



Annex 2 (*)

Market Participation Agreement

(*) This is courtesy translation. You must submit only the Italian version of the document.

**Market Participation Agreement Form,
under article 12, para. 12.1 b) of the Integrated Text of the Electricity Market Rules**

BETWEEN

Gestore del Mercato Elettrico S.p.A., with registered office in Rome, Viale Maresciallo Pilsudski, 92, taxpayer's code and VAT number 06208031002, represented by ..., in his/her capacity of ..., (hereinafter referred to as "GME"),

AND

(name and surname) ... /the company/other ... (company name or registered name),
residing in/with registered office in ... (address),
taxpayer's code ..., VAT number ...,
represented by ..., in his/her capacity of ..., (hereinafter referred to as the "Contracting Party");

GME and the Contracting Party, hereinafter defined individually as the "Party" and jointly as the "Parties",

WHEREAS

- A) GME is the company (*Società per Azioni*) which was set up in accordance with article 5, para. 1 of Legislative Decree no. 79 of 16 March 1999 (hereinafter referred to as Legislative Decree 79/99) and vested with the economic management of the Electricity Market. Pursuant to Article 6 of the Decree of the Minister of Industry, Trade and Handicraft of 11 November 1999, published in *Gazzetta Ufficiale, Serie Generale*, no. 292 of 14 December 1999 - repealed and superseded by the Decree of the Minister of Economic Development of 24 December 2005, in turn repealed and superseded by the Decree of the Minister of Economic Development issued jointly with the Minister of the Environment, Land and Sea Protection on 18 December 2008, published in *Gazzetta Ufficiale* no. 1 of 2 January 2009 (hereinafter referred to as "Ministerial Decree of 18 December 2008"), GME is entrusted, as part of such management, with the organisation of a venue for the trading of Green Certificates;
- B) *Terna-Rete Elettrica Nazionale S.p.A.* (hereinafter referred to as "Terna") is the company (*Società per Azioni*) which was set up as a result of the merger of ownership and management/operation of the national power transmission grid in accordance with article 1 of the Decree of the President of the Council of Ministers of 11 May 2004, published in *Gazzetta Ufficiale, Serie Generale*, no. 115 of 18 May 2004, and which exercises the activities of transmission and dispatching of electricity, including the unified management and operation of the national power transmission grid;
- C) *Gestore dei Servizi Elettrici-GSE S.p.A.* is the company (*Società per Azioni*) which was set up in accordance with article 3, para. 4 of Legislative Decree 79/99 and of article 1, paras. 1 a), b) and c) and 3 of the above-mentioned Decree of the President of the Council of Ministers;
- D) Pursuant to article 5, para. 1 of Legislative Decree 79/99 and after hearing the opinion of *Autorità per l'Energia Elettrica e il Gas* (AEEG – the Italian electricity & gas regulator), the Minister of Industry, Trade and Handicraft approved the Integrated Text of the Electricity Market Rules with his Decree of 9 May 2001, published in *Supplemento Ordinario, Gazzetta Ufficiale, Serie Generale*, no. 127, dated 4 June 2001 (hereinafter referred to as "Ministerial Decree of 9 May 2001");
- E) Pursuant to article 3, para. 3.2 of the Integrated Text of the Electricity Market Rules referred to in the Ministerial Decree of 9 May 2001 and after hearing the opinion of AEEG, the Minister of Productive Activities approved the Instructions to the Integrated Text of the Electricity Market Rules, limited to the provisions relating to the venue for the trading of Green Certificates, with his Decree of 14 March 2003, published in *Gazzetta Ufficiale, Serie Generale*, no. 65 of 19 March 2003;
- F) Pursuant to article 2, para. 2.3 of the Integrated Text of the Electricity Market Rules referred to in the Ministerial Decree of 9 May 2001 and after hearing the opinion of AEEG, the Minister of Productive Activities approved the amendments to the Integrated Text of the Electricity Market Rules with his Decree 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");

- G) Pursuant to article 12, para. 12.1 b) of the Electricity Market Rules, a party wishing to participate in the market shall submit to GME a signed copy of *Contratto di adesione al mercato* (Market Participation Agreement, hereinafter referred to as the "Agreement");
- H) The Technical Rules referred to in article 4 of the Electricity Market Rules shall be published on the website of GME and become effective as of the date of their publication;
- I) For the purposes and effects of the Electricity Market Rules, GME shall be the counterparty of Market Participants in the energy markets and in the Green Certificates Market;
- J) For the purposes and effects of the Electricity Market Rules, Terna shall be the counterparty of Market Participants in the Ancillary Services Market (MSD);
- K) (*limited to the Green Certificates Market*) the Contracting Party is one of the parties mentioned in article 94 of the Electricity Market Rules.

