



**RESOLUTION N°009/ERERA/17**  
**Adoption of model bilateral contracts for the supply of power  
within the framework of the Regional Market of the West African  
Power Pool**

The Regulatory Council,

**MINDFUL** of the Supplementary Act A/SA.2/01/08 establishing the ECOWAS Regional Electricity Regulatory Authority(ERERA);

**MINDFUL** of Regulation C/REG.27/12/07 of 15 December 2007 as amended, concerning the Composition, Organization, Functions and Operation of ERERA;

**MINDFUL** of the Directive C/DIR.1/06/13 dated 21 June 2013 on the organization of the regional electricity market, in particular Article 8(1) thereof;

**MINDFUL** of the Regional Market Rules for the West African Power Pool (WAPP) approved by Resolution N°005/ERERA/15 in particular Articles 12 and 13 thereof; and

After the review of the three draft of the model bilateral contracts as proposed by the WAPP General Secretariat,

**RESOLVE THAT:**

1. The two models of bilateral contracts, copy attached, are hereby adopted by the Regulatory Council for the use by the stakeholders in the West African Power Pool, namely:

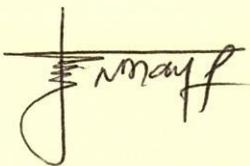
- (a) model Long-term bilateral contract
- (b) model Short-Medium-term bilateral contract.

H      A      R

2. The two models, model long-term and model Short-Medium-term bilateral contracts for the West African Power Pool shall be published in the ERERA official Bulletin and Website.

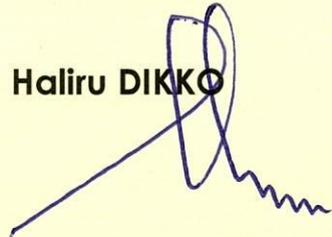
**Made in Accra, GHANA, on August 9, 2017**

**Aly Mar NDIAYE**



**Council Member**

**Haliru DIKKO**



**Council Member**

**Honoré Djamah Ségui BOGLER**



**Chairman**



**Model Long Term Bilateral Agreement**  
(Includes Provision for Countries not sharing borders)

**[For Agreement lasting more than one Year]**

**[Version N° 1.00]**

**Between**

***[Insert Seller's name]***

**And**

***[Insert Buyer's name]***

*2 a R*



## Contents

<i>Article 1. Definitions and Interpretations</i> .....	6
1.1 Definitions .....	6
1.2 Interpretation .....	14
<i>Article 2. Sale and Purchase of Delivered Energy</i> .....	15
<i>Article 3. Conditions Precedent</i> .....	15
3.1 Seller's Conditions Precedent .....	15
3.2 Buyer's Conditions Precedent .....	15
3.3 Satisfaction of Conditions Precedent .....	16
3.4 Status of Agreement .....	16
3.5 Failure to Satisfy Conditions Precedent .....	16
<i>Article 4. Term of the Agreement</i> .....	17
<i>Article 5. Nominations</i> .....	17
<i>Article 6. Commercial Operation Date</i> .....	17
<i>Article 7. Delivery</i> .....	17
7.1 Transfer of title .....	17
7.2 Transfer of Risk .....	18
7.3 Transmission and Other Services .....	18
<i>Article 8. Ancillary Services</i> .....	18
<i>Article 9. Metering and Data Collection</i> .....	18
<i>Article 10. Operation and Maintenance</i> .....	19
10.1 General principles of operation .....	19
10.2 Scheduled Maintenance .....	19
10.3 Unscheduled Outages .....	19
<i>Article 11. Reports, Records and Monitoring</i> .....	19
<i>Article 12. Price and Quantities</i> .....	20
12.1 Energy Price .....	20
12.2 Quantity .....	20
12.3 Computation and Indexation .....	20
<i>Article 13. Tax</i> .....	20
<i>Article 14. Billing and Payment</i> .....	21
14.1 Operating Period Invoices .....	21
14.2 Settlement .....	21
14.3 Billing Disputes .....	21
14.4 Set-off .....	21
<i>Article 15. Payment Guarantee</i> .....	21



<i>Article 16. Insurance</i> .....	22
<i>Article 17. Representations, Warranties and Covenants</i> .....	22
17.1 Seller's Representations and Warranties .....	22
17.2 Buyer's Representations and Warranties .....	23
17.3 Mutual Representation and Warranty .....	23
17.4 Duration of Representations and Warranties .....	24
<i>Article 18. Force Majeure</i> .....	24
18.1 Nature of Relief.....	24
18.2 Exclusions from Relief from Force Majeure.....	24
18.3 Notification of Force Majeure Event .....	24
18.4 Conditions of claim .....	24
18.5 Mitigation .....	24
18.6 Access.....	25
18.7 Allocations .....	25
18.8 Termination for Prolonged Force Majeure Event .....	25
18.9 Extension of Agreement for Force Majeure.....	25
<i>Article 19. Confidentiality</i> .....	25
19.1 Principle .....	25
19.2 Exceptions .....	25
19.3 Disclosure of Confidential Information to Affiliate.....	26
19.4 Confidential Information to other Persons .....	26
19.5 Use of the Confidential Information by other Persons.....	26
<i>Article 20. Default</i> .....	27
20.1 Seller's Default.....	27
20.2 Buyer's Default .....	27
20.3 Termination for Default .....	27
20.4 Remediation of Default .....	27
20.5 Rights or obligations on termination.....	28
<i>Article 21. Liabilities</i> .....	28
21.1 Limitation of Liability.....	28
21.2 Limitation of Remedy .....	28
21.3 Mitigation of Damages.....	28
21.4 Willful Misconduct and Gross Negligence .....	28
<i>Article 22. Indemnities</i> .....	28
22.1 General Indemnification.....	28
22.2 Indemnification Process .....	28
22.3 Defence or settlement of any third party claim.....	29
22.4 Limitations .....	29



<i>Article 23. Transfer</i> .....	29
23.1 Obligation .....	29
23.2 Successors and Permitted Transferees .....	30
23.3 Financing .....	30
<i>Article 24. Change in Trading Regime</i> .....	30
<i>Article 25. Change in Law</i> .....	30
<i>Article 26. Termination</i> .....	31
26.1 Termination .....	31
26.2 Suspension of obligations .....	31
<i>Article 27. Governing Law and Dispute Resolution</i> .....	31
27.1 Governing Law .....	31
27.2 Dispute Resolution .....	31
27.3 Expert Determination .....	31
27.4 Legal proceedings .....	32
27.5 Condition of appointment of Experts and arbitrators .....	33
27.6 Continuation of performance .....	33
<i>Article 28. General Provisions</i> .....	33
28.1 Conflict of Interest .....	33
28.2 Reporting Violations and Reimbursements .....	33
28.3 Exceptions .....	33
28.4 No Reliance .....	34
28.5 No Partnership or agency .....	34
28.6 Further Assurances .....	34
28.7 Waiver of Sovereign Immunity .....	34
28.8 Waiver .....	34
28.9 Waiver Limits .....	34
28.10 No Third Party Beneficiaries .....	34
28.11 Severability .....	35
28.12 Modification .....	35
28.13 Notices .....	35
28.14 Counterparts .....	36
28.15 Entire Agreement .....	36
<i>SCHEDULE 1: PRICE AND QUANTITIES</i> .....	38
<i>SCHEDULE 2 : INSURANCE POLICIES</i> .....	39
<i>SCHEDULE 3 : COMMERCIAL OPERATION DATE AND TERM</i> .....	40
<i>SCHEDULE 4 : SPECIAL CONDITIONS</i> .....	41
<i>SCHEDULE 5: DATA SHEET</i> .....	42



This **AGREEMENT** is made as of [*insert Execution Date: day/month/year*]

## **BETWEEN**

[*Insert Seller's name*], a Market Participant, having the Market Participant identification [*Insert Market Participant identification*] and having its registered office at [*insert physical address*] and official registration number [*insert number*], represented by [it's] [*insert the designation of the duly authorized representative of the Seller*], [*insert the Name of the duly authorized representative of the Seller*], (hereinafter referred to as the “**Seller**”) on the one part;

## **AND**

[*Insert Buyer's name*], a Market Participant having the Market Participant identification [*insert identification for the Market Participant*] and having its registered office at [*insert physical address*] and official registration number [*insert number*], represented by [it's] [*insert the designation of the duly authorized representative of the Buyer*], [*insert the Name of the duly authorized representative of the Buyer*] (hereinafter referred to as “**Buyer**”) on the other part;

(The Seller and the Buyer are hereinafter together referred to as “**Parties**” or individually as “**Party**”).

## **WHEREAS**

1. The Buyer is engaged in the electricity business, including distribution, marketing, brokering, purchasing, selling and/or bulk trading of electricity and has been registered as West African Power Pool (WAPP) market participant and is desirous of buying electricity within the framework of the Regional Electricity Market (as defined under the Regional Market Rules).
2. The Seller is a company in the electricity supply industries that has followed the procedure and has been registered as West African Power Pool (WAPP) market participant and is desirous of selling electricity within the framework of the Regional Electricity Market (as defined under the Regional Market Rules).
3. The Seller wishes to sell to the Buyer, and the Buyer wishes to purchase from the Seller the Electrical Energy (as defined in this Agreement) within the framework of the Regional Electricity Market (as defined under the Regional Market Rules) and on the terms and conditions of this Agreement.
4. The Parties accordingly wish to enter into this Agreement on the terms and conditions set out below.



## Article 1. Definitions and Interpretations

### 1.1 Definitions

Unless the context indicates otherwise, words beginning with upper case used in this Agreement, including the Schedules shall have the corresponding meaning set out below. Any term used herein and not otherwise defined shall have the meaning given to that term in the Regional Market Rules or the Operation Manual.

