

Annex (a)

Form of Access Request for all Capacity Agreements other than for any Foundation Capacity Agreement

Instructions for entering Non-Foundation and Spot Capacity Agreements

The paragraphs below are intended to briefly illustrate the content of Annex (a) and provide the Applicants with a description of the actions to be taken to correctly complete and file an Access Request for Available Capacity or Spot Capacity.

1. Content of the Annex

Annex (a) is composed of five parts, which content can be summarised as follows:

- **Part I** contains the form of Access Request to be used by the Applicants who intend to request access to the Service for Non-Foundation or Spot Capacity. Depending on whether an Applicant requests Non-Foundation or Spot Capacity, it will have to attach to its Access Request, *inter alia*, a duly completed and signed copy of the Non-Foundation Capacity Agreement (Part IV) or of the Spot Capacity Agreement (Part V).
- **Part II** contains the form of Access Request to be used by a User who (i) is already a party to a Capacity Agreement with the Operating Company; and (ii) at the date of the Access Request has a positive Capacity Make-up Balance and intends to utilize Capacity Make-up with respect to its Access Request for Non-Foundation Capacity or Spot Capacity.
- **Part III** contains the form of Modified Acceptance for any Non-Foundation Capacity Agreement. This is the form that will be used by the Operating Company in those cases where an Access Request by an Applicant cannot be entirely accepted or cannot be accepted without modifications. In such cases, the Operating Company will send to the relevant Applicant the Modified Acceptance with the amended Non-Foundation Capacity Agreement attached and will request the Applicant, if interested in accepting the proposal, to send back the Non-Foundation Capacity Agreement duly signed.
- **Part IV** contains (i) the form of Non-Foundation Capacity Agreement; (ii) Schedule 1, which shall specify the *Cqs*, the *Cna*, the CMg and the *CVL* applicable in the determination of the Capacity Charge and the Variable Charge applicable to the Capacity Agreement; and (iii) the direct agreement for the financing of the Terminal, to be entered into between the Terminal, the User and the financing banks.
- **Part V** contains the form of the Spot Capacity Agreement, including Schedule 1, which shall specify the *Cqs*, the *Cna*, the CMg and the *CVL* applicable in the determination of the Capacity Charge and the Variable Charge applicable to the Spot Capacity Agreement.

2. Instructions for completing and filing an Access Request

- 2.1 Depending on the kind of capacity requested and/or the existence of a Capacity Make-Up Balance, the Applicant shall submit its Access Request by completing and filing (i) the appropriate form of Access Request (Part I or Part II); and (ii) the appropriate form of

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Capacity Agreement (Part IV or Part V), together with the related schedules. The instructions for the completion and filing of the form of Access Request and of the form of Capacity Agreement are contained in this paragraph and in paragraph 3 below. A description of the actions to be taken by an Applicant in the event of receipt of a Modified Acceptance sent by the Operating Company is contained in paragraph 4 below.

2.2 Form of Access Request. Depending on the subject of the Access Request, the Applicant shall submit its Access Request by completing and filing either of the following application forms, as indicated herein:

- (a) the form of Access Request under Part I shall be used to request access to both Available Non-Foundation Capacity and Spot Capacity. This form of Access Request shall be completed, accordingly, by inserting the relevant section and/or deleting the non-relevant ones, as indicated in footnotes of the form.
- (b) the form of Access Requests under Part II shall be used by a User which already has a Capacity Agreement with the Operating Company and intends to utilize Capacity Make-up with respect to its Access Request for Available Non-Foundation Capacity or Spot Capacity. The Applicant's Capacity Make-up Balance shall be indicated in the Form of Access Request.

2.3 Irrevocability. Please note that all Access Requests shall be irrevocable from the date of submission until the date indicated in the Regasification Code, which varies depending on the subject of the Access Request.

2.4 Completion. The Access Request shall be completed by the Applicant by including, *inter alia*, the following information as per letters (a) to (d) of the form:

- (a) the loading port(s);
- (b) the technical specifications of LNG Tanker(s);
- (c) the importation agreement held by the Applicant which has to be compatible as to duration and capacity with the terms of the Access Request; and
- (d) only with respect to Access Requests for Available Capacity, the indication of any of the requirements (indicated under letter (a) (iii) of clause 2.4.2 of chapter II) held by the Applicant which entitle it to a ranking priority in the allocation process.

2.5 Representations. The Applicant shall also state within the form of the Access Request (letters (e) and (f) of the form) that both the representations regarding the Applicant's status (mentioned in article 2.4.1 of chapter III) and the fulfilment of the Access Conditions provided in clause 2.4.5 of chapter II of the Regasification Code will be maintained from the date of submission of the Access Request until the date in which the Capacity Agreement is entered into or otherwise the Access Request is rejected, as the case may be.

2.6 Documents to be enclosed. Together with the Access Request, the Applicant shall also submit the accompanying required documentation as indicated in the Regasification Code (clause 2.4.6 and 2.4.7), including the Applicant's status; the Applicant representative's

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authority to execute the Access Request; the financial security backing for the Applicant; the import authorization and the existence of importation agreements compatible with the capacity requested.

3. Capacity Agreement

3.1 Filing. Depending on the subject of the Access Request, the Applicant also shall send to the Operating Company an executed copy of the Non-Foundation Capacity Agreement or the Spot Capacity Agreement.

3.2 Completion. The text of the relevant Capacity Agreement shall be completed by inserting in the form, *inter alia*, the following details:

- (i) the Applicant's details;
- (ii) the indication of its priority ranking, in case the Applicant meets any of the criteria giving priority in the allocation process;
- (iii) the quantity of LNG related to the amount of Terminal Capacity which the Applicant intends to subscribe as well as all the other details on the requested Unloading Slots;
- (iv) with respect to Spot Capacity Agreement (Part V of the form) the Applicant shall also indicate in paragraph 2 ("*Scope and duration*") the other details in relation to the requested Unloading Slot;
- (v) the expiry date of the Agreement;
- (vi) where applicable, the application of the User's Capacity Make-up Balance for the payment of all or part of the Capacity Charge due pursuant to the Capacity Agreement;
- (vii) the Applicant's/User's address for communication and notices; and
- (viii) in the event that the Applicant's request relates to a Non-Foundation Capacity Agreement having a duration exceeding one (1) year, Applicant shall include clause 6 of the Non-Foundation Capacity Agreement (allowing the financing of the Terminal).

3.3 Schedule (1). Schedule (1) shall be completed by inserting the *Cqs*, the *Cna*, the *CMg* and the *CVL* applicable in the determination of the Capacity Charge and the Variable Charge applicable to the Capacity Agreement, as published by the Operating Company on the Electronic Communication System. Please note that the information that will be published by the Operating Company will contain the discount, if any, that will be applied by the Operating Company to the maximum tariffs approved by the Regulatory Authority for Electricity and Gas during each Thermal Year for which there is Available Capacity published on the Electronic Communication System. Therefore, the Applicant who files the Access Request shall take care to download from the Electronic Communication System of the Operating Company a copy of the file containing such information and duly complete Schedule (1) of the Capacity Agreement with the *Cqs*, the *Cna*, the *CMg* and the *CVL*

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applicable in the determination of the Capacity Charge and the Variable Charge applicable to each Thermal Year during which the Capacity Agreement will be effective.

- 3.4 Direct Agreement. In case of Access Requests which, if accepted, would result in a Non-Foundation Capacity Agreement having a duration exceeding one (1) year and, unless otherwise directed in the Electronic Communication System of the Operating Company, the Applicant shall also attach to the Capacity Agreement a duly signed copy of the direct agreement to be entered into between the Terminal, the User and the financing banks (Schedule (2) of Part IV of Annex (a)).

