



Annex B

Market participation contract

**Market participation contract,
referred to in article 12, paragraph 12.1, letter b), of the local flexibility market
Regulations**

BETWEEN

Gestore dei Mercati Energetici S.p.A., with registered office in Rome, Viale Maresciallo Pilsudski n. 122/124, Tax Code and VAT no. 06208031002 (hereinafter: GME),

AND

..... /the company/other
(first name and surname) (trade name or company name)
resident/with registered office in, Prov.,
(address)
Tax Code....., VAT no., in the person of,
as (hereinafter: the Contracting Party);

GME and the Contracting Party, hereinafter referred to individually as the "Party" and jointly as the "Parties",

WHEREAS THAT

- A. GME is the joint-stock company - established pursuant to article 5, paragraph 1, of Italian Legislative Decree 16 March 1999, no. 79 (hereinafter: Italian Legislative Decree no. 79/99) - which organises and manages, among other aspects, the Local Flexibility Market (hereinafter: the Market) aimed at enabling distribution system operators (hereinafter: DSO) to procure local ancillary services;
- B. the DSOs are the companies referred to in article 9 of Italian Legislative Decree no. 79/99 which are entrusted, under concession, with the distribution activity meaning both the transport activity and the electricity transformation on medium and low voltage distribution networks for deliveries to end customers;
- C. GME has prepared the local flexibility market Regulations approved with resolution of 3 August 2023 no. 372/2023/R/eel of the Regulatory Authority for Energy, Networks and the Environment (hereinafter: the Regulations);
- D. the DSOs that make use of the Market are indicated in the Technical Rules referred to in article 4 of the Regulations;
- E. pursuant to article 12, paragraph 12.1, letter b), of the Regulations, the party intending to participate in the market submits to GME a signed copy of the "Market Participation Contract" (hereinafter: the Contract);
- F. the Technical Rules are published on the *website* of GME and enter into force from the date of publication;

G. pursuant to and for the purposes of the Regulations, GME is the counterparty of the Market participants in the Market.

NOW THEREFORE,

the Parties agree and stipulate the following.

Article 1

Subject of the Contract and value of the recitals

1.1 This Contract defines:

- a) the rights and obligations of the Contracting Party towards GME;
- b) the conditions under which GME undertakes to provide the services relating to trading in the Market (hereinafter: the Services);

1.2 The premises to this Contract form an integral and substantial part of it.

Article 2

Obligations of the Contracting Party

2.1 The Contracting Party declares to know and accept, without any conditions or reservations, the Regulations, as resulting from the legislation in force. The Contracting Party also declares that it is familiar with GME's IT support system (hereinafter: the System), in its current configuration, or in any case that it undertakes to understand it.

2.2 The Contracting Party undertakes to:

- a) comply with the Regulations and the Technical Rules and to keep up to date with any changes to these documents. It is understood that if the Contracting Party does not intend to accept any amendments and additions to the Regulations and to the Technical Rules, the Contracting Party itself will have the right to withdraw from this Contract, by sending notice according to the methods provided and to the address indicated in article 9 below, paragraph 9.6. In any case, the withdrawal will only be effective after the Contracting Party has fulfilled the obligations deriving from participation in the Market. If fifteen days have elapsed from the legal publication of such amendments and additions, without the Contracting Party having communicated its intention to withdraw from this Contract, the amendments themselves will be considered tacitly accepted. Without prejudice to everything performed for the purposes of the effectiveness of the withdrawal, pending the afore-mentioned term, the execution of negotiations on the Market by the Contracting Party will be understood as implicit acceptance of the new conditions. The afore-mentioned variations can never constitute a reason that can justify the failure of the Contracting Party to fulfil the obligations assumed on the Market;
- b) be equipped with adequate technological systems for the performing of the trading activity, which are compatible with the System, and it must also update them as a result of any changes made by GME to the System;