TERM	DEFINITIONS
<b>“Act of Insolvency”</b>	means in respect of a Party and whether provisional or final and whether voluntary or compulsory, its insolvency, winding-up, dissolution, administration or liquidation, the making by it of any arrangement or composition with its creditors or the taking of possession by an encumbrance of, or the appointment of a receiver over, the whole or any substantial part of its property or assets or its ceasing or threatening to cease to carry on business, or the commencement of any analogous proceeding by whatsoever name known against it or any of its assets in whatsoever jurisdiction.
<b>“Affiliate”</b>	means for either Party hereto (a) an entity that is a subsidiary of that Party; (b) a person or entity of which that Party is a subsidiary or (c) an entity that is the subsidiary of another person or entity of which that Party is a subsidiary, which person or entity directly or indirectly controls, is controlled by or is under the common control of such Party. For the purposes of clarity, Affiliate includes any ultimate holding company, any holding company and any subsidiary (direct or indirect) of such Party.
<b>“Agreement”</b>	means this document together with the Schedules hereto and any extensions, renewals or amendments of this document agreed to in writing by the Parties.
<b>“Agreed Interest Rate”</b>	means such interest rate as agreed between the Parties and detailed in Schedule 4 ( <i>Special Conditions</i> ).
<b>“Ancillary Services”</b>	means such other services provided by the Seller other than the provision of Electrical Energy, including the provision of reactive power, voltage control, frequency regulation and black start capability.
<b>“Applicable Laws”</b>	means all laws, treaties, ordinances, decrees, statutes, rules and regulations of any Governmental Authority. Any reference to an Applicable Law shall include all statutory and administrative provisions consolidating, amending or replacing such Applicable Law and shall include all rules and regulations promulgated there under.
<b>“Authorisation”</b>	means any authorisation, approval, clearances, consent, exemption, license, order or permit of or from any Governmental Authority required for the due performance by either Party of any covenant or obligation under this Agreement.



TERM	DEFINITIONS
“Back-up Meter ”	means a back-up metering system for electricity, used for reading and measurement of Electrical Energy and installed, tested, commissioned, operated and maintained in accordance with the Operation Manual and/or Regional Metering Code.
“Billing Period”	means a period commencing at 00.00 hours on the first day of a Month, and ending at 24.00 hours on the last day of that Month, save that the first Billing Period shall commence at 00.00 hours on the Effective Date and end at 24.00 hours on the last day of the Month on which the first Billing Period commenced and the last Billing Period shall commence at 00.00 hours on the first day of the Month in which the date of termination occurs and ends at 24.00 hours on the date of termination of this Agreement.
“Breach of Material Provision Period”	means the period stated in Schedule 4 ( <i>Special Conditions</i> ) within which a defaulting Party has to remedy a breach of a material obligation under this Agreement.
“Business Day”	means any day excluding Saturdays and Sundays or a public holiday as gazetted by the [Government/Republic] of [ <i>insert name of Seller host country</i> ] and [ <i>insert name of Buyer host country</i> ] from time to time.
“Buyer's Account”	means the Buyer's bank account detailed in Schedule 4 ( <i>Special Conditions</i> ), which account cannot be changed without giving prior written notice of at least thirty (30) Business Days to the Seller.
“Buyer's Conditions Precedent”	has the meaning given to it in Article 3.2 ( <i>Buyer's Conditions Precedent</i> )
“Change in Law”	<p>means the occurrence after the Execution Date, of any of the following:</p> <ul style="list-style-type: none"> <li>(a) the enactment or issuance of any new Applicable Law;</li> <li>(b) the modification or repeal of any existing Applicable Law;</li> <li>(c) the commencement of any Applicable Law that was not in existence on the Execution Date;</li> <li>(d) the reissue of the Regional Market Rules (such that the new rules are fundamentally changed which results in trading arrangements materially different from those previously in use and originally contemplated by the Parties); and/or</li> <li>(e) the change in the terms or conditions of any Authorisation by an imposition of additional terms or conditions,</li> </ul> <p>which occurrence was (i) not reasonably foreseen by the Parties as at the Execution Date and which makes the continued performance of this Agreement on the terms herein set forth materially less favourable to either or both Parties; and (ii) shall not include any Applicable Law that was enacted or not yet in force as at the Execution Date, or any bill or draft law that was promulgated for comment at any time before the Execution Date if and to the extent that such bill or draft law is materially unchanged when enacted and brought into effect. For the</p>



TERM	DEFINITIONS
	avoidance of doubt, the Parties acknowledge that (i) any procedural change of rules or change in trading regime contemplated in the Regional Market Rules, and (ii) any change in Tax of a general, discriminatory and/or project specific nature, shall not be construed as a Change in Law event.
“Claiming Party”	means a Party that claims relief under Article 18 ( <i>Force Majeure</i> )
“Commercial Operation Date” (COD)	means the date specified in Schedule 4 ( <i>Special Conditions</i> ).
“Conditions Precedent”	means the Seller's conditions precedent and the Buyer's conditions precedent as set out in Article 3 ( <i>Conditions Precedent</i> ).
“Confidential Information”	means all information and data of whatsoever nature, which any Party may from time to time receive or obtain (orally or in written or electronic form) as a result of entering into, or performing its obligations pursuant to, this Agreement (including engineering data, maps, models and interpretations, commercial, contractual and financial information).
“Confidential Information Period”	has the meaning ascribed to it in Schedule 4 ( <i>Special Conditions</i> ).
“Contracted Transmission Capacity”	means the transmission capacity reserved for evacuating electricity to the Buyer in accordance with the Regional Market Rules as allocated and approved by the System and Market Operator and as specified in Schedule 1 ( <i>Price and Quantities</i> ).
“Contracted Quantities”	means the quantities of energy as specified in Schedule 1 ( <i>Price and Quantities</i> )
“Delivered Energy”	means the Electrical Energy delivered during a given period to the Delivery Point.
“Delivery Point”	means the physical point in the interconnector at which the Electrical Energy is delivered from the Seller to the Buyer as further detailed in Schedule 4 ( <i>Special Conditions</i> ).
“Dispute”	means any dispute, controversy, or claim of any kind or type arising out of, relating to, or connected with this Agreement, or the operations carried out under this Agreement, including any dispute concerning the existence, validity, interpretation, performance, breach, or termination of this Agreement.
“Dispute Resolution Procedure”	means the dispute resolution procedures contained in article 40 of the Regional Market Rules.
“Effective Date”	means the date on which all of the Conditions Precedent have been satisfied or waived in accordance with Article 3 ( <i>Conditions Precedent</i> ).



TERM	DEFINITIONS
“Electrical Energy”	means, the generation or consumption of electric power by a device over a period of time, expressed in kilowatthours (kWh) or megawatthours (MWh)
“Energy Price”	means, for each Billing Period, the payment to be made by the Buyer to the Seller for Delivered Energy in accordance with Article 12 ( <i>Price and Quantity</i> ).
“Execution Date”	means the date on which this Agreement is duly signed by the last Party signing.
“Expert”	means any competent person appointed for the determination of disputes expressly reserved for expert determination in this Agreement.
“Force Majeure Event”	<p>means any act, event or occurrence or combination thereof, for which a Party claims relief under Article 18 (<i>Force Majeure</i>) (“<b>Claiming Party</b>”) and:</p> <ul style="list-style-type: none"><li>(a) is beyond a Claiming Party's reasonable control;</li><li>(b) was not foreseeable or, if foreseeable, could not have been (including by reasonable anticipation) avoided or overcome by the Claiming Party having taken all reasonable precautions, due care and reasonable alternative measures in order to avoid the effect of such act, event or occurrence or combination thereof on the Claiming Party's ability to perform its obligations under this Agreement and to mitigate the consequences of such circumstances;</li><li>(c) could not have been (including by reasonable anticipation) or cannot reasonably be avoided or overcome by the Claiming Party, any of its direct or indirect contractors and/or Affiliates exercising Prudent Operating Practices and Reasonable Efforts, having taken all reasonable precautions, due care and reasonable alternative measures in order to avoid the effect of such event on the Claiming Party's ability to perform its obligations under this Agreement and to mitigate the consequences of such circumstances; and</li><li>(d) prevents, hinders or delays a Claiming Party in its performance of any (or any part) of its obligations under, or in connection with this Agreement.</li></ul> <p>A Force Majeure includes, but is not limited to, the following:</p> <ul style="list-style-type: none"><li>(a) acts of war (whether declared or undeclared), armed conflict, civil unrest or insurrection, blockade, embargo, riot, sabotage, acts of terrorism or the specific threats of such acts or events, or conditions attributable to such acts or events;</li><li>(b) strike, work slowdown, lockout or other industrial disturbance or labour dispute that are widespread, nationwide or regional;</li><li>(c) fire, earthquake, cyclone, hurricane, flood, drought, storms, navigational and maritime perils, or other acts of God; and</li></ul>

*Handwritten initials and signature*



TERM	DEFINITIONS
	<p>(d) ionising radiation or contamination, radio activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive assembly or nuclear component.</p> <p>Where a Force Majeure Event is directly or indirectly as a result of negligence, willful misconduct or default of a Claiming Party, including breach by the Claiming Party of any of its obligations under this Agreement, it will not constitute a Force Majeure Event.</p> <p>For the avoidance of doubt, the following events or circumstances shall not constitute a Force Majeure Event:</p> <ul style="list-style-type: none"> <li>(a) late delivery to the Seller of machinery, equipment, materials, spare parts or consumables in relation to the generation facility, save where such late delivery is itself due to a Force Majeure Event;</li> <li>(b) a delay in the performance of any contractor, save where such delay is itself due to a Force Majeure Event;</li> <li>(c) any breakdown in equipment related to the generation facility, save where such breakdown is itself due to a Force Majeure Event;</li> <li>(d) unavailability of funds; and</li> <li>(e) normal wear and tear or flaws or defects in materials and equipment related to the generation facility.</li> </ul>
<p><b>“Governmental Authority”</b></p>	<p>means any regional, municipal, national, state or local government, or any regulatory or administrative agency, instrumentality, commission, body or other authority, and any court or tribunal, lawfully exercising jurisdiction over this Agreement, the performance of obligations of the Parties under this Agreement or either Party's facilities.</p>
<p><b>“Indemnified Party”</b></p>	<p>means the Party that receives the benefit of an indemnity pursuant to Article 22 (<i>Indemnities</i>), together with such Party's directors, officers, and employees and such Party's Affiliates, their directors, officers and employees.</p>
<p><b>“Indemnifying Party”</b></p>	<p>means the Party that gives an indemnity pursuant to Article 22 (<i>Indemnities</i>).</p>
<p><b>“kW”</b></p>	<p>means kilowatt, a unit of electric power.</p>
<p><b>“kWh”</b></p>	<p>means kilowatt-hour, a unit of electrical energy.</p>
<p><b>“Main Meter”</b></p>	<p>means a main metering system for electricity used for reading and measurement of Electrical Energy and installed, tested, commissioned, operated and maintained in accordance with the Operation Manual and/or the Regional Metering Code.</p>
<p><b>“Metering Point”</b></p>	<p>means the location of the Metering System, being at or electrically close to the Delivery Point.</p>
<p><b>“Metering System”</b></p>	<p>means all forms of meters and metering devices, consisting of the Main Meter and Back-up Meter and the associated current transformers (CTs)</p>