4. Actions to be taken by the Applicant in the event of receipt of a Modified Acceptance

- 4.1 In the event that one or more Access Requests for Non-Foundation Capacity may not be accepted by the Operating Company without modifying one or more of the terms of the Non-Foundation Capacity Agreement attached to such Access Request, the Operating may send to one or more Applicants a Modified Acceptance together with an amended Non-Foundation Capacity Agreement attached thereto.
- 4.2 Such Modified Acceptance is considered as a counter proposal by the Operating Company which shall be irrevocable until the date indicated therein.
- 4.3 If the Applicant receives a Modified Acceptance and determines it is still interested in acquiring the relevant capacity, it shall duly execute for acceptance the Non-Foundation Capacity Agreement attached to the Modified Acceptance and send it to the Operating Company. Please note that the Capacity Agreement shall be considered executed between the Applicant and the Operating Company only when the latter receives notice of the acceptance by the Applicant. Therefore, should the Operating Company receive a copy of the duly signed Non-Foundation Capacity Agreement after the latest Day for the acceptance (that is the 24th July in the Annual Subscription Process and the 6th Business Day of the Subscription Month in the Monthly Subscription Process), the Non-Foundation Capacity Agreement will not be concluded, and the Applicant will be deemed to have rejected the proposed amended Non-Foundation Capacity Agreement.

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Part I

Form of Access Request for all Capacity Agreements other than for any Foundation Capacity Agreement

[LETTERHEAD OF THE APPLICANT]

[Place], [date]

To:
Terminale GNL Adriatico S.r.l. (“Operating Company”)
Piazza della Repubblica 14/16
20124 Milan
Italy

For the attention of Capacity Subscription Coordinator

Sirs,

ACCESS REQUEST FOR [AVAILABLE/SPOT]¹ CAPACITY

We refer to the Regasification Code implemented by the Operating Company and approved by the Regulatory Authority for Electricity and Gas on 12 May 2011, by resolution Arg/Gas n° 57/11, providing the conditions for access to the offshore regasification terminal owned by the Operating Company, located approximately 17 km offshore Porto Levante, Italy (the “**Regasification Code**”).

The Operating Company, pursuant to clause 2.3 of chapter II of the Regasification Code, has published on its Electronic Communication System: [i] *the Available Capacity; and ii) the number and the timing, if known, of available Unloading Slots in each Month;* [i] *the Spot Capacity that is available for subscription, including the commencement date and duration of the Unloading Slot, the Scheduled Arrival Range, the Spot Redelivery Period, and the maximum volume of LNG that can be Unloaded during such Unloading Slot; and ii) the due date and time for submission of Access Requests for such Spot Capacity.*²

[Applicant] (the “**Applicant**”)³, hereby, requests from the Operating Company access to the Service: (i) starting from the date; (ii) for the quantities; and (iii) on the terms and conditions provided in the attached [Non-Foundation/Spot] Capacity Agreement.

With reference to clause 2.4.6 of chapter II of the Regasification Code, and in addition to the information contained in the attached [Non-Foundation/Spot] Capacity Agreement, [Applicant] hereby states (*dichiara*) that:

- (a) the loading port(s) of the LNG that will be transported to the Delivery Point is(are) [*insert name of loading port(s)*];
- (b) the LNG Tanker(s) that will be used to transport the LNG to the Delivery Point has(have) the following technical specifications: [*insert technical specifications, including tonnage, gross loading capacity and length*];

¹ Delete as appropriate.

² Delete as appropriate.

³ It is understood that, if this Access Request is accepted by the Operating Company without modifications, the Applicant, as a consequence, shall become a User. Therefore, reference to the Applicant in this Access Request corresponds to a reference to the User in the attached Capacity Agreement.

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- (c) it is the holder of an importation agreement(s) compatible as to duration and capacity with the terms of this Access Request, as specified in the attached [*Non-Foundation/Spot*] Capacity Agreement and in letters (a) and (b) above;
- (d) the Representations set forth in clause 2.4.1 of chapter III of the Regasification Code are and will be true and accurate with respect to [*Applicant*], from the date of submission of this Access Request until the date the attached [*Non-Foundation/Spot*] Capacity Agreement is entered into, or this Access Request is rejected, as the case may be;
- (e) [*in the case of acceptance of this Access Request, it will timely act to be enabled to operate at the Virtual Exchange Point and will duly execute, and timely provide the Operating Company with, the documentation required by Snam Rete Gas, in order for the Operating Company to be authorised to operate at the Virtual Exchange Point by making requests for transactions which imply the automatic acceptance by the Users*] [*it is already enabled to operate at the Virtual Exchange Point and, in the case of acceptance of this Access Request, it will duly execute, and timely provide the Operating Company with, the documentation required by Snam Rete Gas in order for the Operating Company to be authorised to operate at the Virtual Exchange Point by making requests for transactions which imply the automatic acceptance by the Users*]⁴;
- (f) it satisfies and will maintain the Access Conditions provided in clause 2.4.5 of chapter II of the Regasification Code from the date of submission of this Access Request until the date the attached [*Non-Foundation/Spot*] Capacity Agreement is entered into; [and
- (g) it meets the following requirements to be granted priority in the allocation of the requested Available Capacity: [*insert any of the following requirements indicated under letter (a)(iii) of clause 2.4.2 of chapter II of the Regasification Code:*
 - (i) *Applicant is an end client or a consortium of end clients who import for self-consumption and is not an electricity producer;*
 - (ii) *Applicant undertakes to offer the entire volume of Gas to be imported at the Virtual Exchange Point, according to transparent and non-discriminatory conditions;*
 - (iii) *Applicant undertakes to offer a quota at least equal to twenty percent (20%) of the volume of Gas to be imported at the Virtual Exchange Point according to transparent and non-discriminatory conditions and, in particular, a quota equal to [insert quota]% of the volume of Gas that it will be Redelivered to it; (iv) Applicant imports from States other than those from which long term importation agreements were in force as of 28 September 2004;*
 - (v) *Applicant holds a total allocated transportation capacity at entry points to the Grid, excluding storage interconnection points, below twenty-five percent 25% of the overall transportation capacity allocated at the same entry points].*⁵

This Access Request is irrevocable, pursuant to article 1329 of the Italian civil code, until [*insert date determined in accordance with clauses 2.4.2 (a)(ii), 2.4.2 (b)(i) or 2.4.3 (a) of chapter II of the Regasification Code, as the case may be*].

⁴ Delete as appropriate.

⁵ To be inserted if applicable and only for Access Requests for Available Capacity. Not to be inserted for Access Requests for Spot Capacity. Please note that Applicants falling under the categories indicated under points (i) and (ii) shall have the right to request Available Capacity for a maximum period of ten (10) years, whilst Applicants falling under the categories indicated under points (iii), (iv) and (v) shall have the right to request Available Capacity for a maximum period of five (5) years.

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In accordance with clauses 2.4.6 (a)(x), 2.4.6 (b)(vi) or 2.4.6 (c) of chapter II, as the case may be⁶, and clause 2.4.7 of chapter II, of the Regasification Code, together with this Access Request and for the purpose of entering into the attached [*Non-Foundation/Spot*] Capacity Agreement, the Applicant submits the following documentation:

[index of documentation attached to the Access Request pursuant and subject to clauses 2.4.6 (a)(x), 2.4.6 (b)(vi) or 2.4.6 (c) of chapter II, as the case may be, and clause 2.4.7 of chapter II, of the Regasification Code]

If you accept this Access Request, please send us a copy of the attached Capacity Agreement signed for acceptance.

[*Applicant*]

By⁷: _____

Title: _____

⁶ Depending upon the Applicant being a company incorporated under the laws of Italy or not, article 2.4.6 (a)(x), article 2.4.6 (b)(vi) or article 2.4.6 (c) of chapter II of the Regasification Code, shall, respectively, apply.

⁷ To be signed by the same person signing the attached Capacity Agreement

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Part II

Form of Access Request for Capacity Make-Up

[LETTERHEAD OF THE APPLICANT]

[Place], [date]

To:
Terminale GNL Adriatico S.r.l. (“Operating Company”)
Piazza della Repubblica 14/16
20124 Milan
Italy

For the attention of Capacity Subscription Coordinator

Sirs,

Access Request for **[NON-FOUNDATION/SPOT]**⁸ CAPACITY utilising CAPACITY MAKE-UP

We refer to the Regasification Code implemented by the Operating Company and approved by the Regulatory Authority for Electricity and Gas on 12 May 2011 by resolution n° ARG/gas 57/11, providing the conditions for access to the offshore regasification terminal owned by the Operating Company, located approximately 17 km offshore Porto Levante, Italy (the “**Regasification Code**”).

