



# 2011 Fos Tonkin Open Season

Allocation Rules

July 13, 2011



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## 1. INTRODUCTION

- 1.1 This document presents the Allocation Rules applicable in the framework of the invitation to subscribe for regasification capacity at the Fos Tonkin terminal (“2011 Fos Tonkin Open Season” or “Open Season”). These Allocation Rules describe the modalities for the allocation of regasification capacities to Qualified Subscribers under the 2011 Fos Tonkin Open Season procedure.
- 1.2 The information contained in the Allocation Rules prevails over that set out in the Information Memorandum as well as over any information previously published or communicated by Elengy in relation to the Open Season.
- 1.3 Elengy reserves the right to modify, before the Binding Submission Deadline, wholly or in part, the Allocation Rules, the timetable set for the Open Season and, more generally, any of the clauses and procedures planned in the framework of the Open Season, including the Subscription Agreement, provided that no discrimination occurs against any of the Registered or Qualified Subscribers. Elengy will submit these modifications to the Commission de régulation de l'énergie (CRE – *Energy Regulation Commission*) for approval and such approved documents will be given to all Registered or Qualified Subscribers with reasonable notice.

In the event that, as a result of any modifications such as those mentioned in the previous paragraph, a Qualified Subscriber decides to withdraw from the Open Season before the Binding Submission Deadline, the Qualified Subscriber in question shall inform Elengy thereof as soon as possible. Elengy shall then cancel the registration and qualification of the Qualified Subscriber concerned and shall issue a document to the latter confirming said cancellation as well as the cancellation of any Subscription Request the Qualified Subscriber may have submitted. Neither Elengy nor the Qualified Subscriber shall incur any liability as a result of the latter withdrawing from the Open Season in the circumstances described above.

- 1.4 The Allocation Rules are governed by, and to be interpreted in accordance with, French law. The Open Season is planned, organised and deemed to take place at the head office of Elengy in Paris, France.
- 1.5 In the event there is a disagreement resulting from or relating to the Open Season, including any disagreement deriving from the interpretation or implementation of these Allocation Rules or concerning the form, content, validity or date of receipt of any Subscription Request, the matter shall be brought before the Courts of Paris, France, and/or before the CRE as part of the duties this body has been entrusted with under article 38 of Act n° 2000-108 dated 10 February 2000.
- 1.6 All communications exchanged in the framework of the Open Season must be in the French language or, failing this, in English.
- 1.7 The convention used for figures in this document is that a point is used to separate whole numbers from decimals.
- 1.8 The allocation of Capacities to Qualified Subscribers shall take place under the direction of Elengy.

## 2. DEFINITION OF TERMS

2.1 In the meaning of these Allocation Rules, the terms used therein are defined as follows, both in the singular and the plural. Capitalised terms not defined in the following table have the meanings given to them in the General Conditions of the ALNGT Contract, as published on the Elengy website<sup>1</sup>.

Term	Definition
Subscription Agreement	Clauses and conditions governing access by the Capacity Holder to the Fos-Tonkin terminal, in accordance with the clauses and conditions of the ALNGT Contract, with the exception of the Special Conditions set out in Annexe C. Under Clause 1.3, the clauses and conditions of the Subscription Agreement may be amended by Elengy.
Qualification and Submission Address	See Clause 4.13.
Capacity Holder (Successful Tenderer)	See Clause 8.12.
Capacity	Regasification capacity at the Fos-Tonkin terminal, whether positive or nil, expressed in GWh/year for a given Interval and made available under the terms and conditions described in the Subscription Agreement.
Allocated Capacity	See Clause 7.4.
Allocation of Capacities	See Clause 8.12.
Maximum Capacity	See Clause 4.2.4.
Total Capacity	Higher Total Capacity, Lower Total Capacity, Adjusted Total Capacity or Horizon 2020 Tal Capacity, depending on the project considered in the course of the allocation process: High-end Horizon 2035 Project, Low-end Horizon 2035 Project, Horizon 2035 Project adjusted to the Horizon 2020 Project.
Total Capacity to be developed	See Clause 9.3
CRE	"Commission de régulation de l'énergie", the French Energy Regulatory Commission
ALNGT Contract	Clauses and conditions governing Access to LNG terminals as per the version published on the Elengy website and on the basis of which the Subscription Agreement is drawn up
Deadline for Qualification	Final date for receipt by Elengy, at the Qualification and Submission Address, of the qualification forms and the Guarantee submitted by Registered Subscribers in order to qualify for the Open Season. Said date is currently September 16, 2011 (at 4 p.m., Paris time).
Start Date of the Binding Phase	October 3, 2011

<sup>1</sup> [www.elengy.com](http://www.elengy.com)

<b>Term</b>	<b>Definition</b>
End Date of Binding Phase	November 18, 2011
Deadline for Dispatch of Subscription Agreements	November 25, 2011
Binding Submission Deadline	Final date for receipt, at the Qualification and Submission Address, of the Binding Subscription Request submitted by Qualified Subscribers. Said date is currently set at October 21, 2011 (at 4 p.m., Paris time).
Non-Binding Submission Deadline	Final date for receipt, at the Qualification and Submission Address, of the Non-Binding Subscription Request submitted by Qualified Subscribers. Said date is currently set at September 23, 2011 (at 4 p.m., Paris time).
Date of Notification of the Results of the Non-Binding Phase	September 30, 2011
Commitment Decision	See Clause 9.1.
Invalid Subscription Request	See Clause 6.3.
Subscription Request (whether Non-Binding or Binding)	A Subscription Request consists of all the Profiles submitted by a Qualified Subscriber by the Submission Deadline in accordance with Form I included in Annexe B. A Subscription Request is non-binding ("Non-Binding Subscription Request") when it is submitted during the Non-Binding Phase. A Subscription Request is binding ("Binding Subscription Request") when it is submitted during the Binding Phase.
EUR <sub>2011</sub>	Amount expressed in EUR <sub>2011</sub> . Unless otherwise stipulated, all tariffs and investment amounts are given or estimate in EUR <sub>2011</sub> .
Transmission System Operator	Operator of the Transmission system to which the Fos-Tonkin terminal is connected.
Guarantee	See Clause 4.2.4.
Independent Submission Guarantee	See Clause 4.2.4.
Quarter	Period of three (3) months within the 2035 Subscription Period, corresponding with the following dates: - Period starting on October 1 and ending on December 31 for the years 2014 to 2033 ; - Period starting on January 1 and ending on March 31 for the years 2015 to 2034 ; - Period starting on April 1 and ending on June 30 for the years 2015 to 2034 ; - Period starting on July 1 and ending on September 30 for the years 2015 to 2034.
Working Day	In the meaning of these Rules, any day of the week from Monday inclusive to Friday inclusive, with the exception of official holidays in metropolitan France.
Base Capacity	See Clause 6.2.6.1.

<b>Term</b>	<b>Definition</b>
Allocated Number of Unloading Operations	See Clause 8.12.
Open Season	See Clause 1.1.
Ranking	See Clause 7.8.
Related Party	A Related Party (in relation to a given party) is understood to mean any other legal person or corporate body which is under the control of said party, any other legal person or corporate body which controls said party, or any other legal person or corporate body which is under the same control as said party, in the meaning given to these terms in Articles L 233-1 to L 233-4 of the Commercial Code.
Subscription Period	2035 Subscription Period or 2020 Subscription Period depending on the Project considered
2035 Subscription Period	Period starting October 1, 2014 and ending September 30, 2034
2020 Subscription Period	Period starting October 1, 2014 and ending December 31, 2020
Profile	Capacity reservation request which is submitted by a Qualified Subscriber by means of a Subscription Request and which the Qualified Subscriber undertakes to subscribe under the Subscription Agreement, provided that the Capacity thus requested is allocated, whether wholly or in part, in accordance with the Allocation Rules.
Selected Profiles	Clause 7.21
Project	Operations Continuation Project of the Fos Tonkin Terminal beyond October 1, 2014 which, depending on the context, corresponds with the High-end Horizon 2035 Project, the Low-end Horizon 2035 Project or the Horizon 2035 Project adjusted to the Horizon 2020 Project.
Horizon 2035 Project	Continuation project of the Fos Tonkin Terminal as defined in Clause 3.2
Adjusted Horizon 2035 Project	Continuation project of the Fos Tonkin Terminal as defined in Clause 8.11.4
Horizon 2020 Project	Continuation project of the Terminal's activities beyond October 1, 2014 aiming at guaranteeing the operation of the Terminal until 2020, at the latest.
Rank of a Profile	See Clause 7.17.
Allocation Rules	The present document, which governs the allocation of Capacities at the Fos-Tonkin terminal.
Differentiated Subscriber	Clause 8.5
Registered Subscriber	A Subscriber who has signed a Confidentiality Agreement and whose registration has been notified by Elengy.
Qualified Subscriber	Registered Subscriber who has received a notice of qualification in accordance with Clause 4.8.

