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II.2.4 Subscription of the Terminal Capacity

The Unsubscribed Capacity will be made available for subscription in accordance with this clause 2.4.

2.4.1 Subscription of Unsubscribed Foundation Capacity and Released Foundation Capacity

- (a) Operating Company may allocate Unsubscribed Foundation Capacity and/or Released Foundation Capacity to one or more Users ("**Foundation Capacity User(s)**") by entering into agreement(s) ("**Foundation Capacity Agreement(s)**") with such User(s) with respect to such Foundation Capacity.
- (b) No later than one (1) Business Day after entering into a Foundation Capacity Agreement, the Operating Company shall update its Electronic Communication System accordingly.

2.4.2 Subscription of Available Capacity

Any person meeting the requirements of the Regasification Code may become an Applicant for Available Capacity for the Continuous or Spot Regasification Service by submitting an Access Request to the Operating Company in accordance with the Annual Subscription Process or the Infra-Annual Subscription Process, as set forth herein.

- (a) Annual Subscription Process: Available Capacity for the immediately following and subsequent Thermal Years shall be awarded to Applicants through the following process ("**Annual Subscription Process**"):
 - (i) On the first (1st) of June of each Thermal Year, or the following Business Day if the 1st (first) of June is not a Business Day, the Operating Company shall reclassify all Unsubscribed Foundation Capacity and all Released Foundation Capacity for the immediately following Thermal Year as Unsubscribed Non-Foundation Capacity and Released Non-Foundation Capacity, respectively. On such date the Operating Company shall update the Electronic Communication System to show the accordingly revised Available Capacity.
 - (ii) All Applicants shall submit Access Requests for Available Capacity by no later than 17:00 hours on the first (1st) of July or within the same hour of the following Business Day if the 1st (first) of July is not a Business Day. Any such Access Request shall be irrevocable until 23:59 hours on the thirty first (31st) of July.
 - (iii) Available Capacity shall be allocated, on a priority basis, to Applicants filing Access Requests that meet the duration limits indicated for each category indicated under letters (aa), (bb), (cc), (dd) and (ee) below, in accordance with the following ranking priority:
 - (aa) Access Requests made by Applicants that are end clients or consortia of end clients, who import for self-consumption, except for electricity producers, for periods ranging between five (5) and ten (10) years;
 - (bb) Access Requests made by Applicants that undertake to offer the entire volume of Gas to be imported at the virtual exchange point, according to transparent and non-discriminatory conditions, for period ranging between five (5) and ten (10) years;

- (cc) Access Requests made by Applicants that undertake to offer a quota of at least twenty percent (20%) of the volume of Gas to be imported at the virtual exchange point, according to transparent and non-discriminatory conditions, for periods of five (5) years;
 - (dd) Access Requests made by Applicants that import from States other than those from which long term importation agreements were in force as of 28 September 2004, for periods of five (5) years;
 - (ee) Access Requests made by Applicants which, at the time of the Access Request, hold 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, for periods of five (5) years; and
 - (ff) any other Access Requests, for periods shorter than five (5) years.
- (iv) In the event that a portion of the Available Capacity is the object of two or more Access Requests of equal ranking within one of the categories mentioned under paragraphs (aa), (bb), (dd) and (ee) above, the Operating Company shall award such portion of the Available Capacity according to the following criteria:
- (aa) largest aggregate volume of LNG over the term of the Non-Foundation Capacity Agreement;
 - (bb) earliest start date for the Service;
 - (cc) shortest overall duration of the Service; and
 - (dd) fewest number of Unloadings.
- (v) In the event that a portion of the Available Capacity is the object of two or more Access Requests of equal ranking within the category mentioned under paragraph (cc) of point (iii) above, priority will be given to the Applicant that, during the requested period, would offer the overall largest volumes of Gas at the virtual exchange point.
- (vi) Available Capacity which has not been allocated pursuant to points (iii), (iv) and (v) above shall be allocated to Applicants undertaking to enter into Non-Foundation Capacity Agreements of a duration lower than five (5) years, in accordance with the ranking priorities indicated under points (iii), (iv) and (v) above.
- (vii) By the 11th (eleventh) of July, or within the following Business Day if the 11th (eleventh) of July is not a Business Day the Operating Company will issue with respect to each Access Request, an Acceptance, a Modified Acceptance, an Interim Notice, or a notice of rejection, as the case may be, in accordance with the following:
- (aa) *Acceptances*: starting from the highest ranking Access Request, proceeding in order of decreasing ranking and only up to the first Access Request that cannot be Accepted without modification, each Access Request shall be Accepted and the Available Capacity shall be reduced accordingly;