*E*  
*AK*



TERM	DEFINITIONS
	and voltage transformers (VTs) and associated auxiliary equipment used for reading and measurement of Electrical Energy, which are to be located at the Metering Point. " <b>Meters</b> " shall be construed accordingly.
"Month"	means a gregorian calendar month and " <b>monthly</b> " shall be construed accordingly.
"MW"	means megawatt, a unit of electric power being one thousand (1,000) kW.
"MWh"	means megawatt-hour, a unit of electrical energy being one thousand (1,000) kWh.
"Nomination"	means the hourly/daily declaration, for the day ahead, of power supply, of purchase and sale or of import and export made to the Transmission System Operator by the balance responsible party
"Operating Period"	means the period commencing on the Commercial Operation Date until the expiration of the Term by effluxion of time or its earlier termination in accordance with the terms of the Agreement.
"Operation Manual"	means the operation manual of the West African Power Pool adopted by ECOWAS Regional Electricity Regulatory Authority (ERERA) under Resolution N°007/ERERA/15 on the 29 <sup>th</sup> September 2015, as may be amended from time to time.
"Payment Guarantee"	means an unconditional, irrevocable, on demand payment guarantee, capable of being ceded, provided by the Buyer to the Seller in accordance with Article 15 ( <i>Payment Guarantee</i> ) and, in a form and from a financial institution acceptable to the Seller.
"Payment Guarantee Amount"	means the Payment Guarantee Amount specified in Schedule 4 ( <i>Special Conditions</i> ).
"Person"	means any individual, partnership, corporation, company, association, trust or other legal entity.
"Prolonged Force Majeure Event"	has the meaning ascribed in Article 18 of this Agreement ( <i>Force Majeure</i> ).
"Prolonged Force Majeure Period"	means the prolonged Force Majeure Event period specified in Schedule 4 of this Agreement ( <i>Special Conditions</i> ).
"Prudent Operating Practices"	means the practices, methods and acts engaged in or accepted by a significant portion of the international electric generating and utility industry for facilities using the same type of fuel, being of a similar size and being located in a similar geographic environment that, at a particular time, in the exercise of reasonable judgment and in light of the facts known or that reasonably should have been known at the time a decision was made, would be expected to accomplish the desired result in respect of the design, engineering, construction, operation and



TERM	DEFINITIONS
	maintenance of electric generating or transmission equipment of the type applicable to the Parties facilities or the relevant portion of the Transmission System, as applicable, in a manner consistent with Applicable Law, Authorisations, reliability, safety, economy, environmental protection and due consideration to the construction, operation and maintenance standards recommended by the suppliers and manufacturers of such equipment.
<b>“Reasonable Efforts”</b>	means for any action required to be made, attempted or taken by a Party under this Agreement, all necessary efforts that a prudent Person would undertake to meet its obligations under this Agreement in order to protect the interests of the Parties, including commercial interests, taking into account the conditions affecting such action, including the amount of notice to act, recognition of the need to act, the duration and type of the action, the competitive environment in which such action occurs, and the projected benefit, cost and risk to the Party required to take such action.
<b>“Regional Electricity Market”</b>	means all cross-border electricity trading and related services made through the regional interconnected transmission networks within the ECOWAS sub-region.
<b>“Regional Market Rules”</b>	means the regional market rules for West African Power Pool (WAPP) adopted by the ECOWAS Regional Electricity Regulatory Authority (ERERA) under Resolution N°005/ERERA/15, on the 18 <sup>th</sup> August 2015, as may be amended from time to time.
<b>“Regional Metering Code”</b>	means the metering code as mentioned in the Operation Manual.
<b>“Scheduled COD”</b>	means the date determined by the Seller as the date the generation facility is scheduled to achieve Commercial Operation Date and as specified in Schedule 4 ( <i>Special Conditions</i> ).
<b>“Seller's Account”</b>	means the Seller's bank account detailed in Schedule 4 ( <i>Special Conditions</i> ), which account cannot be changed without giving prior written notice of at least thirty (30) Business Days to the Buyer.
<b>“Seller's Conditions Precedent”</b>	has the meaning given to it in Article 3.1 ( <i>Seller's Conditions Precedent</i> )
<b>“Target Effective Date”</b>	means the date specified in Article 3.4 ( <i>Status of the Agreement</i> ), as may be extended in accordance with this Agreement.
<b>“Transmission Tariff Methodology”</b>	means the transmission tariff methodology for the West African Power Pool adopted by the ECOWAS Regional Electricity Regulatory Authority under Resolution N°006/ERERA/15, on the 18 <sup>th</sup> August 2015, as may be amended from time to time.
<b>“Tax”</b>	means any charge, fee, levy or other assessment imposed by any Governmental Authority, whether federal, state, local or otherwise; including all income, withholding, gross receipts, business,



TERM	DEFINITIONS
	environmental, value added, capital gain, duties, capital stock, registration, excise, ad valorem, real property, personal property, land, local development, license, sales, production, occupation, use, service, transfer, payroll, employment, social security, travel, franchise, severance, bonus, or other tax of any kind, as well as any charges and assessments (including any interest, penalties or additions to tax attributable to or imposed on or with respect to any such assessment, whether disputed or not) and all stamp or documentary taxes and fees.
“Term”	means the duration of this Agreement specified in Article 4 ( <i>Term of the Agreement</i> ).
“Transfer”	means any transfer of direct or indirect ownership interests of a Party, or any change in control of a Party as described in Article 23 ( <i>Transfer</i> ). For the avoidance of doubt lender bank step-in does not constitute a Transfer.
“Transmission Network Operator”	means the licensed or authorized entity that operates a Transmission System.
“Transmission System”	means the network of high voltage transmission lines, transformers, switchgear and other transmission equipment controlled by a System Operator or System and Market Operator, as applicable, and utilized for the conveyance of electrical energy from generating plants to distribution systems and/or international interconnectors.
“Wheeling or Transit of electricity”	means the transportation of electricity from a seller to a buyer via third party country/countries.
“Wheeling Agreement”	means an agreement between a System and Market Operator and the Buyer in terms of which the System and Market Operator guarantees wheeling services and access to transmission capacity.
“Year”	means a period of twelve (12) consecutive Months.

*[Handwritten initials]*



## 1.2 Interpretation

In this Agreement, including the Schedules except where expressly provided to the contrary:

- (a) Schedules hereto shall form part of this Agreement and in the event of any conflict between the main body of this Agreement and a Schedule, the main body of this Agreement shall prevail over the provisions of the Schedule;
- (b) reference to any consent not to be unreasonably withheld means that it includes the requirement that such consent shall not be unreasonably conditioned or delayed;
- (c) reference to “include” and “including” shall not be construed as being by way of limitation nor shall they take effect as limiting the generality of any preceding words;
- (d) reference to any publication, statute, rule, regulation, instrument or standard means the same as amended, supplemented or re-enacted from time to time;
- (e) reference to any agreement means the same as amended, supplemented or replaced from time to time;
- (f) any requirement that an action may or shall be taken within a specified number of days means that such action may or shall be taken within the number of days so specified starting at 00:00 hours on the day on which the requirement to take such action arose;
- (g) reference to any amount of money means that amount in [*Specify Currency*];
- (h) reference to Articles and Schedules means reference to Articles and Schedules to this Agreement unless otherwise specified;
- (i) headings are inserted for ease of reference only and shall not form part of this Agreement, affect its interpretation or construction or have any legal effect;
- (j) any remedy which provides for the payment of damages by a Party represents a genuine pre-estimate of the likely or possible loss or damage which might otherwise be suffered by the Party to whom such damages are payable in consequence of the act or omission of the Party liable to pay such damages and shall not in any way be construed as a penalty;
- (k) any good faith best estimate which is given by a Party when required in accordance with this Agreement is non-binding and given for information only and the Party giving such good faith best estimate shall have no liability to the other Party for any inaccuracy thereof;
- (l) reference to any notice or notification means a notice or notification made in writing;
- (m) all measurements and calculations shall be in metric system;
- (n) any activities not specifically governed by this Agreement are outside of the scope of this Agreement;
- (o) in the event of any ambiguity or discrepancy in this Agreement, the following shall apply:
  - i. between two Articles of this Agreement, the provisions of a specific Article relevant to the issue under consideration shall prevail over those in the other Article;
  - ii. between the written description of any drawing and the specifications and standards, the latter shall prevail;
  - iii. between the dimension scaled from the drawing and its specific written dimension, the latter shall prevail; and



- iv. between any value written in numerals and that in words, the latter shall prevail.

## **Article 2. Sale and Purchase of Delivered Energy**

- 2.1 The Seller shall sell and deliver the Electrical Energy at the Delivery Point in accordance with the Contracted Quantities and up to the Contracted Capacity.
- 2.2 The Buyer shall purchase the Delivered Energy for the Energy Price in accordance with the terms and conditions of this Agreement.

## **Article 3. Conditions Precedent**

### **3.1 Seller's Conditions Precedent**

The Seller shall use Reasonable Efforts to satisfy each of the conditions of the Seller's Conditions Precedent on or prior to the Target Effective Date, unless such condition has been extended or waived in writing by the Buyer:

- (a) the Seller has obtained all Authorisations, or if applicable, all waivers or exemptions necessary to fulfill its obligations under this Agreement;
- (b) the Seller and the national Transmission Network Operator have executed a transmission connection and use of Transmission System agreement, and a copy of such agreement has been delivered to the Buyer;
- (c) the regional System and Market Operator has allocated and approved the transmission capacity reserved for evacuating the Electrical Energy to the Buyer according to the provisions of the Regional Market Rules; and
- (d) the Seller has obtained the required insurances as set out in Article 16 (Insurance).

### **3.2 Buyer's Conditions Precedent**

The Buyer shall use Reasonable Efforts to satisfy each of the conditions of the Buyer's Conditions Precedent on or prior to the Target Effective Date, unless such condition has been extended or waived in writing by the Seller:

- (a) the Buyer has delivered to the Seller the Payment Guarantee for the Payment Guarantee Amount in accordance with the provisions of Article 15 (Payment Guarantee);
- (b) the Buyer has obtained all Authorisations, or if applicable, all waivers or exemptions necessary to fulfill its obligations under this Agreement;
- (c) the Buyer and the national Transmission Network Operator have executed a transmission connection and use of system agreement, and a copy of such agreement has been delivered to the Seller;
- (d) the Buyer and the regional System Market Operator have executed the Wheeling Agreement and a copy of such agreement has been delivered to the Seller; and
- (e) the Buyer has obtained the required insurances as set out in Article 16 (Insurance).