NOW, THEREFORE,

the Parties agree as follows:

Article 1
Scope of the Agreement and Validity of the Whereas

- 1.1 This Agreement defines:
 - a) the Contracting Party's rights and obligations towards GME;
 - b) the terms and conditions on which GME shall provide its services in connection with transactions in the Electricity Market and in the Green Certificates Market (hereinafter referred to as the "Services").
- 1.2 The Whereas shall be an integral and essential part hereof.

Article 2
Obligations of the Contracting Party

- 2.1 The Contracting Party declares that it is aware of and accepts, without condition or reservation, the rules of the Electricity Market and of the Green Certificates Market (hereinafter jointly referred to as the "Market") as they result from the applicable legislation. The Contracting Party also declares that it fully understands GME's information system (hereinafter referred to as the System) in its present configuration or that, in any case, it undertakes to do so.
- 2.2 The Contracting Party undertakes:
 - a) to comply with the Electricity Market Rules and the Technical Rules and to keep itself updated with any amendments thereto. It is understood that, where the Contracting Party does not intend to accept any amendments to the Electricity Market Rules or to the Technical Rules, it may withdraw herefrom, giving notice according to the procedures and to the address specified in article 9, para. 9.7 below. However, the withdrawal shall have effect only after the Contracting Party has carried out transactions of opposite sign in order to close its contractual positions in the Forward Electricity Market existing upon submission of the request for withdrawal and, in any case, only after the Contracting Party has fulfilled obligations arising from participation in the Market. Fifteen days after the legal publication of such amendments, where the Contracting Party has not given notice of its intent to withdraw herefrom, such amendments shall be assumed to have been tacitly accepted. Except for transactions made to give effect to the withdrawal, any transaction carried out in the Market before the end of the above period shall be understood as tacit acceptance of the new terms and conditions. In no case may such amendments constitute a valid reason for the Contracting Party to default on obligations acquired in the Market;
 - b) to adopt technological systems that are suitable for trading and compatible with the System, as well as to update them as a result of any modification as GME may make to the same System;

- bbis) to adopt technological systems suitable for issuing invoices for the transactions made in the Electricity Market, compatible with the System and ensuring a correct, timely and secure exchange of the data and information transmitted electronically, under the procedures and within the time limits specified in the Electricity Market Rules and in the Technical Rules;
- c) to employ staff with adequate professional skills and competence in the use of the technological systems referred to in subpara. b) above;
- d) where it intends to participate in the Electricity Market, to join the service of settlement of payments and the guarantee systems specified in Title V of the Electricity Market Rules;
- e) where it also/only intends to participate in the Green Certificates Market, to join the service of settlement of payments specified in Title VI, Sections III and IV of the Electricity Market Rules;
- f) where applicable, to fulfil the obligations specified in article 11, paras. 1, 2 and 3 of Legislative Decree 79/99, under the procedures provided for in the Ministerial Decree of 18 December 2008;
- g) to notify GME timely and, where possible, in good time for GME to make any necessary corrective actions for the purposes of guaranteeing the proper functioning of the Market, of any problem or operational malfunction of a technical nature or any other event which has resulted or might result in the failure to provide or incorrect provision of the Services. In particular, the Contracting Party shall notify GME with the maximum speed and according to the procedures specified in article 9, para. 9.7 below, of the occurrence of any event even potentially dangerous for the integrity and security of the System (including but not limited to the theft of confidential documents regarding access to the System or unauthorised access to the Contracting Party's premises where such documents are kept);
- h) to co-operate with GME or with third parties designated by the same, also permitting access of their employees or assistants to the Contracting Party's premises for carrying out any operations on the Contracting Party's hardware and software as may be necessary to ensure the proper functioning of the Market. It is understood that, pursuant to article 2049 of the Italian Civil Code, GME shall be liable for any damage caused upon such operations;
- i) to respect GME's rights of ownership on the data transmitted through the System and on the trademarks registered or used by the same, as well as GME's or third-party suppliers' rights of ownership on the software programmes used for the carrying out of the Services;
- j) to maintain confidentiality and privacy as regards the devices referred to in article 4, para. 4.1 below or permit their use by specifically designated parties solely for access to and trading in the Market. The Contracting Party shall thus be liable for unauthorised access to the Market by third parties and hold GME harmless against any damage or danger to the integrity or security of the System that may result from the negligence of the Contracting Party or of its staff in the safekeeping of such devices.
- k) to timely ask GME to disable the devices referred to in subpara. j) above and to assign new or different devices in all cases where the Contracting Party has reason to believe that unauthorised parties may make an improper use thereof;
- l) to hold GME harmless against any damage or cost as GME may incur, also as a result of actions of third parties, caused by the actions or conduct of the Contracting Party, as well as of its staff members, assistants or consultants, if any, in violation of this Agreement, of the Electricity Market Rules and of the Technical Rules and of any other legislative provisions or regulations, or instruments and provisions issued by GME or competent authorities.

