



Annex 2
OTC Registration Platform (PCE)
Participation Agreement

**OTC Registration Platform Participation Agreement
under article 18, para. 18.1 b), of the Rules Governing
the OTC Registration Platform**

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 number....., VAT number....., represented by.....

in his/her capacity of.....(hereinafter referred to as "the Applicant/Participant);

GME and the Applicant/Participant, 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 16, paras. 16.2 and 16.3 of Annex A to Decision 111/06 of "Autorità per l'Energia Elettrica e il gas" (Electricity & Gas Regulator - AEEG) of 13 June 2006, as amended, GME - on its own behalf and on behalf of "Terna-Rete Elettrica Nazionale SpA" (hereinafter referred to as "Terna") - operates the service of registration of forward purchases and sales and of injection and withdrawal schedules;

B. Terna is the company arising from the merger of ownership and management/operation of the national transmission grid under article 1 of the Decree of the President of the Council of Ministers of 11 May 2004, published in the "Gazzetta

Ufficiale, Serie Generale”, no. 115 of 18 May 2004. Terna operates the electricity transmission and dispatching service, including the unified management of the national transmission grid and is responsible for registering forward purchases and sales and injection and withdrawal schedules under article 16, para. 16.2 of Annex A to AEEG’s Decision 111/06, as amended;

- C. under article 17 of Annex A to AEEG’s Decision 111/06, as amended, GME issued the Rules (hereinafter referred to as the “Rules”) Governing the OTC Registration Platform (“PCE”);
- D. under article 17, para. 17.4 of Annex A to AEEG’s Decision 111/06, as amended, the Director of Markets of AEEG has successfully verified the Rules as per resolution of 7 February 2007;
- E. under article 18, para. 18.1 b) of the Rules, a party wishing to participate in the PCE shall submit signed copy of the PCE Participation Agreement (hereinafter referred to as the “Agreement”) to GME;
- F. the Technical Rules referred to in article 4 of the Rules are posted on GME’s website and enter into force upon the date of their publication;
- G. under Annex A to AEEG’s Decision 111/06, as amended, GME is the counterparty of Participants on the PCE with regard to the payables and receivables referred to in article 49, para. 49.1 b, d) and e) of the Rules;
- H. under Annex A to AEEG’s Decision 111/06, as amended, and Article 47 of the Rules, the provisions on invoicing and settlement of the payables and receivables referred to in Article 49, para. 49.1 a), c) and f) are set out in the Integrated Text of the Electricity Market Rules approved by a Ministerial Decree of 19 December 2003, as amended;
- I. the Applicant/Participant is one of the parties referred to in Article 16 of the Rules;

NOW, THEREFORE,

the Parties have agreed 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 Applicant/Participant towards GME;
- b) the terms and conditions on which GME undertakes to provide the service related to the registrations on the PCE (hereinafter referred to as the “Service”).

1.2 The Whereas shall be an integral part hereof.

Article 2
Applicant/Participant’s Obligations

2.1 The Applicant/Participant hereby declares that it has read, understood and unconditionally accepts to comply with the Rules, as they arise from the applicable legislation. The Applicant/Participant also declares that it is familiar with the PCE information system (hereinafter referred to as “the System”) in its current configuration or anyway that it undertakes to familiarise therewith.

2.2 The Applicant/Participant agrees:

- a) to comply with the Rules and the Technical Rules and to keep informed about any amendments thereto. Where the Applicant/Participant does not intend to accept any amendments to the Rules and to the Technical Rules, the Applicant/Participant may withdraw herefrom by giving notice thereof according to the modalities and to the address mentioned in article 9, para. 9.6 below. However, such withdrawal shall have effect only after the Applicant/Participant has made one or more registrations on its electricity accounts (the registrations shall be of opposite sign and for quantities equal to those appearing on the same accounts upon submission of the request for withdrawal) and anyway only after the Applicant/Participant has fulfilled the obligations arising from the registrations made on the PCE. If, fifteen days after the legal publication of such amendments, the Applicant/Participant has not given notice of its intent to withdraw herefrom, such amendments shall be deemed to have been tacitly

accepted. Except for registrations that give effect to the aforesaid withdrawal, any further registration that the Applicant/Participant may make on the PCE 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 Applicant/Participant's non-fulfilment of the obligations undertaken on the PCE;