- c) be equipped with adequate technological systems for the performing of the activities relating to the invoicing of the economic items of the Market, compatible with the System and suitable for ensuring a correct, timely and secure exchange of data and information transmitted electronically, in the manner and within the timings envisaged by the Regulations and by the Technical Rules;
- d) acquire personnel with adequate professionalism and competence in the use of the technological systems referred to in the previous letter b);
- e) join the payment settlement service and the guarantee systems referred to in Title V of the Regulations;
- f) inform GME promptly and, where possible, in adequate time so that GME itself, in order to guarantee the regular functioning of the Market, can implement any necessary corrective actions, regarding any operational issue or anomaly deriving from problems of a technical nature, or any other event that has led or may lead to the non- or incorrect provision of the Services. In particular, the Contracting Party undertakes to notify GME, as quickly as possible and in the forms provided for in article 9, paragraph 9.6 below, of the occurrence of events, even if only potentially dangerous for the integrity and security of the System (such as, purely by way of example, the theft of confidential documentation relating to access to the System or unauthorised access to the Contracting Party's premises where such documentation is kept);
- g) cooperate with GME, or with third parties designated by the latter, also allowing access of their employees or auxiliaries to their premises, in order to allow the implementation of all interventions on the equipment (*hardware* and *software*) used by the Contracting Party, which are necessary to ensure the regular functioning of the Market. It is understood that GME is responsible, pursuant to article 2049 of the Italian Civil Code, for any damages caused during the implementation of such interventions;
- h) respect the property rights of GME on the data transmitted through the System and on the trademarks it registers or uses, as well as the property rights of GME itself or of third party suppliers on the *software* programs used for the provision of the Services;
- i) keep the devices referred to in article 4, paragraph 4.1 below private and confidential, and use them, or allow their use by specifically appointed people, exclusively for the accessing and performing of trading activities on the Market. The Contracting Party therefore assumes all responsibility for unauthorised access to the Market by third parties and undertakes to indemnify GME from any damages or danger to the integrity or security of the System that may occur due to the negligence of the Contracting Party or of its personnel in the custody of the afore-mentioned devices;
- j) promptly ask GME to disable the devices referred to in the previous letter i) and to allocate new or different devices in all cases where it has reason to believe that unauthorised people may make improper use of them;
- k) indemnify and hold GME harmless from any damages or cost it may suffer, also as a result of actions brought by third parties, as a result of acts or behaviours put in place by the Contracting Party itself, as well as by any of its auxiliaries, appointees and collaborators, in breach of this Contract, of the Regulations, of the Technical Rules, as well as of any other legislative or regulatory provision, or of deeds and provisions issued by GME or by competent authorities.

