start date	This is the date of commencement of the supply of regasification services for the capacities allocated under the 2011 Fos Tonkin Open Season procedure. It is set at October 1, 2014
Validity Termination date	This is the date of the end of the last quarter for which the Shipper has been allocated non-nil capacity (see clause 8.15 of the Allocation Rules). It is set at <i>[à compléter]</i>
Date of First Unloading Operation	This is the date of the First Unloading Operation, as specified at the time of drawing up Contractual Programme 2. It is set at <i>[à compléter]</i>

### 5 DESIGNATION AND VALUE OF TARIFF TERMS

The tariff structure and terms are determined in accordance with the regulation currently in force.

*[The tariff structure currently in force is available on the following website : [www.elengy.com](http://www.elengy.com)]*

### 6 SUBSCRIPTION AND CORRESPONDING REGASIFICATION SERVICES

Identifier and designation		Value	Unit
NCU	Number of Contractual Unloading Operations *		-
CUQ	Contractual Unloaded Quantity *		MWh
Proportion of the Contractual Unloaded Quantity *			
➤ During the summer period			MWh
➤ During the winter period			MWh

*\* per billing period*

#### **Regasification Services :**

- « Continuous » service
- « uniform » service

*[The regasification services provided may be subject to change.]*

## 7 SHIPPER'S LNG STOCK AT THE VALIDITY START DATE

The Shipper's LNG stock at the Validity Start Date amounts to ..... MWh.

## 8 CONTRACTUAL PROGRAMME

### 8.1 CONTRACTUAL PROGRAMME 1

Billing Period	CUQ MWh	NCU N° vessels	Monthly details	
			MWh/month	N° vessels/month

The first Billing Period shall commence on the Validity Start Date.

### 8.2 CONTRACTUAL PROGRAMME 2

It is determined in accordance with the prevailing allocation rule published on the operator's website.

Date of arrival	Vessel	Port of Loading	Unloaded Quantity (MWh)

## 9 TRANSFER OF LNG STOCK (OPTIONAL)

The Shipper wishes to subscribe to a Transfer of LNG Stock Service: YES / NO *[delete as appropriate.]*

The tariff structure and terms are determined in accordance with the regulations currently in force.

*[The tariff structure currently in force is available on the following website: [www.elengy.com](http://www.elengy.com)]*

## 10 DELAYED SEND-OUT SERVICE AND ADVANCE SEND-OUT SERVICE

The tariff structure and terms are determined in accordance with the regulations currently in force.

*[The tariff structure currently in force is available on the following website: [www.elengy.com](http://www.elengy.com)]*

## 11 PROVISIONS SPECIFIC TO THE 2011 FOS TONKIN OPEN SEASON

### 11.1 DEFINITIONS

Subscription Agreement : this term designates the Agreement including the present Special Conditions ;

Target Date for Commitment Decision : December 31, 2011 ;

Estimated date of Commitment Decision : envisaged date of the Commitment Decision, as notified by the Operator in accordance with Article 11.6 of these present Special Conditions ;

Actual Date of Commitment Decision : Date of binding decision ;

Commitment Decision : Decision by the Operator's Board of Directors to commit to implementing the Horizon 2035 Project ;

Date of Commissioning of the Tank : date of putting the tank built under the Horizon 2035 Project into service ;

Target Commissioning Date of the Tank : October 1, 2017 ;

Horizon 2035 Project : Project encompassing the construction of a new LNG storage tank, the dismantling of the two LNG metal storage tanks and the refurbishing or replacement of equipment required for mooring and unloading the LNG tankers and for vaporizing the LNG. After the commissioning of the new tank, the project will ensure a continued total send-out capacity at the Fos Tonkin terminal of [*compléter par 5,5 ou 7*] bcm/year.

### 11.2 ORDER OF PRECEDENCE OF CONTRACTUAL PROVISIONS

In the event of a discrepancy between the present Special Conditions and the General Conditions, the present Special Conditions will prevail over the latter.

### 11.3 COMING INTO FORCE OF THE SUBSCRIPTION AGREEMENT

The coming into force of the Subscription Agreement is subject to the Commitment Decision by the Terminal Operator, which must be taken at the latest within three (3) months following the Target Date of the Commitment Decision.

Should this proviso not be fulfilled, the Subscription Agreement shall be considered null and void, without any compensation being due to either party, except in the event that the deadlines for fulfilment of said condition are extended by mutual agreement. Fulfilment of the proviso may be ensured by all appropriate means.