*E*  
*an R*



### 3.3 Satisfaction of Conditions Precedent

Each Party shall use Reasonable Efforts to satisfy or obtain the satisfaction of each Condition Precedent for which such Party is primarily responsible.

- (a) Each Party, upon the request of the other Party and at such other Party's expense, shall use Reasonable Efforts to assist the other Party in satisfying each Condition Precedent for which the Party is primarily responsible.
- (b) Each Party shall keep the other informed on a timely basis as to progress in relation to the satisfaction of the Conditions Precedent.
- (c) Upon satisfaction of a Condition Precedent the Party responsible for the satisfaction of the Condition Precedent shall notify the other Party of its satisfaction. Such notice shall include necessary supporting documentation to substantiate the satisfaction of the Condition Precedent. The other Party may, by notice within three (3) Business Days, dispute whether such Condition Precedent has been satisfied.
- (d) Where satisfaction of any Condition Precedent is waived or extended, such waiver or extension shall be confirmed in writing by the Party entitled to grant such waiver or extension, as applicable.

### 3.4 Status of Agreement

3.4.1 Except for the undertakings set out in Article 3 (Conditions Precedent), and the provisions of Article 1 (*Definitions and Interpretations*), Article 19 (*Confidentiality*), Article 22 (*Indemnities*), Article 23 (*Transfer*), Article 27 (*Governing Law and Dispute Resolution*), and Article 28 (*General Provisions*), neither Party shall be obligated or become legally bound by this Agreement until all Conditions Precedent have been satisfied or waived or extended in accordance with this Article 3 (*Conditions Precedent*).

3.4.2 Without prejudice to this Article 3 (*Conditions Precedent*), the Parties undertake to use all Reasonable Efforts to satisfy all Conditions Precedent on or before the Target Effective Date specified in Schedule 4 (*Special Conditions*), whereupon this Agreement shall become effective and endure for the benefit of the Parties for the Term set out in Article 4 (*Term of the Agreement*).

### 3.5 Failure to Satisfy Conditions Precedent

If any of the Conditions Precedent are not satisfied or waived before the Target Effective Date, then:

- (a) the Party responsible for satisfying such Condition Precedent may give notice to the other Party giving reasons for the delay or failure to satisfy the Condition Precedent and the revised date by which it is reasonably expected that the Condition Precedent shall be satisfied and the Parties may mutually agree in writing to extend the Target Effective Date; and
- (b) except where the Target Effective Date is extended pursuant to paragraph 3.5(a) above, this Agreement shall immediately lapse and be of no further force and effect. The Parties shall be discharged from any further obligations or liabilities under this Agreement, except for any rights, obligations or liabilities, which have accrued up to the date of termination of the Agreement.



#### **Article 4. Term of the Agreement**

- 4.1 Subject to Article 3 (*Conditions Precedent*) this Agreement shall come into force on the Effective Date and shall, subject to the provisions hereof, continue in full force and effect and endure for the benefit of the Parties for the period of time detailed in Schedule 3 (*Commercial Operation Date and Term*).
- 4.2 The Term of this Agreement may be extended by the Parties in writing prior to its expiration by effluxion of time, on mutually agreed terms and conditions.

#### **Article 5. Nominations**

- 5.1 Subject to the terms and conditions of this Agreement and according to the Regional Market Rules and the regional Market Procedures Manual, the Buyer shall issue day ahead Nominations to the System and Market Operator provided that all such Nominations shall be in agreement and will follow the procedures established by the Regional Market Rules and the regional Market Procedures Manual.
- 5.2 Subject to the terms and conditions of this Agreement and according to the Regional Market Rules and the regional Market Procedures Manual, the Seller shall issue day ahead Nominations to the regional System and Market Operator provided that all such Nominations shall be in agreement and will follow the procedures established by the Regional Market Rules and the regional Market Procedures Manual.

#### **Article 6. Commercial Operation Date**

- 6.1 The Seller shall use its Reasonable Efforts to achieve the Commercial Operation Date by the Scheduled COD.
- 6.2 If the Seller becomes aware that, for any reason, the Commercial Operation Date will not be achieved by the Scheduled COD, the Seller shall, without any unreasonable delay, notify the Buyer in writing of that fact and measures that it will take to mitigate such delay and of the impact of such measures on its ability to achieve Scheduled COD.
- 6.3 The Seller shall give the Buyer no less than thirty (30) Business Days' notice of the date the Seller will achieve Commercial Operation Date.

*[Guidance Note: if the key reason for concluding this Agreement is the purchase of energy at or by a particular date, then the Buyer may consider imposing penalties if the Seller does not meet the Scheduled COD due to Seller act, omission or default. These penalties can take the form of agreed liquidated damages]*

#### **Article 7. Delivery**

##### **7.1 Transfer of title**

Title to, and custody of Electrical Energy delivered under this Agreement shall pass from the Seller to the Buyer at the Delivery Point.



*[Guidance Note: when considering and agreeing the Delivery Point in market phase 1, the optimal Delivery Point is at the border of the two countries. Where WAPP is responsible for the delivery of Electrical Energy between the selling point and the Delivery Point, this will be dealt with in the Transmission Agreement]*

## **7.2 Transfer of Risk**

The risk of loss of Electrical Energy delivered in accordance with this Agreement shall pass from the Seller to the Buyer at the Delivery Point.

## **7.3 Transmission and Other Services**

- 7.3.1 The Seller shall be responsible for obtaining the transmission services and any ancillary or control area services required by the regional System and Market Operator, the transmission provider, or any independent system operator or other transmission utility with respect to the delivery and transmission of Electrical Energy up to the Delivery Point.
- 7.3.2 The Buyer shall reimburse to the Seller the costs, if any, that the Seller is obliged to pay for the transmission services, provided that such costs do not exceed the transmission services costs as determined and approved in the Transmission Tariff Methodology.

## **Article 8. Ancillary Services**

The Seller shall not contract for the provision of Ancillary Services or any other services which shall adversely impact the Seller's ability to deliver Electrical Energy to the Buyer in terms of this Agreement.

## **Article 9. Metering and Data Collection**

- 9.1 Electrical Energy delivered to the Buyer pursuant to this Agreement shall be measured at the Main Meter and in accordance with the Operation Manual and/or Regional Metering Code.
- 9.2 The Main Meter shall be used for the invoicing purposes as provided in this Agreement.
- 9.3 The measurements made by the Main Meter will take precedence over any estimations or other metering registered on the Back-up Meter. In case of discrepancies between measurements of the Main Meter and the Back-up Meter, this will be treated as a Dispute and referred for determination by the Expert in accordance with Article 27 (*Governing Law and Dispute Resolution*).
- 9.4 The operation of the Metering System including data acquisition, data transmission and data processing shall be done in accordance with the Operation Manual and/or Regional Metering Code.
- 9.5 The Metering System shall be calibrated and tested by the regional System and Market Operator and/or a properly qualified technician approved by the regional System and Market Operator, in accordance with the Regional Market Rules and the Regional Metering Code, and the results shall be binding on the Parties.



**[Guidance Note: the Regional Metering Code will apply to this Agreement. In the event that the Regional Metering Code does not include any specific provision required by the parties, then such provisions are to be included in this article]**

## **Article 10. Operation and Maintenance**

### **10.1 General principles of operation**

The Parties, acting in accordance with Prudent Operating Practices, shall operate, maintain and repair the Parties' facilities and components that they are responsible for during the Operating Period.

### **10.2 Scheduled Maintenance**

The programme of scheduled maintenance for each Year of the Term shall be agreed between the Parties and taken into account in the profiles of the agreed Contracted Quantities (*Schedule 1*).

### **10.3 Unscheduled Outages**

- 10.3.1 Subject to the terms of this Agreement, Parties may, acting in accordance with Prudent Operating Practices, carry out maintenance or repair of their facilities at times other than during a Planned Outage where such maintenance or repair cannot be deferred to the next Planned Outage or upon the occurrence of an unexpected outage.
- 10.3.2 In such a case of unexpected outage, or where maintenance or repair cannot be deferred to the next Planned Outage, the Party carrying out such outage must immediately inform the other Party, the System and Market Operator and its Transmission System Operator of the characteristics of the outage and the time it estimates that will take to return to normal service.
- 10.3.3 The Seller shall be responsible for all reasonable costs incurred by and/or claimed on the Buyer in connection with or arising from any unexpected outage due to maintenance or repairs.

## **Article 11. Reports, Records and Monitoring**

- 11.1 The Parties shall maintain an operations log book, which shall include detailed information on its facility's operation and events. The operations record shall be available for inspection by the other Party upon reasonable advance written request, and the data shall be made available on a real-time basis by remote access to the other Party, if the other Party acquires the necessary equipment and software license to process the data by remote access.
- 11.2 All records and data required to be kept in accordance with this Article 11 (*Reports, Records and Monitoring*) shall be maintained for a minimum of [*five (5) years*] after the creation of such records or data, or as may be required by the WAPP operation manual and/or the regional market rules and procedures.
- 11.3 Notwithstanding the provisions of this Article 11 (*Reports, Records and Monitoring*), after the expiration of the [*five (5) years*] period neither Party shall be entitled to dispose of or destroy any such records or data unless the Party desiring to dispose of or destroy such records or data gives the other Party [*ten (10)*] Business Days prior written notice, generally describing the records or data to be destroyed or disposed of, and the Party receiving such notice does not object thereto in writing within such prescribed period.



Where a written objection is received within the prescribed period, the Party proposing to dispose of or destroy the records or data shall within [10 (ten)] Business Days make all such records and data available to the objecting Party at its offices to inspect and/or copy for a period of [five (5)] Business Days. After the expiration of such [5 (five)] Business Day period, the Party desiring to dispose of or destroy such records or data shall be permitted to do so.

- 11.4 Parties shall provide each other with a monthly report covering the information in Article 10 (*Operation and Maintenance*) no later than seven (7) days after the end of each Month in the format and content the Parties may have agreed.