- (bb) *Modified Acceptances*: if, following the procedure described in the above paragraph (aa), there still are pending Access Requests and Available Capacity, the Operating Company will send a Modified Acceptance to Applicant(s) whose Access Request(s) cannot be Accepted without modification. Any such Modified Acceptance shall be irrevocable until the twenty fourth (24th) of July. In the case all or part of the Available Capacity which is the object of a Modified Acceptance sent to an Applicant pursuant to this paragraph (bb) is also the object of Modified Acceptance(s) sent by the Operating Company to other Applicant(s) with higher ranking Access Request(s), then the Modified Acceptance sent to such Applicant shall provide that, in the case of Acceptance by such Applicant, the resulting Capacity Agreement is subject to the condition precedent that such other Applicant(s) does(do) not Accept its (their) respective Modified Acceptance(s) pursuant to paragraph (v) below;
- (cc) *Interim Notices*: in the case all or part of the Available Capacity requested by any Applicant is also the object of Modified Acceptance(s) sent by the Operating Company to other Applicant(s) with higher ranking Access Request(s), then the Operating Company shall send such Applicant an Interim Notice; and
- (dd) *notices of rejection*: each Applicant that is not entitled to receive an Acceptance, a Modified Acceptance, or an Interim Notice pursuant to paragraphs (aa) through (cc) above, shall not be awarded Available Capacity and shall accordingly receive a notice of rejection.
- (viii) Each Applicant receiving a Modified Acceptance shall submit its Acceptance to the Operating Company no later than 17:00 hours, on the 24th (twenty fourth) of July. If such Acceptance is not received by the Operating Company by such date, the Applicant shall be deemed to have rejected such Modified Acceptance.
- (ix) The Operating Company shall award the then current Available Capacity in ranking order to the higher ranking Applicant(s) that have Accepted its (their) Modified Acceptances or have received Interim Notices, and the Available Capacity shall be reduced accordingly.
- (x) By the 26th (twenty sixth) of July or within the following Business Day if the 26th (twenty sixth) of July is not a Business Day the Operating Company shall (aa) notify each Applicant that has Accepted, pursuant to paragraph (viii) above, a Modified Acceptance that provides for a condition precedent whether such condition precedent has been met; and (bb) send to each Applicant that has received an Interim Notice the Acceptance or rejection of its Access Request.
- (xi) The Terminal Capacity in any given Month that has been subscribed during the Annual Subscription Process shall be deemed to have been subscribed in the following order:
 - (aa) Terminal Capacity that was, prior to the 1st (first) of June, classified as Unsubscribed Non-Foundation Capacity;
 - (bb) Terminal Capacity that was, prior to the 1st (first) of June, classified as Unsubscribed Foundation Capacity; and
 - (cc) Terminal Capacity that was, prior to the 1st (first) of June, classified as Released

Foundation Capacity or Released Non-Foundation Capacity, with such Released Capacity deemed to have been subscribed in the order of the dates of the respective Release Declarations, starting from the earliest.

If, after applying the procedure described in paragraphs (i) through (x) above, the Available Capacity in any given Month of the immediately following Thermal Year is greater than zero and by the 1st (first) of June or within the following Business Day if the 1st (first) of June is not a Business Day of the current Thermal Year the Operating Company had reclassified Unsubscribed Foundation Capacity and/or Released Foundation Capacity in such Month pursuant to paragraph (i) above, then to the maximum extent possible such reclassified capacity shall be converted back to be Unsubscribed Foundation Capacity and/or Released Foundation Capacity, as the case may be, and the Available Capacity shall be reduced accordingly.

