



***Modification of bank guarantee posted in accordance with  
Annex 3 or Annex 5 to the Integrated Text of the Electricity Market Rules  
in force until 31 October 2009***

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

**Letter modifying bank guarantee no.... [•]**

Gestore del Mercato Elettrico S.p.A.  
Viale Maresciallo Pilsudski, 92  
00197 Roma

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

Letter for modifying the bank guarantee issued on ... (date) (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") has posted a bank guarantee on ... (date) issued by the Bank for a maximum amount of Euro..... in accordance with:

Annex 3 to the Integrated Text of the Electricity Market Rules in force until 31 October 2009;

or

Annex 5 to the Integrated Text of the Electricity Market Rules in force until 31 October 2009;

**as possibly updated on (date) ... for the amount of Euro ..., in accordance with:**

Annex 4 to the Integrated Text of the Electricity Market Rules in force until 31 October 2009;

or

Annex 6 to the Integrated Text of the Electricity Market Rules in force until 31 October 2009;

- as per article 79, para. 79.1 of the Integrated Text of the Electricity Market Rules (hereafter "Electricity Market Rules"), for the purpose of submitting adequate bids/offers in the energy markets and requests for registration onto the PCE, Participants may 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;
- article 138 of the Electricity Market Rules, concerning "*Transitory provisions pertaining to guarantees, billing, invoicing of payables and receivables and settlement of payments*" of TITLE IX (Transitory and Final Provisions) provides that:

*183.3 For the purpose of covering obligations acquired after the entry into force hereof, the guarantees posted in the form of first-demand bank guarantees in formats prior to the one of Annex 3 shall be deemed to be valid and effective also for participation in the MTE, only if such formats are modified to conform to Annex 3 hereto under the modalities defined by GME.*

NOW, THEREFORE,

1. At the request of the Market Participant, the Bank hereby modifies its bank guarantee no. ... issued in favour of GME on (date) ...

2. In particular, the text of bank guarantee no. ... is modified by fully incorporating the provisions specified in article 3 below of this modification letter, among the provisions contained in the new bank guarantee form as per Annex 3 to the Electricity Market Rules. For the sake of easier reference, the full text of the above-mentioned Annex 3 is reported below:

***[Annex 3 - Bank Guarantee Form under article 79, para. 79.1  
of the Integrated Text of the Electricity Market Rules***

Gestore del Mercato Elettrico S.p.A.  
Viale Maresciallo Pilsudski, 92  
00197 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*). As a result, the Market Participant has acquired all the financial obligations towards *Gestore del Mercato Elettrico S.p.A* (hereinafter referred to as "GME") in the Day-Ahead Market (MGP), Intra-Day Market (MI) and Forward Electricity Market (MTE) (hereinafter jointly defined as the "energy markets");

*(to be completed only if the guarantee is to be extended to obligations contracted towards GME on the PCE)* a Participant in the Forward Electricity Account Trading Platform (hereinafter referred to as the "PCE") included in the List of Participants, as per article 23 of the Rules Governing the Forward Electricity Account Trading Platform (hereinafter referred to as the "PCE Rules"), successfully verified by the Director of Markets of *Autorità per l'Energia Elettrica e il Gas* (the Italian electricity & gas regulator, hereinafter referred to as "AEEG") with resolution of 7 February 2007. In accordance with article 18, para. 18.1 b) of the PCE Rules, the Participant has signed the PCE Participation Agreement, in the format attached to the same Rules, on ...(*date*). As a result, the Participant has acquired financial obligations towards *Gestore del Mercato Elettrico S.p.A* (hereinafter referred to as "GME") on the PCE; these obligations, in respect of which GME is the counterparty of the same Participant, include but are not limited to transmission capacity fees (CCT), payments of default interest and of redemption fees;

- as per article 79, para. 79.1 of the Electricity Market Rules, for the purpose of submitting adequate bids/offers in the energy markets and requests for registration onto the PCE, Participants may 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 prior and future obligations towards GME, in connection with its participation in the energy markets and in the PCE, 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 and article 7 of the PCE Rules (hereinafter referred to as "prior and future obligations");
- "prior obligations" shall mean all those obligations - even if they are not yet liquid and/or payable - that have already been acquired at the time of effect of this bank guarantee; "future obligations" shall mean all those obligations acquired after such time.

