



Annex 2

P-GAS Participation Agreement

Agreement for participation in the platform for the trading of natural gas bids/offers under art. 14, para. 14.1 b) of the Regulations of the platform for the trading of natural gas bids/offers

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 ..., PSV Code...*(identification code of the "Punto di Scambio Virtuale" – Virtual Trading Point),*
represented by ..., in his/her capacity of ..., (hereafter 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*) which was set up in accordance with Article 5, para. 1 of Legislative Decree no. 79 of 16 March 1999 (hereafter Legislative Decree 79/99) and which is vested, among others, with the economic management of the platform for the trading of natural gas bids/offers (hereafter P-GAS) under the Decree of the Minister of Economic Development of 18 March 2010;
- B) GME prepared the Regulations of the platform for the trading of bids/offers of natural gas (hereafter P-GAS Regulations), approved 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 23 April 2010, as subsequently amended and supplemented;
- C) pursuant to Article 14, para. 14.1 b) of the P-GAS Regulations, a party intending to participate in the P-GAS shall submit to GME a signed copy of the *Contratto di adesione alla P-GAS* (P-GAS participation agreement, hereafter Agreement);
- D) the Technical Rules referred to in Article 4 of the P-GAS Regulations shall be published on the website of GME and have effect as of the date of their publication;
- E) the Contracting Party is one of the parties mentioned in Article 13, para. 13.1 b) of the P-GAS Regulations.

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 Contracting Party's rights and obligations towards GME;
 - b) the terms and conditions on which GME shall provide its service in connection with transactions on the P-GAS (hereafter Service).
- 1.2 The Whereas shall be an integral and essential part hereof.

Article 2

Obligations of the Contracting Party

- 2.1 The Contracting Party declares that he/she is aware of and accepts, without condition or reservation, the P-GAS Regulations, as they result from the applicable legislation. The Contracting Party also declares that he/she fully understands the P-GAS information system (hereafter 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 P-GAS Regulations and the Technical Rules and to keep himself/herself updated with any amendments thereto. It is understood that, where the Contracting Party does not intend to accept any amendments and additions to the P-GAS Regulations or to the Technical Rules, he/she may withdraw herefrom, giving notice according to the procedures and to the address specified in Article 9, para. 9.6 below. Fifteen days after the legal publication of such amendments, if the Contracting Party has not given notice of his/her intent to withdraw herefrom, such amendments shall be assumed to have been tacitly accepted. Any further transaction carried out on the P-GAS 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 on the P-GAS;
 - 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 employ staff with adequate professional skills and competence in the use of the technological systems referred to in subpara. b) above;

- d) where he/she intends to submit supply offers into the P-GAS - to priorly submit to GME (under Article 18 of the P-GAS Regulations) the terms and conditions of supply applied by the same seller in respect of the gas quotas to be offered for sale. By submitting to GME the terms and conditions of supply, duly initialled on each page and signed, the seller authorises GME to publish such terms and conditions on its website or in the P-GAS information system. In case of discrepancy between the terms and conditions of supply submitted to GME and any other version of the same terms and conditions applied and/or made public by the seller, in whatever form, those submitted to GME shall govern;
- e) where he/she intends to submit demand bids, after the seller's acceptance of the application for authorisation to trade gas quotas (under Article 23, para. 23.13 of the P-GAS Regulations) - to comply with the terms and conditions of supply applied by the same seller, in accordance with Article 23, para. 23.14 of the P-GAS Regulations;
- f) to notify GME timely and, where possible, in good time for GME to make any necessary corrective actions for the purposes of guaranteeing the proper operation of the P-GAS, 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 Service. In particular, the Contracting Party shall notify GME with the maximum speed and according to the procedures specified in Article 9, para. 9.6 below, of the occurrence of any event even 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 third parties designated by GME, also permitting access of 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 P-GAS. It is 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 Service;
- 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 on the P-GAS. The Contracting Party shall thus be liable for any unauthorised access to the P-GAS 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 staff 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 staff members, assistants or consultants, if any, in violation of this Agreement, of the P-GAS Regulations 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 service

- 3.1 The Service shall be supplied by GME to the Contracting Party in compliance with this Agreement, the P-GAS Regulations 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 is 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 technical, functional, operational and administrative procedures for the supply of the Service, as a result of amendments to the P-GAS Regulations or Technical Rules.
- 3.4 Without prejudice to what is provided for in the P-GAS Regulations and Technical Rules, if the supply of the Service is interrupted, suspended, delayed or subject to malfunctions caused by technical problems with the System, GME shall do whatever is necessary to overcome such disservices. It is understood that if the aforesaid events result from 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 on the P-GAS. 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 Service.

- 3.6 GME and the Contracting Party agree that GME is not responsible for non-functioning or malfunctioning of lines of communication (for example, telephone lines), as well as of access to the Internet.
- 3.7 The Contracting Party agrees that GME may make resort to third parties designated by GME for the supply of the Service, 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 staff members, assistants or consultants in the management and supply of the Service which are in violation of this Agreement, the P-GAS Regulations or Technical Rules, as well as of any other legislative provision or regulation applicable hereto.

Article 4

Means of 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

Consideration

- 5.1 For the Service supplied in accordance herewith, the Contracting Party shall pay the fees determined by GME under Article 7 of the P-GAS Regulations and the procedures referred to in Articles 8 and 9 thereof.
- 5.2 Where the System is totally disabled and such as to prevent the Contracting Party from carrying out transactions on the P-GAS, the fees referred to in Article 7, para. 7.2 b) of the P-GAS Regulations shall be reduced proportionally to the period in which such disabling has occurred.

Article 6

Limitation of liability, force majeure and fortuitous events

- 6.1 Without prejudice to what is provided in the P-GAS Regulations, GME shall, in carrying out the Service, be liable for damages of a contractual and extra-contractual nature, exclusively 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 of this Agreement. 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 time limit, of any claim for damages relating to the supply of the Service 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 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 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

- 7.2 This Agreement shall be executed by and upon the signature of the Contracting Party and 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 P-GAS. GME shall notify the Contracting Party of the outcome of the above verifications as per Article 16 of the P-GAS Regulations.
- 7.3 This Agreement will cease to have effect upon the occurrence of one of the following events:

- a) exclusion of the Contracting Party from the P-GAS;
- b) total disabling of the System as a result of amendments to the applicable provisions;
- c) Contracting Party's withdrawal herefrom.

7.4 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 Participant, as acquired in accordance with Article 16 of the P-GAS Regulations, 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 fixed fee specified in Article 7, para. 7.1 of the P-GAS Regulations by way of indemnity and 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 therefrom 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)

9.5 Every communication or notification to be made in accordance herewith shall be made in writing and delivered by hand, 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;

- ...
(address)
fax number ..., e-mail address ...

9.6 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 P-GAS Regulations, 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) (P-GAS Regulations, Technical rules and amendments thereto); Article 2.2 (k) (Disclaimer); Articles 3.5 and 3.6 (Limitation of liability); Article 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 11 (Disputes).

The Contracting Party

....Rome, (date)

