

FLUXYS

MARKET SURVEY TO ASSESS MARKET DEMAND
FOR ADDITIONAL LONG-TERM GAS TRANSMISSION
CAPACITY **FROM FRANCE TO BELGIUM**

ATTACHEMENT 3: AASC - FLUXYS

[DATE]

FLUXYS NV/SA

AND

[SHIPPER]

AGREEMENT FOR ANTICIPATED SUBSCRIPTION OF CAPACITIES

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This Agreement for Anticipated Subscription of Capacities (the "**Agreement**") is made between:

- (1) **FLUXYS NV/SA**, a company incorporated under the laws of Belgium with its registered office at Kunstlaan 31, 1040 Brussels, and registered at the Register for Legal Entities under number 0402.954.628 (hereinafter called "**Fluxys**" which expression includes its successors in title and permitted assigns);

hereby duly represented by Messrs. Walter Peeraer, Chairman of the Executive Board and Chief Executive Officer, and Pascal De Buck, Member of the Executive Board and Commercial Director;

and:

- (2) **[SHIPPER]**, a company incorporated under the laws of **[COUNTRY]** with its registered office at **[ADDRESS]** and registered at the **[REGISTER]** under number **[NUMBER]** (hereinafter called "**Shipper**" which expression includes its successors in title and permitted assigns);

hereby duly represented by **[REPRESENTATIVE]** and **[REPRESENTATIVE]**;

Fluxys and Shipper may hereinafter be collectively referred to as the "**Parties**" and individually as a "**Party**".

WHEREAS:

- (A) GRTgaz and Fluxys launched on 31 May 2010 the non-binding phase of the Open Season with a view of collecting market's interest for new firm long term capacities from France to Belgium,
- (B) Dunkerque LNG has taken on 27 June 2011 the final investment decision of the Dunkirk LNG Terminal Project,
- (C) On the basis of the results of the non-binding phase of the Open Season, GRTgaz and Fluxys have launched its binding phase on 13 December 2011,
- (D) In the framework of the binding phase of the Open Season, Shipper has submitted a Binding Capacity Request for transmission services from the Dunkirk LNG Terminal and/or PEG Nord via the New Interconnection Point Veurne to ZTP and/or IZT (as defined in Clause 1 hereinafter) and Fluxys and GRTgaz have allocated certain or all of the requested transmission services to the Shipper in accordance with the Allocation Rules set forth in the

Supplementary Information Memorandum of the binding phase of the Open Season,

(E) Fluxys and the Shipper are willing to enter into the present Agreement in order to determine the terms and conditions which shall govern said transmission services.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS

"Affiliated Company" shall mean any company falling within the definition of art. 2, 22 of the Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC

"Agreement" shall mean the present Agreement for Anticipated Subscription of Capacities

"Allocated Transmission Services" shall have the meaning ascribed to it in Clause 2

"Allocated Dunkirk LNG Transmission Services" shall mean the Allocated Transmission Services from Dunkirk LNG Terminal to ZTP and/or IZT

"Allocated Veurne Transmission Services" shall mean the Allocated Transmission Services from NIP Veurne to ZTP and/or IZT

"Confidential Information" shall have the meaning ascribed to it in Clause 9

"CRE" shall mean the Commission de régulation de l'énergie

"CREG" shall mean the "Commission de Régulation de l'Electricité et du Gaz" as referred to in the Gas Act, its successor or any other authority legally empowered to carry out the duties currently attributed to the CREG

"Cross Border Delivery Service" shall have the meaning ascribed to it in Clause 2.2

"Dunkerque LNG" shall mean the operator of the Dunkirk LNG Terminal Project

"Dunkirk LNG Terminal" shall mean the flange on which the Natural Gas transmission grid of GRTgaz connects to the LNG terminal in Dunkirk

"Dunkirk LNG Terminal Project" shall mean the LNG terminal as developed by Dunkerque LNG in the Dunkirk port

"Fluxys Extension" shall mean those parts of the Fluxys' grid which need to be constructed and operated in order to provide the Allocated Transmission Services subscribed under this Agreement

"Gas Act" shall mean the Belgian Gas Law concerning the transportation of gaseous and other substances by pipeline of 12 April 1965, as amended from time to time

"GRTgaz" shall mean the operator of the French natural gas transmission grid connected to Fluxys