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 and the PCE Rules.

**Article 1**  
***(Validity and effect of the bank guarantee)***

The bank guarantee shall be valid and effective from ... and not subject to any condition, provided that the verification conducted by the bank in charge of treasury services under article 79, para. 79.6 of the Electricity Market Rules has had a positive outcome.

**Article 2**  
***(Waiver of preventative redemption)***

The Bank shall - irrevocably 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 "prior obligations" and "future obligations" towards GME arising from participation in the energy markets and in the PCE.

**Article 3**  
***(No assessment of the Market Participant's credit worthiness)***

The Bank agrees and declares that, as the obligations mentioned in article 2 above arise from participation in the energy markets and in the PCE, they do not involve GME's prior assessment of the Market Participant's credit worthiness, notwithstanding that this letter also represents a special authorisation granted by the Bank to GME for the purposes and effects of article 1956 of the Italian Civil Code.

**Article 4**  
***(Substitution in the bank guarantee contract during the transitional period)***

If GME is guaranteed by other guarantees that the Market Participant has previously posted in favour of GME to cover obligations acquired in the energy markets and in the PCE and that have been issued in formats other than the present one, then this bank guarantee may substitute the previous guarantees, provided that: i) the guarantee is posted for an amount at least equal to the amount of the "prior obligations"; and ii) the Market Participant submits an appropriate application to GME and to the bank in charge of treasury services upon the submission of this bank guarantee. The substitution shall relieve the previous bank guarantee issuer of its obligations.

Otherwise, this bank guarantee shall not impair the validity and effect of the previous guarantees. In this case, the prior guarantees and this bank guarantee issued to GME shall merely cumulate, without relieving the guarantors of their obligations, notwithstanding the fact that GME may preliminarily redeem the prior guarantees. Moreover, this bank guarantee shall cover the "prior obligations" and the "future obligations" even in case of guarantees preceding this bank guarantee.

#### **Article 5**

##### ***(Substitution and succession of bank guarantees over time)***

The provisions on substitution and succession of the guarantees over time, referred to in Article 4 above, shall also apply to the cases of multiple bank guarantees that are posted in this format. However, the subsequent guarantor shall waive the benefit of preventative redemption of the previous guarantor.

#### **Article 6**

##### ***(Extension of the Bank's liability)***

Notwithstanding the provisions of Article 1 above, where the Bank loses one of the qualifications required by the applicable legislation and by the Electricity Market Rules for issuing and maintaining the bank guarantees referred to in article 79 of the Electricity Market Rules, the Bank shall continue to be liable for all the obligations acquired by the Market Participant until that time and until the same Participant replaces this bank guarantee with another appropriate guarantee.

#### **Article 7**

##### ***(First-demand payment)***

As an effect of the provisions of Article 2 above, the Bank shall - irrevocably and without delay - pay any amount, without examining the reasons for the request for payment and without raising any exception and/or objection and in spite of any exception, complaint or objection made by the Market Participant and/or third parties (including other guarantors of the same Participant) in connection therewith, upon the submission of a mere written request by GME, up to a maximum total amount of Euro ...

#### **Article 8**

##### ***(Modalities of payment by the Bank)***

After receiving the request referred to in Article 7 above, to be sent by fax to fax no... or by e-mail 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 thereof 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.

#### **Article 9**

##### ***(Derogation from the provisions of Article 1957 of the Italian Civil Code)***

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 diligently persisted in such request.

#### **Article 10**

##### ***(Partial redemption)***

This guarantee may also be partially redeemed, but it shall remain valid and effective for the residual amount.

#### **Article 11**

##### ***(Autonomy of the bank guarantee)***

By way of derogation from article 1939 of the Italian Civil Code, this guarantee shall be valid and effective even if the Market Participant's principal obligation towards GME is declared invalid or ineffective or if it is modified in any form, even unilaterally only, by GME.

