**Form of First Demand Guarantee**

[LETTERHEAD OF THE APPROVED ISSUING INSTITUTION]

[Place], [*date*]

To:

Terminale GNL Adriatico S.r.l. (“Operating Company”)

Via Santa Radegonda, 8

20121 Milan

Italy

For the attention of Capacity Subscription Coordinator

Sirs,

FIRST DEMAND GUARANTEE

Whereas:

1. The Regasification Code provides the conditions for access to the offshore regasification terminal owned by the Operating Company located approximately 17 km offshore Porto Levante, Italy, pursuant to article 24, sub-section V of the legislative decree no. 164/2000 (the “**Regasification Code**”);
2. On May 12 2011, the Regulatory Authority for Energy Networks and Environment, according to article 24.5 of Legislative Decree, reviewed the compliance with the applicable law of the Regasification Code implemented by the Operating Company. The Regasification Code has been amended in line with the applicable law and has been approved by the Regulatory Authority for Energy Networks and Environment;
3. We have been informed that on [*insert date*], [*insert name of the User*] with registered office at [*insert address*], (the “**User**”) has entered into a Capacity Agreement (as defined in the Regasification Code) with the Operating Company for the performance by the Operating Company of the Service (as defined in the Regasification Code) with respect to the amount of [***Foundation Capacity/Non-Foundation Capacity/Spot Capacity***][[1]](#footnote-1) subscribed by the User thereunder, in accordance with the provisions of such Capacity Agreement (the “**Agreement**”);
4. The Regasification Code is an integral part of, and shall apply to, such Agreement; and
5. This Guarantee (as herebelow defined) is issued in accordance with the Agreement.

In this Guarantee words and expressions not otherwise defined herein shall have the same meaning as are respectively assigned to them in the Agreement.

Now the undersigned [*insert name of the Approved Issuing Institution*] (hereinafter the “**Guarantor**”; the Guarantor and the Operating Company being the “**Parties**”, and each of them a “**Party**”) hereby irrevocably and unconditionally undertakes as follows (the “**Guarantee**”):

**1.** The Guarantor hereby irrevocably guarantees to pay to the Operating Company, up to the Amount (as herebelow defined), any and all amounts due by the User as Regasification Service Charge and Redelivery Service Costs pursuant to the Agreement, which have not been paid by the User on the respective due date (the “**Guaranteed Obligations**”), upon the Operating Company’s first demand (any such demand being referred to as a “**Demand**”). Any Demand shall be a demand for payment made in writing by the Operating Company to the Guarantor (with a copy sent to the User) in accordance with the form of Appendix A hereto attached, stating that any amounts due by the User pursuant to the Agreement and the Regasification Code has not been paid by the User to the Operating Company by the respective due date. The Guarantor shall pay the amounts indicated in the relevant Demand to the Operating Company (i) no earlier than 10 (ten) Business Days after receipt of evidence from the Operating Company that the relevant Demand has been notified to the User by registered post (*raccomandata con avviso di ricevimento*) pursuant to Section 12 below; and (ii) no later than 15 (fifteen) Business Days after receipt of the evidence specified in point (i) above.

**2.** For the first year of effectiveness of this Guarantee the aggregate maximum amount payable by the Guarantor hereunder (the “**Amount**”) shall be equal to Euro [•][[2]](#footnote-2).

Without prejudice to the right of the Guarantor to terminate this Guarantee pursuant to Section 4 below, if the effectiveness of this Guarantee is extended pursuant to Section 4, the Amount applicable during the relevant Extended Period shall be determined as follows: the User shall, at least forty (40) days before the Stated Expiration Date or the New Expiration Date (as applicable), notify to the Guarantor, with a copy to the Operating Company, the Amount that will apply during such Extended Period determined pursuant to Appendix B hereto attached.

Payment shall be made in favour of the Operating Company to such account as specified in the relevant Demand.

**3.** The liability of the Guarantor shall not be impaired, reduced or affected by reason of any of the following (whether or not the Guarantor has notice thereof or has consented thereto):

1. any time being given to the User or any forbearance or forgiveness under the Agreement by the Operating Company or any delay on the part of the Operating Company in asserting any of its rights against the User; or
2. any disability, incapacity, change in ownership or change in status of the User; or
3. any event of liquidation, bankruptcy, insolvency proceedings or similar proceedings or a change in the constitution of the User; or
4. any other bond, security or guarantee held by the Operating Company for any of the obligations of the User under the Agreement or by any failure or delay by the Operating Company to enforce such bond, security or guarantee or by the release or waiver of such bond, security or guarantee by the Operating Company whether in whole or in part; provided however that under no circumstance whatsoever shall the Operating Company make a Demand in accordance hereunder with reference to any amount due pursuant to the Agreement which has been paid to the Operating Company under any such other bond, security or guarantee; or
5. any invalidity, illegality or unenforceability of the Agreement or of any provision thereof.

