



## ***Annex 2***

### ***GME's Emissions Trading Market Participation Agreement***

**GME's Emissions Trading Market Participation Agreement**  
**under art. 11, para. 11.1 b) of GME's Emissions Trading Market Rules**

**BETWEEN**

Gestore dei Mercati Energetici S.p.A., having its registered office in Rome, Viale Maresciallo Pilsudski no. 92, 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, 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 4 of its by-laws, GME shall organise a venue for the trading of emission allowances, as per Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 "*establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC*";
- B. Directive 2004/101/EC of the European Parliament and of the Council of 27 October 2004, "*amending Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community, in respect of the Kyoto Protocol's project mechanisms*", as amended, has established such a scheme;
- C. Directives 2003/87/EC and 2004/101/EC have been transposed into the Italian legislation by Legislative Decree of 4 April 2006, implementing Directives 2003/87/EC and 2004/101/EC on greenhouse gas emission allowance trading within the

Community, in respect of the Kyoto Protocol's project mechanisms, and published in "Gazzetta Ufficiale" no. 140 of 19 June 2006 - "Supplemento Ordinario" no. 150;

- D. In its Emissions Trading Market Rules, which came into force upon publication on GME's website on 21 March 2007 and were subsequently amended and supplemented (hereinafter referred to as the "Rules"), GME has defined the organisation of and the procedures for the management of its Emissions Trading Market (hereinafter referred to as the "Market");
- E. under article 11, para. 11.1 b) of the Rules, a party wishing to participate in the Market shall submit a signed copy of GME's Emissions Trading Market 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;

### **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 services for transactions in the Market (hereinafter referred to as the "Services").
- 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 published on GME's website on 21 March 2007 and as subsequently amended and supplemented. The Applicant/Participant also declares that it is familiar with GME's 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. If, fifteen days after the 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. Any transaction that the Applicant/Participant may make in 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 Applicant/Participant's non-fulfilment of the obligations undertaken in the Market;
- b) to acquire technological systems suitable for the performance of the trading 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 rely on personnel with adequate professional qualifications and proficiency in the use of the technological systems covered by para. b) above;
- d) to join the guarantee and settlement-of-payment systems referred to in Section IV and V 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 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 Market. 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);

- f) 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 Market. 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;
- g) 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 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 for the performance of the activity of trading in the Market. Therefore, the Applicant/Participant 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 Applicant/Participant or of its personnel in the safekeeping of such devices;
- i) to timely ask GME to disable the devices referred to in para. h) above and to assign new or different devices, whenever 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 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***

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

- 3.1 GME shall provide the Services to the Applicant/Participant 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 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 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 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 Market. 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 Services.
- 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 Services, 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 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 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 Services 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 36, para. 36.1 thereof.

#### ***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 Applicant/Participant 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 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 Market 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 12 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 34, para. 34.2 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 Pilsdudki, n. 92 – 00197 Roma;

- .....  
 (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 Pilsdudki, n. 92 – 00197 Roma, fax number +39 06 8012 4102, e-mail address certificatineri@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 VII of the Rules, which shall be deemed to be an integral part hereof and fully transcribed herein.

GME

the Applicant/Participant

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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 (Services 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

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Rome, *(date)*