- b) to acquire technological systems suitable for the performance of the registration activity and compatible with the System, and to update/upgrade them as a result of any changes that GME may make to the System;
- c) to acquire technological systems suitable for issuing invoices for the transactions made on the PCE, compatible with the System and capable of ensuring a correct, timely and secure exchange of data and information transmitted in electronic form, under the modalities and within the time limits established in the Rules and Technical Rules;
- d) to employ personnel with adequate professional qualifications and proficiency in the use of the technological systems covered by para. b) above;
- e) to join the system of settlement of payments and the guarantee systems referred to in Section V of the Rules;
- f) 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 Service or incorrect provision of the Service. The Applicant/Participant 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 PCE. In particular, the Applicant/Participant 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 documentation regarding access to the System, or unauthorised access to the Applicant/Participant's premises where such documentation is kept);
- g) to co-operate with GME or with GME-designated third parties and allow their employees or assistants to access the premises of the Applicant/Participant for performing any jobs on the Applicant/Participant's hardware and software as may be required to ensure the proper operation of the PCE. It is hereby

understood that, under article 2049 of the Italian Civil Code, GME shall be liable for damages which may be caused during such jobs;

- h) to respect the rights of ownership of GME on the data transmitted through the System and on trade marks 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 Service;
- i) 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 for the performance of the activity of registration on the PCE. Therefore, the Applicant/Participant shall be liable for any unauthorised access to PCE 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 Applicant/Participant or of its personnel in the safekeeping of such devices;
- j) to timely ask GME to disable the devices referred to in para. i) above and to assign new or different devices, whenever it deems that unauthorised persons may make an improper use thereof;
- k) to hold GME harmless from any damage, cost or third-party claim arising from any action or conduct of the Applicant/Participant 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 **Service provided by GME**

3.1 GME shall provide the Service to the Applicant/Participant in compliance with this Agreement, the Rules and the Technical Rules. GME's obligations in the provision of the Service shall constitute obligations of means.

3.2 GME shall provide the required co-operation so that the Applicant/Participant 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 Applicant/Participant and performed and provided at its own expense.

- 3.3 GME reserves the right to change the technical, functional, administrative and operational procedures for the provision of the Service, 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 Service is interrupted, suspended, delayed or malfunctioning 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 Applicant/Participant for accessing the System, the Applicant/Participant shall remove the related causes with the maximum speed. GME and the Applicant/Participant, each within the scope of 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 PCE. GME and the Applicant/Participant 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 Applicant/Participant within the scope of the provision of the Service.
- 3.6 GME and the Applicant/Participant 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 Applicant/Participant acknowledges that, for the provision of the Service, GME may resort to GME-designated third parties. Nevertheless, the contractual relationship shall be established solely between the Applicant/Participant and GME.
- 3.8 GME shall respect the Applicant/Participant's ownership rights on the data transmitted through the System and on trade marks or names registered or used by the Applicant/Participant and of which GME may become aware.

- 3.9 GME shall hold the Applicant/Participant 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 Service 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 Applicant/Participant 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 Access to the System shall take place as set forth in the Technical Rules.

Article 5

Fees

- 5.1 For the Service provided in compliance herewith, the Applicant/Participant shall pay the fees established by GME under article 7 of the Rules, according to the procedures defined in article 54 thereof.
- 5.2 In case of total disabling of the System, which prevents the Applicant/Participant from making registrations on the PCE, the fees referred to in para. 5.1 above shall be reduced proportionally to the period of occurrence of such disabling.
- 5.3 The provision of para. 5.2 above shall not apply if the Participant is also an Electricity Market Participant.

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 Service, 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 Applicant/Participant shall - under penalty of debarment - notify GME of any claim concerning the provision of the Service within fifteen working days, at the latest, from the date when the Applicant/Participant 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 Applicant/Participant has learned - or should have learned by using ordinary diligence - of the occurrence of the damaging event.
- 6.3 GME and the Applicant/Participant 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 Applicant/Participant 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 have effect from the date of submission of the PCE Participation Application.
- 7.2 This Agreement shall cease to have effect upon the occurrence of one of the following events:
- a) exclusion of the Applicant/Participant from the Market;
 - b) total disabling of the System as a result of amendments to the applicable rules;
 - c) withdrawal of the Applicant/Participant from the Agreement.
- 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 20 of the Rules, shall represent one of the grounds for *de jure* termination of this Agreement under article 1456 of the Italian Civil Code, notwithstanding GME's right to withhold the fixed fee specified in article 54, para. 54.2 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 Notwithstanding 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 This Agreement, signed and initialled in each page by the Parties, is issued in two originals in the Italian language. Any amendment hereto 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 Pilsudski, 122-124 – 00197 Rome, Italy, fax number +39-06-8012 4524, e-mail address info@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 Applicant/Participant arising under, out of or in connection with this Agreement shall be settled in accordance with Section VI of the Rules, which shall be deemed to be an integral part hereof and fully transcribed herein.

GME

the Applicant/Participant

.....

.....

For the purposes of articles 1341 and 1342 of the Italian Civil Code, the following contractual clauses are specifically approved: Article 2 (Applicant/Participant's Obligations); Article 3 (Service Provided by 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); Article 11 (Disputes).

The Applicant/Participant

.....

Rome, *(date)*