Term	Definition
Indicative Maximum Tariff	Tariff laid down under Clause 7.25, equal to 1.1 EUR2011/MWh and corresponding to an average subscription tariff over the 2035 Subscription Period of 84% and 93% respectively for the Higher Capacity Project and the Lower-Capacity Project, factoring in (i) the costs of the implementation of the High-end and Low-end Horizon 2035 Projects and (ii) the economic conditions, particularly those of a regulatory nature, that apply to the determination of the utilisation tariffs of the methane terminals as of 1 January 2010.
Projected Average Tariff	Clause 7.24
Terminal	Fos Tonkin Liquefied Natural Gas Terminal
Economic viability test	Clause 7.25
Average Unloading Rate	For a given Profile $k$ , the ratio of Capacity $C_k^S$ to the Number of Unloading Operations $D_k^S$

### 3. OFFER OF CAPACITIES

- 3.1 The marketing of Capacities at the Fos-Tonkin terminal is currently planned until 30 September 2014. Elengy intends to continue and increase the Capacities of the Fos-Tonkin terminal to the 2035 Subscription Period. Elengy will develop these Capacities depending, in particular, on the interest shown by Qualified Subscribers in subscribing capacities the Subscription Period 2014 to 2035.
- 3.2 To this end, Elengy is planning to implement one of the following two projects ("Horizon 2035 Projects"):
- 3.2.1 The Higher-Capacity Project or High-end Project, which consists in increasing the Capacity of the Fos-Tonkin terminal to 82,000 GWh/year ("Total Higher Capacity" or *THC*) for the 2035 Subscription Period;
- 3.2.2 The Lower-Capacity Project or Low-end Project, which consists in increasing the Capacity of the Fos-Tonkin terminal to 65,000 GWh/year ("Total Lower Capacity" or *TLC*) for the 2035 Subscription Period.
- 3.3 The Capacities which Elengy is planning to market are constant for the various yearly quarters of the 2035 Subscription Period, and will be equal to:
- 3.3.1 The Total Higher Capacity" (*THC*) in the event that the Higher-Capacity Project is implemented by Elengy;
- 3.3.2 The Total Lower Capacity" (*TLC*) in the event that the Lower Capacity Project is implemented by Elengy.
- 3.4 The terms Total High Capacity and Total Low Capacity designate the capacity levels used by Elengy when referring to its project of continuing and increasing operations at the Terminal and when referring to the allocation of these Capacities to Subscribers. However, the attention of Registered Subscribers is drawn to the fact that:
- 3.4.1 the actual Capacity of the Terminal will depend, in particular, on the progress of the Horizon 2035 Project, which will be undertaken, and on the capacity marketed by the Transmission System Operator at the Transmission/Terminal Interface Point ("PITTM") of the Fos Tonkin Terminal.
- 3.4.2 as indicated in the Special Conditions reproduced in Appendix C, Elengy expects that the actually available Capacity will be limited to 65,000 GWh/year during the time period between October 1, 2014 and December 1, 2015 then to 47,000 GWh/year between January 1, 2016 and the Commissioning Date of the Tank as defined in Appendix C.
- 3.5 In the event that the capacity requests would not allow Elengy to undertake the Horizon 2035 Project, Elengy projects the following:
- 3.5.1 a continuation project of the Terminal, which would be adjusted to the capacity requests confirmed in the course of the Binding Phase ("Adjusted Horizon 2035 Project");
- 3.5.2 a project continuing operations at the Terminal until 2020 (« Horizon 2020 Project »), which consists in ensuring the Capacity of the Terminal at a level of 35 000 GWh/year ("Capacity Horizon 2020") over the 2020 Subscription Period.



## 4. QUALIFYING FOR THE OPEN SEASON AND CONTACTS WITH ELENGY

### Qualification

- 4.1 Any Registered Subscriber may submit a Request for Qualification to take part in the Open Season.
- 4.2 In order to qualify, Registered Subscribers must comply with the following requirements by the deadline for qualification:

- 4.2.1 Submit a Request for Qualification in accordance with Model Form 1 ("Request for Qualification") included in Appendix A;
- 4.2.2 Provide a power of attorney bearing the stamp of the company, notarially attested (if required by the legislation in force in the country where the Registered Subscriber has its registered offices) in favour of at least one person ("Principal Point of Contact") and giving the latter the powers specified in Model Form 2 ("Power of Attorney") included in Appendix A. The Registered Subscriber may designate, on said Form, a second person with the same powers ("Second Point of Contact").

Elengy shall be entitled – and hereby reserves the right – to request the persons signing the Power of Attorney to provide additional proof of their authority to delegate the powers specified in the Power of Attorney.

- 4.2.3 Undertake the obligations specified in Model Form 3 ("Declarations"). To this end, one of the holders (or the holder) of the power of Attorney granted in accordance with Model Form 2 must sign a declaration on behalf of the Registered Subscriber, using for this purpose Model Form 3 included in Appendix A.

Registered Subscribers hereby undertake, in particular, to have the competency to fulfil the obligations resulting from the Open Season procedure; to follow the Allocation Rules; to indicate to Elengy any Related Party that, to the best of their knowledge, wishes to take part in the Open Season; and not to enter into collusion with other Registered Subscribers.

Registered Subscribers, in the event that they are allocated Capacities at the Fos Tonkin Terminal, also commit to reserving daily entry capacities to the transmission system of the Transmission System Operator at the Fos PITTM by means of an ad hoc capacity transmission, which they shall be allocated on a yearly basis.

- 4.2.4 Provide a guarantee ("Guarantee") for an amount equivalent to €150 per GWh/year of the Capacity which the Registered Subscriber wishes to acquire. The amount of the Guarantee will determine the maximum capacity which the Registered Subscriber may request and obtain at the end of the allocation process ("Maximum Capacity").

The Guarantee may be in the form of a bank guarantee or a banker's deposit:

- In the case of a bank guarantee ("Independent Submission Guarantee"), the guarantee must consist of a valid, irrevocable and unconditional stand-by letter of credit in EUR, issued by a bank whose registered offices are located in a Member State of the European Union and which has a rating of at least A by Standard & Poor's and A2 by Moody's. Furthermore, said guarantee must expire not earlier than March 31, 2012, and must be issued in favour of Elengy in the form and terms specified in Model Form 4 of Appendix A. It is hereby specified that should a Subscriber that has provided an Independent Submission Guarantee withdraw from the Open Season procedure in accordance with Clause 1.3 of these Rules, or should the Subscriber fail to qualify or not be selected as a Successful Tenderer (Capacity Holder), Elengy shall return the original of said Guarantee as soon as possible after the occurrence of the event in question.

The Independent Submission Guarantee must be received by Elengy at the Qualification and Submission Address by the Deadline for Qualification, at the latest.

- In the case of a banker's deposit, the Guarantee must be provided in the form of a payment credited to the following bank account:

Name of bank : BRED  
SWIFT Code : BREDFRPP  
Account Holder : Elengy Tonkin Encaissements  
Account No. : 10107 00109 00718024886 46  
IBAN : FR 76 1010 7001 0900 7180 2488 646  
Reference : OPEN SEASON FOS-TONKIN 2011

- The deposit must be effectively paid by the Deadline for Qualification. A deposit shall be deemed to be effectively paid when the full amount of the Guarantee has been credited to the above-mentioned bank account. It is hereby specified that should a Subscriber that has provided a banker's deposit withdraw from the Open Season procedure in accordance with Clause 1.3 of these Rules, or should the Subscriber fail to qualify or not be selected as a Successful Tenderer (Capacity Holder), Elengy shall return the deposit guarantee as soon as possible after the occurrence of the event in question.

- 4.3 In order to be valid, the required qualification forms must be received by Elengy at the Qualification and Submission Address by the Deadline for Qualification, at the latest.
- 4.4 Where several Related Parties wish to qualify jointly for the Open Season, they must coordinate their action in order to appoint one of them to act as Qualified Subscriber representing all the Related Parties for the purposes of the Open Season.
- 4.5 Should it come to Elengy's knowledge that several Qualified Subscribers are Related Parties and that Clause 4.4 is not being complied with, Elengy shall request the parties concerned to comply with said clause. In the absence of an adequate response, Elengy will give priority to the Qualified Subscriber that has been the first to provide Elengy with all the elements necessary for qualification.
- 4.6 Within a reasonable period of time from the date of receipt of all the information and declarations as well as of the Guarantee required for a Registered Subscriber to qualify in accordance with Clauses 4.2 to 4.5, Elengy shall contact the Registered Subscriber in question to confirm that the latter

qualifies for the Open Season or, as the case may be, to reject its request for qualification. Elengy will strive to ensure that said period of time does not exceed two (2) working days from receipt of said information, declarations and Guarantee. A Registered Subscriber whose qualification has been confirmed by Elengy is termed a "Qualified Subscriber".

- 4.7 Elengy may refuse to qualify a Registered Subscriber in the event that the latter does not comply with the terms of the Confidentiality Agreement or does not fulfil the qualification criteria set out in these Allocation Rules. Should a Request for Qualification be rejected, Elengy will explain the reason(s) for the rejection. Elengy shall be entitled, at its sole discretion, to indicate one or more inadequacies in a request and invite the Registered Subscriber concerned to submit a new Request for Qualification. In such an event, Elengy will set a deadline for receipt of said new Request for Qualification.
- 4.8 When a Request for Qualification is accepted, Elengy will provide the Principal Point of Contact, by means of Model Form 5 included in Appendix A, with a certificate stating that the Registered Subscriber has been accepted as a Qualified Subscriber and detailing the Maximum Capacity allocated to the latter. It is up to each Qualified Subscriber to ensure compliance with the obligations of the Confidentiality Agreement and to continue to fulfil the qualification criteria set out in the Allocation Rules.