Article 3
Services of GME

- 3.1 The Services shall be supplied by GME to the Contracting Party in compliance with this Agreement, the Electricity Market Rules and the Technical Rules. The obligations of GME as regards the supply of the Services shall constitute “obligations of means”.
- 3.2 GME shall give the Contracting Party the necessary co-operation for access to the System, namely in accordance with what is specified in the Technical Rules. It is understood that the carrying out of activities and the provision of the necessary means of access shall be the exclusive responsibility and at the sole expense of the Contracting Party.
- 3.3 GME may modify technical, functional, operational and administrative procedures for the supply of the Services, as a result of amendments to the Electricity Market Rules or Technical Rules.
- 3.4 Without prejudice to what is provided for in the Electricity Market Rules and Technical Rules, if the supply of the Services is interrupted, suspended, delayed or subject to malfunctions caused by technical problems with the System, GME shall do whatever is necessary to overcome such disservices. It is understood that if the aforesaid events result from technical problems with the hardware or software used by the Contracting Party to access the System, the Contracting Party shall eliminate the relative causes with the maximum speed. GME and the Contracting Party shall co-operate within the scope of their responsibilities to identify the causes of interruptions, suspensions, delays or malfunctions and to restore the proper functioning of the System as soon as possible.
- 3.5 GME shall be responsible for the correct management and transmission of data and information entered by third parties into the System or resulting from the Market. GME and the Contracting Party agree that GME's obligations shall not include the checking of the truthfulness, accuracy and completeness of data and information provided by third parties and made available to the Contracting Party as part of the provision of the Services.
- 3.6 GME and the Contracting Party agree that GME is not responsible for non-functioning or malfunctioning of lines of communication (for example, telephone lines), as well as of access to the Internet.
- 3.7 The Contracting Party agrees that GME may make use of third parties designated by GME for the supply of the Services, while it is understood that in every case, the contractual relationship shall be exclusively between the Contracting Party and GME.
- 3.8 GME undertakes to respect the Contracting Party's rights of ownership on the data transmitted through the System and on the trademarks registered or used by the Contracting Party and made known to GME.
- 3.9 GME shall hold the Contracting Party harmless against any damage or cost as the Contracting Party may incur, also as a result of actions of third parties, caused by the actions or conduct of GME or of its staff members, assistants or consultants in the management and supply of the Services which are in violation of this Agreement, the Electricity Market Rules or Technical Rules, as well as of any other legislative provision or regulation applicable hereto.

Article 4
Means of access to the System

- 4.1 For the purpose of accessing the System, the Contracting Party shall use the technical security devices indicated by GME, such as, for example, the user code together with password, smart card or other means of strong authentication.
- 4.2 Access to the System shall take place in compliance with the provisions specified in the Technical Rules.

Article 5
Consideration

- 5.1 For the Services supplied in accordance herewith, the Contracting Party shall pay the fees determined by GME under article 7 of the Electricity Market Rules and the procedures referred to in articles 75, 77 and 100 thereof.
- 5.2 Where the System is totally disabled and such as to prevent the Contracting Party from carrying out transactions in the Market, the fees referred to in para. 5.1 above shall be reduced proportionally to the period in which such disabling has occurred.