- (xii) Following completion of the Annual Subscription Process and by no later than the 27th (twenty-seventh) of July, or the following Business Day if the 27th (twenty-seventh) of July is not a Business Day, the Operating Company shall update the Electronic Communication System accordingly.
 - (xiii) The results of the Annual Subscription Process shall be communicated to the Regulatory Authority for Electricity and Gas within 15 (fifteen) Days from its completion.
- (b) Infra-Annual Subscription Process: the Infra-Annual Capacity will be made available by the Operating Company during the Thermal Year in accordance with the subscription rules:
- (i) of the Continuous Regasification Service, or the Infra-Annual Capacity in the period that starts in the Month M+2 starting from the publication on the Electronic Communication System and until the end of the current Thermal Year; and
 - (ii) of the Spot Capacity, or the Infra-Annual Capacity available in the Month M+1, starting from the publication on the Electronic Communication.

The Infra-Annual Capacity will be allocated according to the procedure below.

Any person meeting the requirements of the Regasification Code may become an Applicant for the Infra-Annual Capacity published in accordance with article II.2.3, submitting an Access Request to the Operating Company in accordance with the following procedure ("Infra-Annual Subscription Process"):

- (i) All Applicants shall submit Access Requests for the Infra-Annual Capacity no later than the deadline date for the submission as specified in accordance with letter (v) article 2.3 (e) of chapter II. Each Access Request shall be irrevocable until 17:01 hours the next Day to the deadline for the which the Access Request shall be Accepted, as specified pursuant to letter (v) of article 2.3 (e) of chapter II:
 - (aa) Access Requests for Continuous Capacity will be ranked according to the Subscription Allocation Criteria;
 - (bb) Access Requests for Spot Capacity will be ranked according to the following order of priority:
 - i) priority will be given to the Access Requests related to the provision of

services for the LNG volume closer to the maximum volume of LNG that can be Unloaded during the relevant Unloading Slots, as indicated by the Operating Company in accordance with letter (iii) of article 2.3 (e) of chapter II; and

- ii) in the event that more Access Requests have an equal priority according to the criteria referred to in previous paragraph (i), it will be recognized more priority to Access Requests submitted by Applicants making use of the right to apply Make-Up Capacity, starting with the Access Request presented by the Applicant with the higher Make-up Balance and proceeding in decreasing order according to the size of the Make-up Balance
- (ii) by 17:00 of the deadline specified at letter (v) of article 2.3 (e) of chapter II, and without prejudice to paragraph (iii) below, the Operating Company will issue, with respect to each Access Request, an Acceptance or a notice of rejection, depending as the case may be, in accordance with the following provisions:
- (aa) Acceptances: Access Request with highest priority shall be accepted; and
 - (bb) notice of rejection: each Applicant that has submitted an Access Request with a lower priority than the highest it will not be awarded Infra-Annual Capacity and shall accordingly receive a Notice of Rejection.
- (iii) except in cases where the Operating Company may use the transportation capacity already booked under the Transportation Contract, the Operating Company shall not be obligated to accept an Access Request for Infra-Annual Capacity if he has not been able to get the necessary transportation capacity from the Transportation Company in order to Redeliver the Gas resulting from the LNG that would be Discharged by the Applicant;
- (iv) if, the whole Infra-Annual Capacity has not been allocated within the deadline, the Operating Company will assign the remaining Capacity according to time of receipt of the relevant requests by the Applicants (first come first served), until:
- i) the 5th (fifth) Business Day before the Scheduled Arrival Range of each Unloading Slot for the Spot Capacity; and
 - ii) the 15th (fifteenth) Day of the Month following the Month of publication of the Infra-Annual Capacity for the Continuous Capacity.

By 17:00 the Day after receiving an Access Request and, except as provided in article 2.4.2 (b) (iii), the Operating Company will issue with respect to each Access Request, an Acceptance or a notice of rejection, as the case may be.