The Operating Company, pursuant to clause 2.3 of chapter II of the Regasification Code, has published on its Electronic Communication System: *[i) the Available Capacity; and ii) the number and the timing, if known, of available Unloading Slots in each Month;]**[i) the Spot Capacity that is available for subscription, including the commencement date and duration of the Unloading Slot, the Scheduled Arrival Range, the Spot Redelivery Period, and the maximum volume of LNG that can be Unloaded during such Unloading Slot; and ii) the due date and time for submission of Access Requests for such Spot Capacity.]*⁹

On [insert date] **[Applicant]** (the “**Applicant**”)¹⁰ has entered into a capacity agreement with the Operating Company for the use of the Service;

On the date of this Access Request the Capacity Make-Up Balance (as defined in the Regasification Code) of the Applicant, under the Capacity Agreement mentioned above, amounts to € *[insert amount of Capacity Make-Up Balance]*;

[Applicant], hereby, requests from the Operating Company access to the Service: (i) starting from the date; (ii) for the quantities; and (iii) on the terms and conditions provided in the attached *[Non-Foundation/Spot]* Capacity Agreement, as well as for the use of its Capacity Make-Up under the Capacity Agreement mentioned above.

With reference to clause 2.4.6 of chapter II of the Regasification Code, and in addition to the information contained in the attached *[Non-Foundation/Spot]* Capacity Agreement, *[Applicant]* hereby states (*dichiara*) that:

⁸ Delete as appropriate.

⁹ Delete as appropriate.

¹⁰ It is understood that, if this Access Request is accepted by the Operating Company without modifications, the Applicant, as a consequence, shall become a User. Therefore, reference to the Applicant in this Access Request corresponds to a reference to the User in the attached Capacity Agreement.

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- (a) the loading port(s) of the LNG that will be transported to the Delivery Point is(are) *[insert name of loading port(s)]*;
- (b) the LNG Tanker(s) that will be used to transport the LNG to the Delivery Point has(have) the following technical specifications: *[insert technical specifications, including tonnage, gross loading capacity and length]*;
- (c) it is the holder of an importation agreement(s) compatible as to duration and capacity with the terms of this Access Request, as specified in the attached *[Non-Foundation/Spot]* Capacity Agreement and in letters (a) and (b) above;
- (d) the Representations set forth in clause 2.4.1 of chapter III of the Regasification Code are and will be true and accurate with respect to *[Applicant]*, from the date of submission of this Access Request until the date the attached *[Non-Foundation/Spot]* Capacity Agreement is entered into, or this Access Request is rejected, as the case may be;
- (e) *[in the case of acceptance of this Access Request, it will timely act to be enabled to operate at the Virtual Exchange Point and will duly execute, and timely provide the Operating Company with, the documentation required by Snam Rete Gas in order for the Operating Company to be authorised to operate at the Virtual Exchange Point by making requests for transactions which imply the automatic acceptance by the Users] [it is already enabled to operate at the Virtual Exchange Point and, in the case of acceptance of this Access Request, it will duly execute, and timely provide the Operating Company with, the documentation required by Snam Rete Gas in order for the Operating Company to be authorised to operate at the Virtual Exchange Point by making requests for transactions which imply the automatic acceptance by the Users]¹¹*;
- (f) it satisfies and will maintain the Access Conditions provided in clause 2.4.5 of chapter II of the Regasification Code from the date of submission of this Access Request until the date the attached *[Non-Foundation/Spot]* Capacity Agreement is entered into; [and
- (g) it meets the following requirements to be granted priority in the allocation of the requested Available Capacity: *[insert any of the following requirements indicated under letter (a)(iii) of clause 2.4.2 of chapter II of the Regasification Code:*
 - (i) *Applicant is an end client or a consortium of end clients who import for self-consumption and is not an electricity producer;*
 - (ii) *Applicant undertakes to offer the entire volume of Gas to be imported at the Virtual Exchange Point, according to transparent and non-discriminatory conditions;*
 - (iii) *Applicant undertakes to offer a quota at least equal to twenty percent (20%) of the volume of Gas to be imported at the Virtual Exchange Point according to transparent and non-discriminatory conditions and, in particular, a quota equal to [insert quota]% of the volume of Gas that it will be Redelivered to it;*
 - (iv) *Applicant imports from States other than those from which long term importation agreements were in force as of 28 September 2004;*
 - (v) *Applicant holds a total allocated transportation capacity at entry points to the Grid, excluding storage interconnection points, below 25% of the overall transportation capacity allocated at the same entry points];¹²*

¹¹ Delete as appropriate.

¹² To be inserted if applicable and only for Access Requests for Available Capacity. Not to be inserted for access

Courtesy translation, not binding.

This Access Request is irrevocable, pursuant to article 1329 of the Italian civil code, until *[insert date determined in accordance with clauses 2.4.2 (a)(ii), 2.4.2 (b)(i) or 2.4.3 (a) of chapter II of the Regasification Code, as the case may be]*.

In accordance with clauses 2.4.6 (a)(x), 2.4.6 (b)(vi) or 2.4.6 (c) of chapter II, as the case may be¹³, and clause 2.4.7 of chapter II, of the Regasification Code, together with this Access Request and for the purpose of entering into the attached *[Non-Foundation/Spot]* Capacity Agreement, the Applicant submits the following documentation:

[index of documentation attached to the Access Request pursuant and subject to clauses 2.4.6 (a)(x), 2.4.6 (b)(vi) or 2.4.6 (c) of chapter II, as the case may be, and clause 2.4.7 of chapter II, of the Regasification Code]

If you accept this Access Request, please send us a copy of the attached Capacity Agreement signed for acceptance.

[Applicant]

By¹⁴: _____

Title: _____

requests for Spot Capacity. Please note that Applicants falling under the categories indicated under points (i) and (ii) shall have the right to request Available Capacity for a maximum period of ten (10) years, whilst Applicants falling under the categories indicated under points (iii), (iv) and (v) shall have the right to request Available Capacity for a maximum period of five (5) years.

¹³ Depending upon the Applicant being a company incorporated under the laws of Italy or not, article 2.4.6 (a)(x), article 2.4.6 (b)(vi) or article 2.4.6 (c) of chapter II of the Regasification Code, shall, respectively, apply.

¹⁴ To be signed by the same person signing the attached Capacity Agreement

Courtesy translation, not binding.

Part III

Form of Modified Acceptance for Non-Foundation Capacity Agreement

[LETTERHEAD OF THE OPERATING COMPANY]

[Place], [date]

To:

[*Applicant*]

(hereinafter the **Applicant**)¹⁵

[*Applicant's address*]

For the attention of Capacity Subscription Coordinator
Sirs,

MODIFIED ACCEPTANCE FOR NON-FOUNDATION CAPACITY

We refer to the access request you submitted on [insert date] (the “**Access Request**”) requesting access to our offshore regasification terminal, located approximately 17 km offshore Porto Levante, Italy, under the term and conditions of our Regasification Code, as approved by the Regulatory Authority for Electricity and Gas on 12 May 2011 by resolution n° Arg/Gas n° 57/11 (the “**Regasification Code**”).

Your Access Request can not be accepted without modification of one or more of the terms of the Non-Foundation Capacity Agreement attached to it, as specified in the Non-Foundation Capacity Agreement attached herewith.

This Modified Acceptance and the attached Non-Foundation Capacity Agreement is sent to you pursuant to clauses 2.4.2 (a)(vii)(bb) or 2.4.2 (b)(iii)(bb) of chapter II of the Regasification Code (as the case may be) and it is an irrevocable contractual proposal (proposta irrevocabile), pursuant to article 1329 of the Italian civil code, until [*insert date determined in accordance with clauses 2.4.2 (a)(vii)(bb) or 2.4.2 (b)(iii)(bb) of chapter II of the Regasification Code, as the case may be*].

