



## ***Annex B***

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

**Market Participation Agreement,  
under Article 13, para. 13.1 b) of the Natural-Gas Market Rules**

BETWEEN

*Gestore dei Mercati Energetici S.p.A.*, with registered office in Viale Maresciallo Pilsudski 122-124, 00197 Rome, Italy, taxpayer's code and VAT number 06208031002 (hereafter "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 ..., (hereafter the "Contracting Party"),

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

WHEREAS

- A. GME is the company (*società per azioni*) - set up in accordance with article 5, para. 1 of Legislative Decree no. 79 of 16 March 1999 - which is vested, among others, with the economic management of the Natural-Gas Market (hereafter the "Market") on an exclusive basis under article 30, para. 1 of Law no. 99 of 23 July 2009 (hereafter "Law 99/09");
- B. GME prepared the Natural-Gas Market Rules (hereafter the "Rules"), approved under art. 30, para. 1 of Law 99/09 by the Minister of Economic Development with his Decree of 6 March 2013, as subsequently amended and supplemented, and fully superseding - under the Decree of 9 August 2013 - the Gas Market Rules, approved under art. 30, para. 2 of Law 99/09 by the Ministry of Economic Development after hearing the opinion of *Autorità per l'energia elettrica e il gas* (AEEG – the electricity & gas regulator) on 26 November 2010, as subsequently amended and supplemented;
- C. *Snam Rete Gas S.p.A.* (hereafter "SNAM") is the company (*società per azioni*) - set up on 15 November 2000 - which carries out the activities of transmission and dispatching of natural gas and which organises and manages the PSV system under AEEG's Decision 22/04, as subsequently amended and supplemented;
- D. pursuant to Article 13, para. 13.1 b) of the Rules, a party intending to participate in the market shall submit to GME a signed copy of the *Contratto di adesione al mercato* (Market Participation Agreement, hereafter the "Agreement");
- E. the Technical Rules referred to in Article 4 of the Rules shall be published on the website of GME and have effect as of the date of their publication;
- F. for the purposes and effects of the Rules, GME shall be the counterparty of Participants in the Market;

NOW, THEREFORE,

the Parties agree as follows:

**Article 1**

**Scope of the Agreement and Validity of the Preamble**

- 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 Market (hereafter the "Services").
- 1.2 The Preamble shall be an integral and essential part hereof.

**Article 2**

**Obligations of the Contracting Party**

- 2.1.1 The Contracting Party declares that he/she is aware of and accepts, without any condition or reservation, the Rules as they result from the applicable legislation. The Contracting Party also declares that he/she fully understands GME's information system (hereafter the "System") in its present configuration or that, in any case, he/she undertakes to do so.

## 2.2 The Contracting Party undertakes:

- a) to comply with the Rules and the Technical Rules and to keep himself/herself updated with any amendments thereto. It shall be understood that, where the Contracting Party does not intend to accept any amendments and additions to the Rules and Technical Rules, he/she may withdraw herefrom, giving notice according to the procedures and to the address specified in Article 9, paras. 9.6 and 9.7 below. At any rate, the withdrawal shall have effect only after the Contracting Party has carried out transactions of opposite sign in order to close his/her contractual positions existing in the Forward Gas Market upon submission of the notice of withdrawal and, anyway, only after the Contracting Party has met his/her obligations in connection with his/her participation in the Market. Fifteen days after the legal publication of such amendments and additions, if the Contracting Party has not given notice of his/her intent to withdraw herefrom, such amendments and additions shall be assumed to have been tacitly accepted. Without prejudice to the transactions carried out 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 the trading activity 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;
- c) to adopt technological systems suitable for issuing invoices for the transactions made in the 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 Rules and the Technical Rules;
- d) to employ personnel with adequate professional skills and competence in the use of the technological systems referred to in subparas. b) and c) above
- e) to join the service of settlement of payments and the guarantee systems referred to in Title V of the Rules;
- f) to notify GME timely and, where possible, in good time for GME to make any necessary corrective actions for the purpose of ensuring the proper operation 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, paras. 9.6 and 9.7 below, of the occurrence of any event 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);
- g) to co-operate with GME or with the third parties designated by GME, also permitting access by 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 shall be understood that, pursuant to article 2049 of the Italian Civil Code, GME shall be liable for any damages caused upon such operations;
- h) to respect GME's rights of ownership on the data transmitted through the System and on the trademarks registered or used by GME, as well as GME's or third-party suppliers' rights of ownership on the software programmes used for the provision of the Services;
- i) to maintain confidentiality and privacy as regards the devices referred to in Article 4, para. 4.1 below and use 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 any 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 his/her personnel in the safekeeping of such devices;