Elengy shall incur no liability whatsoever in respect of the qualification, the rejection of the application for qualification, or the revocation of the qualification of a Qualified or Registered Subscriber.

- 4.9 A Qualified Subscriber may withdraw from the Open Season at any time before the Binding Submission Deadline by transmitting a notice to this effect to Elengy before said deadline. In such an event, Elengy shall endeavour to send the Qualified Subscriber an acknowledgement of receipt of said notice within two (2) Working Days of the date of receipt of the notice.
- 4.10 A Qualified Subscriber may adjust the amount of the Guarantee within five (5) Working Days of the Binding Submission Deadline by transmitting a new Guarantee to Elengy by said deadline. Elengy shall then strive to send the Qualified Subscriber, within two (2) Working Days, by means of Model Form 5, an amended version of the Acceptance of Qualification of said Qualified Subscriber, detailing the Maximum Capacity applicable following adjustment of the amount of the Guarantee, and shall return to the Qualified Subscriber the Guarantee previously provided by the latter.
- 4.11 Qualified Subscribers must notify Elengy as soon as possible of any change that may affect the information supplied in the qualification documents. In all cases, the relevant notice must be received by Elengy within five (5) Working Days of the date of occurrence of the change in question. Elengy will then examine the new information and shall be entitled to request any additional information, documents, commitments – or amendments to existing documents already submitted by the Qualified Subscriber – as may be necessary in the circumstances.
- 4.12 Elengy may revoke the qualification of a Qualified Subscriber at any time in the event that:
- 4.12.1 The Qualified Subscriber breaches the terms and conditions of these Allocation Rules or those of the Confidentiality Agreement; or
  - 4.12.2 The Qualified Subscriber is no longer entitled to take part in the Open Season owing to essential changes that have been notified to the Elengy in compliance with Clause 4.11; or
  - 4.12.3 It has come to Elengy's knowledge that the Qualified Subscriber did not fulfil the qualification criteria and does not yet fulfil them, or again in the event that some other important objective reason exists for revoking the qualification.

Elengy shall explain the reason(s) for any such revocation.

- 4.13 Unless explicitly stated otherwise by Elengy, all documents must be sent by registered mail with acknowledgement of receipt – or by using any other service (such as FedEx, DHL or UPS) that will provide the Registered Subscriber with an acknowledgement of receipt – and must be sent, furthermore, to the Qualification and Submission Address, except where the present Allocation Rules or any other contractual document provides otherwise.

Qualification and Submission Address

**Elengy**  
**Open Season Fos Tonkin 2011**  
**Direction Stratégie Développement Commercialisation**  
**11 avenue Michel Ricard – TSA 90100**  
**92276 Bois-Colombes cedex**  
**France**

- 4.14 All communications intended for Registered or Qualified Subscribers shall be sent by Elengy in writing to the address of the Principal Point of Contact previously notified by said Registered Subscribers or Qualified Subscribers. Elengy shall also be entitled to transmit messages by fax or e-mail.

#### **Contacts with Elengy**

- 4.15 Elengy invites the Registered Subscribers and Qualified Subscribers to raise any questions they might have and will be available to deal with these questions. Registered Subscribers and Qualified Subscribers are invited to submit any such questions to the following address:

E-mail: [fostonkin-development@elengy.com](mailto:fostonkin-development@elengy.com)

- 4.16 In order to ensure the non-discriminatory nature of the Open Season procedure, and depending on actual needs, Elengy shall regularly inform Registered Subscribers and Qualified Subscribers of the replies that Elengy gives to the various questions (once they have been rendered anonymous) raised by Registered or Qualified Subscribers within the framework of the Open Season.

## 5. PROCESS OF ALLOCATION OF CAPACITIES TO QUALIFIED SUBSCRIBERS

- 5.1 During the process of Allocation of Capacities to Qualified Subscribers, the latter will put forward their requests for Capacities by means of a Subscription Request.
- 5.2 The process of Allocation of Capacities to Qualified Subscribers shall include an initial phase for the submission of Non-Binding Subscription Requests, followed by an indicative allocation of Capacities to Qualified Subscribers on the basis of said Non-Binding Subscription Requests (“Non-Binding Phase”).
- 5.3 This phase shall be followed by a phase for the submission of Binding Subscription Requests, followed by an allocation of Capacities to Qualified Subscribers on the basis of said Binding Subscription Requests (“Binding Phase”).
- 5.4 Only Qualified Subscribers that have submitted a valid Non-Binding Subscription will be entitled to submit a Binding Subscription Request.
- 5.5 Elengy has decided that the allocation of capacities will take place according to the same modalities during the Non-Binding Phase and the Binding Phase unless, after analysing the results of the Non-Binding Phase, Elengy deems it necessary to modify the offer of capacity or the allocation modalities. Consequently, at this stage of the Open Season, the terms “Subscription Request” and “Submission Deadline” are used indifferently to designate Non-Binding and Binding Submission Requests and Submission Deadlines.

## 6. SUBMISSION OF SUBSCRIPTION REQUESTS

### Expression of Subscription Requests

- 6.1 A Subscription Request submitted by a Qualified Subscriber  $S$  (" $DS^S$ ") shall consist of a maximum of 10 Profiles ( $P_k^S$ ,  $k=1,2,\dots,10$ ). The Qualified Subscriber  $S$  shall specify, for each of its Profiles, the Capacity  $C_k^S$ , the Number of Unloading Operations  $D_k^S$ , and the Duration  $T_k^S$ .
- 6.2 To be considered valid, a Subscription Request must:
- 6.2.1 Be duly completed and signed by a person authorised by virtue of the Power of Attorney and, furthermore, be drawn up in accordance with the model Subscription Request reproduced in Appendix B;
  - 6.2.2 Be submitted in accordance with Clause 6.5;
  - 6.2.3 Comprise at least one and no more than ten Profiles;
  - 6.2.4 Include for each Profile  $k$  the following information, in a legible way:
    - 6.2.4.1 Capacity  $C_k^S$  expressed in annual volume (GWh/year), with no figures after the point;
    - 6.2.4.2 The Number of Unloading Operations  $D_k^S$  (expressed in annual terms, as the number of Unloading Operations per year) associated with Capacity  $C_k^S$ , as a whole number with no decimals after the point;
    - 6.2.4.3 The date of end of Profile corresponds with the date of end of Quarter. The Duration of the Profile  $T_k^S$  is defined as the number of Quarters within the period of time between October 1, 2014 and the date of end of the Profile.
  - 6.2.5 Be such that the sum of the Capacities requested by the Qualified Subscriber in the relevant Subscription Request is less than or equal to the Subscriber's Maximum Capacity;
  - 6.2.6 Be such that, for each of the Profiles  $P_k^S$ , the values of the Capacities, the Number of Unloading Operations and the Durations are:
    - 6.2.6.1 Either strictly positive and such that:
      - Capacities  $C_k^S$  are higher than or equal to 5,000 GWh/year ("Base Limit/Capacity");
      - The Durations are greater than or equal to 4 and lower than or equal to 80.

- 6.2.6.2 Or nil, an unrecorded value being considered nil, any Profile associated with a nil value of the Capacity or of the Number of Unloading Operations or of the Duration being not taken into account for the allocation of the Capacities;
- 6.2.7 Include at least one Profile associated to a non-nil Capacity, a non-nil Number of Unloading Operation and a non-nil Duration;
- 6.2.8 Be sent to the Qualification and Submission Address and received by the Submission Deadline, in accordance with Clause 6.5.
- 6.3 An invalid Subscription Request in the meaning of Clause 6.2 ("Invalid Subscription Request") shall not be taken into account by Elengy when allocating Capacities.
- 6.4 In order to enable Elengy to take account of their specific needs, Qualified Subscribers are also invited to specify, optionally, in their Subscription Requests, the following elements:
  - 6.4.1 The type and size (in m<sup>3</sup> of LNG) of the tanker(s) envisaged;
  - 6.4.2 The envisaged LNG loading port(s);
  - 6.4.3 Any other service(s) desired.