### 11.4 SHIPPER'S OBLIGATION TO CONCLUDE AN AGREEMENT WITH THE TRANSMISSION SYSTEM OPERATOR

The Shipper has an obligation to conclude a Transmission Agreement with the Operator of the Transmission System so as to provide for the transmission of given quantities of natural gas via the system from the Fos PITTM covering at least the period for which the Shipper has been allocated capacity within the framework of the 2011 Fos Tonkin Open Season.

### 11.5 GROUNDS FOR INVALIDITY OF A PROVISION OF THE SUBSCRIPTION AGREEMENT

Notwithstanding any provision to the contrary, in the event that such a provision of this Subscription Agreement and/or its implementation is contrary to the law or the applicable regulations in force or should it be incompatible with the decisions or orders of authorities, courts or tribunals, and should such decisions or orders not be suspended on appeal, said provision shall be considered null and void without either Party being entitled to claim any compensation or reimbursement from the other Party on these grounds. Each of the Parties hereby undertakes to engage in negotiations

and to replace said provision with a new provision that is as close as possible to the provision included in this Subscription Agreement and at the same time to comply with the laws and regulations and with the decisions or orders of said authorities, courts or tribunals.

## 11.6 OBLIGATION TO PROVIDE INFORMATION BEFORE THE VALIDITY START DATE

As from the date of signature of the Subscription Agreement, the Operator shall regularly inform the Shipper, at least every six months, on the progress of the Horizon 2035 Project.

At the latest one (1) year following the Actual Date of the Commitment Decision, the Operator shall notify the updated total amount of investment required by the Horizon 2035 Project and the corresponding estimated average tariff.

The Operator shall notify the Shipper of the Date of Commissioning of the Tank at the latest one (1) month before that date and, if need be, shall notify the Shipper of a change of the Target Commissioning Date of the Tank.

## 11.7 DELAY DUE TO THE TRANSMISSION SYSTEM OPERATOR

Any delay due to the Transmission System Operator in relation to the Date of Commissioning of the Tank which prevents said Operator from fulfilling its obligation to take delivery at the Fos PITTM, shall not result in any liability on the part of the Operator or detract from the obligations of the Shipper.

## 11.8 FORCE MAJEURE

Article 14 « Force Majeure and suspension of contractual obligations » of the General Conditions shall only apply as from the Date of Commissioning of the Tank. The following provisions of this article shall apply during the period prior to said date.

### Definition of Force Majeure

The following events and circumstances shall be considered « Force Majeure » as long as, and to the extent that, they affect the above-mentioned obligations :

- Any event which is beyond the control of the Party invoking it ; cannot be overcome by engaging in the reasonable efforts that said Party is duty-bound to undertake in its capacity as a Prudent and Reasonable Operator, and prevents said Party from fulfilling, whether wholly or in part, any of its obligations pursuant to the Subscription Agreement ;
- Any of the following circumstances (without the conditions set out in the previous paragraph having to be fulfilled) to the extent that any said circumstance affects the Party invoking it and prevents said Party from fulfilling, whether wholly or in part, any of its obligations pursuant to the Subscription Agreement :
  - o Industrial action,
  - o The failure or stoppage of a machine or an incident affecting equipment or its operation, provided that said failure, stoppage or incident does not result from inadequate maintenance, abnormal use of the installations or a fault of the Party invoking it,
  - o Events attributable to a third party and the occurrence of which could not reasonably be foreseen by the Party invoking said events in its capacity as a Prudent and Reasonable Operator,
  - o Failure to obtain or loss of any permit required for the construction and operation of the Terminal by the Operator, in spite of engaging in reasonable efforts to secure such a permit.

### Notification of Force Majeure

Should either Party be hindered or delayed in fulfilling any of its obligations under the Subscription Agreement by an event that said Party considers a force majeure event, said Party shall notify the other Party – in writing and as soon as possible after the event in question – of the occurrence of the event as well as of its circumstances and its foreseeable consequences for the implementation of the Subscription Agreement.

### Suspensory effects of Force Majeure

The Party that has notified the force majeure event shall be exempted – for the duration of said event or circumstance – from fulfilling its contractual obligations affected by said event or circumstance.

Therefore, no delay or failure to comply with the contractual provisions by either Party for reasons of force majeure shall:

(a) Constitute a failure to comply with, or breach of the Subscription Agreement;

or

(b) Give rise to an action for damages or a claim for reimbursement of any additional costs incurred as a result of the force majeure event.

The deadlines set in the Subscription Agreement may therefore be extended. However, the Party (or Parties) affected by the force majeure event shall do everything in its/their power to mitigate the impact of said event on the execution of the Subscription Agreement and its attendant obligations.

### Prolonged Force Majeure

Should the execution of the Subscription Agreement be substantially prevented or delayed during an overall aggregate period of more than twelve (12) months as a result of one or more Force Majeure events, the Parties shall endeavour to find a mutually acceptable solution.

