



## ***Annex 2***

### ***Market Participation Agreement***

**Market Participation Agreement**  
**under article 15, para. 15.1 b), of the Rules of Operation**  
**of the Energy Efficiency Certificates Market**

**BETWEEN**

GME, Gestore dei Mercati Energetici S.p.A., having its registered office in Viale Maresciallo Pilsudski 122-124, 00197 Rome, Italy, taxpayer's and VAT number 06208031002, represented by ....., in his/her capacity of .....(hereinafter referred to as GME),

**AND**

...../the company/other.....

(name and surname) (company name or registered name)

residing in...../having its 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 referred to as the "Party" individually and the "Parties" jointly,

**WHEREAS**

- A. GME is the company that was set up in compliance 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; under article 6 of the Decree of the Minister of Industry, Trade and Handicraft of 11 November 1999, published in the "Gazzetta Ufficiale, Serie Generale", no. 292 of 14 December 1999 (hereinafter referred to as Ministerial Decree of 11 November 1999), GME is also vested with the organisation of a venue for the trading of Green Certificates as part of the management of the Electricity Market;
- B. under article 10, para. 3 of the Decrees issued by the Minister of Productive Activities in consultation with the Minister of Environment and Land Protection on 20 July 2004 (*new identification of quantitative targets for improving end-use energy efficiency under article 9, para. 1 of Legislative Decree no. 79 of 16 March 1999 and new identification of national quantitative targets of energy savings and development of renewable sources as per article 16, para. 4 of Legislative Decree no. 164 of 23 May 2000*, as subsequently amended and supplemented, hereinafter referred to as "Decrees of the Minister of Productive Activities of 20 July 2004"), GME is vested with the organisation of a venue for the trading of Energy Efficiency Certificates, whose rules (Rules of Operation of the Energy Efficiency Certificates Market, hereinafter referred to as the "Rules") are approved by "Autorità per l'energia elettrica, il gas ed il sistema idrico" (AEEGSI) pursuant to article 7, para. 4 of Legislative Decree no. 115 of 30 May 2008;

- C. under article 15, para. 15.1 b) of the Rules, parties wishing to participate in the Energy Efficiency Certificates Market (hereinafter referred to as “the Market”) shall submit a signed copy of the Market Participation Agreement (hereinafter referred to as “the Agreement”) to GME;
- D. the Technical Rules referred to in article 4 of the Rules shall be posted on GME’s website and enter into force upon the date of their publication;
- E. within the meaning and for the purposes of the Rules, GME is the counterparty of Participants in the market.

**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 rights and obligations of the Contracting Party towards GME;
  - b) the terms and conditions on which GME undertakes to provide services related to transactions on the market (hereinafter referred to as “the Services”).
- 1.2 The Preamble shall be an integral part hereof.

***Article 2***

**Contracting Party’s obligations**

2.1 The Contracting Party hereby declares that he/she/it has read, understood and unconditionally accepts to comply with the Rules, as they arise from the applicable legislation. The Contracting Party also declares that he/she/it is familiar with GME’s Information System (hereinafter referred to as “the System”) in its current configuration or that he/she/it undertakes to familiarise therewith.

2.2. The Contracting Party agrees:

- a) to comply with the Rules, the Technical Rules and the applicable laws and regulations and to keep informed about any amendments thereto. Where the Contracting Party does not intend to accept any amendments to the Rules and to the Technical Rules, the Contracting Party may withdraw herefrom by giving notice thereof according to the modalities and to the address mentioned in article 9, para. 9.6 below. If, fifteen days after the legal publication of such amendments, the Contracting Party has not given notice of his/her/its intent to withdraw herefrom, such amendments shall be deemed to have been tacitly accepted. Any transaction that the Contracting Party may make on the market pending the expiration of the above time limit shall be construed as implicit acceptance of the new terms and conditions. However, such

amendments shall not be a valid reason for the Contracting Party's non-fulfilment of the obligations undertaken on the market;

- b) to acquire technological systems suitable for the performance of the trading activities and compatible with the System, and to update/upgrade them as a result of any changes that GME may make to the System;
- b bis) to acquire technological systems suitable for the performance of activities relating to the billing of the economic elements of the market, compatible with the System and suitable to ensure a proper, timely and secure exchange of data and information transmitted electronically, in the manner and within the terms provided for by the Rules and the Technical Rules;
- c) to employ personnel with adequate professional qualifications and proficiency in the use of the technological systems covered by para. 2.2 b) and b bis) above;
- d) to join the guarantee system referred to in Title III, Section II of the Rules and the system of invoicing and settlement of payments for transactions and the fees referred to in Title III, Section III of the Rules;
- e) to timely report to GME any malfunction or abnormal operating condition due to technical problems, or any other event causing GME's failure to provide the Services or incorrect provision of the Services. The Contracting Party shall, to the extent possible, report such malfunction, abnormal operating condition or event within such time as to enable GME to take prompt corrective action with a view to ensuring the proper operation of the Market. In particular, the Contracting Party undertakes to notify GME, with the maximum speed and according to the procedures mentioned in article 9, para. 9.6 below, of the occurrence of events that may jeopardise the integrity and security of the System (including but not limited to thefts of confidential documents regarding access to the System, or unauthorised access to the Contracting Party's premises where such documents are kept);
- f) to co-operate with GME or with GME-designated third parties and allow their employees or assistants to access the premises of the Contracting Party for carrying out any jobs on the Contracting Party's hardware and software as may be required to ensure the proper operation of the Market. Under article 2049 of the Italian Civil Code, GME shall be liable for damages which may be caused during such jobs;
- g) to respect the rights of ownership of GME on the data transmitted through the System and on trademarks or names registered or used by GME, as well the rights of ownership of GME or third-party suppliers on the software programmes used for the provision of the Services;