*[Guidance Note: the timeline for the Parties to take actions or to maintain records indicated in Article 11 may be negotiated by the Parties in accordance with the regional market rules and procedures]*

## **Article 12. Price and Quantities**

### **12.1 Energy Price**

In accordance with the terms and conditions set out in the Agreement, during the Operating Period the Buyer shall pay the Seller, Monthly in arrears, the Energy Price specified in Schedule 1 (*Price and Quantities*).

### **12.2 Quantity**

The Seller will deliver to the Buyer the Contracted Quantities as specified in Schedule 1 (*Price and Quantities*) subject to Article 5 (*Nominations*).

### **12.3 Computation and Indexation**

*[Guidance Note: the parties are to agree the indexation formula applicable to the Energy Price and establish periods for adjustment. Indexation normally applies on an annual basis.]*

## **Article 13. Tax**

- 13.1 Each Party shall be liable for its own Tax payments arising out of its respective obligations under this Agreement.
- 13.2 The Parties shall upon written request, provide each other necessary proof to establish due satisfaction and payment of any Tax obligation.
- 13.3 Each Party agrees to indemnify in full and hold the other Party harmless against any claim, loss or damage that may arise, as a result of failure of the Indemnifying Party to discharge its Tax obligations.



## **Article 14. Billing and Payment**

### **14.1 Operating Period Invoices**

- 14.1.1 Not later than two (2) Business Days after the end of each Billing Period, the Seller shall submit an invoice to the Buyer based on the Contracted Quantities and Energy Price established in this Agreement for that Billing Period, and if applicable, adjusted to rectify any errors or discrepancies from previous Billing Periods in accordance with the terms of this Agreement.
- 14.1.2 All payments shall be due and payable by the Buyer within thirty (30) Business Days after the Buyer receives an invoice from the Seller, in immediately available funds to the Seller's Account.
- 14.1.3 The Buyer shall deposit the charge stated in the invoice in the Seller's Account, whether or not the Buyer disputes the invoiced amount.
- 14.1.4 The Buyer shall pay interest at the Agreed Interest Rate on any unpaid settlement amount due and payable under this Agreement from the date payment was due, up to and including the date on which final payment is made.

### **14.2 Settlement**

The regional System and Market Operator will make the settlement corresponding to the eventual differences between the Contracted Quantities and Delivered Energy values in accordance with the requirements of the Regional Market Rules. The regional System and Market Operator shall administer the billing and payment process of the above mentioned differences in accordance with the provisions of the Regional Market Rules.

### **14.3 Billing Disputes**

If any invoice or any portion thereof is disputed by the Buyer, payment of any part thereof shall not be withheld but shall be paid to the Seller when due. From then on, the disputed invoice will be dealt within the Dispute Resolution Procedure. Where the Buyer's contention regarding a disputed invoice is resolved in its favour, such amount shall bear interest at the Agreed Interest Rate and the amount plus the interest shall be set-off against the Buyer's future payment obligations under this Agreement.

### **14.4 Set-off**

All payments under this Agreement shall be made free and clear from, and without set-off, save to the extent that the Buyer is required to withhold any Tax from the Seller under any Applicable Law and as provided in Article 14 (*Billing and Payment*).

## **Article 15. Payment Guarantee**

- 15.1 The Buyer shall provide the Seller with a Payment Guarantee as continuing security for the due payment of the Buyer's obligations in terms of this Agreement for an amount equal to the Payment Guarantee Amount.
- 15.2 The Payment Guarantee shall be valid from the Effective Date and remain in full force and effect for so long as there are payments due and payable by the Buyer to the Seller (including disputed payments).
- 15.3 In the event that the Seller exercises its rights and calls on the Payment Guarantee in accordance with its terms as a consequence of a non-payment by the Buyer, then the



Buyer shall immediately reinstate the Payment Guarantee to its full Payment Guarantee Amount.

- 15.4 The Parties acknowledge and agree that a failure by the Buyer to maintain a Payment Guarantee or reinstate the Payment Guarantee in accordance with the provisions of this Article 15 (*Payment Guarantee*) shall amount to a material breach of this Agreement.
- 15.5 After the expiry of the Term and when all the obligations of the Buyer have been carried out, completed or otherwise discharged, the Seller will return the Payment Guarantee to the Buyer.

#### **Article 16. Insurance**

- 16.1 During the Term, each Party shall obtain and maintain insurance for its respective facilities consistent with the requirements of Schedule 2 (*Insurance Policies*) in accordance with the standards of Prudent Operating Practices and Applicable Law.
- 16.2 To the extent reasonably possible, each Party shall require its insurers and underwriters to waive their rights of subrogation in favour of the other Party, its Affiliates, and their directors, officers, employees, agents and insurers.
- 16.3 The Parties shall apply any and all insurance proceeds received in connection with the damage and/or loss to the facilities toward the repair, reconstruction or replacement of the facilities in the first instance except in the event of any termination of this Agreement pursuant to Article 20.2 (*Buyer's Default*) or Article 18.8 (*Termination for Prolonged Force Majeure Event*).

#### **Article 17. Representations, Warranties and Covenants**

##### **17.1 Seller's Representations and Warranties**

The Seller represents and warrants to the Buyer that as of the Execution Date:

- (a) the Seller is a company, duly incorporated and validly existing under the laws of the [Specify Country] and is duly qualified and in good standing required for performance under this Agreement;
- (b) the Seller is registered as a Market Participant according to the Regional Market Rules and therefore authorised to participate in the Regional Electricity Market;
- (c) the Seller has full power, authority and legal right to own or possess its assets and conduct its business as currently conducted or contemplated and has obtained all necessary covenants and Authorisations to sign and deliver this Agreement and perform its obligations under this Agreement;
- (d) there are no actions, suits or proceedings pending or, to the Seller's knowledge, threatened against or affecting the Seller or any of its Affiliates before any court or administrative body or arbitral tribunal that might materially adversely affect the ability of the Seller to meet and carry out its obligations under this Agreement;
- (e) to the best of its knowledge after reasonable inquiry, no filing or registration with, no notice to and no Authorisation is required for the Seller to execute, deliver or perform its obligations under this Agreement, except for (i) the Authorisations specified as a Condition Precedent in Article 3 (Conditions Precedent) hereof, all of which have or will be obtained and are or will be in full force and effect and (ii) such Authorisations as may be required in the future to perform its obligations under the Agreement, which will be applied for in due course and diligently;



- (f) the execution, delivery and performance by the Seller of this Agreement will not contravene any provision of, or constitute a default under, any other agreement or instrument to which it is a party or by which it or its property may be bound in relation to the performance of its obligations under this Agreement; and
- (g) it shall honour and perform its obligations under all agreements entered into relating to its performance of obligations under this Agreement and such agreements shall remain valid and subsist for the Term, provided that in the event that any such agreement is terminated during the Term, the Seller shall procure the negotiation and execution of an adequate substitute agreement.

### **17.2 Buyer's Representations and Warranties**

The Buyer represents and warrants to the Seller that as of the Effective Date:

- (a) the Buyer is a company duly incorporated and validly existing under the laws of the [*Specify Country*] and is duly qualified and in good standing required for performance under this Agreement;
- (b) the Buyer is registered as Market Participant according to Regional Market Rules and therefore authorised to participate in the Regional Electricity Market;
- (c) the Buyer has full power, authority and legal right to own its assets and conduct its business as currently conducted or contemplated and has obtained all necessary covenants and Authorisations to sign and deliver this Agreement and perform its obligations under this Agreement;
- (d) there are no actions, suits or proceedings pending or, to the Buyer's knowledge, threatened against or affecting the Buyer or any of its Affiliates before any court or administrative body or arbitral tribunal that might materially adversely affect the ability of the Buyer to meet and carry out its obligations under this Agreement;
- (e) to the best of its knowledge after reasonable inquiry, no filing or registration with, no notice to and no Authorisation is required for the Buyer to execute, deliver or perform this Agreement, except for (i) the Authorisations specified as a Condition Precedent in Article 3 (*Conditions Precedent*) hereof, all of which have been or will be obtained and are or will be in full force and effect and (ii) such Authorisations as may be required in the future to perform its obligations under the Agreement, which will be applied for in due course and diligently pursued;
- (f) the execution, delivery and performance by the Buyer of this Agreement will not contravene any provision of, or constitute a default under, any other agreement or instrument to which it is a party or by which it or its property may be bound in relation to the performance of its obligations under this Agreement; and
- (g) it shall honour and perform its obligations under all agreements entered into relating to its performance of obligations under this Agreement and such agreements shall remain valid and subsist for the Term, provided that in the event that any such agreement is terminated during the Term, the Buyer shall procure the negotiation and execution of an adequate substitute agreement.

### **17.3 Mutual Representation and Warranty**

Each Party represents and warrants to the other as of the Execution Date that neither it nor any of its Affiliates, shareholders, directors, officers, employees have made, offered or authorised with respect to the matters which are the subject of this Agreement, any payment, gift, promise or other advantage, whether directly, indirectly, through any other Person to or



for the use or benefit of any public official, (including any individual holding a legislative, administrative or judicial office) or any political party, where such payment, gift, promise or advantage would violate any Applicable Laws

#### **17.4 Duration of Representations and Warranties**

Each representation and warranty shall be true and accurate in all material respects for the Term.

### **Article 18. Force Majeure**

#### **18.1 Nature of Relief**

Subject to this Article 18 (*Force Majeure*), a Claiming Party shall be relieved from the duty to perform its obligations under this Agreement and excused from any liability for failure to perform such obligations, in whole or in part, under this Agreement to the extent such non-performance is caused by the occurrence of a Force Majeure Event.

#### **18.2 Exclusions from Relief from Force Majeure**

Notwithstanding any other provision in this Article 18 (*Force Majeure*), a Party shall not be relieved of its obligations to make payments that have become due and payable under this Agreement.

#### **18.3 Notification of Force Majeure Event**

A Claiming Party shall notify the other Party in writing, as soon as reasonably possible but no later than seven (7) days of it becoming aware of the relevant Force Majeure Event. This notice shall include reasonable details regarding the nature and effects of the Force Majeure Event. The Claiming Party shall keep the other Party informed fortnightly in writing regarding the steps that it is taking to overcome the effects of the Force Majeure Event and its current estimate as to when it will be able to resume performance of its obligations. The Claiming Party shall be relieved from its duty to perform and from liability under this Article 18 (*Force Majeure*) from the commencement of the Force Majeure Event.