[We draw your attention to the fact that the Available Capacity, which is the object of this Modified Acceptance, is also the object of Modified Acceptances sent by the Operating Company to other Applicant(s) with higher ranking Access Request(s). Therefore, in case of Acceptance by the Applicant of this Modified Acceptance, the resulting Non-Foundation Capacity Agreement attached here below, shall be subject to the condition precedent that such other Applicant(s) does(do) not Accept its (their) respective Modified Acceptance(s) pursuant to clause 2.4.2 (a)(viii) or 2.4.2 (b)(iv) of chapter II of the Regasification Code, in accordance with clause 8 of the attached Non-Foundation Capacity Agreement.]¹⁶

If you accept this Modified Acceptance, please sign the attached Capacity Agreement and send it to us prior to the time that the irrevocable contractual proposal set forth herein expires.

Terminale GNL Adriatico S.r.l.

By: _____

¹⁵ It is understood that, if this Modified Acceptance is accepted by the Applicant, the Applicant, as a consequence, shall become a User. Therefore, reference to the Applicant in this Modified Acceptance corresponds to a reference to the User in the attached Non-Foundation Capacity Agreement.

¹⁶ To be inserted if applicable.

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Title: _____

Part IV

Non-Foundation Capacity Agreement

This Non-Foundation Capacity Agreement (the “**Capacity Agreement**”), is entered into between [User], a company incorporated and existing under the laws of [User’ State of incorporation], registered with the [User’s Registered Office] under number [registration number], tax code number [tax code number], whose principal office is located at [User’s address] (the “**User**”)¹⁷ and **Terminale GNL Adriatico S.r.l.**, a company incorporated and existing under the laws of the Republic of Italy, registered with the Milan *Registro delle Imprese* under number 1788519, fiscal code/VAT code number 13289520150 and whose principal office is located at Piazza della Repubblica 14/16, 20124 Milan, Italy (“**Operating Company**”). Collectively, the User and the Operating Company are referred to herein as the “**Parties**”.

RECITALS

On 15 February 2010 the Operating Company has implemented an Regasification Code (the “**Regasification Code**”) providing the conditions for access to the offshore regasification terminal owned by the Operating Company located approximately 17 km offshore Porto Levante, Italy,

On 12 May 2011 the Regasification Code has been approved by the Regulatory Authority for Electricity and Gas, by resolution Arg/Gas n° 57/11 pursuant to article 24, sub-section V of the legislative decree no. 164/2000;

The Operating Company, pursuant to clause 2.3 of chapter II of the Regasification Code, has published on its Electronic Communication System: i) the Available Capacity; and ii) the number and the timing, if known, of available Unloading Slots in each Month;

On [insert date] the User has submitted an Access Request for [Available Capacity/Available Capacity utilising Capacity Make-up]¹⁸ pursuant to article 2.4.2 of chapter II, including, *inter alia*, the information and statements specified in clause 2.4.6 (a) of chapter II of the Regasification Code [and stating, in particular, that it met certain requirements to be granted priority in the allocation of the requested Available Capacity. Namely, the User stated that (insert statement(s) made under letter g) of the Access Request for Available Capacity/Access Request for Capacity Make-up)]¹⁹.

NOW, THEREFORE, the User and the Operating Company agree to be legally bound as follows: (*TUTTO CIÒ PREMESSO E CONSIDERATO, l’Utilizzatore ed il Gestore concordano quanto segue:*)

1. Recitals and Definitions

- 1.1 The recitals are hereby incorporated and form an integral and essential part of this agreement.
- 1.2 All the capitalized terms used in the Capacity Agreement shall have the same meaning given in clause 1.1 of chapter I of the Regasification Code.

¹⁷ It is understood that the Applicant shall only become a User upon, and as a consequence of, the acceptance of the Access Request or the Modified Acceptance (to which this Agreement is attached) by the Operating Company or the Applicant, respectively, as the case may be. Therefore, prior to completion of this Agreement, reference to the User in this Agreement shall be considered as a reference to the Applicant.

¹⁸ Delete as appropriate.

¹⁹ To be inserted if applicable, including the statement relating to the priority ranking criterion(a) made under letter d) of the relevant Access Request.

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2. Scope and duration

2.1 The Operating Company allocates to the User, and the User subscribes for the Non-Foundation Capacity for the quantities as follows. *(Il Gestore conferisce all'Utilizzatore, e l'Utilizzatore sottoscrive, la Capacità Regolata per le quantità di seguito indicate)*

Volume of LNG (m³/Unloading Slot)	Year and Month	Number of Unloading Slots (for each Month)	Timing (if applicable) of each Unloading Slot	Non-Foundation Capacity Subscribed (indicative energy value in TJ)
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2.2 The Capacity Agreement shall expire on [*insert date corresponding to the ninetieth (90th) Day after the date of the last Unloading requested*]. Expiration of this Capacity Agreement shall be without prejudice to any obligations and/or liabilities which have accrued prior to the expiration date.)

3. Charges

3.1 The Capacity Charge and the Variable Charge due by the User pursuant to the Capacity Agreement shall be determined in accordance with the relevant provisions of the Regasification Code by applying the *Cqs*, the *Cna*, the *CMg* and the *CVL* as set forth in Schedule (1) hereto.

3.2 The Grid Capacity Charge and the Variable Transportation Charge due by the User pursuant to the Capacity Agreement shall be determined in accordance with letters (f) and (g), respectively, of clause 8.1.1 of chapter III of the Regasification Code.

3.3 The Additional Charges and any other payments due by the User pursuant to the Capacity Agreement shall be determined in accordance with the relevant provisions of the Regasification Code.

3.4 [The Operating Company shall apply the User's Capacity Make-Up Balance under the capacity agreement dated [*date of relevant capacity agreement*] for the payment of all or part of the Capacity Charge due pursuant to the Capacity Agreement, in accordance with clause 8.10.2 of chapter III of the Regasification Code.]²⁰

4. Service Conditions

4.1 [*User*] states that it satisfies and will satisfy and maintain all of the Service Conditions provided in clause 2.3 of chapter III of the Regasification Code throughout the term of the Capacity Agreement.

4.2 With particular reference to the Service Condition provided under letter (j) of clause 2.3 of chapter III, [*User*] acknowledges that the provision to the Operating Company of a duly executed authorisation to make requests for transactions at the Virtual Exchange Point which imply the automatic acceptance of the User is essential in order for the Operating Company to be able to Redeliver the Gas. Therefore, [*User*] undertakes to provide the Operating Company with a duly executed copy of such authorization, as well as of any other documentation required by Snam Rete Gas in this respect, within two (2) Days from the execution of this agreement or, should such date

²⁰ To be inserted if applicable.

Courtesy translation, not binding.

fall later than the fifth (5th) Business Day preceding the date when the first Unloading is requested, immediately after the execution of this agreement.

- 4.3 [User] hereby represents and warrants to the Operating Company that the Representations set forth in clauses 2.4.1 (a) through 2.4.1 (d) of chapter III of the Regasification Code are true and accurate as of the date on which the Capacity Agreement is entered into. In respect of the Representations set forth in clauses 2.4.1 (a) and 2.4.1 (b) of chapter III of the Regasification Code, [User] undertakes that they will remain true and accurate as provided for in clauses 2.4.2 and 2.4.3 of chapter III of the Regasification Code.

5. Domicile election and notices

- 5.1 According to clause 4.2 of chapter I of the Regasification Code and for the purposes of the Capacity Agreement, the User elects domicile at [insert address] in Milan, and undertakes to maintain such a domicile in Milan, for the entire duration of this Capacity Agreement.

- 5.2 Any communication and notice to the User made by the Operating Company pursuant to clause 16 of chapter III of the Regasification Code, shall be sent at the address set out in article 5.1 above to the attention of Mr. [insert addressee], fax number [insert fax number], e-mail address [insert e-mail address].

6. [Financing of the Terminal]²¹

- 6.1 At the request of the Operating Company the User agrees: (i) to allow the Operating Company to create a security interest in favour of the Operating Company's lenders in this Capacity Agreement; and (ii) to enter into a direct agreement with [Operating Company's lenders] (the "Lenders").

- 6.2 The direct agreement is attached to this Capacity Agreement as Schedule (2).]

7. Application of the Regasification Code

This Capacity Agreement is subject to the terms and conditions of the Regasification Code, which are incorporated herein by reference.