Article 3
GME services

- 3.1 The Services will be provided by GME to the Contracting Party in accordance with this Contract, with the Regulations and with the Technical Rules. GME's obligations relating to the provision of the Services constitute obligations of means.
- 3.2 GME will provide the Contracting Party with the necessary collaboration for the Contracting Party to access the System, in compliance, in particular, with what is indicated in the Technical Rules. It is understood that the implementation of the activities and the provision of the tools necessary for the access are the sole responsibility and will be fully borne by the Contracting Party.
- 3.3 GME has the right to modify the technical, functional, administrative and operational procedures for provision of the Services, as a result of modifications or additions to the Regulations or of the Technical Rules.
- 3.4 Without prejudice to the provisions of the Regulations and of the Technical Rules, if the provision of the Services is interrupted, suspended, delayed or in any case subject to anomalies due to technical reasons concerning the System, GME undertakes to do what is necessary to resolve such problems. It is understood that if the afore-mentioned events are attributable to technical reasons concerning the equipment (hardware or software) used by the Contracting Party to access the System, the Contracting Party will be required to eliminate the related causes as quickly as possible. GME and the Contracting Party undertake, within the scope of their respective competences, to collaborate in order to identify the causes of the interruptions, suspensions, delays or anomalies and to restore the functionality of the System as soon as possible.
- 3.5 GME is responsible for the correct processing and transmission of data and information entered by third parties in the System or formed on the Market. GME and the Contracting Party acknowledge that GME's obligations do not include checking the truthfulness, accuracy and completeness of the data and information provided by third parties, which are made available to the Contracting Party as part of the provision of the Services.
- 3.6 GME and the Contracting Party acknowledge that GME cannot be held responsible for faults or malfunctions of the telecommunications lines (for example, telephone lines), as well as of the *Internet* access.
- 3.7 The Contracting Party acknowledges that GME has the right to make use of third parties designated by GME itself for the provision of the Services, being understood that, in any case, the contractual relationship exists exclusively between the Contracting Party and GME.
- 3.8 GME undertakes to respect the Contracting Party's property rights on the data transmitted through the System and on the registered or used trademarks of which GME has become aware.
- 3.9 GME undertakes to indemnify and hold the Contracting Party harmless from any damages or cost suffered by the Contracting Party, including as a result of actions brought by third parties, as a result of acts or behaviour by GME or of its auxiliaries, appointees or collaborators, for the management and the provision of the Services in breach of this Contract, of the Regulations, of the Technical Rules, as well as of any other legislative or regulatory provision applicable to this Contract.

Article 4
How to access the System

- 4.1 For the purposes of accessing the System, the Contracting Party is required to use the technical security devices indicated by GME such as, for example, a user code, with a combined password, smart card or other strong authentication tools.
- 4.2 Access to the System takes place in accordance with the provisions of the Technical Rules.

Article 5
Fee

- 5.1 The Contracting Party shall pay the fees established by GME pursuant to article 7 of the Regulations for the Services provided in execution of this Contract, according to the methods defined in articles 71 and 73 of the Regulations.
- 5.2 In the event of total deactivation of the System, such as to prevent the Contracting Party from performing trading on the Market, the fees referred to in the previous paragraph 5.1 are reduced in proportion to the period in which this deactivation occurred.

Article 6
Limitation of liability, force majeure and unforeseeable circumstances

- 6.1 Without prejudice to the Regulations, GME, in the provision of the Services, is liable for contractual and non-contractual damages exclusively insofar as these constitute an immediate and direct consequence of its conduct determined by wilful misconduct or negligence and, in the latter case, are foreseeable at the date of signing this Contract. The Parties mutually agree that there will be no compensation or indemnity obligation for damages that are an indirect or unforeseeable consequence of GME's conduct including, by way of example, damages deriving from the loss of business opportunities or customers or from the loss of profits.
- 6.2 The Contracting Party shall notify GME, under penalty of forfeiture, of any claim for compensation relating to the provision of the Services within and no later than fifteen working days from the day on which the Contracting Party became aware, or should have become aware using ordinary diligence, of the occurrence of the harmful event, contextually providing a precise indication of the circumstances in which the harmful event and the damages occurred. The related supporting documentation must be communicated to GME no later than twenty working days from the day on which the Contracting Party became aware, or should have known using ordinary diligence, of the occurrence of the harmful event.
- 6.3 There will be no liability of GME and of the Contracting Party for breaches due to force majeure, unforeseeable circumstances, or events beyond their control such as, by way of example, wars, riots, earthquakes, floods, fires, strikes, interruptions of the supply of electricity or of the supply of dedicated data transmission lines forming part of the System, when such interruptions are exclusively attributable to the behaviour of third parties.

- 6.4 GME will not be liable for any damages suffered by the Contracting Party and/or by third parties deriving from any requests made by the DSOs to cancel, or to suspend, or to revoke the session held or in progress.
- 6.5 GME has the faculty, in cases of force majeure and unforeseeable circumstances, and generally in all cases in which the Contracting Party's activity is potentially harmful to the integrity or to the security of the System, to suspend access to the System itself, without the need for prior communication of the circumstances leading to the suspension.