#### **18.4 Conditions of claim**

A Claiming Party shall not be entitled to relief pursuant to this Article 18 (*Force Majeure*), or having become entitled shall cease to be so entitled, and a Force Majeure Event shall cease to be treated as a Force Majeure Event, to the extent that the Claiming Party fails to comply with the requirements of this Article 18 (*Force Majeure*), unless such failure would itself qualify as a Force Majeure Event.

#### **18.5 Mitigation**

The Claiming Party shall, as soon as practicable after the commencement of the Force Majeure Event, diligently proceed to do all things reasonably practicable at its own reasonable cost and acting in accordance with Prudent Operating Practices to expeditiously remedy and mitigate the Force Majeure Event causing the failure and to minimise the interruption of performance of its affected obligations. To the extent that a Claiming Party's facilities have been damaged or destroyed, then such Claiming Party shall repair and/or replace such facilities from the proceeds of the insurance policies required in terms of Article 16 (*Insurance*).



## **18.6 Access**

At the request of the other Party, the Claiming Party shall provide, or use Reasonable Efforts to procure, access to the areas and facilities affected by the Force Majeure Event, and to its records relating to that Force Majeure Event, for a reasonable number of representatives of the other Party, at that other Party's sole risk and expense, in order that such representatives may verify the impact of the Force Majeure Event on the Claiming Party's performance and the likely duration of its effects.

## **18.7 Allocations**

Notwithstanding the provisions of Article 4 (*Term of the Agreement*) above, if due to a Force Majeure Event, the Seller is unable to make available all or part of the Contracted Capacity, the Parties shall meet and in good faith negotiate an amicable allocation of Contracted Capacity during the subsistence of the Force Majeure Event.

## **18.8 Termination for Prolonged Force Majeure Event**

If a Force Majeure Event, which prevents or substantially impairs the satisfaction of any material condition required to be satisfied under this Agreement or a Claiming Party's performance of any material obligation required to be performed under this Agreement, continues for the Prolonged Force Majeure Period, then either Party shall have the right, but not the obligation, to terminate this Agreement pursuant to Article 26 (*Termination*); provided that such material condition has not been completely satisfied and/or the performance of such material obligation has not been completely restored (insofar as may reasonably be determined by the Party giving notice of termination) as of the time such right of termination is exercised.

## **18.9 Extension of Agreement for Force Majeure**

Subject to the right of termination under Article 18.8 (*Termination for Prolonged Force Majeure Event*), if a Force Majeure Event occurs, the duration of the relevant period and the Term shall be deemed to be automatically extended by a period of time equal to the impact on the Claiming Party's ability to perform its obligations under the Agreement; provided that (i) such automatic extension shall not extend the relevant period or in the Term in violation of any Applicable Laws, or (ii) one of the Parties informs the other Party in writing that it wants to maintain the original Term and not extend it. This communication has to be made not later than 5 (five) calendar days after the Force Majeure Event has ceased.

## **Article 19. Confidentiality**

### **19.1 Principle**

Subject to the provisions of this Article 19 (*Confidentiality*), the Parties shall keep all Confidential Information strictly confidential and shall not disclose Confidential Information during the Term and for the Confidential Information Period after termination to any Person not a Party to this Agreement, except pursuant to Article 19.2 (*Exceptions*).

### **19.2 Exceptions**

19.2.1 A Party shall not disclose Confidential Information unless he gets the prior written consent of the other Party.

19.2.2 Nonetheless, a Party may disclose Confidential Information without the other Party's prior consent to the extent such information:



- (a) is already known to the Party receiving the information as of the date of disclosure under this Agreement;
- (b) is already in possession of the public or becomes available to the public other than through the act or omission of such disclosing Party or of any other Person to whom Confidential Information is disclosed pursuant to this Agreement;
- (c) is required to be disclosed by such Party and or an Affiliate of the disclosing Party under Applicable Law, or by an order, decree, regulation or rule of a Governmental Authority, or if required by any court, arbitration or administrative tribunal in the course of proceedings before it to which the disclosing Party is a party; provided that such disclosing Party shall use Reasonable Efforts to give prompt notice to the other Party before such disclosure;
- (d) is acquired independently from a third party that represents that it has the right to disseminate such information at the time it is acquired by such disclosing Party; or
- (e) is developed by such disclosing Party independently of the Confidential Information received from the other Party.

### **19.3 Disclosure of Confidential Information to Affiliate**

A Party may disclose Confidential Information without the other Party's prior consent to an Affiliate; provided that such Party hereby warrants and guarantees that it shall take all necessary steps to ensure that its Affiliate shall adhere to the terms of this Article 19 (*Confidentiality*).

### **19.4 Confidential Information to other Persons**

A Party may disclose Confidential Information without the other Party's prior written consent to any of the following Persons for the purposes of enabling the disclosing Party to comply with its obligations under this Agreement:

- (a) employees, officers and directors of such Party;
- (b) any consultant, adviser, agent or legal counsel retained by such Party;
- (c) any bona fide prospective transferee of a Party's rights and obligations under this Agreement (including a prospective transferee with whom a Party and or its Affiliates are conducting bona fide negotiations directed toward a merger, consolidation or the sale of a majority of its or an Affiliate's shares), and any consultant retained by such prospective transferee, in order to enable such prospective transferee to assess such Party's rights and obligations; and
- (d) any bank or other financial institution or entity funding or proposing to finance such Party and or/an Affiliate, including any consultant retained by such bank or other financial institution or entity for that purpose.

### **19.5 Use of the Confidential Information by other Persons**

Prior to making any disclosure of the Confidential Information to Persons under Article 19.4 (*Confidential Information to other Persons*) the Party desiring to make such disclosure shall obtain an undertaking of strict confidentiality and non-disclosure and to use the Confidential Information solely for the stated purpose, enforceable by either Party, but otherwise substantially in the same form and content as the obligations under this Agreement, from each such Person. With respect to outside legal counsel, a Party shall only be required to ascertain that such legal counsel is bound by an obligation of confidentiality.

A handwritten signature in blue ink is located in the bottom right corner of the page.



## **Article 20. Default**

### **20.1 Seller's Default**

For the purposes of this Agreement, default by the Seller shall be any of the following events or circumstances, other than where solely due to a Force Majeure Event:

- (a) any breach by the Seller of any of its material obligations under this Agreement, which remains unremedied by the Seller after receipt of written notice from the Buyer and after the Breach of Material Provision Period;
- (b) the occurrence of an Act of Insolvency affecting the Seller;
- (c) the Seller ceases to be a Market Participant for any reason whatsoever;
- (d) revocation, cancellation or withdrawal of any Authorisation due to an act or omission of the Seller; and
- (e) any statement, representation or warranty made by the Seller herein in terms of Article 17 (Representations, Warranties and Covenants) or in any certificate or other document delivered or made under or pursuant to this Agreement proving to have been incorrect, in any material respect which has significant effect, when made or when deemed to have been made.

### **20.2 Buyer's Default**

For the purposes of this Agreement, default by the Buyer shall be any of the following events or circumstances, other than where solely due to a Force Majeure Event:

- (a) any failure to pay any sum of money due and owing under this Agreement for a period of thirty (30) Business Days from the date when such sum was first due and payable;
- (b) the occurrence of an Act of Insolvency affecting the Buyer;
- (c) the failure to maintain and/or reinstate the Payment Guarantee;
- (d) the Buyer ceases to be a Market Participant for any reason whatsoever;
- (e) revocation, cancellation or withdrawal of any Authorisation due to an act or omission of the Buyer; and
- (f) any other breach by the Buyer of any of its material obligations under this Agreement, which remain unremedied by the Seller after receipt of written notice from the Seller and after the Breach of Material Provision Period.

### **20.3 Termination for Default**

Subject to Article 20.4 (*Remediation of Default*), upon the occurrence of an event of default in Article 20.1 (*Seller's Default*) or Article 20.2 (*Buyer's Default*), the non-defaulting Party may serve a notice on the defaulting Party terminating this Agreement.

### **20.4 Remediation of Default**

In the event that any default set out in Article 20.1 (*Seller's Default*) or Article 20.2 (*Buyer's Default*), is not capable of remedy within a period of ten (10) Business Days from a notice received from the non-defaulting Party, then the defaulting Party shall furnish the non-defaulting Party with a detailed programme ("Remedial Programme") within such ten (10) Business Day period. Any Remedial Programme shall be agreed between the Parties and in the event of a Dispute in relation to the Remedial Programme, such dispute shall be referred to an Expert for determination.



## 20.5 Rights or obligations on termination

The expiry or termination of this Agreement shall not affect any rights or obligations which may have accrued prior to such expiry or termination and shall not affect obligations of each of the Parties under this Agreement or, any other Authorisations, or agreement or document between the Parties, which are expressed to continue after such expiry or termination.

## Article 21. Liabilities

### 21.1 Limitation of Liability

Except as expressly provided in this Agreement, a Party shall not be liable to the other Party for any loss or damage which does not immediately or directly arise from the relevant act or omission relating to this Agreement, including indirect losses, consequential or special losses, losses or deferments of revenue, profit or opportunity.

### 21.2 Limitation of Remedy

Except as expressly provided for elsewhere in this Agreement, a Party's remedy against the other Party for non-performance or breach of this Agreement or for any other claim of whatsoever nature arising out of or in relation to this Agreement shall be in contract, and no Party shall be liable to the other Party (or its Affiliates, their respective directors, officers, employees and agents) in respect of any damages, losses or claims for any alleged breach of statutory duty, tortuous act or omission.

### 21.3 Mitigation of Damages

Each Party shall use Reasonable Efforts to mitigate or avoid any loss or damage caused by the failure of the other Party to meet its obligations under this Agreement, whether or not such failure is the result of a Force Majeure Event.

### 21.4 Willful Misconduct and Gross Negligence

To the extent that a Party's breach of its obligations under this Agreement results solely from such Party's willful misconduct and or gross negligence, Article 21.2 (*Limitation of Remedy*) shall not apply to limit the liability of such Party or the remedies available to the other Party.

## Article 22. Indemnities

### 22.1 General Indemnification

Each of the Seller and the Buyer respectively, as an "**Indemnifying Party**", shall indemnify, defend, and hold harmless the other Party, as an "**Indemnified Party**", from and against all losses or damages relating to third party claims arising from:

- (a) the breach of any representation, warranty, covenant or obligation of the Indemnifying Party under this Agreement; and
- (b) any other act, omission or event for which the Indemnifying Party is liable pursuant to this Agreement.