[8. Condition Precedent

The Capacity Agreement is subject to the condition precedent that the other Applicant(s) with higher ranking Access Request(s) does(do) not Accept its (their) respective Modified Acceptance(s) pursuant to clause 2.4.2 (a)(viii) or 2.4.2 (b)(iv) of chapter II of the Regasification Code.]²²

[Place], [date]

[Applicant]

By: _____

Title: _____

²¹ To be deleted for Access Requests aimed at entering into Non-Foundation Capacity Agreements with a term of up to 1 (one) year.

²² To be inserted if applicable.

Courtesy translation, not binding.

The User, hereby, unconditionally approves, pursuant to and for the purposes of, articles 1341 and 1342 of the Italian Civil Code, the following articles of the Regasification Code:

CHAPTER I:

4.1 “Competence of the Regulatory Authority for Electricity and Gas”; **4.2** “Submission to jurisdiction”; **4.3** “Arbitration of Technical Disputes”.

CHAPTER II:

2.1.1 “Provisional Terminal Capacity”; **2.4.2** “Subscription of Available Capacity”; **2.4.3** “Subscription of Spot Capacity”; **2.4.6** “Access Requests”; **2.4.8** “Execution of Modified Acceptances”; **2.5** “Access Denial”; **2.6** “Released Capacity”; **2.7** “Subscribed Non-Foundation Capacity to be made available to the Operating Company for allocation to third parties pursuant to article 11, sub section 3, of AEEG Resolution no 167 of 1 August 2005”; **2.8** “Subscribed Foundation Capacity to be made available to the Operating Company for allocation to third parties pursuant to article 6, sub section 3, of the MAP decree of 11 April 2006”; **3.2** “Annual Scheduling”; **3.3** “Three (3) Month Scheduling”; **3.7** “Unloading Slot unavailability”.

CHAPTER III:

2.2 “Parties’ obligations”; **2.6** “User’s standard of performance”; **2.7** “Refusal of changes in the Service”; **2.9** “Performance of the Redelivery Service”; **3** “Withdrawal from and duration of capacity agreements”; **4** “Title”; **5.1.3** “Determination of quantity and quality of LNG at the Delivery Point”; **5.1.4** “Adjustment of within spec LNG”; **5.1.7** “User’s liability in relation to Unloading of Off-Spec LNG”; **6.1** “Redelivery of Gas”; **6.2** “Losses and Consumption”; **7** “Force Majeure”; **8.1** “Invoicing by the Operating Company”; **8.4** “Suspension of payment of invoices”; **8.6** “Adjustment of Errors”; **8.7** “No deduction of taxes; liability for Maritime Charges”; **8.10** “Capacity Make-Up”; **8.11** “Charges for scheduling variance applicable to Continuous Users”; **8.12** “Charges for scheduling variance applicable to Spot Capacity”; **9** “Taxes, duties and charges on the Gas”; **12** “Exchanges of Subscribed Capacity”; **13** “Termination”; **14** “Liability”; **15** “Complaints”; **19** “Enforcement Costs”; **20** “Waiver of immunity”.

CHAPTER IV:

1.3 “Rejection of LNG Tankers”; **1.4.2** “Failure to make necessary modifications”; **3.6** “Re-Assignment of Berth”; **3.8.2** “Demurrage”; **3.9** “Excess of boil-off”.

CHAPTER VI:

2.1 “Subjects entitled to submit requests for the amendment of the Regasification Code”; **2.2** “Requirements for the admissibility of the requests”; **2.4** “Assessment of the request”; **4** “Communications”.

ANNEX (a):

Instructions for entering Non-Foundation and Spot Capacity Agreements: **2.3** “Irrevocability”; **4.2**; **4.3**;

Part I – Form of Access Request for all Capacity Agreements other than for any Foundation Capacity Agreement: **paragraph after letter (g)**;

Part II – Form Access Request for Capacity Make-up: **paragraph after letter (g)**;

Part III – Form of Modified Acceptance for Non-Foundation Capacity Agreement: **third paragraph**;

Courtesy translation, not binding.

Part IV – Non-Foundation Capacity Agreement: clause **5** “*Domicile election and notices*”; clause **6** “*Financing of the Terminal*”.

Schedule (2) - Direct Agreement: Recital E; clause **2** “*Consent to assignment and Step-In Rights*”; clause **3** “*Payments under the Capacity Agreement*”; clause **6.7** “*Arbitration*”; clause **6.9** “*Termination*”; clause **6.10** “*Conflicts of documents*”.

Part V – Spot Capacity Agreement: clause **5** “*Domicile election and notices*”

ANNEX (e) – Form of Release Declaration: **last paragraph**.

The list of “unfair terms” (“*clausole vessatorie*”) shall be modified or integrated in accordance with the amendments to the Regasification Code (if any) required by the Regulatory Authority for Electricity and Gas.

[Applicant]

By: _____

Title: _____

For Acceptance:

Terminale GNL Adriatico S.r.l.

By: _____

Title: _____

Courtesy translation, not binding.

Schedule (1)

[User to insert Schedule (1) as published by the Operating Company on the Electronic Communication System, with respect to the capacity which is the object, and for the term, of the Capacity Agreement.]

Schedule (2)

DIRECT AGREEMENT

THIS AGREEMENT (the **Direct Agreement** or the **Agreement**), dated as of [●], is entered into between:

- (a) Terminale GNL Adriatico S.r.l, with registered office in Piazza della Repubblica 14/16, 20124 Milan and registered with the Milan *Registro delle Imprese* under no. 1788519, VAT and tax code no. 13289520150, (the **Borrower**);
- (b) [●], with registered office in [●] and registered with the [●] *Registro delle Imprese* under no. [●], VAT and tax code no. [●](the **User**); and
- (c) [●], with registered office in [●], registered with the [●] *Registro delle Imprese* under no. [●] and with the Banks' Register under no. [●], VAT and tax code no. [●], as facility agent acting in the name and on behalf of the banks which are parties of the Finance Documents (as defined below) and listed in Exhibit A hereto (the **Finance Parties**) (the facility agent, together with its successors in such capacity, the **Facility Agent**

(each of them hereinafter the **Party** and, collectively, the **Parties**).

RECITALS

A. The Project. The Borrower is in the process of implementing a project to build and operate an offshore plant (the **Terminal**) located at an approximate water depth of 30 metres in the Adriatic Sea in Italian territorial waters at approximately lat. 45°05', long. 12°35' approximately 17 km offshore Porto Levante (the **Project**).

B. The Capacity Agreement. The User and the Borrower have entered into a Non-Foundation Capacity Agreement dated [●], which is subject to the terms and conditions stated in the Regasification code providing the conditions for access to the Terminal, pursuant to Article 24, sub-section V, of the legislative decree no. 164 of 23rd May 2000 (the **Regasification Code**) dated [●] (as amended, supplemented or otherwise modified, the **Capacity Agreement**).

C. The Finance Documents. On [●], the Borrower has entered into certain finance documents (as amended, supplemented or otherwise modified, the **Finance Documents**), among which a facility agreement (the **Facility Agreement**), pursuant to which the Finance Parties have undertaken to extend credit to the Borrower on a *project finance* basis for the purposes of financing the cost of the Project and certain related expenses, up to an amount equal to € [●].

D. The Facility Agent. Pursuant to Article [●] of the Facility Agreement, [●]²³ has been appointed as agent for the Finance Parties, with full power and capacity to act in their name and on their behalf.

E. The Assignment of Receivables. The Borrower and the Facility Agent are going to enter into an assignment of receivables (the **Assignment of Receivables**), as security for the Borrower's obligations under the Finance Documents, under which the Borrower shall assign all of its receivables under the Capacity Agreement, including all of its rights to receive payment under or with respect to the Capacity Agreement and all payments due and to become due to the Borrower under or with respect to the Capacity Agreement, to the Facility Agent, acting in the name and on behalf of the Finance Parties.

NOW, THEREFORE, the Parties hereby agree as follows:

²³ To be filled with the name of the bank under (c) above, in its capacity of Facility Agent.

Courtesy translation, not binding.

ARTICLE 1. - RECITALS AND ANNEXES

Recitals and Annexes form integral and substantial part of this Agreement.