- h) to maintain confidentiality on the devices mentioned in article 4, para. 4.1 below, and use them - or allow their use by duly authorised persons - only for access to and trading on the market. Therefore, the Contracting Party shall be liable for any unauthorised access to the Market by third parties and hold GME harmless from any damage or threat to the integrity or security of the System arising from negligence of the Contracting Party or of its personnel in the safekeeping of such devices;
- i) to timely ask GME to disable the devices referred to in para. 2.2 h) above and to assign new or different devices, whenever he/she/it deems that unauthorised persons may make an improper use thereof;
- j) to hold GME harmless from any damage, cost or third-party claim arising from any action or conduct of the Contracting Party and of its employees, assistants and consultants which may infringe this Agreement, the Rules, the Technical Rules, as well as any other legislative or regulatory provision or instrument issued by GME or by appropriate authorities.

### **Article 3**

#### **Services provided by GME**

3.1 GME shall provide the Services to the Contracting Party in compliance with this Agreement, the Rules and the Technical Rules. GME's obligations in the provision of the Services shall constitute obligations of means.

3.2 GME shall provide the required co-operation so that the Contracting Party may access the System in accordance with the Technical Rules. It is hereby understood that the performance of the activities and the provision of the means of access to the System shall be the exclusive responsibility of the Contracting Party and performed and provided at his/her/its own expense.

3.3 GME reserves the right to change the technical, functional, administrative and operational procedures for the provision of the Services, as a result of amendments to the Rules or Technical Rules.

3.4 Without prejudice to the Rules and Technical Rules, if the provision of the Services is interrupted, suspended, delayed or abnormal due to technical problems with the System, GME shall take the necessary measures to overcome such inconveniences. It is hereby understood that, if such events are due to technical problems with the hardware or software used by the Contracting Party for accessing the System, the Contracting Party shall remove the related causes with the maximum speed. GME and the Contracting Party, each within the scope of his/her/its responsibilities, agree to co-operate in order to identify the causes of such interruptions, suspensions, delays or malfunctions and to restore the operation of the System as soon as possible.

3.5 GME shall be responsible for the correct processing, reporting and transmission of any data which third parties may enter into the System or which may result from the Market. GME and the Contracting Party acknowledge that GME's obligations exclude the checking of the truthfulness, accuracy and completeness of any data provided by third parties and made available to the Contracting Party within the scope of the provision of the Services.

3.6 GME and the Contracting Party acknowledge that GME shall not be liable for faults or malfunctions of telecommunication lines (e.g. telephone lines) and of access to the Internet.

3.7 The Contracting Party acknowledges that, for the provision of the Services, GME may resort to designated third parties. Nevertheless, the contractual relationship shall be established solely between the Contracting Party and GME.

3.8 GME shall respect the Contracting Party's ownership rights on the data transmitted through the System and on trademarks or names used by the Contracting Party and of which GME has become aware.

3.9 GME shall hold the Contracting Party harmless from any damage, cost or third-party claim arising from any action or conduct of GME or of its employees, assistants or consultants for the operation and provision of the Services which may infringe this Agreement, the Rules, the Technical Rules, as well as any other legislative or regulatory provision or instrument applicable hereto.

#### ***Article 4***

##### **Access to the System**

4.1 For access to the System, the Contracting Party shall use the technical security devices indicated by GME, including but not limited to: user code with password, smart card or other strong authentication tools.

4.2 In particular, access to the System shall take place as set forth in the Technical Rules.

#### ***Article 5***

##### **Consideration**

5.1 For the Services provided in compliance herewith, the Contracting Party shall pay the fee established under article 6 of the Rules, according to the procedures defined in article 36 thereof.

5.2 Any interruption or suspension of the provision of the Services shall not be a valid reason for non-payment or delayed payment of the fee referred to in para. 5.1 above.