Article 7 **Duration**

- 7.1 This Contract is deemed to be finalised upon its signature by the Contracting Party and its receipt, in the original version, by GME and it has an indefinite duration. The effectiveness of the Contract is subject to GME's positive verification of the completeness and correctness of the documentation sent by the Contracting Party and of the existence of the requirements for admission of the Contracting Party to the Market. GME will inform the Contracting Party of the outcome of these checks pursuant to article 14 of the Regulations.
- 7.2 This Contract will cease to produce its effects upon the occurrence of one of the following events:
- a) exclusion of the Contracting Party from the Market;
 - b) total deactivation of the System due to changes in the applicable regulations;
 - c) withdrawal by the Contracting Party from this Contract.
- 7.3 Termination of the Contract pursuant to this article will not in any way prejudice any other right to which a Party is entitled under this Contract or under generally applicable laws, nor will it affect any right or obligation of a Party which has already arisen on the date of termination.

Article 8 **Resolution**

- 8.1 For any reason, any loss of the status of Market participant, as acquired pursuant to article 14 of the Regulations, constitutes grounds for legal termination of this Contract pursuant to article 1456 of the Italian Civil Code, without prejudice to GME's rights to withhold the fixed fee referred to in article 7, paragraph 7.1, letter b), of the Regulations as indemnity for and without prejudice to any further right to compensation for any greater damage.

Article 9 **General clauses**

- 9.1 The invalidity or nullity of one or more of the clauses of this Contract will not compromise the validity of the remaining clauses, which will in any case remain in full force and effect.
- 9.2 This Contract and the rights and obligations of the Parties hereunder may not be transferred to third parties except in the cases expressly provided for in this Contract.

9.3 Without prejudice to the provisions of the previous article 6, paragraph 6.2, failure to exercise or delay in exercising one of the rights due to a Party under this Contract cannot be considered as a waiver of such rights.

9.4 Without prejudice to the provisions of the previous article 2, paragraph 2.2, lett. a), any modification to the Contract must take place in writing.

9.5 For the purposes referred to in this Contract, the Parties elect their domicile at the following addresses:

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

9.6 Any communication or notification to be made pursuant to this Contract must be made in writing and delivered by hand, also by courier, or sent by registered letter with acknowledgement of receipt, or by electronic message with acknowledgement of receipt or by certified mail, to following addresses:

- Gestore dei Mercati Energetici S.p.A, Viale Maresciallo Pilsudski n. 122/124 - 00197 Rome, *adresse-mail*: info@mercatoelettrico.org; gme@pec.mercatoelettrico.org;
-
(address)
certified e-mail address....., e-mail *address*.....;

9.7 The communications will be considered received on the date of signing the receipt of successful delivery, if performed by hand delivery, or when they reach the recipient's address, if performed by registered letter with acknowledgement of receipt, or on the date of receipt of the message of successful delivery, if sent by e-mail or on the date of receipt of the message of successful delivery, if sent by certified e-mail.

Article 10
Applicable law

10.1 This contract is regulated by the Italian law.

Article 11
Disputes

11.1 Any dispute that may arise between GME and the Contracting Party in relation to this Contract will be resolved according to the provisions contained in Title VI of the Regulations, which are deemed to be fully referred to and transcribed herein.

the Contracting Party

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The following clauses of the Contract are specifically approved, pursuant to and for the purposes of articles 1341 and 1342 of the Italian Civil Code: Article 2.2 (a) (Regulations and Technical Rules and their amendments); Article 2.2 (k) (Indemnification); Articles 3.5 and 3.6 (Limitation of Liability); Article 6 (Limitation of responsibilities, forfeiture, suspension of the service); Article 7 (Termination of the effects of the Contract); Article 8 (Termination); Article 9.2 (Prohibition of assignment); Article 10 (Applicable law); Article 11 (Disputes).

the Contracting Party

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Rome, (*date*)