ARTICLE 2. CONSENT TO ASSIGNMENT AND STEP-IN RIGHTS

- 2.1 Consent to Assignment. The User (a) hereby consents in all respects to the assignment to the Facility Agent pursuant to the Assignment of Receivables of all of the Borrower's receivables under the Capacity Agreement, including the Borrower's right to receive payments from the User; (b) acknowledges that the Borrower may not, without the prior written consent of the Facility Agent, amend, modify, vary, terminate or supplement the Capacity Agreement or take any action that would result in any of the foregoing; unless the above events are mandatorily imposed by law; (c) consents that the Borrower may, with the prior written consent of the Facility Agent, assign (in whole or in part) the Capacity Agreement or subcontract (in whole or in part) the performance of the Service and/or of any service relating to the Service to a third party, provided that the third party has the financial and technical status and capability to perform the obligations and exercise the rights of the Borrower under the Capacity Agreement; and (d) consents to any transfer of the Capacity Agreement which might result from any merger, de-merger or conversion of the legal status of the Borrower, as well as from any transfer or lease of the Borrower's going concern.
- 2.2 Step-In Rights. The User and the Borrower hereby acknowledge and consent that the Facility Agent, in the name and on behalf of the Finance Parties and upon written notice to the User, shall be entitled, in case an event of default has occurred and is continuing under the Finance Documents, to transfer, at the terms and conditions provided under the Facility Agreement (of which the User shall be duly and timely informed), the contractual position of the Operating Company to a third party appointed by the Banks (the **Appointed Transferee**), provided that the Appointed Transferee, once appointed, formally declares to take over the whole contractual position of the Borrower under the Capacity Agreement, and provided further that such transfer does not alter or prejudice the tax position of the User under the Capacity Agreement (including without limitation, by way of adversely impacting on the deductibility of the regasification fee or other operating costs).
- 2.3 Right to Cure. In the event of a default or breach by the Borrower in the performance of any of its obligations under the Capacity Agreement, or upon the occurrence or non-occurrence of any event or condition under the Capacity Agreement that would immediately or with the passage of any applicable grace period or the giving of notice, or both, enable the User to suspend or terminate the Capacity Agreement (a **Default**), the User will not terminate the Capacity Agreement until it first gives prompt written notice of such Default to the Borrower and the Facility Agent.

Then, within a period of at least (i) [60] days, in respect of a non-payment default, and (ii) [45] days, in respect of a payment default from the giving of such notice, the Facility Agent, acting in the name and on behalf of the Finance Parties, will be entitled to notify to the User the Finance Parties' intention to cure the Default or, alternatively, to have the Borrower or a third party to cure it.

In this case, the Banks will be entitled, within the following [60] days, to:

- (a) appoint an Appointed Transferee, which will take over the whole contractual position of the Operating Company under the relevant Capacity Agreement; or
- (b) to cure, either directly or indirectly, the Borrower's breach which might trigger the termination; or

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- (c) notify to the User that the attempt to (i) replace the Operating Company in its contractual position under the Capacity Agreement or (ii) cure the Borrower's breach has failed,

provided that:

- (1) in the cases under (a) and (b) above, the User shall not suspend the performance of the relevant Capacity Agreement.
- (2) if the Facility Agent is prohibited from curing any such Default by any process, stay or injunction issued by any governmental authority or pursuant to any bankruptcy or insolvency proceeding involving the Borrower, then the time period specified herein for curing a Default shall be extended for the period of such prohibition but in no event longer than [180] days.

2.4 No Amendments. The User agrees that it will not, without the prior written consent of the Facility Agent, acting in the name and on behalf of the Finance Parties (i) enter into or agree to any material amendment, supplement, transfer, suspension, novation, extension, restatement or other material modification of the Capacity Agreement or any material term or condition thereof, unless the above events are mandatorily imposed by law (ii) enter into or agree to any consensual suspension, cancellation, or termination of the Capacity Agreement, (iii) assign or otherwise transfer any of its right, title or interest under the Capacity Agreement.

2.5 No Liability. The User acknowledges and agrees that neither the Facility Agent nor its designees nor the Finance Parties shall have any liability or obligation under the Capacity Agreement as a result of this Direct Agreement, nor shall the Facility Agent or its designees be obligated or required to (a) perform any of the Borrower's obligations under the Capacity Agreement, except when the Facility Agent, acting in the name and on behalf of the Finance Parties, has expressly stated its intention to cure directly any of the Borrower's breach, as provided under Article 2.3 (b) above, in which case the rights and obligations of the Facility Agent shall be no more than those of the Borrower under the Capacity Agreement or (b) take any action to collect or enforce any claim for receivables, relating to payment obligations, assigned under the Assignment of Receivables, except in the cases and at the terms and conditions provided thereunder.

2.6 Performance under Capacity Agreement. The User shall perform and comply with all material terms and provisions of the Capacity Agreement to be performed or complied with by it and shall maintain the Capacity Agreement in full force and effect in accordance with its terms.

2.7 Delivery of Notices. The User shall deliver to the Facility Agent and its designees, concurrently with the delivery thereof to the Borrower, a copy of each material notice, request or demand given by the User pursuant to the Capacity Agreement.

2.8 Delivery of Financial Statements. On or prior to the date hereof, the User has delivered to the Facility Agent a copy of its annual audited financial statement (**Financial Statement**) for its most recent fiscal year. Within ninety (90) days after the close of each of its fiscal year, the User shall deliver to the Facility Agent annual audited Financial Statements, prepared in accordance with the International Accounting Standards or should the User not be subject to International Accounting Standards, to generally accepted accounting principles in the jurisdiction of formation of the User, certified by a reputable independent certified public accountant.

ARTICLE 3. - PAYMENTS UNDER THE CAPACITY AGREEMENT

3.1 Payments. The User shall pay all amounts payable by it to the Borrower under the Capacity Agreement in the manner required by the Capacity Agreement directly into the account specified in

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Exhibit B hereto, or to such other person or account as shall be specified from time to time by the Facility Agent to the User in writing in accordance with the relevant finance documentation. The Borrower hereby authorizes and directs the User to make such payments as aforesaid.

- 3.2 No Offset, etc. All payments required to be made by the User to the Borrower under the Capacity Agreement shall be made without any offset, recoupment, abatement, withholding, reduction or defence whatsoever, other than those offsets, recoupments, abatements, withholdings, reductions and defence permitted under applicable law or expressly allowed by the terms of the Capacity Agreement.

ARTICLE 4. - REPRESENTATIONS AND WARRANTIES OF THE USER

The User makes the following representations and warranties, as of the date of execution and delivery of this Direct Agreement and the Capacity Agreement.

- 4.1 Status. The User is a duly incorporated, organised and validly existing company under the laws of jurisdiction of its incorporation, and has all requisite corporate power and authority to execute this Direct Agreement and the Capacity Agreement and perform its obligations thereunder.
- 4.2 Authorisation; No Conflict. The User has duly authorized and executed this Direct Agreement and the Capacity Agreement. Neither the execution of this Direct Agreement and the Capacity Agreement by the User nor its consummation of the transactions contemplated thereby nor its compliance with the terms thereof does or will require any consent or approval not already obtained, or will conflict with the User's formation documents or any contract or agreement binding on it.
- 4.3 Legality, Validity and Enforceability. Each of this Direct Agreement and the Capacity Agreement is in full force and effect and is a legal, valid and binding obligation of the User, enforceable against the User in accordance with its terms.
- 4.4 Governmental Consents. There are no governmental consents existing as of the date of this Direct Agreement that are required or will become required to be obtained by the User in connection with the execution, delivery or performance of this Direct Agreement and the Capacity Agreement and the consummation of the transactions contemplated thereunder, other than those governmental consents which have been obtained and are in full force and effect.
- 4.5 Litigation. There are no pending or, to the User's knowledge, threatened in writing actions, suits, proceedings or investigations or any kind (including arbitration proceedings) to which the User is a party or is subject, or by which it or any of its properties are bound, that if adversely determined to or against the User, could reasonably be expected to materially and adversely affect the ability of the User to execute and deliver the Capacity Agreement and this Direct Agreement or for the User to perform its obligations thereunder or hereunder.
- 4.6 Existing Defaults. The User is not in default under the Capacity Agreement.
- 4.7 No Previous Assignments. The User has no notice of, and has not consented to, any previous assignment by the Borrower of all or any part of its rights under any Capacity Agreement.
- 4.8 Representations and Warranties. All representations, warranties and other statements made by the User in the Capacity Agreement were true and correct as of the date when made.