"GRTgaz Extension" shall mean those parts of the GRTgaz' grid which need to be constructed and operated in order to allow GRTgaz to provide the services necessary for Fluxys to be able to offer the Allocated Dunkirk LNG Transmission Services and in order to allow GRTgaz to provide the exit capacity matching the entry capacity offered through the Allocated Veurne Transmission Services

"Model Review" shall have the meaning ascribed to it in Clause 2

"NIP Veurne" shall mean the flange on which the Natural Gas transmission grids of Fluxys and GRTgaz connect nearby Veurne

"Open Season" shall mean the process designated as such which has been launched by GRTgaz and Fluxys for collecting the interest of and subscribing long term firm capacities from France to Belgium with Shipper and other shippers

"IZT" shall mean the flange on which the Natural Gas transmission grid of Fluxys connects in Zeebrugge with the Interconnector undersea pipeline

"Natural Gas" shall mean any hydrocarbon or mixture of hydrocarbons and non-combustible gases which, when extracted from the subsoil of the earth in its natural state separately or together with liquid hydrocarbons, is in the gaseous state.

"Network Code" shall have the meaning ascribed to in Clause 3

"Standard Transmission Agreement" shall have the meaning given to it in Clause 3

"Start Date" shall have the meaning set forth in Clause 5.2

"Target Start Date" shall have the meaning set forth in Clause 5.1

"ZTP" shall mean the notional trading point to be created in Belgium under the future entry-exit gas transmission model

2. TRANSMISSION SERVICES

2.1 Subject to the terms and conditions of this Agreement, Shipper hereby subscribes, and Fluxys hereby accepts to deliver to Shipper, firm transmission services for Natural Gas from the offtake points to the (virtual) redelivery points in the capacities and for the duration as set forth under this Clause 2.

2.2 The following transmission services have been allocated to the Shipper (the “**Allocated Transmission Services**”):

From	To	Capacity	Duration
NIP Veurne	ZTP	[•] kWh/hour	[•] years
NIP Veurne	IZT	[•] kWh/hour	[•] years
Dunkirk LNG Terminal	ZTP	[•] kWh/hour	[•] years
Dunkirk LNG Terminal	IZT	[•] kWh/hour	[•] years

The Allocated Dunkirk LNG Transmission Services shall be contractually structured as entry capacity to the Fluxys grid at the Dunkirk LNG Terminal and shall include in particular a mandatory cross border delivery service bundled and matched (in quantity and time) with related physical entry capacity of the Fluxys grid at the NIP Veurne (the “**Cross Border Delivery Service**”). Through subscription of Allocated Dunkirk Transmission Services the Shipper accepts that it shall deliver to Fluxys any Natural Gas at the Dunkirk LNG Terminal in lieu of at the NIP Veurne implying that the physical entry capacity at NIP Veurne linked to the Cross Border Delivery Service cannot be utilized as entry capacity at the NIP Veurne.

2.3 In consideration of the delivery of the Allocated Transmission Services, a tariff, which shall be approved by the CREG, shall be due by the Shipper to Fluxys from the Start Date for the Duration and the Capacities as provided in Clause 2.2.

The tariff for the Allocated Veurne Transmission Services to ZTP shall be the applicable tariff for other entry points of the Fluxys grid.

The price to be paid for the Allocated Veurne Transmission Services to IZT in accordance to the terms and conditions of this Agreement shall be at maximum 19 €/m³(n)/h/year, (or 70,06 €/MWh/d/year¹), yearly indexed at the Belgian Consumer Price index (CPI).

The tariff for the Allocated Dunkirk LNG Transmission Services to ZTP shall be equal to the sum of (i) the applicable tariff for other entry points of the Fluxys grid and (ii) the tariff for the Cross Border Delivery Service.

¹ GCV used for conversion equal to 11,3 kWh/m³(n)

The tariff for the Allocated Dunkirk LNG Transmission Services to IZT shall be equal to the sum of (i) the tariff of the Allocated Veurne Transmission Services to IZT and (ii) the tariff of the Cross Border Delivery Service.

The tariff for the Cross Border Delivery Service shall be based on the applicable tariff for Fluxys as approved by the CRE. Without prejudice to the terms and conditions of the future Standard Transmission Agreement, Fluxys shall have the right to request financial assurances from Shipper for the Cross Border Delivery Service that are in accordance with applicable standards of GRTgaz.