Should the Parties fail to reach an agreement within twenty-four (24) months of the occurrence of the Force Majeure event or of the first of several Force Majeure events, either Party shall be entitled rightfully to terminate the Subscription Agreement by means of a written notice addressed to the other Party. No reimbursement or compensation for losses or damages shall be due as a result of this termination.

## 11.9 TERMINATION BEFORE THE VALIDITY START DATE

Article 25 « Termination » of the General Conditions shall only apply as from the Validity Start Date. The following provisions of this article shall apply during the period prior to said date :

In the event that the Operator does not obtain all the permits and authorizations required to implement the Horizon 2035 Project and to operate the Terminal at the latest one day before the Validity Start Date, either Party shall be entitled to terminate the Subscription Agreement within a maximum period of three (3) months, without giving notice and without any kind of compensation or judicial formalities whatsoever being required of either Party.

In the event that the Operator in accordance with Article 11.6 notifies the Shipper of an amount of investment required for the implementation of the Horizon 2035 Project which exceeds by more than 25% the amount of investment communicated by Elengy in the Information Memorandum, i.e. the amount of *[à compléter par 255 ou 325]* M€<sub>2011</sub>, the Shipper shall be entitled to terminate the Subscription Agreement within a maximum period of two (2) weeks from the date of dispatch of the first notice, without any kind of compensation whatsoever being required of either Party.

In the event that in application of the preceding paragraph only one Shipper terminates the Subscription Agreement, the Operator is entitled to proceed as many times as necessary and repeatedly with:

- The estimation of a new average tariff which takes account of these Subscription Agreement terminations;
- The notification of the remaining Shippers of this new estimated average tariff. From the date of receipt of this notice, the Shipper has a deadline of six (6) working days to terminate the Subscription Agreement, without any compensation of either Party.



## 11.10 GROSS CALORIFIC VALUE (GCV)

The regasification capacities marketed at the Fos Tonkin Terminal and expressed in GWh are based on a standard GCV of 11,75 kWh/cm.

In the event of a significant and lasting decrease of the GCV of cargoes, the Operator may establish, in a non-discriminatory and transparent fashion, new subscription levels for Shippers that have subscribed for capacity at the Fos Tonkin Terminal.

## 11.11 RENEGOTIATION CLAUSE

In the event of changes in the LNG market, which significantly affect the Shipper's ability to unload cargoes at the Terminal, the Shipper has the ability to renegotiate the Subscription Agreement in accordance with the provisions stipulated below.

The Shipper shall notify the Operator by registered letter with acknowledgement of receipt of his interest to renegotiate his Subscription Agreement at a lower level by specifying the conditions of this renegotiation and, possibly, his interest to terminate the Subscription Agreement (« Notification of Negotiation »).

The Operator shall inform the other shippers potentially affected by this renegotiation notification and the CRE within the shortest possible time.

From the receipt of this notification, the Shipper, the Operator and, if need be, the other potentially affected Shippers have a time period of six (6) months to negotiate, in good faith, the changes to be made to the Subscription Agreement(s).

At the end of this period, the Operator offers the Shipper to agree to an amendment to the Subscription Agreement based on the following principles:

- The coming into force of the amendment to the Subscription Agreement agreed in the framework of the negotiation from the date of signature of all the shippers affected ;
- The payment of compensation covering the costs incurred by the implementation of the amendment to the Subscription Agreement. In the event of an anticipated closing-down of the Terminal, this compensation shall be determined by taking into consideration, in particular :
  - o An anticipated closing-down of the Terminal occurring at a minimum of five (5) years after the date of receipt of the Notification of Negotiation ;
  - o The non-amortized proportion of the regulated asset base of the Terminal on the date of its closing-down ;
  - o The dismantling costs of the Terminal for which no provisions have been made on the date of its anticipated closing-down ;
  - o Possible restructuring costs due to the anticipated closing-down of the Terminal.

When a Notification of Negotiation is sent to the Operator by another shipper, the Shipper shall, when applicable, renegotiate in good faith the Subscription Agreement under the conditions as set forth in this section.

## 11.12 CAPACITY REDUCTION UNTIL THE COMMISSIONING DATE OF THE TANK

The Operator anticipates that:

- the total capacity at the Fos Tonkin Terminal will be reduced to 5,5 bcm/year between October 1, 2014 and December 31, 2015
- the total capacity at the Fos Tonkin Terminal will be reduced to 4 bcm/year between January 1, 2016 and the Commissioning Date of the Tank.

During this period, Shippers' subscriptions will be reduced proportionally on the basis of non-discriminatory and transparent conditions, defined by the Operator.