#### **Communication of Subscription Requests**

- 6.5 In order to take part in the Open Season, Qualified Subscribers must submit their Subscription Requests in accordance with the model reproduced in Appendix B. The Subscription Request must:
  - 6.5.1 Be inserted in an envelope bearing the mention "Fos-Tonkin Open Season – Do not open" and the company name of the Qualified Subscriber. This envelope must itself be contained in an external envelope addressed to the Qualification and Submission Address;
  - 6.5.2 Be sent by registered mail with acknowledgement of receipt or by means of some other service, such as FedEx, DHL or UPS, which will provide the Qualified Subscriber with an acknowledgement of receipt;
  - 6.5.3 Be received at the Qualification and Submission Address by the Submission Deadline at the latest.
- 6.6 In the event that Elengy receives several Subscription Requests associated with one and the same Qualified Subscriber, Elengy shall only keep the latest Subscription Request received from the Qualified Subscriber concerned by the Submission Deadline, and all previous Subscription Requests shall be ignored.
- 6.7 The inner envelope containing the Subscription Requests shall be kept unopened by Elengy at least until the next day after the Submission Deadline.
- 6.8 At the earliest on the day after the Submission Deadline, Elengy shall open all the envelopes containing Subscription Requests.
- 6.9 In the event of a Subscription Request being invalid, Elengy shall immediately notify the relevant Qualified Subscriber, who shall then have a maximum of two (2) Working Days, after the notification

by Elengy of the invalidity of the Subscription Request, to submit a new, valid Subscription Request to the Qualification and Submission Address, in accordance with Clauses 6.5.1 and 6.5.2, or, if necessary, by fax at the request of Elengy. In the event that no valid Subscription Request is received at the Qualification and Submission Address within the deadline from the Qualified Subscriber concerned, then the Subscription Request from the latter shall be considered an invalid Subscription Request.

- 6.10 Pursuant to the previous clause, Elengy shall notify the Qualified Subscribers who have not submitted valid Subscription Requests...
- During the Non-Binding Phase, that their qualification has been revoked;
  - During the Binding Phase, that their Subscription Request shall not be taken into account when allocating Capacities.
- 6.11 On the basis of the valid Subscription Requests received, Elengy shall apply the allocation modalities described in Section 7 for the Non-Binding Phase and in Section 8 for the Binding Phase.



## 7. NON-BINDING PHASE : NON-BINDING ALLOCATION OF CAPACITIES TO QUALIFIED SUBSCRIBERS

- 7.1 The capacity allocation modalities presented in this section shall be applied by Elengy to all valid Non-Binding Subscription Requests made by Qualified Subscribers and received at the Qualification and Submission Address by the Non-Binding Submission Deadline, in accordance with Clause 6.5.

### Introduction – Non-Binding Phase

- 7.2 On the basis of the Submission Model Form (Model Form I of Appendix B), Qualified Subscribers shall send their Subscription Requests to the Qualification and Submission Address by the Non-Binding Submission Deadline, in accordance with Clause 6.5.
- 7.3 Elengy shall allocate Capacities to the Qualified Subscribers, on the basis of their Non-Binding Subscription Requests, up to the Total Capacity associated with the Higher Capacity Project.
- 7.4 The Capacities allocated by Elengy (“Allocated Capacities”) to Qualified Subscribers by the end of this process shall then be used by Elengy to perform an Economic Viability Test on the basis of the Higher Capacity Project.
- 7.5 If the results of the Economic Viability Test are not satisfactory, Elengy shall allocate Capacities to the Qualified Subscribers, on the basis of their Non Binding Subscription Requests, up to the Total Capacity associated with the Lower Capacity Project. The Capacities allocated by Elengy (“Allocated Capacities”) to Qualified Subscribers by the end of this process shall then be used by Elengy to perform an Economic Viability Test on the basis of the Lower Capacity Project.

### Selection of Horizon 2035 Project

- 7.6 Elengy shall initially consider the Higher Capacity Project and then proceed in accordance with the following clause.

### Profile selection process

- 7.7 Elengy shall select the Profiles being allocated Capacities on the basis of a selection process comprising the following 3 stages:

#### Stage 1 – Ranking of Capacity Requests

- 7.8 Elengy will establish the Ranking Order of all the Profiles, i.e. an ordered list of Profiles, in accordance with Clauses 7.9 to 7.16. It should be noted that several Profiles may be ranked differently for one and the same Qualified Subscriber depending on the Ranking Order.
- 7.9 Elengy shall rank the Profiles according to their Duration, giving priority to Profiles with a longer Duration.
- 7.10 In the event that, pursuant to the previous clause, two or more Profiles are ranked equally, Elengy will divide said Profiles into two groups:

- Group 1 : Profiles associated with an Average Unloading Rate, defined as the ratio of the Capacity to the Number of Unloading Operations higher than or equal to 400 GWh per Unloading Operation ;
  - Group 2 : Profiles associated with Average Unloading Operations strictly below 400 GWh per Unloading Operation.
- 7.11 Profiles of equal Duration in Group 1 shall be given priority over Profiles of equal Duration in Group 2.
- 7.12 In the event that, pursuant to the previous clause, two or more Profiles are ranked equally, Elengy will divide said Profiles of equal Duration and belonging to the same Group into two categories:
- Category A : Profiles associated with Capacities higher than or equal to twice the Base Capacity ;
  - Category B : Profiles associated with Capacities strictly below twice the Base Capacity.
- 7.13 All Profiles of equal Duration, belonging to the same Group in Category A shall be ranked equally and shall have priority over Profiles of equal Duration, belonging to the same Group in Category B.
- 7.14 Profiles of equal Duration and belonging to the same Group in Category B shall be ranked in descending order of Capacity, i.e. giving priority to Profiles associated with higher Capacities.
- 7.15 In the event that, pursuant to the preceding clauses, two or more Profiles are ranked equally, Elengy will decide between the equal-priority Profiles by lot under the supervision of a Court Clerk.
- 7.16 At the end of the process described in Clauses 7.8 to 7.15, Elengy establishes an intermediary Ranking Order. If for a given Qualified Subscriber, the sum of the Capacities of the Profiles ranked on the basis of said priorities is higher than or equal to 66.7% of the Total Capacity then the Profiles of this Qualified Subscriber beyond that limit, in part or in all, will be directly ranked immediately below to the Profiles submitted by other Qualified Subscribers having the same Duration.
- 7.17 At the end of the process described in Clauses 7.8 to 7.16, Elengy will have established the Ranking Order of the various Profiles submitted by Qualified Subscribers. Elengy shall then assign the first rank to the Profile with the highest priority in the Ranking Order, then the second rank to the following Profile, and so forth, until all Profiles have been considered.

## **Stage 2 – Selection of Profiles**

- 7.18 On the basis of the Ranking Order previously established during Stage 1, Elengy shall select Profiles such that the sum of the Capacities associated with the Profiles is higher than or equal to the Total Capacity.
- 7.19 To this end, Elengy shall proceed as follows :
- 7.19.1 Elengy shall first select the Profile that has priority according to the Ranking Order, i.e. the Profile to which Rank 1 has been assigned ;
  - 7.19.2 Elengy shall then identify the first Profile with a higher Rank than the previously identified Rank;

7.19.3 Elengy shall then calculate the sum of the Capacities associated with the previously selected Profiles and the Capacity associated with the Profile with the Rank identified in Clause 7.19.2:

7.19.3.1 If this sum is less than or equal to the Total Capacity, then Elengy shall select the Profile previously identified in Clause 7.19.2 and shall proceed again in accordance with Clause 7.19.2, unless the last Rank to be identified corresponds to the last Rank in the Ranking Order, in which case Elengy shall proceed in accordance with Clause 7.20;

7.19.3.2 In the opposite case, Elengy shall not select the identified Profile and shall proceed in accordance with Clause 7.20.

7.20 Elengy shall then allocate the Total Capacity remaining after implementing Clause 7.19. To this end, Elengy shall estimate the Total Capacity Balance as the difference between Total Capacity, on the one hand, and the sum of the Capacities associated with the Profiles selected after implementation of Clause 7.19, on the other hand.

If the Capacity Balance is higher than or equal to 10% of the Base Capacity, Elengy shall proceed in accordance with Clauses 7.20.1 and following. Otherwise, Elengy shall proceed in accordance with Clause 7.21.

7.20.1 Elengy shall identify the highest-rank Profile that has been selected after implementation of Clause 7.19, i.e. the Profile with Rank N, as well as the Profile with the Rank immediately above the latter, i.e. the Profile with Rank N+1;

7.20.2 Elengy shall then adjust the Profile with Rank N+1 by:

- Giving the Capacity a value equal to the Total Capacity Balance;
- Giving the Number of Unloading Operations a value equal to the Number of Unloading Operations initially requested by the Qualified Subscriber, multiplied by the Total Capacity Balance and divided by the Capacity initially requested by the Qualified Subscriber, the result being rounded to the closest whole number.

In addition to the Profiles selected after implementation of Clause 7.19, Elengy shall select this Profile with Rank N+1, taking into account the above-mentioned adjustments. Said Profile is termed the "Rationed Profile".

7.21 The Profiles selected after implementation of Clauses 7.19 and 7.20 are termed " Selected Profiles". Elengy shall then proceed to Stage 3.