ARTICLE 5. - OPINION OF COUNSEL

On or before [●], the User shall deliver, upon request by the Facility Agent a legal opinion of its legal

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counsel relating to the User's signatory powers with respect to the Capacity Agreement, this Direct Agreement, any other material agreement to which the User is a party, in form and substance acceptable to the Facility Agent.

ARTICLE 6. - MISCELLANEOUS

- 6.1 Notices. All notices or other communications required or permitted to be given hereunder shall be in writing and shall be considered as properly given (a) if delivered in person, (b) if sent by registered mail with return receipt or (c) if sent by prepaid telex, or by telecopy with correct answer back received. Notices shall be directed (i) if to the User, in accordance with the Capacity Agreement, and (ii) if to the Facility Agent, to [●]. Notice so given shall be effective upon receipt by the addressee. Any party hereto may change its address for notice hereunder to any other location by giving no less than twenty (20) days notice to the other parties in the manner set forth above in this paragraph.
- 6.2 Further Assurances. The User shall fully cooperate with the Facility Agent and perform all additional acts reasonably requested by the Facility Agent to effect the purposes of this Direct Agreement, including as may be required to perfect the Finance Parties' interest in the Capacity Agreement.
- 6.3 Amendments. This Direct Agreement may not be amended, changed, waived, discharged, terminated or otherwise modified unless such amendment, change, waiver, discharge, termination or modification is in writing and signed by each of the Parties.
- 6.4 Entire Agreement. This Direct Agreement and any agreement, document or instrument attached hereto or referred to herein integrate all the terms and conditions mentioned herein or incidental hereto.
- 6.5 Governing Law. This Direct Agreement shall be governed by the laws of Italy.
- 6.6 Severability. In case any one or more of the provisions contained in this Direct Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby, and the Parties shall enter into good faith negotiations to replace the invalid, illegal or unenforceable provision with a view to obtaining the same commercial effect as this Direct Agreement would have had if such provision had been legal, valid and enforceable.
- 6.7 Arbitration. If any dispute, controversy or claim arises in relation to or under this Direct Agreement, any party hereto may, by notice to the other parties, refer the dispute to be finally settled by arbitration. Such arbitration shall be conducted in accordance with the Rules of Arbitration of the International Chamber of Commerce (the **ICC Rules**) prevailing and in effect as at the date the matter is referred to arbitration. The number of arbitrators shall be three (3) and they shall be appointed in accordance with the ICC Rules; in particular where there are multiple respondent, they, jointly, shall nominate an arbitrator for confirmation pursuant to Article 9 and 10 of the ICC Rules. In the absence of such a joint nomination and where the respondents are unable to agree to appoint an arbitrator, this appointment shall be made by the ICC International Court of Arbitration. The third arbitrator, who will act as chairman of the Arbitral Tribunal, shall be appointed by the Court. Arbitration shall be conducted in the English language and the place of arbitration shall be Rome, Italy. The decision of the arbitration panel shall include a statement of the reasons for such decision and, shall be final and binding on the parties thereto, subject to the provisions set forth under Article 29 of the ICC Rules.
- 6.8 Successors and Assignees. The provisions of this Direct Agreement shall be binding upon and inure to the benefit of the parties hereto and their permitted successors and assignees.

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6.9 Termination. The User's obligations hereunder are absolute and unconditional, and the User shall have no right to terminate this Direct Agreement or to be released, relieved or discharged from any obligation or liability hereunder so long as the User shall have any commitments outstanding under the Capacity Agreement and until all its obligations thereunder shall have been indefeasibly satisfied in full.

6.10 Conflicts of Documents. In the event of any conflict between the provisions of this Direct Agreement and the provisions of the Capacity Agreement, the provisions of this Direct Agreement shall prevail.

[Date]

[Name of the User]
as the User

By: _____
Name:
Title:

[Name of Facility Agent]
as the Facility Agent

By: _____
Name:
Title:

TERMINALE GNL ADRIATICO S.R.L.
as the Borrower

By: _____
Name:
Title:

Courtesy translation, not binding.

Exhibit A to
Direct Agreement

The Finance Parties

Courtesy translation, not binding.

Exhibit B to

Direct Agreement

**Payment instructions
for Account**

Part V

Spot Capacity Agreement

This Spot Capacity Agreement (the “**Spot Capacity Agreement**”), is entered into between [User], a company incorporated and existing under the laws of [User’ State of incorporation], registered with the [User’s Registered Office] under number [registration number], tax code number [tax code number], whose principal office is located at [User’s address] (the “**User**”)²⁴ and **Terminale GNL Adriatico S.r.l.**, a company incorporated and existing under the laws of the Republic of Italy, registered with the Milan *Registro delle Imprese* under number 1788519, fiscal code/VAT code number 13289520150 and whose principal office is located at Piazza della Repubblica 14/16, 20124 Milan, Italy (“**Operating Company**”). Collectively, the User and the Operating Company are referred to herein as the “**Parties**”.

RECITALS

On 15 February 2010 the Operating Company has implemented an Regasification code (the “**Regasification Code**”) providing the conditions for access to the offshore regasification terminal owned by the Operating Company located approximately 17 km offshore Porto Levante, Italy,

On 12 May 2011 the Regasification Code has been approved by the Regulatory Authority for Electricity and Gas, by resolution Arg/Gas n° 57/11 pursuant to article 24, sub-section V, of the legislative decree no. 164/2000;

The Operating Company, pursuant to clause 2.3 of chapter II of the Regasification Code, has published on its Electronic Communication System: i) the Spot Capacity that is available for subscription, including the commencement date and duration of the Unloading Slot, the Scheduled Arrival Range, the Spot Redelivery Period, and the maximum volume of LNG that can be Unloaded during such Unloading Slot; and ii) the due date and time for submission of Access Requests for such Spot Capacity;

On [insert date] the User has submitted an Access Request for [Spot Capacity/Spot Capacity utilising Capacity Make-up]²⁵ including, *inter alia*, the information and statements specified in clause 2.4.6 (b) of chapter II of the Regasification Code.

NOW, THEREFORE, the User and the Operating Company agree to be legally bound as follows: (*TUTTO CIÒ PREMESSO E CONSIDERATO, l’Utilizzatore ed il Gestore concordano quanto segue:*)

1. Recitals and Definitions

- 1.1 The recitals are hereby incorporated and form an integral and essential part of this agreement.
- 1.2 All the capitalized terms used in the Spot Capacity Agreement shall have the same meaning given in clause 1.1 of chapter I of the Regasification Code.

2. Scope and duration

- 2.1 The Operating Company allocates to the User, and the User subscribes Spot Capacity for a volume of [insert volumes of LNG that will be unloaded during the Unloading Slot and in relation to

²⁴ It is understood that the Applicant shall only become a User upon, and as a consequence of, the acceptance of the Access Request by the Operating Company. Therefore, prior to completion of this Agreement, reference to the User in this Agreement shall be considered as a reference to the Applicant.

²⁵ Delete as appropriate.

Courtesy translation, not binding.

which the user requests the Service] cubic metres of LNG, with an indicative energy value in MJ of [insert indicative energy value of the LNG], for the Unloading Slot commencing on [insert the commencement date of the Unloading Slot posted on the Electronic Communication System] with a duration of [insert the duration of the Unloading Slot posted on the Electronic Communication System], and with the following Scheduled Arrival Range: [insert Schedule Arrival Range posted on the Electronic Communication System]. (Il Gestore conferisce all'Utilizzatore, e l'Utilizzatore sottoscrive, ...)

2.2 The Spot Redelivery Period will be the following: *[insert Spot Redelivery Period posted by the Operating Company on the Electronic Communication System].*

2.3 The Spot Redelivery Programme will be the one determined by the Operating Company in accordance with the provisions of the Regasification Code.