- (v) the results of the Infra-Annual Capacity Subscription Process shall be communicated to the Regulatory Authority for electricity gas and water system within the 15th (fifteenth) Day of the Month following the Month within which the Infra-Annual Subscription Process has occurred.

2.4.3 Maximisation of Terminal utilization

With the objective of maximising and optimising the utilisation of the Terminal, the Operating Company may, during the Annual Subscription Process and the Infra-Annual Subscription Process, consult with Applicants and Users and seek an agreement between all potentially affected parties in

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order to accommodate, to the maximum extent possible, all Access Requests. Any agreement so reached between such parties may contain modifications to Access Requests and/or Capacity Agreements of the potentially affected parties. No User or Applicant is under any obligation to enter into any such agreement. If mutual agreement is not reached between all the potentially affected parties, the Operating Company will strictly apply the Annual Subscription Process or the Infra-Annual Subscription Process, as the case may be, to allocate the relevant Available Capacity or Spot Capacity. In no case may any such agreement result in an Applicant or a User that is not party to such agreement being in a less advantageous position with respect to the subscription of capacity or the provision of the Service than that Applicant or User would have been in under the Annual Subscription Process, the Infra-Annual Subscription Process or its Capacity Agreement, as the case may be, in the absence of such agreement.

2.4.4 Access Conditions

Unless the Operating Company has waived or deferred compliance with any one or more of the following conditions (to the extent such waiver or deferment is allowed under the applicable Regulations), each Applicant, throughout the period from the delivery of its Access Request until the Acceptance or rejection of such Access Request, must satisfy and maintain all of the following conditions ("**Access Conditions**"):

- (a) there are available to the Applicant one or more importation contracts, and will have quantities of LNG that are the subject of the Access Request and such quantities of LNG must meet LNG Quality Specifications;
- (b) as per art. 11 AEEGSI resolution 118/15/R/Gas the Applicant whether Transportation User or, in the event the Applicant does not meet this requirement, the Applicant indicates one or more Transportation Users, as per article 11.6 of AEEGSI resolution 1118/15/R/Gas
- (c) there is available to the Applicant sufficient LNG Tanker capacity to transport to the Delivery Point the quantities of LNG that are the subject of the Access Request, and such LNG Tanker(s), its (their) crew(s) and captain(s), will be in compliance with the Terminal Regulations, Maritime Regulations, the Cargo Handling Manual and the LNG Tanker Vetting Procedure;
- (d) the Applicant is in compliance with the provisions of clause 10 of chapter III;
- (e) where any quantity of LNG that is the subject of the Access Request is to be imported from countries outside the European Union, the Applicant has received authorisation granted by MSE for importation of such quantity of LNG pursuant to the provisions set forth in the decree of the MICA (Italian Ministry of Industry, Trade and Crafts) of the 27th of March 2001;

If at any time while the Access Request is pending any Applicant ceases to satisfy or maintain one or more of the Access Conditions, such Applicant must notify the Operating Company within two (2) Business Days after becoming aware of such event.

2.4.5 Access Requests

- (a) Each Access Request for Available Capacity shall include the following information and statements that must remain valid with reference to the Applicant from the date of submission of the Access Request to the signing of the Capacity Contract or the refusal of the Access Request, as appropriate, as well as the documentation specified in clause 2.4.7 of chapter II:

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- (i) the portion of Available Capacity, expressed in cubic metres, requested for each specific Month. For the Spot Capacity Access Requests this data is only required for the relevant Unloading Slot;
 - (ii) with respect to the requested Available Capacity, the specific number of Unloading Slots for each Month and the quantity of LNG expressed in cubic metres for each such Unloading Slot. For the Spot Capacity Access Requests specify the relevant Unloading Slot and the related LNG quantity;
 - (iii) with respect to the Unloading Slots requested, the loading port(s) of the LNG that will be transported to the Delivery Point;
 - (iv) the technical specifications (including the tonnage, gross loading capacity, and length) of the LNG Tanker(s) that will be used to transport the LNG to the Delivery Point;
 - (v) confirmation of the existence of LNG importation agreements compatible as to duration and quantities with the terms of the Access Request specified in paragraphs (i), (ii), (iii) and (iv) above;
 - (vi) confirmation of whether the Applicant meets the requirements necessary to be granted any priority in the allocation of Available Capacity established in paragraph (iii) of clause 2.4.2 (a) above, specifying the type of priority to which the Applicant is entitled in the case of the Annual Subscription Process;
 - (vii) the technical specifications (including the tonnage, gross loading capacity, and length) of the LNG Tanker that will be used to transport such volume of LNG to the Delivery Point;
 - (viii) the loading port of the LNG that will be transported to the Delivery Point; and
 - (ix) the arrival date of the LNG Tanker;
- (b) If the Applicant for Available Capacity or Spot Capacity is not a company incorporated in one of the member states of the European Union, the Access Request shall be duly notarised by a notary public and legalized or apostilled as may be required under Italian law in order to certify the authenticity of the signature of the notary public, his/her capacity as notary public and, where appropriate, the identity of the seal or stamp which the Access Request bears.

Recognizing that time is of the essence with respect to submission of Access Requests hereunder, a company that is not incorporated in one of the member states of the European Union and intends to submit Access Request(s) may provide, in advance of any such submission:

- (i) evidence satisfactory to the Operating Company that identified representative(s) of such company are duly empowered to execute and submit, in the name and on behalf of such company, (x) such Access Request(s), it being understood that in the case of attorneys in fact (“*rappresentanti negoziali*”), such representatives shall have also been authorised to specifically approve in writing unfair terms (“*clausole vessatorie*”) pursuant to and for the purpose of articles 1341 and 1342 of the Italian civil code and, in particular, the clause derogating the territorial competence referred to under clause 4.2 of chapter I of

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this Regasification Code, which provides that “*any and all disputes arising out of or in connection with a Capacity Agreement between the Operating Company and the User which is a Party to such Capacity Agreement and/or in connection with the Regasification Code, other than Technical Disputes referred to in clause 4.3 of chapter I, shall be subject to the Italian jurisdiction and to the exclusive competence of the Courts of Milan*”, and (y) the undertaking specified in point (ii) below; and

- (ii) an undertaking of such company to promptly inform the Operating Company as soon as such identified representative(s) are no longer empowered to execute and submit Access Request(s) in the name and on behalf of such company.

The Operating Company shall review the evidence specified in point (i) above and advise the relevant company whether it accepts such evidence as being satisfactory to it. If the Operating Company so advises such company, then such company, for a period of 14 (fourteen) Months from the submission of such evidence to the Operating Company, will be entitled to submit Access Request(s) executed by the relevant representative(s) without having to comply with the requirements set forth in the first paragraph of this clause 2.4.6 (c).

- (c) Each Access Request shall express unconditional acceptance by the Applicant of the terms and conditions of the Regasification Code, as well as specific acceptance by the Applicant of the relevant clauses of the Regasification Code pursuant to, and for the purposes of, articles 1341 and 1342 of the Italian civil code.

2.4.6 Documentation to accompany Access Requests

Without prejudice to the requirements of clause 2.4.5 of chapter II, each Applicant shall submit with its Access Request the documents required pursuant to clause 10.1 of chapter III in a form and substance satisfactory to the Operating Company and in addition a self declaration of the import notice or import authorisation required under applicable Regulations for the Applicant to import LNG into Italy.

2.4.7 Execution of Modified Acceptances

The provisions set forth in clauses 2.4.6 (a)(x), 2.4.6 (b)(vi) and 2.4.6 (c) of chapter II shall apply *mutatis mutandis* to the execution of a Modified Acceptance by any Applicant.

2.4.8 Procedure for notification of Access Requests and Modified Acceptances

Each Access Request and each Modified Acceptance shall be notified by the relevant Applicant to the Operating Company in compliance with the requirements set forth in the relevant section of Annex (a).