### **Stage 3 – Notification of Selected Profiles to the Qualified Subscribers**

7.22 Elengy shall notify the Qualified Subscribers of their Selected Profiles by proceeding as follows:

7.22.1 Where appropriate, Elengy shall identify the Selected Profiles associated with the Qualified Subscriber that has submitted the Rationed Profile, and shall proceed in accordance with the following clauses:

7.22.1.1 By means of the Notice/Confirmation Model Form (Model Form II, presented in Appendix B), Elengy shall notify the Qualified Subscriber of the selection of the latter's Selected Profiles;

7.22.1.2 The Qualified Subscriber shall contact Elengy to either confirm or disconfirm the selection of the entirety or part of the Rationed Profile in accordance with the following provisions:

7.22.1.2.1. If the Qualified Subscriber does not confirm, by the deadline specified in Model Form II, that it wishes to be allocated the entirety or part of the Rationed Profile:

- By means of the Notice/Confirmation Model Form, Elengy shall notify the Qualified Subscriber of the Selected Profiles associated with the Subscriber concerned, taking into account the fact that its Rationed Profile has not been allocated to it;
- Elengy shall then proceed in accordance with Clause 7.19.2, unless the Rank of the Rationed Profile corresponds to the last Rank in the Ranking Order, in which case Elengy shall proceed in accordance with Clause 7.22.2.

7.22.1.2.2. If the Qualified Subscriber confirms, by the deadline specified in Model Form II, that it wishes to be allocated the entirety or part of the Rationed Profile:

- By means of the Notice/Confirmation Model Form, Elengy shall notify the Qualified Subscriber of the Selected Profiles associated with the Subscriber concerned, taking into account the part of the Rationed Profile that must be allocated to it;
- Elengy shall then proceed in accordance with Clause 7.19.2, unless the Rank of the Rationed Profile corresponds to the last Rank in the Ranking Order, or unless the Qualified Subscriber has notified Elengy that it wishes to be allocated all the Capacity proposed for the Rationed Profile in which case Elengy shall proceed in accordance with Clause 7.22.2.

7.22.2 Elengy shall identify the Selected Profiles associated with the Qualified Subscribers that have not submitted a Rationed Profile, and shall notify said Subscribers – by means of the Notice/Confirmation Model Form – of the selection of their Selected Profiles.

7.23 Elengy shall then proceed in accordance with the following clauses.

### **Economic Viability Test**

- 7.24 Elengy shall proceed to determine the average tariff estimated in EUR<sub>2011</sub> for the Subscription Period (" Projected Average Tariff "), which is contingent on:
- The Selected Profiles, following implementation of Clause 7.22;
  - The costs incurred to implement the Project considered;
  - The economic conditions, including the regulatory framework, applied to determine the utilisation tariffs of the LNG terminals as of 1 January 2010.
- 7.25 Elengy shall then check that the Projected Average Tariff in EUR<sub>2011</sub> is lower than or equal to the Indicative Maximum Tariff in EUR<sub>2011</sub>. The results of the Economic Viability Test shall be considered satisfactory if the Projected Average Tariff is lower than or equal to the Indicative Maximum Tariff and, conversely, as unsatisfactory if this is not the case.
- 7.26 If the project considered is the Higher Capacity Project, and if the Economic Viability Test applied to the Higher Capacity Project is satisfactory, Elengy shall:
- Allocate the Capacities associated with the Selected Profiles;
  - Initiate the Binding Phase on the basis of the Higher Capacity Project.
- 7.27 If the project considered is the Higher Capacity Project, and if the Economic Viability Test applied to the Higher Capacity Project is not satisfactory, Elengy shall proceed in accordance with Clause 7.7, turning to consider the Lower Capacity Project.
- 7.28 If the project considered is the Lower Capacity Project, and :
- If the Economic Viability Test is satisfactory, Elengy shall :
    - o Allocate the Capacities associated with the Selected Profiles;
    - o Initiate the Binding Phase on the basis of the Lower Capacity Project.
  - If the Economic Viability Test is not satisfactory, Elengy shall initiate the Binding Phase on the basis of the Lower Capacity Project.

### **Communication of the results of the Non-Binding Phase and revision of the Allocation Rules**

- 7.29 Elengy shall analyse the results of the Non-Binding Phase and shall endeavour to communicate them to the Qualified Subscribers having submitted a Non-Binding Request by the date of Notification of the results of the Non-Binding Phase at the latest, in form of a summary presentation ensuring, in particular, the confidentiality of the Profiles submitted by the Qualified Subscribers.
- 7.30 If need be, in the light of the results of the Non-Binding Phase and after having consulted CRE, Elengy shall determine the changes to be made to the allocation modalities, which were applied in the Non-Binding Phase. In that case:
- these modalities shall be specified in a new version of the Information Memorandum, possibly by accompanying them by a new version of the Allocation Rules and their appendices. These



documents shall be submitted for approval to CRE and made available to the Qualified Subscribers having submitted a Non-Binding Request,

- Adjustments, which are deemed significant, shall be approved by CRE by way of deliberation. In this case and in accordance with the Declarations of the Qualified Subscribers the payment stipulated in Clause 8.5 shall not be due.

## 8. BINDING PHASE: BINDING ALLOCATION OF CAPACITIES TO THE QUALIFIED SUBSCRIBERS

### Submission of Binding Subscriptions

- 8.1 The Qualified Subscribers shall then be invited to submit a Binding Subscription Request by the Binding Submission Deadline in accordance with Clause 6.5.
- 8.2 Elengy shall then proceed to validate the Subscription Requests in accordance with the Clauses of Section 6.
- 8.3 Elengy shall estimate the total volume of gas ("Total Volume of Gas") associated with each of the Non-Binding and Binding Subscription Requests, as the sum of the products of the Profile Durations and the Profile Capacities associated with said Subscription Requests.
- 8.4 Elengy shall estimate, for each Qualified Subscriber, the ratio ("Relative Difference between Total Volumes") between:
- On the one hand, the absolute value of the difference between the Total Volume of Gas of the Non-Binding Subscription Request and the Total Volume of Gas of the Binding Subscription Request, and
  - On the other hand, the Total Volume of Gas of the Non-Binding Subscription Request.
- 8.5 Elengy shall communicate the following information to each of the Qualified Subscribers for which the Relative Difference between Total Volumes is higher than 30% ("Differentiated Subscribers") :
- The value of the estimated Relative Difference between Total Volumes for the Qualified Subscriber concerned ;
  - That the Subscriber has an obligation, in the event that (i) no capacity is allocated by the end of the Binding Phase, and (ii) provided the Allocation Rules have not been amended in a significant manner between the Non-Binding Phase and the Binding Phase, to pay Elengy an amount of 50 000 EUR in contribution to the costs of the 2011 Fos Tonkin Open Season.

### Selection of the Continuation Project

- 8.6 Elengy shall pursue the allocation process by considering the Project considered at the end of the Non-Binding Phase.

### Profile Selection Process

- 8.7 Elengy shall pursue the process by selecting, in accordance with Clauses 7.7 to 7.23, the Profiles associated with the valid Binding Subscription Requests. The process is expected to be completed by the End Date of the Binding Phase.

### Economic Viability Test

- 8.8 Elengy shall proceed to perform the Economic Viability Test in accordance with Clauses 7.24 and 7.25.

- 8.9 If the project considered is the Higher Capacity Project, and should the Economic Viability Test be :
- Satisfactory, Elengy will close the Binding Phase and further consider the Higher Capacity Project ;
  - Unsatisfactory, Elengy will proceed to allocate the capacities in accordance with Clauses 8.7 and following, albeit turning to consider the Lower Capacity Project.

8.10 If the project considered is the Lower Capacity Project, and assuming furthermore that the Economic Viability Test is satisfactory, Elengy:

- Shall determine whether, without calling into question the selection of Selected Profiles, the additional Capacities associated with the Higher Capacity Project can be allocated to Profiles that have not previously been selected, while at the same ensuring that the results of the Economic Viability Test applied after said allocation continue to be satisfactory.

To this end, Elengy shall :

- o Identify the Profiles – submitted by Qualified Subscribers – which have not been selected after implementation of Clause 8.7 ("Remaining Profiles");
  - o Consider a project whose total capacity would be equal to the difference between the Higher Total Capacity and the Lower Total Capacity ("Incremental Project");
  - o Apply Clauses 7.7 to 7.23 to said Remaining Profiles and to the Incremental Project, and determine whether any Profiles are selected following implementation of these clauses ("Additional Profiles"), these Additional Profiles being added to the list of Selected Profiles;
  - o Proceed to perform the Economic Viability Test in accordance with Clauses 7.24 and 7.25, considering the Higher Capacity Project and the Selected Profiles;
  - o If the results of this Economic Viability Test are satisfactory, Elengy shall close the Binding Phase and consider these Selected Profiles and the Higher Capacity Project.
- In the event that the results of the Economic Viability Test provided for in the previous point are unsatisfactory, Elengy shall close the Binding Phase and consider the Selected Profiles identified after implementation of Clause 8.7 and the Lower Capacity Project.

8.11 In the event that the results of the Economic Viability Test are unsatisfactory, Elengy shall organise a Consultation ("Consultation") among the Qualified Subscribers that have made Subscription Requests to examine how best to plan the Capacity Continuation Project at the Terminal. As part of said Consultation, Elengy shall move to:

8.11.1 Inform the Qualified Subscribers of the organisation of the Consultation by Elengy and of the main results obtained from the application of the Economic Viability Test to the Lower and Higher Capacity Project and, if appropriate, in particular, inform the Qualified Subscribers of:

- The Projected Average Tariff ;



- The Annual Total Capacities subscribed to by the Qualified Subscribers over the Subscription Period.