2.4 The Spot Capacity Agreement shall expire on *[insert date corresponding to the ninetieth (90th) Day after the Annual Reconciliation for Inventory Loss and/or Gain as per paragraph (b) of clause 6.3 of Chapter III]*. Expiration of this Spot Capacity Agreement shall be without prejudice to any obligations and/or liabilities which have accrued prior to the expiration date.

3. Charges

3.1 The Capacity Charge and the Variable Charge due by the User pursuant to this Spot Capacity Agreement shall be determined in accordance with the relevant provisions of the Regasification Code by applying the *Cqs*, the *Cna*, the *CMg* and the *CVL* for Spot Capacity as set forth in Schedule (1) hereto.

3.2 The Grid Capacity Charge and the Variable Transportation Charge due by the User pursuant to the Spot Capacity Agreement shall be determined in accordance with letters (f) and (g), respectively, of clause 8.1.1 of chapter III of the Regasification Code.

3.3 The Additional Charges and any other payments due by the User pursuant to the Spot Capacity Agreement shall be determined in accordance with the relevant provisions of the Regasification Code.

3.4 [The Operating Company shall apply the User's Capacity Make-Up Balance under the capacity agreement dated *[date of relevant capacity agreement]* for the payment of all or part of the Capacity Charge due pursuant to the Spot Capacity Agreement, in accordance with clause 8.10.2 of chapter III of the Regasification Code.]²⁶

4. Service Conditions

4.1 [*User*] states that it satisfies and will satisfy and maintain all of the Service Conditions provided in clause 2.3 of chapter III of the Regasification Code throughout the term of the Spot Capacity Agreement.

4.2 With particular reference to the Service Condition provided under letter (j) of clause 2.3 of chapter III, [*User*] acknowledges that the provision to the Operating Company of a duly executed authorisation to make requests for transactions at the Virtual Exchange Point which imply the automatic acceptance of the User is essential in order for the Operating Company to be able to Redeliver the Gas. Therefore, [*User*] undertakes to provide the Operating Company with a duly executed copy of such authorization, as well as of any other documentation required by Snam Rete Gas in this respect, within two (2) Days from the execution of this agreement or, should such date

²⁶ To be inserted if applicable.

Courtesy translation, not binding.

fall later than the fifth (5th) Business Day preceding the date when the first Unloading is expected, immediately after the execution of this agreement.

- 4.3 [User] hereby represents and warrants to the Operating Company that the Representations set forth in clauses 2.4.1 (a) through 2.4.1 (d) of chapter III of the Regasification Code are true and accurate as of the date on which the Spot Capacity Agreement is entered into. In respect of the Representations set forth in clauses 2.4.1 (a) and 2.4.1 (b) of chapter III of the Regasification Code, [User] undertakes that they will remain true and accurate as provided for in clauses 2.4.2 and 2.4.3 of chapter III of the Regasification Code.

5. Domicile election and notices

- 5.1 According to clause 4.2 of chapter I of the Regasification Code and for the purposes of the Spot Capacity Agreement, the User elects domicile at [insert address] in Milan, and undertakes to maintain such a domicile in Milan, for the entire duration of this Spot Capacity Agreement.
- 5.2 Any communication and notice to the User made by the Operating Company pursuant to clause 16 of chapter III of the Regasification Code, shall be sent at the address set out in article 5.1 above to the attention of Mr. [insert addressee], fax number [insert fax number], e-mail address [insert e-mail address].

6. Application of the Regasification Code

This Spot Capacity Agreement is subject to the terms and conditions of the Regasification Code, which are incorporated herein by reference.

[Place], [date]

[Applicant]

By: _____

Title: _____

The User, hereby, unconditionally approves, pursuant to and for the purposes of, articles 1341 and 1342 of the Italian Civil Code, the following clauses of the Regasification Code:

CHAPTER I:

4.1 “Competence of the Regulatory Authority for Electricity and Gas”; **4.2** “Submission to jurisdiction”; **4.3** “Arbitration of Technical Disputes”.

CHAPTER II:

2.1.1 “Provisional Terminal Capacity”; **2.4.2** “Subscription of Available Capacity”; **2.4.3** “Subscription of Spot Capacity”; **2.4.6** “Access Requests”; **2.4.8** “Execution of Modified Acceptances”; **2.5** “Access Denial”; **2.6** “Released Capacity”; **2.7** “Subscribed Non-Foundation Capacity to be made available to the Operating Company for allocation to third parties pursuant to article 11, sub section 3, of AEEG Resolution no 167 of 1 August 2005”; **2.8** “Subscribed Foundation Capacity to be made available to the Operating Company for allocation to third parties pursuant to article 6, sub section 3, of the MAP decree of 11 April 2006”; **3.2** “Annual Scheduling”; **3.3** “Three (3) Month Scheduling”; **3.7** “Unloading Slot unavailability”.

CHAPTER III:

Courtesy translation, not binding.

2.2 “Parties’ obligations”; **2.6** “User’s standard of performance”; **2.7** “Refusal of changes in the Service”; **2.9** “Performance of the Redelivery Service”; **3** “Withdrawal from and duration of capacity agreements”; **4** “Title”; **5.1.3** “Determination of quantity and quality of LNG at the Delivery Point”; **5.1.7** “User’s liability in relation to Unloading of Off-Spec LNG”; **6.1** “Redelivery of Gas”; **6.2** “Losses and Consumptions”; **7** “Force Majeure”; **8.1** “Invoicing by the Operating Company”; **8.4** “Suspension of payment of invoices”; **8.6** “Adjustment of Errors”; **8.7** “No deduction of taxes; liability for Maritime Charges”; **8.10** “Capacity Make-Up”; **8.11** “Charges for scheduling variance applicable to Continuous Users”; **8.12** “Charges for scheduling variance applicable to Spot Capacity”; **9** “Taxes, duties and charges on the Gas”; **12** “Exchanges of Subscribed Capacity”; **13** “Termination”; **14** “Liability”; **15** “Complaints”; **19** “Enforcement Costs”; **20** “Waiver of immunity”.

CHAPTER IV:

1.3 “Rejection of LNG Tankers”; **1.4.2** “Failure to make necessary modifications”; **3.6** “Re-Assignment of Berth”; **3.8.2** “Demurrage”; **3.9** “Excess of boil-off”.

CHAPTER VI:

2.1 “Subjects entitled to submit requests for the amendment of the Regasification Code”; **2.2** “Requirements for the admissibility of the requests”; **2.4** “Assessment of the request”; **4** “Communications”.

ANNEX (a):

Instructions for entering Non-Foundation and Spot Capacity Agreements: **2.3** “Irrevocability”; **4.2;** **4.3;**

Part I – Form of Access Request for all Capacity Agreements other than for any Foundation Capacity Agreement: **paragraph after letter (g)**;

Part II – Form Access Request for Capacity Make-up: **paragraph after letter (g)**;

Part III – Form of Modified Acceptance for Non-Foundation Capacity Agreement: **third paragraph**;

Part IV – Non-Foundation Capacity Agreement: clause **5** “Domicile election and notices”; clause **6** “Financing of the Terminal”.

Schedule (2) - Direct Agreement: Recital E; clause **2** “Consent to assignment and Step-In Rights”; clause **3** “Payments under the Capacity Agreement”; clause **6.7** “Arbitration”; clause **6.9** “Termination”; clause **6.10** “Conflicts of documents”.

Part V – Spot Capacity Agreement: clause **5** “Domicile election and notices”

ANNEX (e) – Form of Release Declaration: **last paragraph**.

[Note: the list of “unfair terms” (“*clausole vessatorie*”) shall be modified or integrated in accordance with the amendments to the Regasification Code (if any) required by the Regulatory Authority for Electricity and Gas].

[Applicant]

By: _____

Courtesy translation, not binding.

Title: _____

For Acceptance:

Terminale GNL Adriatico S.r.l.

By: _____

Title: _____

Courtesy translation, not binding.

Schedule (1)

[User to insert Schedule (1) as published by the Operating Company on the Electronic Communication System, with respect to the capacity which is the object of the Spot Capacity Agreement.]