2.4 A modification, review or any other change to or of the definitions, components and/or concepts of the future gas transmission model in Belgium as currently contemplated (the "**Model Review**") shall not affect the validity and binding nature of subscription of the Allocated Transmission Services. Following a Model Review, such subscription will be deemed to have been made for the transmission services offered under the reviewed model matching as closely as possible the Capacities, offtake and redelivery points and Duration specified in this Clause 2.

3. CONTRACTUAL DOCUMENTS

3.1 The Allocated Transmission Services shall be governed by, among other things, a standard transmission agreement (the "**Standard Transmission Agreement**") to be approved by the CREG after consultation of the shipper community and the rules and/or codes as applicable according to the Belgian and European regulation in place (the "**Network Code(s)**").

3.2 Fluxys and Shipper agree and undertake to enter into the Standard Transmission Agreement within thirty (30) days after its approval by the CREG for all of, and not less than all of, the Allocated Transmission Services. If for whatsoever reason Parties do not enter into the Standard Transmission Agreement before the Start Date, the Allocated Transmission Services shall be nevertheless governed by the Standard Transmission Agreement and the Network Code(s) in the version and form as applicable at the Start Date, as if the Parties had entered thereinto.

4. ASSIGNMENT OF THIS AGREEMENT

4.1 Neither Party may, for whole or part of the duration of this Agreement assign any rights or obligations under this Agreement without the prior written consent of the other Party. Neither Party shall withhold such consent if the assignee has expressly undertaken in writing to be bound by the terms and conditions of this Agreement.

4.2 The Parties may freely transfer or assign any rights and obligations under this Agreement to an Affiliated Company, provided that such Affiliated Company undertakes (i) to comply with the rights and obligations under this Agreement and (ii) to provide relevant guarantees to the non-assigning Party (such as parent company guarantee).

4.3 No assignment of any rights or obligations under this Agreement shall be effective until such assignment has been notified in writing to Fluxys and, where applicable, until consent has been given by Fluxys to the assigning Party or to their successors or assignees.

5. TERMS AND CONDITIONS

5.1. CONSTRUCTION OF THE FLUXYS EXTENSION AND THE GRTGAZ EXTENSION

5.1.1 Fluxys undertakes to design, construct and commission the Fluxys Extension in order to be able to provide the Allocated Transmission Services. Fluxys, as prudent and reasonable operator will use its reasonable endeavours to complete and commission the Fluxys Extension on or before 1 November 2015 (the **Target Start Date**).

5.1.2 Fluxys has or shall conclude an agreement with GRTgaz providing, among other things, for the design, construction and commissioning of the GRTgaz Extension by GRTgaz on or before the Target Start Date.

5.1.3 Fluxys shall provide Shipper with quarterly progress reports related to the progress of the design, engineering, construction and commissioning of the Fluxys Extension and, for Shippers having subscribed Allocated Dunkirk LNG Transmission Services, of the GRTgaz Extension, to the extent that this information has been received from GRTgaz, it being understood that:

- (i) any such progress reports shall be considered as purely informational;
- (ii) Fluxys cannot be held liable for incompleteness and/or incorrectness of such reports; and,
- (iii) such reports shall in no way alter any of Fluxys' or Shipper's rights and obligations under this Agreement.

5.1.4 Fluxys shall:

- (i) promptly notify Shipper if any delay occurs in obtaining the authorisations, permits and licenses required for the construction of the Fluxys Extension and, for Shippers having subscribed Allocated Dunkirk LNG Transmission Services,

of the GRTgaz Extension, to the extent that this information has been received from GRTgaz and the anticipated consequences thereof on the Fluxys Extension Start Date (respectively the GRTgaz Extension); and,

- (ii) inform Shipper if the Target Start Date would be altered. In such case Fluxys shall notify the Target Start Date to Shipper, at the latest ninety (90) days before such altered Target Start Date.

5.2 START DATE AND DURATION

The Start Date shall be the earliest of following dates:

- (i) the date on which the Fluxys Extension, GRTgaz Extension and Dunkirk LNG Terminal Project are completed and commissioned. The Dunkirk LNG Terminal Project shall be considered as commissioned on the day following the unloading of the third methane carrier at this LNG terminal; and
- (ii) 6 months after the completion and commissioning of the Fluxys Extension and GRTgaz Extension.

The period during which the Allocated Dunkirk LNG Transmission Services and/or the Allocated Veurne Transmission Services are to be delivered starts on the Start Date and ends on the day which is the numerically corresponding day in the year which is the number of years indicated in the row "duration" under Clause 2 after the Start Date.