### 22.2 Indemnification Process

The Indemnified Party shall promptly notify the Indemnifying Party of the assertion or commencement of any claim, demand, investigation, action, suit or other legal proceeding for which indemnity or defence is or may be sought under this Agreement; provided however,



that this notice requirement shall not apply to any claim, demand, investigation, action, suit or other legal proceeding in which the Parties are adversaries. The failure by the Indemnified Party to so notify the Indemnifying Party shall not relieve the Indemnifying Party of its obligations under this Article 22 (*Indemnities*), except to the extent, if any, that it has been prejudiced by the lack of timely and adequate notice.

### **22.3 Defence or settlement of any third party claim**

The Indemnifying Party shall at the Indemnified Party's request assume the defence or settlement of any third party claim with legal counsel reasonably satisfactory to the Indemnified Party; provided however, that the Indemnifying Party shall not settle or compromise any third party claim without the Indemnified Party's prior written consent to such settlement or compromise.

### **22.4 Limitations**

Notwithstanding the foregoing:

- (a) the Indemnified Party shall have the right, at its option and expense, to participate fully in the defence or settlement of any third party claim; and
- (b) if the Indemnifying Party does not diligently defend or settle any third party claim within a reasonable period of time after it is notified of the assertion or commencement thereof, then:
  - i. the Indemnified Party shall have the right, but not the obligation, to undertake the defence or settlement of such third party claim for the account and at the risk of the Indemnifying Party; and
  - ii. the Indemnifying Party shall be bound by any defence or settlement that the Indemnified Party may make as to such third party claim.
- (c) the Indemnified Party shall be entitled to join the Indemnifying Party in any third party claim to enforce any right of indemnity under this Agreement; and
- (d) the Indemnified Party shall cooperate with the Indemnifying Party in the defence or settlement of any Third Party Claim and, at the expense of the Indemnifying Party, and subject to obligations of confidentiality to other Persons, the Indemnified Party shall furnish any and all materials in its possession and try to make any and all witnesses under its control available to the Indemnifying Party for any lawful purpose relevant to the defence or settlement of the third party claim.

## **Article 23. Transfer**

### **23.1 Obligation**

23.1.1 Any Transfer shall be effective only if, and a transferee shall not have any rights under this Agreement unless and until, the following requirements are satisfied:

- (a) The transferee expressly undertakes in an instrument reasonably satisfactory to the other Party to perform the obligations of the transferring Party under this Agreement, obtains any necessary Authorisations for the Transfer and furnishes any guarantees required under this Agreement or any Applicable Law; and except in the case of a Transfer to an Affiliate, the other Party has consented in writing to such Transfer, which consent shall be denied only if the transferee fails to establish to the reasonable satisfaction of the other Party its technical and financial capability to perform its obligations under this Agreement.



- (b) No consent shall be required for a Transfer to an Affiliate, if the transferring Party agrees in an instrument reasonably satisfactory to the other Party to remain liable for its Affiliate's performance of its obligations under this Agreement.
- (c) Notwithstanding any Transfer, both the transferring Party and the transferee shall be liable to the other Party for the transferring Party's obligations (financial or otherwise), which have vested, matured or accrued under the provisions of this Agreement before such Transfer.

23.1.2 If the transferring Party makes a Transfer without satisfying in all material respects the requirements of Article 23 (*Transfer*), then the other Party shall have the right to terminate this Agreement.

### **23.2 Successors and Permitted Transferees**

Subject to the provisions of Article 23 (*Transfer*), this Agreement shall be binding upon and endure for the benefit of the respective successors in title and permitted transferees of each Party.

### **23.3 Financing**

Nothing contained in this Article 23 (*Transfer*) shall prohibit a Party from mortgaging, pledging, or otherwise encumbering its rights and benefits under this Agreement to a third party in order to provide security relating to financing, provided that:

- (a) such Party shall remain liable for all of its obligations under this Agreement and relating to such security interest;
- (b) the security interest shall be expressly subordinated to the rights of the other Party under this Agreement; and
- (c) such Party shall ensure that any such security interest shall be expressed to be without prejudice to the provisions of this Agreement.

## **Article 24. Change in Trading Regime**

Upon the declaration by a relevant Authority that different rules in the Regional Electricity Market be applied and such rules impact the Parties in carrying out its obligations under this Agreement, the Parties shall as soon as practicable but not later than five (5) Business Days from the declaration, or the Parties becoming aware of the declaration, meet to review the impact of such rules on the obligations of the Parties under this Agreement and shall agree such changes to this Agreement as may be required to enable the Parties comply with and sufficiently adjust their operations to accommodate the change in rules in the Regional Electricity Market

## **Article 25. Change in Law**

In the event that a Change in Law results in a material increase or decrease in the Seller's costs there shall be an equitable adjustment of the pricing regime specified in this Agreement to adjust the pricing taking into account such material increase or decrease as the case may be, provided the Seller shall be in no less or no more favourable financial position than the Seller was prior to such Change in Law.



## Article 26. Termination

### 26.1 Termination

This Agreement shall be deemed to be terminated on the date of the occurrence of any of the following:

- (a) the effluxion of the Term or as extended; or
- (b) the date specified in a notice of termination under Article 20.3 (Termination for Default).

### 26.2 Suspension of obligations

Without prejudice to the Seller's rights under Article 4 (*Term of the Agreement*), the Seller may suspend its obligations to make the Contracted Quantities available under this Agreement with immediate effect by giving the Buyer a notice of termination pursuant to this Article 26 (*Termination*).

*[Guidance Note: The parties to consider whether it may be appropriate to impose penalties on the defaulting party for termination arising from default. In considering an appropriate penalty, parties are to note that consequential loss, indirect loss and loss of profit is excluded from claims]*

## Article 27. Governing Law and Dispute Resolution

### 27.1 Governing Law

This Agreement shall be governed by, construed and enforced in accordance with the laws of the [*specify country*] and the rules governing the Regional Electricity Market.

### 27.2 Dispute Resolution

Any Dispute arising from or in connection with this Agreement (including its validity) shall be treated in accordance with the Dispute Resolution Procedure as provided by article 40(4) of the Regional Market Rules.

### 27.3 Expert Determination

Where this Agreement provides that any Dispute or other matter shall be referred to an Expert or the Parties otherwise so agree the following provisions shall apply:

- (a) The Expert shall be a suitably qualified person with requisite experience jointly appointed by the Parties and willing to act.
- (b) The procedure for appointing an Expert is as follows:
  - i. The Party calling for the appointment of an Expert shall provide to the other Party a notice specifying:
    - a. the breach, act, omission or other circumstance that is the basis for the Dispute;
    - b. the provision within this Agreement or other basis for the Dispute;
    - c. the nature of the Dispute (technical, financial, or legal); and



- d. the quantum, or likely quantum, of any amount claimed in connection with the Dispute.
- ii. If, within [*ten (10) Business Days*] of the notice, the Parties fail to agree on a single Expert, then the Party who has called for the appointment of the Expert shall request:
  - a. in the case of technical engineering or financial matters, the chair for the time being of [*insert the name of the agreed institution/organisation*] to appoint the Expert, within a period of [*ten (10) Business Days*] of referral; or
  - b. in the case of legal matters, the chair for the time being of [*insert the name of the agreed institution/organisation*], to appoint the Expert, within a period of [*ten (10) Business Days*] of referral.
- (c) Other than in the case of invoices disputed by the Buyer in accordance with Article 14 (*Billing and Payment*), within a period of five (5) Business Days after the appointment of the Expert or such other period as the Parties may agree, each Party may make such written submissions as it wishes to the Expert and shall simultaneously provide a copy to the other Party, and at the end of such period each Party shall have an additional period of five (5) Business Days to make counter-submissions to the Expert (with a copy to the other Party) in reply to the other Party's written submissions made during the aforementioned period provided that neither Party shall during such period make any written counter-submission which purports to reply to, raise or refer to, any new matters not raised or referred to in any submission made during the aforementioned period.
- (d) At the end of the additional five (5) Business Days referred to in Article 27.3.(c) above, and no later than five (5) Business Days thereafter, either Party may, with the consent of the Expert and at a time and place decided by the Expert, make an oral presentation to the Expert in the presence of the other Party commenting on or explaining matters previously submitted to the Expert in writing;
- (e) The Expert shall render his determination in writing within [*fifteen (15) Business Days*] of the completion of the oral presentation made in accordance with Article 27.3(d) and give reasonable details of the reasons for his determination.
- (f) The decision of the Expert shall be final and binding on the Parties save in the event of fraud or manifest error or mistake.
- (g) The Expert shall act as an expert and not as an arbitrator.
- (h) The costs of the Expert shall be borne as determined by the Expert:
  - i. in the case of Dispute, by the failing Party or equally by the Parties, where there is no failing Party;
  - ii. equally by the Parties in other matter.

#### **27.4 Legal proceedings**

Neither Party shall have any right to commence or maintain any legal proceedings pertaining to a Dispute until the Dispute has been resolved in accordance with Article 27.2 (*Dispute Resolution*) or Article 27.3 (*Expert Determination*), and then only to enforce or execute the award under such procedure.

A handwritten signature in blue ink, appearing to be 'B. R. H.', is located in the bottom right corner of the page.



### **27.5 Condition of appointment of Experts and arbitrators**

The Parties shall each ensure that all Experts, conciliators and arbitrators shall agree to be bound by the provisions of Article 19 (*Confidentiality*) of this Agreement as a condition of appointment.

### **27.6 Continuation of performance**

The Parties shall continue to perform their respective obligations under this Agreement during any Expert or arbitration proceeding, provided that the right to terminate pursuant to Article 26 (*Termination*) on grounds, different to those referred to an Expert or arbitrators, shall not be restricted by this Article 27.6 (*Continuation of Performance*).

## **Article 28. General Provisions**

### **28.1 Conflict of Interest**

No director, employee or agent of a Party or its Affiliates may engage in any of the following activities without the other Party's prior written consent:

- (a) Give to or receive from any director, employee or agent of the other Party or its Affiliates in connection with this Agreement, either of the following:
  - i. any gift, entertainment or other benefit exceeding the value of 2000 kWh as per the Energy Price indicated in Schedule 1 (Price and Quantities); or
  - ii. any commission, fee or rebate; and
- (b) enter into any business arrangement with any director, employee or agent of the other Party or any Affiliate of the other Party (other than as a representative of the other Party or the Affiliate of the other Party).