**4.** This Guarantee shall come into force immediately at the date above written (the “**Effective Date**”) and shall be effective until the date falling on the first anniversary of the Effective Date (the “**Stated Expiration Date**”), provided however that the effectiveness of this Guarantee shall be automatically extended for further consecutive periods of one (1) year each (each such period an “**Extended Period**”) unless, at least thirty (30) days prior to the Stated Expiration Date or to the date falling on any consecutive anniversary thereof (the “**New Expiration Date**”), as the case may be, the Guarantor notifies in writing the Operating Company, pursuant to Section 12 below, that this Guarantee shall have to be deemed as terminated on the Stated Expiration Date or the New Expiration Date, as the case may be.

**5.** The Guarantor represents to the Operating Company that as at the date of this Guarantee:

(a) the execution and delivery of this Guarantee and the performance of all transactions and obligations contemplated hereby are within its corporate authority, and the execution, delivery and performance hereof have been duly authorised by all necessary proceedings;

(b) it is a bank or other credit institution whose long term unsecured and unguaranteed debt has a rating not less than at least two (2) of the following rating agencies:

(i) BBB- issued by S&P;

(ii) Baa3 issued by Moody's; and/or

(iii) BBB issued by Fitch Ratings; and

(c) this Guarantee constitutes valid and legally binding obligations of the Guarantor enforceable in accordance with its terms.

**6.** The Guarantor agrees that this Guarantee shall be additional to and not in substitution for any rights or remedies that the Operating Company may have against the User under the Agreement or at law.

**7.** In case of any delay in the payment of the Guaranteed Obligations, the Guarantor shall pay to the Operating Company default interest on and subject to the same terms of the Regasification Code.

**8.** Any release, discharge or settlement between the Guarantor and the Operating Company shall be conditional upon no security, disposition or payment to the Operating Company being avoided, set aside or ordered to be refunded pursuant to any enactment or law relating to bankruptcy, liquidation, administration or insolvency or for any other reason whatsoever and, should this condition not be fulfilled, the Operating Company shall be entitled to enforce this Guarantee subsequently as if such release, discharge or settlement had not occurred and any payment had not been made.

**9.** No failure or delay by the Operating Company in exercising any right or remedy under this Guarantee shall operate as a waiver, nor shall any single or partial exercise or waiver of any right or remedy under this Guarantee preclude its further exercise or the exercise of any other right or remedy, respectively.

**10.** The Guarantor hereby irrevocably waives any right and benefits provided for under Articles 1944, 1945, 1955 and 1957 of the Italian civil code.Each of the provisions of this Guarantee is severable and distinct from the others, and if at any time any such provision is or becomes ineffective, inoperable, invalid or unenforceable it shall be severed and deemed to be deleted from this Guarantee, and in such event the remaining provisions of this Guarantee shall continue to have full force and effect.

**11.** This Guarantee is for the benefit of the Operating Company and its successors, transferees and assignees in connection with the Agreement.

**12. (A)** Any notice or other communication to be given (i) by one Party to the other Party and/or the User, or (ii) by the User to one or both the Parties, under, or in connection with, this Guarantee shall be in writing and signed by or on behalf of the Party giving it or the User, as the case may be. It shall be served by sending it by fax to the number set out in Section 12 (B), or sending it by pre‑paid recorded delivery, special delivery or registered post, to the address(es) set out in Section 12 (B) and in each case marked for the attention of the relevant recipient set out in Section 12 (B) (or as otherwise notified from time to time in accordance with the provisions of this Section 12). Any notice so served by fax or post shall be deemed to have been duly given:

1. in the case of fax, at the time of transmission as indicated in the transmission report; or
2. in the case of prepaid recorded delivery, special delivery or registered post, at the date indicated in the receipt of delivery,

provided that in each case where delivery by hand or by fax occurs after 6pm on a Business Day or on a day which is not a Business Day, service shall be deemed to occur at 9am on the following Business Day.

Any references to time in this article are to local time in the country of the addressee.