- j) to timely ask GME to disable the devices referred to in subpara. i) 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;
- k) 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 his/her personnel members, assistants or consultants, if any, in violation of this Agreement, of the 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**  
**GME's Services**

- 3.1 The Services shall be supplied by GME to the Contracting Party in compliance with this Agreement, the 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 shall be 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 the technical, functional, operational and administrative procedures for the supply of the Services, as a result of amendments or additions to the Rules or Technical Rules.
- 3.4 Without prejudice to what is provided for in the Rules and Technical Rules, if the supply of the Services is interrupted, suspended, delayed or affected by malfunctions caused by technical problems with the System, GME shall do whatever is necessary to overcome such problems. It shall be understood that, if the aforesaid events are due to 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 operation of the System as soon as possible.
- 3.5 GME shall be responsible for the correct processing and transmission of data and information entered by third parties into the System or arising in 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 shall not be responsible for faults or malfunctions of lines of communication (e.g. telephone lines), as well as of access to the Internet.
- 3.7 The Contracting Party agrees that GME may rely on 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 personnel members, assistants or consultants in the management and supply of the Services, which are in violation of this Agreement, the Rules or Technical Rules, as well as of any other legislative provision or regulation applicable hereto.

**Article 4**  
**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**  
**Fees and Contribution**

- 5.1 For the Services supplied in accordance herewith, the Contracting Party shall pay the fees determined by GME under Article 7 of the Rules, under the procedures and within the time limits referred to in Article 60 thereof.
- 5.2 Where the System is totally disabled and prevents 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.
- 5.3 The Contracting Party shall pay the contribution mentioned in Article 8 of the Rules, under the procedures and within the time limits established therein.

**Article 6**  
**Limitation of liability, force majeure and fortuitous events**

- 6.1 Without prejudice to what is provided in the Rules, GME shall, in carrying out the Services, be liable for damages of a contractual and extra-contractual nature, only when they constitute the immediate and direct consequence of wilful misconduct or gross negligence and, in the latter case, are predictable upon the date of the signing hereof. The Parties agree that there shall be no obligation of compensation 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 any claim for damages 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 at the same time a detailed report of the circumstances of the damaging event and of the damages so produced. The relative documents 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 the operation of the dedicated data transmission lines which are part of the System, when such interruptions are exclusively the fault of third parties.
- 6.4 GME shall not be liable for damages incurred by the Contracting Party and/or third parties resulting from any unavailabilities, for whatever reason, of the PSV system organised and managed by Snam.
- 6.5 GME may, in cases of force majeure or fortuitous events and, in general, in all cases where the activities of the Contracting Party may 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**

- 7.1 This Agreement shall be executed by and upon the signature of the Contracting Party and by and upon the receipt of its original by GME. Its duration shall be unlimited. The Agreement shall have effect after GME has successfully verified the completeness and correctness of the documents submitted by the Contracting Party and the fulfilment of the requirements for admission of the Contracting Party to the Market. GME shall notify the Contracting Party of the outcome of the above verifications as per Article 15 of the Rules.
- 7.2 This Agreement will 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 provisions;
  - c) Contracting Party's withdrawal herefrom.
- 7.3 The dissolution of the Agreement under this Article shall not impair any other right of either party under the Agreement or 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 15 of the Rules, shall constitute reason for *de jure* termination of this Agreement pursuant to article 1456 of the Italian Civil Code, without prejudice to the right of GME to withhold the contribution paid under Article 8 of the Rules, as well as the fixed fee specified in Article 7, para. 7.1 b) of the Rules by way of indemnity and to 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 impair 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 herefrom shall not be assigned to third parties unless otherwise specified herein.
- 9.3 Without prejudice to 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 Any amendment hereto shall be made in writing.
- 9.5 For the purposes of this Agreement, 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 Every communication or notification to be made in accordance herewith shall be made in writing and delivered by hand, also by courier, or sent by registered letter with return receipt, by fax or by e-mail with acknowledgment of 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 4524; e-mail address [info@mercatoelettrico.org](mailto:info@mercatoelettrico.org), [gme@pec.mercatoelettrico.org](mailto:gme@pec.mercatoelettrico.org);
  - ...  
(address)  
fax number ..., e-mail address ...
- 9.7 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 VI of the Rules, which shall be deemed to be fully referred to and transcribed herein.

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 2.2 (a) (Rules, Technical Rules and Amendments thereto); Article 2.2 (k) (Disclaimer); Articles 3.5 and 3.6 (Limitation of Liability); Article 6 (Limitation of Liability, Lapse, Suspension of the Service); Article 7 (Cease of Effect of the Agreement); Article 8 (Termination); Article 9.2 (No Assignment); Article 10 (Governing law); Article 11 (Disputes).

The Contracting Party

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Rome, (*date*)