8.11.2 Define the modalities of communicating the Subscription Request which will be submitted in the framework of the Consultation by specifying, in particular, the delays and means of communication.

8.11.3 Offer the Qualified Subscribers consulted to be allocated Capacities within the Horizon 2035 Project by agreeing to increase their Subscription Requests or by accepting a Projected Average Tariff higher than the Indicative Maximum Tariff. To achieve this, Elengy shall proceed as follows :

- Request Qualified Subscribers interested in Horizon 2035 Capacities to notify their interest by submitting a new Binding Subscription Request and a Comparative Tariff in replacement of the Indicative Maximum Tariff with a view to putting it to the Economic Viability Test ;
- Considering the Horizon 2035 Project, select Profiles on the basis of valid Binding Subscription Requests by applying – mutatis mutandis – the provisions in Clauses 7.7 to 7.21 ;
- By applying – mutatis mutandis – the provisions of Clause 7.24, estimate the Projected Average Tariff in conjunction with the Profiles Selected for the Lower and Higher Capacity Horizon 2035 Project.

8.11.4 In the event that, following the application of the provisions of clause 8.11.2, Elengy was to reach the conclusion that no capacity developed within the scope of the Horizon 2035 Projects can be allocated, Elengy shall proceed with the Consultation by considering an Adjusted Horizon 1035 Project.

In case Elengy considers that an Adjusted Horizon 2035 Project is likely to meet the Capacity Requests expressed during the Binding Phase, Elengy shall:

- Present to the Qualified Subscribers the regasification services which Elengy plans to provide within the Adjusted Horizon 2035 Project, the projected tariff and the associated Capacities (“Adjusted Horizon 2035 Capacities”);
- Request the Qualified Subscribers interested in Horizon 2035 Capacities to notify their interest by submitting a new Subscription Request;
- Considering the Adjusted Horizon 2035 Project, select Profiles on the basis of valid Binding Subscription Requests by applying – mutatis mutandis – the provisions of Clauses 7.7 to 7.21, with the exception of Clause 7.15;
- By applying – mutatis mutandis – the provisions of Clause 7.24, estimate the Projected Average Tariff in conjunction with the Profiles Selected for the Adjusted Horizon 2035 Project.

8.11.5 In the event that, following the application of the provisions of Clause 8.11.4, Elengy was to reach the conclusion that no capacity developed within the scope of the Adjusted Horizon

2035 Project can be allocated, Elengy shall proceed with the Consultation by considering the Horizon 2020 Project. To achieve this, Elengy shall proceed as follows:

- Present to the Qualified Subscribers the regasification services which Elengy plans to provide within the Horizon 2020 Project, the Special Conditions applicable, the projected tariff and the Horizon 2020 Capacity ;

- Request the Qualified Subscribers interested in the Horizon 2020 Capacities to notify their interest by submitting a new Subscription Request characterized by Capacities lower than or equal to the Capacities initially requested during the Binding Phase ;

- Considering the Horizon 2020 Project, select Profiles on the basis of valid Subscription Requests by applying – mutatis mutandis – the provisions of Clauses 7.7 to 7.21, with the exception of Clause 7.15 ;

By applying – mutatis mutandis – the provisions of Clause 7.24, estimate the Projected Average Tariff in conjunction with the Profiles Selected for the Horizon 2020 Project.

8.11.6 At the end of this Consultation :

- in the event that Elengy was to reach the conclusion that the Capacities can be allocated to Qualified Subscribers :

- Elengy shall notify the Qualified Subscriber concerned of the Capacities which they may be allocated, the Projected Average Tariff as well as the project associated therewith ;
- The Qualified Subscribers wishing to be allocated these Capacities, shall confirm their interest in these Capacities to Elengy ;
- Elengy shall declare the end of the Binding Phase and notify all the Qualified Subscribers of this closure.

- in the event that Elengy was to reach the conclusion that no Capacity can be allocated to the Qualified Subscribers, Elengy shall :

- Declare the end of the Binding Phase and notify this closure to the Qualified Subscriber ;
- Close the Open Season without allocating any Capacity.

## Allocation of Capacities

8.12 Following the close of the Binding Phase, Qualified Subscribers that have been allocated non-nil capacities at the end of this process shall be designated as capacity holders at the Fos-Tonkin terminal ("Capacity Holders"). For each Capacity Holder and each Quarter of the Subscription Period, Elengy shall determine the sum :

- of the Capacities that have been allocated to the Qualified Subscriber concerned (" Allocated Capacities ") ;
- of the Numbers of Unloading Operations that have been allocated to the Qualified Subscriber (" Number of Allocated Unloading Operations ").

- 8.13 In the event that no Qualified Subscriber is designated as Capacity Holder and that the Allocation Rules have not been amended in a significant manner between the Non-Binding and the Binding Phases, Elengy shall bill each of the Differentiated Subscribers an amount of 50 000 EUR in conformity with the commitment made. This amount shall be payable in accordance with the payment modalities set out in the General Conditions of the ALNGT Contract.
- 8.14 Elengy shall prepare, for each Capacity Holder, a Subscription Agreement, including in particular, among the Special Conditions, the following indications:
- Date of Start of Validity: 1<sup>st</sup> October 2014;
  - Date of End of Validity: end date of the last Quarter for which the Capacity Holder has been allocated a non-nil Capacity;
  - Contractual Unloaded Quantity (CUQ) for each Billing Period: quantity, expressed in MWh, equal to the Allocated Capacity associated with the Quarters corresponding to said Billing Period;
  - Number of Contractual Unloading Operations (NCU) for each Billing Period: whole number equal to the Number of Unloading Operations associated with the Quarters corresponding to said Billing Period;
  - "Continuous" or "uniform" service for each Billing Period.
- 8.15 Elengy shall strive to send Capacity Holders the Subscription Agreement, duly completed and signed by Elengy, by the Deadline for Dispatch of the Subscription Agreements. In accordance with Model Form 3, Capacity Holders have an unconditional obligation to return to Elengy a copy of the Subscription Agreement, duly signed and initialled, within 10 Working Days of the Date of Dispatch, by Elengy, of the Subscription Agreement completed and signed by Elengy. Elengy shall make every reasonable effort to return, to each Capacity Holder, the Guarantee constituted as part of the Capacity Holder's Open Season qualification process, within five (5) Working Days of the date when the Capacity Holder constitutes the guarantee provided for in Paragraph 10.1 of the General Conditions of the Subscription Agreement.
- 8.16 Elengy shall notify the Network Operator of the identity of the Capacity Holders and the Capacities allocated to them in each Quarter.
- 8.17 Furthermore, Elengy shall notify:
- All Qualified Subscribers of the total Capacities allocated at the Fos-Tonkin terminal by the end of the Binding Phase;
  - Qualified Subscribers that have not been designated as Capacity Holders, the fact that no Capacity has been allocated to them by the end of the Binding Phase.

#### **Allocation of available Capacities after the close of the Binding Phase**

- 8.18 After the close of the Binding Phase, any Capacities that may become available shall be published on the Elengy website. Said available Capacities shall again be allocated according to the "first come, first served" rule or any other transparent and non-discriminatory rules established by Elengy, in accordance with the regulations in force and in application of the Special Conditions.

## 9. COMMITMENT DECISION

- 9.1 After the close of the Binding Phase, Elengy will perform an analysis of the results of the Binding Phase. This analysis will serve as the basis for deciding whether or not to implement the continuation project (" Commitment Decision ").
- 9.2 Elengy expects the Commitment Decision to be taken by December 31, 2011. This Commitment decision is contingent on the following condition precedent : obtaining of the administrative authorization required for the Project considered.
- 9.3 The Commitment Decision whether or not to implement a continuation project, possibly reviewed on the basis of an analysis of the Profiles and Elengy's financial criteria, belongs to the Board of Directors of Elengy. The Commitment Decision shall specify, in particular, the Total Capacity to be developed, i.e. the Capacities for each of the Quarters withinin the Subscription Period which Elengy decides to develop in order to make them available to the market following the Open Season procedure.
- 9.4 Following its Commitment Decision, Elengy will close the Open Season.

### **Communication by Elengy following the close of the Open Season**

- 9.4 Following the close of the Open Season, Elengy shall inform CRE, the Network Operator, the Qualified Subscribers and the general public of its decision whether or not to implement a project ensuring the continuation of operations at the Fos Tonkin terminal.

## APPENDIX A: MODEL FORMS FOR QUALIFICATION

- Model Form 1: Request for Qualification
- Model Form 2: Powers of Attorney
- Model Form 3: Declarations
- Model Form 4: Independent Submission Guarantee
- Model Form 5: Acceptance of Qualification



## Model Form 1: Request for Qualification

Name of the Company:

.....

**For the attention of:**

Elengy  
Open Season Fos Tonkin 2011  
Direction Stratégie, Développement, Commercialisation  
11 avenue Michel Ricard – TSA 90100  
92276 Bois-Colombes cedex  
France  
Mr. Pierre Cotin

Date: .....

Further to the communication of the Allocation Rules by Elengy in the framework of the Fos Tonkin Open Season, we wish to participate in the Open Season.

