

## **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**”) <sup>1</sup> 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 Via Santa Radegonda 8, 20121 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 ARERA 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 **Error! Reference source not found.** of chapter II of the Regasification Code, has published on its Electronic Communication System: i) the Available Capacity; and [ii) the Incremental Capacity, if applicable ] ii) the number and the schedule, if known, of available Unloading Slots in each Month;

On [insert date] the User has submitted an Access Request for [Available Capacity/ Incremental Capacity /Available Capacity utilising Capacity Make-up]<sup>2</sup> pursuant to article **Error! Reference source not found.** of chapter II [alternatively: “has participated to the auction procedure pursuant to article 2.4.2 b) of chapter II”], and has provided , *inter alia*, the information and statements pursuant to article 2.4.5 (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)]<sup>3</sup>.

**NOW, THEREFORE**, the User and the Operating Company agree to be legally bound as follows:

### **1. Recitals and Definitions**

1.1 The recitals are hereby incorporated and form an integral and essential part of this agreement.

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<sup>1</sup> 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.

<sup>2</sup> Delete as appropriate.

<sup>3</sup> To be inserted if applicable, including the statement relating to the priority ranking criterion(i) made under letter d) of the relevant Access Request.

***English courtesy translation, non binding***

- 1.2 All the capitalized terms used in the Capacity Agreement shall have the same meaning given in clause **Error! Reference source not found.** of chapter I of the Regasification Code.

**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 (m <sup>3</sup> /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 [Subject to the conditions set out in the Regasification Code, the Applicable Regulations, and article 9, the Slots relating to the Incremental Capacity will be made available as follows:

- (a) Within 3 (three) Months from the signature of the Capacity Contract the Operating Company notifies to the User a time frame of 6 (six) Months within the following 3 (three) years in which the User has to define the first Month for the first Unloading within one Month from the notification ("First Unloading")
- (b) If the conditions set out in the Regasification Code and the Applicable Regulations are not met 2 (two) Months before the First Unloading for the provision of the Incremental Capacity, the Operating Company will notify the User of a new time frame of 6 (six) Months within the following year in which the User must define the first Month for the first Unloading
- (c) In the event that the User does not notify his preference for the First Unloading within the deadline, the last Month of the notified time frame will be considered as the Month for the First Unloading ]<sup>4</sup>
- (d) In the event that the Incremental Capacity is not available at the term referred to in point b) the User will not have to pay the fee relating to the Incremental Capacity. It is understood that the Operating Company will not incur any liability in the event of delay or non-availability of the Incremental Capacity.

- 2.3 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.)

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<sup>4</sup> To be inserted where applicable.

### **3. Charges**

- 3.1 The Capacity Charge due by the User pursuant to the Capacity Agreement shall be determined in accordance with the relevant provisions of the Regasification Code is defined as set forth in Annex (1) of the Capacity Contract hereto.
- 3.2 The Grid Capacity Charge due by the User pursuant to the Capacity Agreement shall be determined in accordance with letter-(e), respectively, of clause **Error! Reference source not found.** 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 Capacity Charge relating to the Incremental Capacity is due as from the date such Incremental Capacity is made available]
- 3.5 [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 **Error! Reference source not found.** of chapter III of the Regasification Code.]<sup>5</sup>

### **4. Service Conditions**

- 4.1 [*User*] states that it satisfies and will satisfy and maintain all of the Service Conditions provided in clause **Error! Reference source not found.** 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 **Error! Reference source not found.** of chapter III, [*User*] acknowledges that the provision to the Operating Company of a duly executed authorisation to make requests for transactions at the System 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 fall later than the fifth (5<sup>th</sup>) 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 **Error! Reference source not found.** (a) through **Error! Reference source not found.** (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 **Error! Reference source not found.** (a) and **Error! Reference source not found.** (b) of chapter III of the Regasification Code, [*User*] undertakes that they will remain true and accurate as provided for in clauses **Error! Reference source not found.** and **Error! Reference source not found.** of chapter III of the Regasification Code.

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<sup>5</sup> To be inserted if applicable.

**5. Domicile election and notices**

- 5.1 According to clause **Error! Reference source not found.** 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 **Error! Reference source not found.** 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]<sup>6</sup>**

- 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 **Error! Reference source not found.** (a) (x) of chapter II of the Regasification Code.]]<sup>7</sup>

**9. [Condition Subsequent to the Incremental Capacity]**

- 9.1 With reference to the Incremental Capacity only, this Capacity Agreement shall be terminated in accordance with article 9.2, pursuant to article 1353 of the Italian Civil Code, with retroactive effect, if the Operating Company, within 2 (two) months from the conclusion of this Capacity Agreement, decides not to implement the Incremental Capacity, also taking into account the financial and technical conditions of the intervention for its implementation(the "**Condition Subsequent**").
- 9.2 The fulfilment of the Condition Subsequent referred to in article 9.1 above shall be notified in writing by the Operating Company to the User. Upon sending by the Operating Company to the User of the notice of fulfilment of the Condition Subsequent:

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<sup>6</sup> To be deleted for Access Requests aimed at entering into Non-Foundation Capacity Agreements with a term of up to 1 (one) year.

<sup>7</sup> To be inserted if applicable.

- (a) with reference to the Incremental Capacity only, this Capacity Agreement shall terminate pursuant to article 1353 of the Italian Civil Code with retroactive effect. This Capacity Agreement, once terminated pursuant to this article 9.2, shall no longer have any effect with reference to the Incremental Capacity only;
- (b) the related Access Request submitted by the User, with reference to Incremental Capacity only, and the subsequent allocation of the Incremental Capacity in its favour as a result of the Annual Subscription Procedure shall no longer have any effect;
- (c) the User shall not be entitled to make any claim against the Operating Company (including, by way of example, but not limited to, any right to compensation for damages, indemnification and/or reimbursement) in relation to the ineffectiveness of the related Access Request, in relation to Incremental Capacity only, and the allocation of Incremental Capacity referred to in letter (b) above and, with reference to the Incremental Capacity only, to the termination of this Capacity Agreement referred to in this article 9.

**9.3 Article 1359 of the Italian Civil Code shall not apply to the Condition Subsequent.]<sup>8</sup>**

[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, [article 9 of the Capacity Agreement and] 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:**

**2.4.2** “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 14, sub section 3, of TIRG”; **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

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<sup>8</sup> To be inserted in the event of Access Request for Incremental Capacity.

## *English courtesy translation, non binding*

*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 of the Regasification chain"; **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**.

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 ARERA.

[Applicant]

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By: \_\_\_\_\_

Title: \_\_\_\_\_

For Acceptance:

Terminale GNL Adriatico S.r.l.

By: \_\_\_\_\_

Title: \_\_\_\_\_

**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.]

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\* In case of Infra-annual Capacity subscription through auction procedures pursuant to article 2.4.2. (b)  $\alpha$ ) of Chapter II, the Cqs is replaced by the allocation price offered by the User.