1. **Flexibility Service – Form of First Demand Guarantee**
2. [LETTERHEAD OF THE APPROVED ISSUING INSTITUTION]
3. To:

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

Via Santa Radegonda 8, 20121 Milano

Italia

For the attention of Capacity Subscription Coordinator

1. [Place], [date]
2. FIRST DEMAND GUARANTEE
3. **Dear Sirs**,
4. Whereas:
   * 1. The Regasification Code provides the conditions to access 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;

(c) We have been informed that on [*insert date*], [*insert name of the Transport System User*] with registered office at [*insert address*], (the **“Flexibility Service User**”) has entered into a Contract for the access to the Flexibility Service ( hereinafter “Agreement or Contract”) with the Operating Company for the performance by the Operating Company of the Flexibility Service (as defined in the Regasification Code and in the Technical Operating Provisions, hereinafter “DTF” published by the Operating Company on the Electronic Communication System) (the “**Contract**”);

(d) The Regasification Code is an integral part of, and shall apply to, such Contract; and

(e) This Guarantee (as here below defined) is issued in accordance with the Contract.

1. In this Guarantee, words and expressions not otherwise defined herein shall have the same meaning as are respectively assigned to them in the Contract.
2. 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”):
3. The Guarantor hereby irrevocably guarantees to pay to the Operating Company, up to the Amount (as here below defined), any and all amounts due by the Flexibility Service User as Flexibility Service Charge (CSS subscription fee and, in case of allocation of the Flexibility Service, the CRF redelivery fee offered as *pay as bid* )pursuant to the Contract, which have not been paid by the Flexibility Service 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 Flexibility Service User) in accordance with the form of Appendix A hereto attached, stating that any amounts due by the Flexibility Service User pursuant to the Contract and the Regasification Code and the DTF has not been paid by the Flexibility Service 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 Flexibility Service User by registered post pursuant to Section 12 below; and (ii) no later than 15 (fifteen) Business Days after receipt of the evidence specified in point (i) above
4. 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 [•][[1]](#footnote-1)
   1. Payment shall be made in favour of the Operating Company to such account as specified in the relevant Demand.
5. 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 extension granted to the Flexibility Service User, or any acquiescence under the Contract by the Operating Company, or any delay by the Operating Company in asserting its rights against the User of the Flexibility Service; or
   2. any disability, incapacity, change in ownership or change in status of the Flexibility Service 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 Flexibility Service User under the Contract 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.
6. This Guarantee shall come into force immediately at the date above written (the “**Effective Date**”) and shall be effective until the sixtieth day following the end of the date on which the Contract expires.
7. The Guarantor represents to the Operating Company that as at the date of this Guarantee:
   1. 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;
   2. 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:
      1. BBB- issued by S&P;
      2. Baa3 issued by Moody's; and/or
      3. BBB issued by Fitch Ratings; and
   3. this Guarantee constitutes valid and legally binding obligations of the Guarantor enforceable in accordance with its terms..
8. 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 Flexibility Service User under the Contract or at law.
9. 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.
10. 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.
11. 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.
12. 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.
13. This Guarantee is for the benefit of the Operating Company and its successors, transferees and assignees in connection with the Contract.
14. **(A)** Any notice or other communication to be given (i) by one Party to the other Party and/or the Flexibility Service User, or (ii) by the Flexibility Service 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 Flexibility Service User, as the case may be. It shall be served by sending it by Certified email 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 shall be deemed to have been duly given:
    1. in the case of Certified email, 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 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.

* 1. Any references to time in this article are to local time in the country of the addressee.
  2. **(B)** The addresses of the Parties and the Flexibility Service User for the purpose of Section 12 (A) are as follows:
  3. Operating Company

Terminale GNL Adriatico S.r.l.

Indirizzo: Via Santa Radegonda 8, 20121 Milano

Tel.: +39 02.636981

Certified e-mail: terminale.gnl.adriatico\_mercato@pec.it

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

* 1. [Guarantor]

Address:

Tel.:

Certified e-mail:

For the attention of:

* 1. [*Flexibility Service User*]

Address:

Tel.:

Certified Email:

For the attention of:

* 1. **(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 for the purposes of this Section 12, provided that, such notice shall only be effective on:
  2. the date specified in the notice as the date on which the change is to take place; or
  3. 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.

1. 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].
   1. 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 olo 10; e

- article 13

* 1. Signed by:

In the capacity of:

1. Enter the amount determined based on the indications referred to in Article 4.3.2 letter b) of the DTF and, in no case, less than Euro 100,000. [↑](#footnote-ref-1)