**(B)** The addresses and fax numbers of the Parties and the User for the purpose of Section 12 (A) are as follows:

##### Operating Company

Terminale GNL Adriatico S.r.l.

Address: via Santa Radegonda 8, 20121 Milano

Tel.: +39 02636981

Fax: +39 02. 44386377

For the attention of: [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

**[*Guarantor***]

Address:

Tel.:

Fax:

For the attention of:

**[*User***]

Address:

Tel.:

Fax:

For the attention of:

**(C)** A Party may notify the other Party and the User, and the User may notify the Parties, of a change to its name, relevant addressee, address or fax number for the purposes of this Section 12, provided that, such notice shall only be effective on:

(a) the date specified in the notice as the date on which the change is to take place; or

(b) if no date is specified or the date specified is less than five (5) Business Days after the date on which notice is given, the date following ten (10) Business Days after notice of any change has been given.

**13.** This Guarantee, including any Demand hereunder, shall be governed by and construed in accordance with the laws of Italy and any dispute arising out of or in connection with this Guarantee shall be subject to the Italian jurisdiction and to the exclusive competence of the Courts of Milan. For the purpose of proceedings (including for the purpose of receiving service of process), the Guarantor elects domicile in Milan at the following address [*insert address*].

Yours faithfully,

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(The Guarantor)

The Guarantor, hereby, unconditionally approves, pursuant to and for the purposes of, articles 1341 and 1342 of the Italian Civil Code, the following clauses of this First Demand Guarantee:

- article 1;

- article 3;

- article 4;

- article 6 ;

- article 8;

- article 9 ;

- article 10 ; and

- article 13

By:

Title:

1. Delete as appropriate. [↑](#footnote-ref-1)
2. Insert the amount calculated in accordance with the following formula:

   a) In case of Capacity subscription through an Infra-annual Capacity procedure pursuant to article 2.4.2. (b) α) of Chapter II:

   I = (P+ Cets) x SC + (GCC )

   n

   Where:

   P = *pay as bid* allocation price expressed in EUR / m3liq;

   Cets = the applicable Cets with reference to the Thermal Year or relevant period;

   n = 1 In case of a Guarantee issued pursuant to a Spot Capacity Contract; or in the case of a Guarantee issued pursuant to a Foundation/Non-Foundation Capacity Contract for one Unloading Slot;

   n = 2 In case of a Guarantee issued pursuant to a Spot Capacity Contract with two Unloading Slots; or in the case of a Guarantee issued pursuant to a Foundation/Non-Foundation Capacity Contract for two Unloading Slots;

   n= 3 In case of a Guarantee issued pursuant to a Spot Capacity Contract with three or more Unloading Slots; or in the case of a Guarantee issued pursuant to a Foundation/Non-Foundation Capacity Contract for three or more Unloading Slot;

   I = the amount

   SC = the amount of the Subscribed Capacity according to the relevant Capacity Contract with reference to the Thermal Year or the relevant period;

   GCC = the proportional share of the aggregated Grid Charge related to the User with reference to the Thermal Year or the relevant period;

   b) In case of Capacity subscription through an Annual Capacity procedure pursuant to article 2.4.2. (a) of chapter II or in case of Capacity subscription through Spot Capacity procedure pursuant to article 2.4.2. (b) β ) of chapter II (first come first served criteria):

   1. I = (Cqs+ Cets x SC) + GCC 
      * 1. n

   Where:

   n=1 In the case of a guarantee issued pursuant to a Contract for Spot Capacity or in the case of a guarantee issued pursuant to a Contract for Foundation or Non-Foundation Capacity related to one Unloading Slot

   n =2 In the case of a guarantee issued pursuant to a Contract for Spot Capacity related to two Unloading Slots; or in the case of a guarantee issued pursuant to a Contract for Foundation or Non-Foundation Capacity related to two Unloading Slots

   n =3 In the case of a guarantee issued pursuant to a Contract for Spot Capacity related to three or more Unloading Slots; or in the case of a guarantee issued pursuant to a Contract for Foundation or Non-Foundation Capacity related to three or more Unloading Slots

   I = the amount;

   Cqs = the *Cqs* applicable with respect to the relevant Thermal Year or period;

   Cets = the Cets applicable with respect to the relevant Thermal Year or period;

   SC = the amount of Subscribed Capacity under the relevant Capacity Agreement with respect to the relevant Thermal Year or period;

   GCC=the User’s proportionate share of the total Grid Capacity Charge with respect to the relevant Thermal Year or period; [↑](#footnote-ref-2)