5.3 TERM

5.3.1 Subject to Clause 5.4 below, this Agreement shall come into effect as from its execution by both Parties.

5.3.2 Subject to Clauses 5.5 and 5.6 this Agreement shall remain in full force and effect until the end of the duration of the Allocated Transmission Services as defined in Clause 2.2.

5.3.3 If, for any reason, the tariff for the Allocated Veurne Transmission Services to IZT or the tariff for the Allocated Dunkirk LNG Transmission Services to IZT in accordance to the terms and conditions of this Agreement shall be higher than the maximum as set out in Clause 2, Parties shall discuss in good faith the terms and conditions of this Agreement. In any such discussion, the economic balance of the present Agreement shall be preserved. It is hereby understood that preserving the economic balance for a Shipper, having subscribed the Allocated Veurne Transmission Services to IZT or the Allocated Dunkirk LNG Transmission Services to IZT, shall mean that at first instance Parties shall seek to exchange capacities subscribed for to IZT for any other equivalent Fluxys' physical exit capacity subject to (i) physical availability on the Fluxys grid and (ii) equivalent revenue generation for Fluxys.

5.4. CONDITIONS PRECEDENT

This Agreement is entered into subject to the following:

- (i) Approval by the board of directors of Fluxys of the Fluxys Extension, on or before 1 May 2012; and,
- (ii) Confirmation in writing by GRTgaz to Fluxys on or before 15 May 2012 of:
 - (a) it having obtained its approvals and the approval of the CRE to build and operate the GRTgaz Extension; and,
 - (b) it being committed to build and operate the GRTgaz Extension to commission and make it available no later than the Target Start Date.

Fluxys shall promptly notify the Shipper when the above conditions have been satisfied.

If Shipper has not been notified by Fluxys on or before 21 May 2012 that the hereinabove mentioned conditions precedent have been satisfied, this Agreement shall terminate and neither Party shall have any liability to the other as a result of such termination.

5.5. STEP-OUT RIGHT FOR SHIPPER

If:

- (i) Fluxys has not obtained all necessary permits, licenses and authorisations for the construction of the Fluxys Extension by 1 November 2015; or,
- (ii) Fluxys has not commenced construction of the Fluxys Extension on or before 1 November 2015; or

Shipper shall be entitled to terminate this Agreement without any indemnity or other payment being due by Shipper to Fluxys, by giving written notice to Fluxys within one (1) Month as from having been notified by Fluxys that the step-out right has been triggered. Shipper's failure to exercise its step-out right within this one (1) Month delay will constitute an irrevocable and final waiver of this right. Fluxys shall notify Shipper if any of the events mentioned under Clause 5.5 has occurred within one (1) Month of its occurrence. Fluxys' failure to notify Shipper in case the step-out right has been triggered shall constitute a breach of this Agreement and shall entail Shipper to exercise at any time its step-out right.

5.6. STEP-OUT RIGHT FOR FLUXYS

5.6.1 If:

- (i) One or more other shippers gathering altogether more than 80% of the Allocated Transmission Services resulting from the Open Season have invoked their step-out right according to Clause 5.5 under their respective agreements;

- (ii) Fluxys (respectively GRTgaz) has not obtained all necessary permits, licenses and authorisations for the construction of the Fluxys Extension (respectively GRTgaz Extension) by 1 November 2015;
- (iii) Fluxys (respectively GRTgaz) has not commenced construction of the Fluxys Extension (respectively GRTgaz Extension) on or before 1 November 2015; or,
- (iv) The commissioning of the Dunkirk LNG Terminal Project has not occurred on 31 December 2018; or,
- (v) GRTgaz decides not to proceed with or cease the construction of the GRTgaz Extension.

For the purpose of Clause 5.6.1 (ii) Fluxys shall use its best efforts throughout the term of this Agreement to obtain all necessary permits, licenses and authorisations for the construction of the Fluxys Extension by 1 November 2015.

For the purpose of Clause 5.6.1 (iii) Fluxys shall use its best efforts throughout the term of this Agreement to commence construction of the Fluxys Extension by 1 November 2015.