#### ***Article 6***

### **Limitation of liability, force majeure and fortuitous events**

6.1 Unless otherwise specified in the Rules, GME shall, in the provision of the Services, be liable for contractual and non-contractual damages, to the extent that such damages are an immediate and direct consequence of its wilful misconduct or gross negligence and, in the latter case, are foreseeable upon the signature hereof. The Parties acknowledge that GME shall not be liable for damages which are an indirect or unforeseeable consequence of GME's conduct, including but not limited to damages arising from the loss of business opportunities, customers or profits.

6.2 The Contracting Party shall - under penalty of debarment - notify GME of any claim concerning the provision of the Services within fifteen working days, at the latest, from the date when the Contracting Party has learned - or should have learned by using ordinary diligence - of the occurrence of the damaging event, providing a detailed account of the circumstances of the event and of the resulting damages. The related supporting documentation shall be notified to GME within twenty working days, at the latest, from the date when the Contracting Party has learned - or should have learned by using ordinary diligence - of the occurrence of the damaging event.

6.3 GME and the Contracting Party shall not be liable for defaults due to force majeure, fortuitous events or events beyond their control, including but not limited to wars, riots, earthquakes, floods, fires, strikes, interruptions of electricity supply or of the provision of the dedicated data transmission lines making part of the System, if such interruptions are ascribable solely to third parties.

6.4 In cases of force majeure and fortuitous events and generally in all cases where the activity of the Contracting Party may jeopardise the integrity or security of the System, GME may suspend the access to the System without giving prior notice of the circumstances giving rise to the suspension.

### **Article 7**

#### **Duration**

7.1 This Agreement shall be executed by the signature of the Contracting Party and the receipt of its original by GME. Its duration shall be unlimited. The effectiveness of the agreement shall be subject to the successful outcome of GME's verification of the completeness and regularity of the documents submitted by the Contracting Party and of the Contracting Party's fulfilment of the requirements for admission to the market. GME shall notify the Contracting Party of the outcome of said verifications under Article 17 of the Rules.

7.2 This Agreement shall cease to have 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) withdrawal of the Contracting Party herefrom.

7.3 The dissolution of the Agreement under this Article shall not impair any other right, which either Party may have hereunder or in compliance with applicable laws, or any right or obligation of either Party arising prior to the date of dissolution.

**Article 8  
Termination**

8.1 Any loss for whatever reason of the status of Market participant, acquired according to the provisions of article 17 of the Rules, shall represent one of the grounds for *de jure* termination of this Agreement under article 1456 of the Italian Civil Code, without prejudice to GME's right to withhold the fee specified in article 6 of the Rules by way of indemnity and any right to claim for additional damages, if any.

**Article 9  
General clauses**

9.1 The invalidity of one or more of the clauses hereof shall not prejudice the remaining clauses hereof, which shall continue in full force and effect.

9.2 This Agreement and the rights and obligations of the Parties arising herefrom shall not be assigned to third parties, except as specifically provided herein.

9.3 Without prejudice to the provisions of article 6, para. 6.2 above, the failure or delay of either Party to exercise one of the rights arising herefrom shall not be construed as a waiver thereof.

9.4 Any amendment to this Agreement shall be made in writing.

9.5 For the purposes hereof, the Parties elect domicile at the following addresses:

- Gestore dei Mercati Energetici S.p.A., Viale Maresciallo Pilsudski 122-124 – 00197, Rome, Italy;
  - .....
- (address)

9.6 Any notice to be given hereunder shall be made in writing and delivered by hand, courier service, or transmitted by registered letter with return receipt, or via fax or e-mail message with return receipt to the following addresses:

- Gestore dei Mercati Energetici S.p.A., Viale Maresciallo Pilsudski 122-124 – 00197, Rome, Italy, fax number +39-06-8012 4102; e-mail address [certificatibianchi@mercatoelettrico.org](mailto:certificatibianchi@mercatoelettrico.org);
  - .....
- (address)
- fax number....., e-mail address.....



9.7 The notices shall be deemed to have been received upon the date of signature of the delivery receipt, if delivered by hand, or when they reach the address of the recipient, if they are sent by registered letter with return receipt, or upon the date appearing in the transmission receipt of the fax machine, if they are sent by fax, or upon the date of receipt of the return receipt of the e-mail message, if they are 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 between GME and the Contracting Party arising under, out of or in connection with this Agreement shall be settled in accordance with Title IV of the Rules, which shall be deemed to be an integral part hereof and fully transcribed herein.

The Contracting Party  
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For the purposes and effects of articles 1341 and 1342 of the Italian Civil Code, the following contractual clauses are specifically approved: Article 2.2 a) (Rules and Technical Rules and amendments thereto); Article 2.2 j) (Release of liability); Articles 3.5 and 3.6 (Limitation of liability); Article 6 (Limitation of liability, debarment, suspension of the service); Article 7 (Cessation of effect of the Agreement); Article 8 (Termination); Article 9.2 (No assignment); Article 10 (Governing law); Article 11 (Disputes).

The Contracting Party  
.....

Rome, (date)