#### **Article 12**

##### ***(Waiver of the rights covered by Articles 1945, 1947 and 1955 of the Italian Civil Code)***

The Bank hereby explicitly and irrevocably waives its rights in accordance with Articles 1945, 1947 and 1955 of the Italian Civil Code.

#### **Article 13**

##### ***(Waiver of claims or actions)***

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.

**Article 14**

***(Delegation of the rights covered by this bank guarantee)***

The Bank hereby accepts that GME's rights of redemption of this guarantee be exercised by GME or a party specially authorised in writing by GME.

**Article 15**

***(Waiver of the bank guarantee by GME)***

GME may at any time and in its sole judgement waive this bank guarantee, by notifying the Bank and the Market Participant's thereof and with effect from 24:00 of the working day on which the Bank receives such notification. In this case, the Bank shall be liable for all the obligations acquired by the Market Participant until that time.

**Article 16**

***(Unilateral withdrawal by the Bank)***

The Bank may withdraw from this bank guarantee, by notifying GME and the bank in charge of GME's treasury services thereof by registered letter with return receipt. The withdrawal from the bank guarantee shall have effect and the bank guarantee shall cease ten days after receipt of the notification by GME.

**Article 17**

***(Effects of withdrawal)***

The bank shall be liable for all obligations, even if they are not yet liquid and/or payable, contracted until the time of effect of the withdrawal, if the Market Participant does not submit to GME a guarantee to cover such obligations.

**Article 18**

***(Notifications)***

Notwithstanding the provisions of Article 8 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 ...

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 the message of confirmation, if sent by fax.

**Article 19**

***Jurisdiction***

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

Registered Name of the Bank

Signatures of its Proxy Holders

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 Articles 2 *(Waiver of preventative redemption)*, 4 *(Substitution in the bank guarantee contract during the transitional period)*, 5 *(Substitution and succession of bank guarantees over time)*, 6 *(Extension of the Bank's liability)*, 7 *(First-demand payment)*, 9 *(Derogation from the provisions of Article 1957 of the Italian Civil Code)*, 10 *(Partial redemption)*, 11 *(Autonomy of the bank guarantee)*, 12 *(Waiver of the rights specified in Articles 1945, 1947 and 1955 of the Italian Civil Code)*, 13 *(Waiver of claims or actions)* and 19 *(Jurisdiction)* of this bank guarantee.

Registered Name of the Bank

Signatures of its Proxy Holders

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

3. The following is a list of the provisions of the aforementioned Annex 3, which have been fully incorporated into this modification letter and accepted by the Bank, with the explicit repeal of all the provisions of bank guarantee no. .... which are incompatible with the same provisions.

- Art. 1 (Validity and effect of the bank guarantee);
- Art. 2 (Waiver of preventative redemption);
- Art. 3 (No assessment of the Market Participant's credit worthiness);
- Art. 5 (Substitution and succession of bank guarantees over time);
- Art. 8 (Modalities of payment by the bank);
- Art. 11 (Autonomy of the bank guarantee)
- Art. 15 (Waiver of the bank guarantee by GME);
- Art. 16 (Unilateral withdrawal by the Bank);
- Art. 17 (Effects of withdrawal)
- Art. 19 (Jurisdiction)

Registered Name of the Bank

Signatures of its Proxy Holders

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 Articles 1 (*Validity and effect of the bank guarantee*), 2 (*Waiver of preventative redemption*), 3 (*No assessment of the Market Participant's credit worthiness*), 5 (*Substitution and succession of bank guarantees over time*), 6 (*Modalities of payment by the Bank*), 11 (*Autonomy of the bank guarantee*), 15 (*Waiver of the bank guarantee by GME*), 16 (*Unilateral withdrawal by the Bank*), 17 (*Effects of withdrawal*) and 19 (*Jurisdiction*) of the bank guarantee form as per Annex 3 to the Electricity Market Rules, which is enclosed hereto.

Registered Name of the Bank

Signatures of its Proxy Holders

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