To this end, we hereby send you Model Form 2 (Power of Attorney) and Model Form 3 (Declarations) – based on the models attached to the Allocation Rules – duly completed, initialled and signed.

*(Delete as appropriate)* Furthermore, we send you our bank guarantee, based on the model attached to the Allocation Rules.

*(Delete as appropriate)* Furthermore, we hereby inform you that we have made a bank transfer in accordance with the Allocation Rules in order to provide the required Guarantee.

Name/Title: .....

Company: .....

Signature: .....

Attachments:

- Power of Attorney
- Declarations
- Independent Submission Guarantee *(Delete as appropriate)*



## Model Form 2: Power of Attorney<sup>1</sup>

I, the undersigned  
(First name, SURNAME) .....

Acting in the capacity of:  
(Function) .....

Representing the company:  
(Name of company) .....

With registered offices  
at:  
(Address of registered  
offices) .....

Registered in the: ..... Under number .....

(hereinafter referred to as "the Company")

Hereby authorise the following Points of Contact:

### 1. Principal Point of Contact

First name, SURNAME:	.....
Position within the company:	.....
Address:	..... .....
Telephone number:	.....
Fax number:	.....
E-mail:	.....
Date and signature:	.....

### 2. Second Point of Contact

First name, SURNAME:	.....
Position within the company:	.....
Address:	.....

<sup>1</sup> If required by the legislation of the country where the company is registered, please return this Power of Attorney in the form of an official deed or document authenticated by a notary.



	.....
Telephone number:	.....
Fax number:	.....
E-mail:	.....
Date and signature:	.....

To carry out, for and on behalf of the Company, the following actions in relation to the 2011 Fos Tonkin Open Season organised by Elengy:

- sign and make all the necessary declarations to qualify as a Qualified Subscriber (including in particular the declarations that must be made in accordance with Model Form 3);
- submit a Subscription Request and transmit or receive communications concerning the Open Season and – as and when appropriate – conclude the Subscription Agreement;
- sign and endorse any document, contract or commitment, whatever its nature, in relation to the 2011 Fos Tonkin Open Season;
- take, on behalf of the Company, any other measures that are necessary or appropriate for the purposes of the 2011 Fos Tonkin Open Season;
- perform all other reasonably necessary actions to fulfil the Company's obligations resulting from the 2011 Fos Tonkin Open Season.

The terms have the meaning defined in the Allocation Rules or in this document:

Done in: (Place)	.....
On: (Date)	.....
Signature of the grantor of the Power of Attorney:	.....
In the presence of <sup>2</sup> : (Name and function):	.....
Signature:	.....

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<sup>2</sup> In some countries, the signature of a notary may be required.



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## Model Form 3 – Declarations

### A: Elengy

I, the undersigned ..... (name of one of the persons designated in Model Form 2), duly authorised to make declarations concerning the matters described below, accept, confirm and guarantee the following, on behalf of

.....

(the "Company"):

1. The Company is duly incorporated as a company, operates legally in accordance with the law applicable to it and pursues commercial activities;
2. The financial situation of the Company is sound, the Company is capable of paying its debts on time, it is not insolvent and is not in receivership or liquidation;
3. The Company is capable of fulfilling its obligations resulting from the 2011 Fos Tonkin Open Season, and the fulfilment of said obligations has been duly authorised, where appropriate, by all the decisions required of the Company's decision-making bodies. Said obligations (including any subsequent agreement) constitute, for the Company, valid and unconditional obligations, which apply to it in accordance with their terms, except where said application is limited by the legislation in force concerning bankruptcy, insolvency and/or reorganisation or any other similar law;
4. The obligations of the Company pursuant to the 2011 Fos Tonkin Open Season are not in conflict with, nor do they infringe or violate any law applicable to the Company, nor any provision of its Articles of Association nor any applicable decision or judgement of a court or of any other public body, nor do they entail non-compliance with the terms of a contract or agreement to which the Company is party or by which it is bound;
5. The obligations of the Company pursuant to the 2011 Fos Tonkin Open Season do not require the Company to obtain any approval, authorisation, measure, submission or notice from any public body or other competent legal person nor registration with, or notification of, any public body or other competent legal person under the provisions of any law, agreement or contract to which the Company is party or by which it is bound; or, where required, that such approvals, authorisations, measures, submissions or notices have been duly obtained, carried out or performed and are fully valid and applicable or shall be obtained, carried out or performed within the established time limits;
6. To the best of the knowledge of the Company, no entity in relation to which the Company is a related Party wishes to qualify or has already qualified as a Qualified Subscriber for the 2011 Fos Tonkin Open Season or, where such a Related Party wishes to qualify or is already qualified as a Qualified Subscriber for the Open Season, it has already informed Elengy of this fact;
7. The Company shall observe the Allocation Rules;
8. The Company has not entered into collusion nor shall it enter into collusion with other Qualified Subscribers in the framework of the 2011 Fos Tonkin Open Season in order to obtain an advantage. In spite of the foregoing, the Company may conclude agreements with one or more Related Parties concerning their joint participation or that of a Related Party in the 2011 Fos Tonkin Open Season, provided they give Elengy prior notice thereof;
9. The information received by the Company in relation to the 2011 Fos Tonkin Open Season shall be treated by the Company on a confidential basis, in accordance with the terms of the Confidentiality Agreement which the Company has signed;

10. The Company agrees that all actions carried out by itself or on its behalf in its capacity as Qualified Subscriber should be considered as having taken place in France;
11. The Company hereby declares that it is familiar with the clauses and conditions concerning the Subscription Agreement. Should the Company be allocated regasification Capacities following the 2011 Fos Tonkin Open Season, it agrees to be bound by said clauses and conditions. Furthermore, the Company undertakes to return the Subscription Agreement, duly signed and initialled, in accordance with said clauses and conditions, within 10 Working Days of the date of dispatch, by Elengy, of the Subscription Agreement, completed and signed by Elengy;
12. In accordance with the Allocation Rules, the Company has provided or shall provide a guarantee ("Guarantee"), for a principal amount equivalent to 150 EUR per GWh/year, applied to the Capacity which the Registered Subscriber wishes to acquire, i.e. .... EUR. This Guarantee is constituted by means of (a transfer to Elengy's bank account) / (an Independent Submission Guarantee) (*Delete as appropriate*);
13. The Company undertakes to pay Elengy an amount of 50 000 EUR in contribution to the costs of the 2011 Fos-Tonkin Open Season in the event that (i) the Binding Subscription Request submitted by the Company is significantly different from the previously submitted Non-Binding Subscription Request, a Binding Subscription Request being deemed to differ significantly from the Non-Binding Subscription Request when the absolute value of the difference between the total volumes of gas to be unloaded under the two Subscription Requests represents more than 30% of the total volume of gas to be unloaded under the Non-Binding Subscription Request, the total volumes of gas to be unloaded being defined as the sum of the products of the Profiles' durations and their capacities; and (ii) the Allocation Rules have not been amended in a significant manner between the Non-Binding Phase and the Binding Phase and (iii) no capacity is allocated by the end of the Binding Phase;
14. The Company undertakes to reserve – should Capacities be allocated to it at the Fos-Tonkin Terminal – daily entry capacity on the System Operator's transmission system at the Fos PITTM, by means of an ad hoc subscription agreement based on the capacity that will be allocated to the Company each year;
15. The Company has accepted and endorsed the terms of the present declarations in its own name (rather than acting as an agent, trustee or in any other capacity).

The Company fully understands and agrees that the Subscription Request made during the Open Season is irrevocably binding. The capitalised terms used in this Model Form have the meaning given to them in the Allocation Rules or in this document.

This Model Form is governed by, and should be interpreted in accordance with, French legislation.

Name: (it must be that of a person designated in Model Form 2)	Position:
..... .....	..... .....

Signature: (it must be that of a person designated in Model Form 2)

.....

Date: .....

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## Model Form 4: Independent Submission Guarantee

Elengy  
11 avenue Michel Ricard – TSA 90100  
92276 Bois-Colombes cedex  
France

« Dear Sir/Madam,

We are acting on instruction from our client, (Company), in the framework of the invitation to subscribe for regasification capacity at the Fos-Tonkin terminal ("2011 Fos Tonkin Open Season"), for which a Binding Subscription Request must be submitted by (the Company) by October 21, 2011 at the latest, and which aims to conclude an agreement ("Subscription Agreement") for access to the Fos-Tonkin LNG terminal between, on the one hand, the Capacity Holders resulting from the 2011 Fos Tonkin Open Season and, on the other, Elengy.

Under the terms and conditions of the Allocation Rules for the 2011 Fos Tonkin Open Season, (the Company) – together with all other Registered Subscribers that wish to qualify for the 2011 Fos Tonkin Open Season – must provide Elengy with a guarantee to cover the Company's obligations under the 2011 Fos Tonkin Open Season.