Article 6
Limitation of liability, force majeure and fortuitous events

- 6.1 Notwithstanding the provisions of the Electricity Market Rules, GME shall, in carrying out the Services, be liable for damages of a contractual and extra-contractual nature, exclusively when they constitute the immediate and direct consequence of wilful or serious misconduct and, in the latter case, are foreseeable upon the date of the signing of this Agreement. The Parties agree that there shall be no obligation of compensation or indemnity for damages that are an indirect or unpredictable consequence of the conduct of GME, including but not limited to damages resulting from the loss of business opportunities, customers or profits.
- 6.2 The Contracting Party shall notify GME, under penalty of lapse of time limit, of any claim to compensation relating to the supply of the Services within and not later than fifteen working days from the day on which the Contracting Party has come to know or should have known, using proper diligence, of the occurrence of the damaging event, providing a detailed report of the circumstances of the damaging event and of the damages so produced. The relative documentation in support of the claim shall be transmitted to GME within and not later than twenty working days from the day on which the Contracting Party has come to know or should have known, using proper diligence, of the occurrence of the damaging event.
- 6.3 GME and the Contracting Party shall not be liable for default due to force majeure, fortuitous cases, or events beyond their control, including but not limited to wars, uprisings, earthquakes, floods, fires, strikes, interruptions in electricity supply or in operation of the data transmission lines which are part of the System, when such interruptions are exclusively the fault of third parties.
- 6.4 GME may, in cases of force majeure or fortuitous events, and, in general, in all cases where the operations of the Contracting Party may potentially damage the integrity or security of the System, suspend access to the System without the necessity of prior notification of the circumstances giving rise to the suspension.

Article 7
Duration

- 7.2 This Agreement shall be valid and effective from the date of submission of the Market Participation Application.
- 7.3 This Agreement will cease to have validity and effect upon the occurrence of one of the following events:
- a) exclusion of the Contracting Party from the Market;
 - b) total disabling of the System as a result of amendments to the applicable rules;
 - c) Contracting Party's withdrawal herefrom.
- 7.4 The dissolution of the Agreement under this Article shall not impair any other right of either party under the Agreement or under the applicable legislation, and any right or obligation of either party that has already arisen upon the date of dissolution.

Article 8
Termination

- 8.1 Any loss for whatever reason of the status of Market Participant, as acquired in accordance with article 14 of the Electricity Market Rules, shall constitute reason for *de jure* termination of this Agreement pursuant to article 1456 of the Italian Civil Code, notwithstanding the right of GME to withhold the fixed fee specified in article 77, para. 77.2 of the Electricity Market Rules by way of indemnity and any other further right to compensation for any additional damages.

Article 9
General Clauses

- 9.1 The invalidity or nullity of one or more of the clauses of this Agreement shall not affect the validity of the remaining clauses, which shall retain in every case their full force and effect.
- 9.2 This Agreement and the rights and obligations for the Parties resulting therefrom shall not be assigned to third parties unless otherwise specified herein.
- 9.3 Notwithstanding the provisions of article 6, para. 6.2 above, failure or delay by either Party to exercise the rights arising herefrom shall not represent a waiver of such rights.
- 9.4 Where the Contracting Party is admitted to only one of the markets for which it has submitted a Participation Application, the Agreement shall be considered to be effective only with regard to the market to which the same Applicant has been admitted.
- 9.5 This Agreement, signed and initialled on each page by the Parties, is done in two originals in the Italian language. Any amendment hereto shall be made in written form.
- 9.6 For the purposes of this Agreement, the Parties elect domicile at the following addresses:
- Gestore del Mercato Elettrico S.p.A., Viale Maresciallo Pilsudski 92, 00197 Roma,
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- 9.7 Every communication or notification to be made in accordance herewith shall be made in writing and delivered by hand, even by courier or sent by registered letter with return receipt, or by fax or by e-mail with acknowledgment of receipt, to the following addresses:
- Gestore del Mercato Elettrico S.p.A., Viale Maresciallo Pilsudski 92, 00197 Roma,
fax number +39 06 8012 4524; e-mail address info@mercatoelettrico.org;
- ... (*address*)
fax number ..., e-mail address ...
- 9.8 Communications shall be deemed to have been received upon the date of signature of their receipt of delivery, if delivered by hand, or when they reach the receiver's address, if sent by registered letter with return receipt, or upon the date of receipt recorded by the fax machine if sent by fax, or upon the date of receipt of the acknowledgement of receipt, if sent by e-mail.

Article 10
Governing Law

- 10.1 This Agreement shall be governed by the Italian law.

Article 11
Disputes

11.1 Any dispute arising between GME and the Contracting Party in connection herewith shall be settled in accordance with the provisions contained in Title VII of the Electricity Market Rules, which shall be deemed to be integrally referenced and transcribed herein.

GME

the Contracting Party

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For the purposes and effects of Articles 1341 and 1342 of the Italian Civil Code, I hereby specifically approve the following clauses of the Agreement: Article 2 (Obligations of the Contracting Party); Article 3 (Services of *GME*); Article 6 (Limitation of liability, Force Majeure and Fortuitous events); Article 7 (Duration); Article 8 (Termination); Article 9 (General Clauses); Article 10 (Governing Law) and Article 11 (Disputes).

The Contracting Party

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Rome, (*date*)