Except in case of gross negligence or wilful misconduct, Fluxys shall be entitled to terminate this Agreement without any indemnity or other payment being due by Fluxys to Shipper, by giving written notice to Shipper within one (1) Month upon its knowledge of any of the events listed under Clause 5.6.1(i) to (v) having occurred. Fluxys failure to exercise its step-out right within this one (1) Month delay will constitute an irrevocable and final waiver of this right in respect of such event.

5.6.2 Fluxys shall promptly notify Shipper in writing if any of the events mentioned under Clause 5.6.1 has occurred.

6. REPRESENTATIONS AND WARRANTIES

Each of the Parties hereby represents and warrants that it is duly authorized to enter into this Agreement for and on behalf of the entities identified herein and on behalf of its concerned Affiliated Company, successors and assigns.

7. COSTS, FEES & EXPENSES

The Parties agree that, except if otherwise expressly agreed upon in this Agreement, each Party shall bear its own costs, fees and expenses incurred in connection with the resolution of all matters resolved herein and the implementation of this Agreement.

8. CONFIDENTIALITY

This Agreement and all information obtained hereunder by one Party from the other Party shall be deemed to be confidential and must be treated as confidential ("**Confidential Information**").

The Parties shall keep confidential and shall not disclose Confidential Information during the term of this Agreement and for a period of three years after the termination date of this Agreement to any Person not a Party to this Agreement.

A Party may disclose Confidential Information to the extent such information:

- (i) is already known to such Party as at the date of disclosure to it under this Agreement;
- (ii) is already in possession of the public or becomes available to the public other than through the act or omission of such Party or of any other Person to whom Confidential Information is disclosed pursuant to this Agreement;
- (iii) is required to be disclosed by such Party and/or an Affiliated Company of such Party by applicable Law, a court of competent jurisdiction or a competent judicial, governmental, supervisory or regulatory body, or the rules of a stock exchange on which the securities of the Party or its Affiliated Company are listed, provided that such Party shall use reasonable endeavours to give the other Party prompt notice before such disclosure;
- (iv) is acquired independently from a third party that represents that it has the right to disseminate such information at the time it is acquired by such Party;
or
- (v) is developed by such Party independently of the Confidential Information received from the other Party.

A Party may disclose Confidential Information without the other Party's prior written consent to an Affiliated Company if and to the extent such disclosure is necessary for the purposes of performing this Agreement and in such a case the disclosing Party is responsible for ensuring that the Affiliate complies with the terms of this Clause 9 as if it were a party to this Agreement.

A Party may disclose Confidential Information without the other Party's prior written consent to any of the following persons if and to the extent such disclosure is necessary for the purposes of performing this Agreement:

- (i) employees, officers and directors of the disclosing Party or an Affiliated Company in order to enable such Party and/or an Affiliated Company to perform its obligations under this Agreement;
- (ii) a professional adviser retained by such Party or an Affiliated Company in order to enable such Party and/or an Affiliated Company to perform its obligations under this Agreement;

- (iii) a bona fide prospective transferee of a Party's rights and/or obligations under this Agreement, and any professional adviser retained by such prospective transferee, in order to enable such transferee to assess such Party's rights and obligations under this Agreement; or
- (iv) any bank or financial institution proposing to finance such Party and/or an Affiliated Company, including any professional adviser retained by such bank or financial institution.

9. SEVERABILITY

If at any time any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect that shall not affect or impair:

- (i) the legality, validity or enforceability of any other provision of this Agreement;
or
- (ii) the legality, validity or enforceability of that or any other provision of this Agreement.

In such event, the Parties shall undertake to replace the invalid, illegal or unenforceable provision by a replacement provision which, as closely as possible, matches the original intent of the Parties in a legally possible manner.

10. APPLICABLE LAW & JURISDICTION

10.1 This Agreement shall exclusively be governed by and construed in accordance with Belgian law.

10.2 Any disputes arising out of or in relation with this Agreement shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by three (3) arbitrators appointed in accordance with those Rules. The seat of the arbitration shall be Brussels, Belgium and the arbitration shall be conducted in the English language.

IN WITNESS WHEREOF

Each of the Parties has caused this Agreement to be executed by its duly authorised representatives on _____, and acknowledges having received one (1) original copy.

For and on behalf of:

FLUXYS:

Name: Pascal De Buck
Title: Member of the Executive Board
Commercial Director

Name: Walter Peeraer
Title: Chairman of the Executive Board
Chief Executive Officer

For and on behalf of:

[SHIPPER]:

Name: _____
Title: _____

Name: _____
Title: _____