Therefore we, the undersigned (Name of bank), with registered offices in a Member State of the European Union and having rating of at least A by Standard & Poor's and A2 by Moody's on the date of issue of the present guarantee (hereinafter "the Bank"), irrevocably and unconditionally undertake to pay Elengy upon first demand, in cash and not in the form of a deposit, the principal amount of (.....) EUR in respect of the 2011 Fos Tonkin Open Season, within five (5) working days (i.e. on a day when the banks are open in the financial market of (locality of Bank's registered offices), immediately upon request made by Elengy by registered letter with acknowledgement of receipt to the following address (Address of Bank), in accordance with the Model Form which is attached to the present guarantee and which forms an integral part of this document.

This guarantee is given in the form of an autonomous and independent guarantee payable upon first request and the Bank hereby expressly renounces any right to invoke any exception resulting from another agreement, including the Subscription Agreement or the Allocation Rules, to delay or refuse payment of the amounts payable under the present guarantee, including, among said exceptions, any disputes, legal proceedings or arbitration procedures relating to the Subscription Agreement.

The present guarantee is concluded "intuitu personae".

The present guarantee shall come into force on September 16, 2011 and shall expire after the closest of the following two dates:

- The date of constitution of the Guarantee provided for in Paragraph 10.1 of the General Conditions of the Contract for Access to the LNG terminal (ALNGT Contract);
- March 31, 2012.

In the event that no Capacity is allocated to (the Company) following the 2011 Fos Tonkin Open Season, the present guarantee shall expire on the date of receipt by (the Company) of the notice sent by Elengy informing it that no Capacities have been allocated to it.

Upon expiry of the guarantee, the present original document shall be returned to us as soon as possible.

The present guarantee may only be called upon once, and only for the maximum principal amount.

The terms and expressions used in the present guarantee have the meanings given to them in the Allocation Rules and their annexes or in the present guarantee.

The present guarantee is governed by French law and any dispute arising in relation to the present guarantee shall fall within the exclusive competence of the Paris Commercial Court.

Yours faithfully,"

**ANNEXE to the Independent Submission Guarantee**

(To be sent by registered mail with acknowledgement of receipt)

I, the undersigned ....., representing the Company Elengy, a public limited company with a capital of 107 372 190 EUR with registered offices at BOIS-COLOMBES (FR 92270), 11 avenue Michel Ricard, France, registered in the Nanterre Registry of Trade and Companies under the number 451 438 782, in my capacity as .....

Hereby notify (the Bank) that the amount of ..... EUR is immediately payable by bank transfer to account number ..... held in the name of ..... at (the banking establishment), in respect of the Independent Submission Guarantee given by the (Bank) on (date).....

Done in Bois-Colombes, on .....

---

## Model Form 5 – Acceptance of Qualification

A

(First name, NAME of  
Principal Point of  
Contact) .....

(Position of Principal  
Point of Contact) .....

(Name of the Company) .....

With registered  
offices at (Address  
of registered  
offices) .....  
.....  
.....

Registered in the: ..... Under number .....

**Re: Acceptance of your Request for Qualification for the 2011 Fos Tonkin Open Season**

We hereby acknowledge receipt of Model Form 3, duly completed, and certify that we have accepted your Request for Qualification and participation in the 2011 Fos Tonkin Open Season as a Qualified Subscriber.

Please note that Elengy has set your Maximum Capacity at (.....) GWh/year.

The capitalised terms used in this Model Form have the meaning given to them in the Allocation Rules and their annexes.

This Model Form is governed by, and should be interpreted in accordance with, French legislation.

May we draw your attention to the fact that you have an obligation to continue to fulfil the qualification requirements set out in the Confidentiality Agreement, the Allocation Rules and Model Form 3.

Signature (for and on behalf of Elengy)

Name .....

Date .....



## APPENDIX B: SUBSCRIPTION MODEL FORMS

- Model Form I: Subscription Request
- Model Form II: Notice – Confirmation

## Model Form I: Subscription Request – Page 1/2

Qualification and Submission Address:

<p><b>Elengy</b>  <b>Open Season Fos Tonkin 2011</b>  <b>Direction Stratégie Développement Commercialisation</b>  <b>11 avenue Michel Ricard – TSA 09100</b>  <b>92276 Bois-Colombes</b>  <b>France</b></p>
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### Identification of Qualified Subscriber

Name of company:	.....
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(Hereinafter referred to as the "Qualified Subscriber")

Represented by

Name, Surname:	.....
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(Hereinafter referred to as the "Representative of the Qualified Subscriber")

Hereby submits its Subscription Request in the framework of the 2011 Fos Tonkin Open Season.

I hereby declare that I am authorised, by virtue of the Power of Attorney, to submit the present Subscription Request which unconditionally and irrevocably commits the Qualified Subscriber, should it be designated as a Successful Tenderer (Capacity Holder), to conclude a Subscription Agreement in accordance with the Allocation Rules.

This Subscription Request contains ..... Profiles.

The terms and expressions used in the present document have the meanings given to them in the Allocation Rules and their annexes or in the present document.

### Signature of the Representative of the Qualified Subscriber

First name:		Place, date:	....., on .....
Surname:		Signature:	

## Subscription Request – Page 2/2

	Start date	Capacity	End date of Profile	Average number of unloading operations per year
		GWh/year*	mm/jj/aaaa **	#/year***
Profile 1	10/01/2014			
Profile 2	10/01/2014			
Profile 3	10/01/2014			
Profile 4	10/01/2014			
Profile 5	10/01/2014			
Profile 6	10/01/2014			
Profile 7	10/01/2014			
Profile 8	10/01/2014			
Profile 9	10/01/2014			
Profile 10	10/01/2014			

\* To be expressed in GWh/year, with no decimals after the point.

\*\* Date corresponding with the end date of a Quarter.

\*\*\* #/year i.e. the annual number of Unloading Operations associated with the Capacities expressed in GWh/year, with no decimals after the point.

Optional information	
Type and size (in m <sup>3</sup> of LNG) of the LNG tanker(s):	
LNG loading port(s):	
Other desired services:	

### Signature of the Representative of the Qualified Subscriber

First name:		Place, date:	....., on .....
Surname:		Signature:	



## Model Form II: Notice – Confirmation – Page 1/2

For the attention of:

### Identification of the Qualified Subscriber

Company name:	.....
---------------	-------

(hereinafter referred to as the "Qualified Subscriber")

Represented by

First name, Surname:	.....
----------------------	-------

(hereinafter referred to as the "Representative of the Qualified Subscriber")

Address	..... ..... .....
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**Re: Notification of selection of Profiles and acceptance of Rationed Profile within the scope of the 2011 Fos Tonkin Open Season**

Please note that the [.....] Profiles listed in the table on the following page were selected in accordance with Clause 7.21 of the Allocation Rules.

*(Delete as appropriate)* Furthermore, in accordance with Clause 7.20, Profile [.....] is a Rationed Profile. In accordance with Clause 7.22.1, if you wish to be allocated the entirety or part of this Rationed Profile, you must inform Elengy thereof by [.....] hours (Paris time) on [.....]. To this end, it is necessary to:

- Specify, on the following page, the Capacity of the Rationed Profile that you wish to have allocated to you. Said capacity must have a value between 0 and the Capacity proposed for the Rationed Profile;
- Sign and return to Elengy, by fax, the following page by the above-mentioned time and date.

The capitalised terms used in this Model Form have the meaning given to them in the Allocation Rules and their annexes. This Model Form is governed by, and should be interpreted in accordance with, French legislation.

Signature (for and in behalf of Elengy)

Surname .....

Date .....

## Notice – Confirmation – Page 2/2

*(Delete as appropriate)* **By fax**  
**Elengy Open Season Fos Tonkin 2011**  
**+33 1 46 52 35 42**

	Start date	Capacity	End date of Profile	Average number of unloading operations per year
		GWh/year*	mm/jj/aaaa **	#/year***
<b>Profile 1</b>	10/01/2014			
<b>Profile 2</b>	10/01/2014			
<b>Profile 3</b>	10/01/2014			
<b>Profile 4</b>	10/01/2014			
<b>Profile 5</b>	10/01/2014			
<b>Profile 6</b>	10/01/2014			
<b>Profile 7</b>	10/01/2014			
<b>Profile 8</b>	10/01/2014			
<b>Profile 9</b>	10/01/2014			
<b>Profile 10</b>	10/01/2014			

\*To be expressed in GWh/year, with no decimals after the point.

\*\* Date corresponding with the end date of a Quarter.

\*\*\* #/year, i.e. the annual number of Unloading Operations associated with the Capacities expressed in GWh/year, with no decimals after the point.

*(Delete as appropriate)* I hereby declare that I am authorised, by virtue of the Power of Attorney, to submit the present Notice/Confirmation and I request that a Capacity of  GWh/year be allocated to the Qualified Subscriber under the Rationed Profile identified as Profile  in the above table.

The present Notice/Confirmation unconditionally and irrevocably commits the Qualified Subscriber, should it be designated as a Successful Tenderer (Capacity Holder), to conclude a Subscription Agreement in accordance with the Allocation Rules.

The terms and expressions used in the present document have the meaning given to them in the Allocation Rules and their annexes or in the present document.

### Signature of the Representative of the Qualified Subscriber

First name:		Place, date:	
Surname:		Signature:	





## APPENDIX C: SPECIAL CONDITIONS OF THE SUBSCRIPTION AGREEMENT