



***Annex 5***  
***Bank Guarantee***  
***Spot Electricity Market***

**Bank Guarantee Form,  
under article 79, para. 79.1 of the Integrated Text of the Electricity Market Rules**

Gestore dei Mercati Energetici S.p.A.  
Largo Giuseppe Tartini, 3/4  
00198 Roma

(place) ..., (date) ...

Bank guarantee (ref. no. ...)

The Bank ..., branch of ..., with registered office in ..., taxpayer's code ..., VAT number ..., listed at no. ... of the Register of Companies (*Registro delle Imprese*) and at no. ... of the Register of Banks (*Albo delle Banche*), capital stock Euro ..., represented by its legal representatives ... (hereinafter referred to as the "Bank"),

WHEREAS

- ... (surname and name/company name or registered name), ... (date and place of birth), ... (place of residence and, if different, domicile/registered office)  
taxpayer's code....., VAT number ...  
capital stock Euro ..., of which ... (subscribed), of which ... (paid-up), registered with .... (hereinafter referred to as the "Market Participant" or "Applicant"), is an Electricity Market Participant included in the Register of Market Participants pursuant to article 16 of the Integrated Text of the Electricity Market Rules, approved by the Decree of the Minister of Industry, Trade and Handicraft of 9 May 2001 and published in *Supplemento Ordinario, Gazzetta Ufficiale, Serie Generale*, no. 127 of 4 June 2001, as amended by the Decree of the Minister of Productive Activities of 19 December 2003, published in *Supplemento Ordinario, Gazzetta Ufficiale, Serie Generale*, no. 301 of 30 December 2003, as subsequently amended and supplemented (hereinafter referred to as the "Electricity Market Rules");
- in accordance with article 12, para. 12.1 b) of the Electricity Market Rules, the Market Participant has signed the Market Participation Agreement, in the format attached to the aforesaid Rules, on ... (date);
- for the purposes and effects of article 35, para. 35.1, and article 45, para. 45.1 of the Electricity Market Rules, the Market Participant has acquired financial obligations towards *Gestore dei Mercati Energetici S.p.A* (hereinafter referred to as "GME") in the Day-Ahead Market (MGP) and in the Intra-Day Market (MI) (hereinafter jointly defined as the "markets");
- as per article 79, para. 79.1 of the Electricity Market Rules, for the purpose of covering obligations acquired in the markets, Market Participants are required to post a bank guarantee issued by banks meeting the requirements specified in the same article 79, para. 79.1;
- the above-mentioned bank guarantee shall be submitted to the bank in charge of GME's treasury services (as set forth in article 78 of the Electricity Market Rules), which shall verify the bank guarantee;
- the Market Participant has submitted a formal request for the above-mentioned bank guarantee for a maximum amount of Euro ... to cover all obligations towards GME, in connection with its participation in the markets, in whatever form (including accessory obligations), except those arising from failure to pay the fees referred to in article 7, para. 7.1 of the Electricity Market Rules;

NOW, THEREFORE,

the Bank issues this guarantee in favour of GME on the terms and conditions indicated below and, anyway, in accordance with the Electricity Market Rules.

1. The bank guarantee shall be valid and effective from ... to ....
2. The Bank shall - irrevocably, unconditionally and formally waiving the benefit of preventative redemption as specified in article 1944 of the Italian Civil Code - guarantee the fulfilment of all of the Market Participant's obligations towards GME arising from its participation in the markets, in whatever form (including accessory obligations), except those arising from failure to pay the fees referred to in article 7, para. 7.1 of the Electricity Market Rules, in the period of validity and effect of this bank guarantee.
3. Notwithstanding the provisions of point 1 above, where the Bank loses one of the qualifications required for issuing bank guarantees or where the Bank - in case of redemption of the bank guarantee issued under article 79, para. 79.1 of the Electricity Market Rules - fails to pay the guaranteed amount, this bank guarantee shall be valid until the end of the invoicing period following the one in which such loss or failure to pay has occurred. It is understood that the Bank shall be liable not only for the Applicant's obligations acquired until such date but also for any other obligation which may be connected with this bank guarantee and which may subsequently arise.
4. As an effect of the provisions of point 2 above, the Bank shall - irrevocably and without delay - pay any amount, without examining the reasons for the request for payment and in spite of any exception, complaint or objection made by the Market Participant in connection therewith, upon the submission of a mere written request by GME, up to a maximum total amount of Euro ...
5. After receiving the request referred to in point 4 above, to be sent by registered letter with return receipt, preceded by a fax to fax no..... or by e-mail message with acknowledgement of receipt, the Bank shall pay the amount in Euro indicated in the request for payment within ten days from the date of receipt of the registered letter with return receipt and with value date on the same day, by means of bank transfer (*bonifico di importo rilevante [BIR]*) or equivalent procedures. Where the date of payment falls on a holiday, the deadline shall be postponed to the following first working day.
6. The Bank hereby explicitly relieves GME of the obligation to act in accordance with the provisions of article 1957 of the Italian Civil Code, notwithstanding that, by way of derogation from such article, the Bank shall remain bound by its obligations, even if GME has not submitted a request to the Market Participant or has not persisted in such request.
7. This guarantee may also be partially redeemed, but it shall remain valid and effective for the residual amount.
8. By way of derogation from article 1939 of the Italian Civil Code, this bank guarantee shall be valid and effective even if the Market Participant's principal obligation towards GME is declared invalid.
9. The Bank hereby explicitly and irrevocably waives its rights in accordance with Articles 1945, 1947 and 1955 of the Italian Civil Code.
10. The Bank explicitly waives any defence, exception, right to compensation, claim or action towards GME in connection with the obligations arising herefrom, including but not limited to any defence, exception, compensation, claim or action that the Applicant may in any way institute against GME.
11. The Bank hereby accepts that GME's rights of redemption of this bank guarantee be exercised by GME or a party specially authorised by GME.
12. Notwithstanding the provisions of point 5 above, all communications or notifications shall be made by registered letter with return receipt or by e-mail with acknowledgment of receipt or by fax to the following addresses:

.... (*surname and name/company name or registered name*), ...(*address*)

e-mail address ... fax no.....

Communications or notifications shall be deemed to have been received upon their arrival at the receiver's address, if sent by registered letter with return receipt, or upon the date of acknowledgement of receipt, if sent by e-mail, or upon the date of acknowledgement of receipt, if sent by fax.

13. The Court of Rome shall have exclusive jurisdiction over any dispute arising herefrom.

Registered Name of the Bank

Signatures of its Legal Representatives

For the purposes and effects of articles 1341 and 1342 of the Italian Civil Code, the Bank hereby specifically approves the clauses and conditions specified in points 2 (*Waiver of preventative redemption*), 3 (*Extension of the Bank's liability*), 4 (*First-demand payment*), 6 (*Derogation from the provisions of Article 1957 of the Italian Civil Code*), 7 (*Partial redemption*), 8 (*Derogation from validity*), 9 (*Waiver of the rights specified in Articles 1945, 1947 and 1955 of the Italian Civil Code*), 13 (*Waiver of claims or actions*) and 13 (*Jurisdiction*) of this bank guarantee.

The Bank

*N.B.: the signatures of the legal representatives shall be certified in accordance with the applicable legislation.*