### **28.2 Reporting Violations and Reimbursements**

28.2.1 A Party shall immediately notify the other Party of any violation of Article 28 (*General Provisions*) or of the occurrence of any event prior to the Execution Date which, if it had occurred after the Execution Date, would constitute a violation of Article 28 (*General Provisions*). In addition to any other remedies to which the other Party may be legally entitled, the Party in violation of Article 28 (*General Provisions*) shall reimburse or issue a credit to the other Party equal to the value of the benefit received by or given to the director, employee or agent of the other Party or any of its Affiliate as a consequence of that violation or event.

28.2.2 A Party may audit the relevant records of the other Party and of any director, employee or agent of the other Party or its Affiliates for the sole purpose of determining whether they have complied with Article 28 (*General Provisions*).

### **28.3 Exceptions**

The provisions of the preceding Article 28.2 (*Reporting Violations and Reimbursements*) shall not apply to:

- (a) Party's performance which is in accordance with Applicable Laws or policies of any Governmental Authority; or
- (b) a Party's acquisition of products or services from an Affiliate, or the sale thereof to an Affiliate, made in accordance with this Agreement.



#### **28.4 No Reliance**

Each Party affirms for itself and its Affiliates that in entering into this Agreement it has not relied on any representation or warranty or undertaking which is not contained in this Agreement. Without prejudice to any liability for fraudulent misrepresentation or fraudulent misstatement, either the Seller or the Buyer shall not be liable for and shall have no remedy for any misrepresentation or untrue statement unless and to the extent that a claim lies under this Agreement.

#### **28.5 No Partnership or agency**

Nothing in this Agreement, in any document referred to in it or in any arrangement contemplated by it shall be deemed to create a partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided in this Agreement. The signing, completion and implementation of this Agreement shall not be deemed to empower either Party to bind or impose on the other Party any obligations to any third parties or to pledge the credit of the other Party.

#### **28.6 Further Assurances**

The Parties shall undertake all further acts and execute and deliver all further instruments, deeds and documents as shall be reasonably required in order to perform and carry out the purpose, intent and provisions of this Agreement.

#### **28.7 Waiver of Sovereign Immunity**

Each Party recognizes and acknowledges that this Agreement constitutes a commercial transaction, and that its rights and obligations under this Agreement are of a commercial and not a governmental nature. To the fullest extent not prohibited by any Applicable Law, each Party hereby irrevocably waives on behalf of itself and its assets, any and all immunities from jurisdiction, from enforcement and for any other purpose whatsoever.

#### **28.8 Waiver**

No waiver of any term, provision or condition of this Agreement shall be effective unless it is in writing and signed by the waiving Party.

#### **28.9 Waiver Limits**

The waiver of any term, provision or condition of this Agreement or of any action pursuant to this Agreement on any occasion shall not constitute a waiver of:

- (a) any other term, provision, or condition of, or action pursuant to, this Agreement; or
- (b) such terms, provisions or conditions of, or actions pursuant to, this Agreement on any future occasion.

#### **28.10 No Third Party Beneficiaries**

The Parties intend that the terms and conditions of this Agreement shall be solely for the benefit of the Parties and shall not confer any rights upon any third parties.



### 28.11 Severability

If any provision of this Agreement is finally determined to be illegal, invalid, void or unenforceable under any Applicable Laws, then such provision shall be deemed to be deleted and the remaining provisions of this Agreement shall continue in full force and effect and if necessary, be so amended as shall be necessary to give effect to the spirit and intent of this Agreement to the extent possible.

### 28.12 Modification

This Agreement shall only be amended or modified by a written instrument duly executed by the Parties.

### 28.13 Notices

#### (a) Methods of delivery

Unless otherwise provided in this Agreement, all notices, requests, statements and other communications required or permitted between the Parties by this Agreement shall be in writing and either hand-delivered or sent by pre-paid registered post, email or facsimile to the address or number of the Party concerned set out in Article 28.13(b) (*Addresses*) or such other address or number as contemplated in Article 28.13(c) (*Change in Address*). No communication shall be effective until received by the addressee and a communication shall be deemed to have been received:

- i. if delivered by hand during ordinary business hours, to its physical address in Article 28.13(b) (*Addresses*), when so delivered;
- ii. if delivered by pre-paid registered post, to its postal address in Article 28.13(b) (*Addresses*), seven (7) Business Days after posting, subject to proof of posting;
- iii. if delivered by email, upon receipt by the sender of a return email from the recipient in which the sender's communication is acknowledged (it being the responsibility of the sender to obtain such acknowledgement); and
- iv. if delivered by facsimile, upon sending, subject to confirmation of uninterrupted transmission on a transmission report and provided that a hard copy is promptly dispatched to the recipient in the manner provided in clauses Article 28.13(b)(i) or Article 28.13(b)(ii) above.

#### (b) Addresses of the Parties

The Parties choose the postal and physical addresses and contact details set out below:

##### i. The Seller:

Postal Address: *[insert]*

Physical Address: *[insert]*

Country of Registered Office *[insert Country within the Regional Electricity Market]*

Email Address: *[insert]*

Fax No.: *[insert]*

Tel No.: *[insert]*

Attention: *[insert]*; and



ii. The Buyer:

Postal Address: *[insert]*

Physical Address: *[insert]*

Country of Registered Office [*insert Country within the Regional Electricity Market*]

Email Address: *[insert]*

Fax No.: *[insert]*

Tel No.: *[insert]*

Attention: *[insert]*;

(c) Change in address

Either Party may change its nominated physical or postal address to another physical or postal address, as the case may be, or its contact details by giving at least fifteen (15) days' prior written notice to the other Party.

**28.14 Counterparts**

This Agreement may be executed in any number of counterparts and each such counterpart shall be deemed an original Agreement for all purposes; provided that no Party shall be bound to this Agreement unless and until both Parties have executed a counterpart. For purposes of assembling all counterparts into one document, the Parties are authorized to detach the signature page from one or more counterparts and, attach each signed signature page to a counterpart.

**28.15 Entire Agreement**

This Agreement contains and expressly refers to the entire agreement between the Parties with respect to its subject matter and expressly excludes any warranty, condition or other undertaking implied at law or by custom and supersedes all previous agreements and understandings between the Parties with respect to its subject matter and each Party acknowledges and confirms that it does not enter into this Agreement in reliance on any representation, warranty or other undertaking by the other Party not fully reflected in the terms of this Agreement.



**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement, by their duly authorized representatives with full rights, power and authority to enter into and perform this Agreement, the day and year first above written.

The Common Seal of the within named

For the **“Seller”** [*Insert the Seller official name*]

Signature: [*Duly authorised Signature*]

Name: [*Full Name of the Signatory*]

Designation: [*Designation of the Signatory*]

has been affixed hereto In the presence of:

Signature: [*Duly authorised Signature*]

Name: [*Full Name of the Signatory*]

Designation: [*Designation of the Signatory*]

The Common Seal of the within named

For the **“Buyer”** [*Insert the Buyer official name*]

Signature: [*Duly authorised Signature*]

Name: [*Full Name of the Signatory*]

Designation: [*Designation of the Signatory*]

has been affixed hereto In the presence of:

Signature: [*Duly authorised Signature*]

Name: [*Full Name of the Signatory*]

Designation: [*Designation of the Signatory*]



## SCHEDULE 1: PRICE AND QUANTITIES

### Energy Price

The price is [*insert amount*] [*insert currency*]/ MWh

### Contracted Capacity

[*insert*] MW

### Contracted Quantities

The quantities under this Agreement are [*insert*]

*[Guidance Note: The quantities may be subject to modulation according to a load curve. In this case, the load curve or modulation has to be precisely described.]*



## SCHEDULE 2 : INSURANCE POLICIES

*[Guidance Note: This schedule is to provide the required details of all necessary insurances to be arranged so as to ensure the commercial value of the facilities is protected]*



### SCHEDULE 3 : COMMERCIAL OPERATION DATE AND TERM

The **Commercial Operation Date** shall be [*day*] [*month*] [*year*]

The **Term** of this Agreement is established as [*insert period*]

A handwritten signature in black ink, appearing to be 'E. A. R.' or similar, located in the bottom right corner of the page.



#### SCHEDULE 4 : SPECIAL CONDITIONS

1	Breach of Material Provision Period (Article 1)	<i>Parties to specify agreed period</i>
2	Agreed Interest Rate (Article 1)	<i>Parties to specify Agreed Interest Rate</i>
3	Buyer's Account (Article 1)	<i>Parties to specify Buyer's Account</i>
4	Commercial Operation Date (Article 1)	<i>Parties to specify Commercial Operation Date</i>
5	Confidential Information Period (Article 1)	<i>Parties to specify Confidential Information Period</i>
6	Delivery Point (Article 1)	<i>Parties to specify the details of the Delivery Point</i>
7	Payment Guarantee Amount (Article 1)	<i>Parties to specify Payment Guarantee Amount</i>
8.	Prolonged Force Majeure Period (Article 1)	<i>Parties to specify Prolonged Force Majeure Period</i>
9	Scheduled COD (Article 1)	<i>Parties to specify the Scheduled COD</i>
10	Seller's Account (Article 1)	<i>Parties to specify Seller's Account</i>
11	Target Effective Date (Article 3.4)	<i>Parties to specify the Target Effective Date</i>



## SCHEDULE 5: DATA SHEET

1.	Execution date	<i>Specify date</i>
2.	Seller's name	<i>Specify Name</i>
3.	Seller's identification as Market Participant	<i>Specify number</i>
4.	Seller's address	<i>Specify physical location</i>
5.	Buyer's name	<i>Specify Name</i>
6.	Buyer's identification as Market Participant	<i>Specify number</i>
7.	Buyer's address	<i>Specify physical location</i>
8.	Article 1. Breach of Material Provision Period	<i>Specify agreed period</i>
9.	Article 1. Agreed Interest Rate	<i>Specify agreed Rate</i>
10.	Article 1. Business Day	<i>Specify Seller host country</i>
11.	Article 1. Business Day	<i>Specify Buyer host country</i>
12.	Article 1. Buyer's Account	<i>Specify Buyer's Account</i>
13.	Article 1. Commercial Operation Date	<i>Specify Commercial Operation Date</i>
14.	Article 1. Confidential Information Period	<i>Specify Confidential Information Period</i>
15.	Article 1. Delivery Point	<i>Specify Delivery Point</i>
16.	Article 1. Payment Guarantee Amount	<i>Specify Payment Guarantee Amount</i>
17.	Article 1. Prolonged Force Majeure Period	<i>Specify Prolonged Force Majeure Period</i>



18.	Article 1. Scheduled COD	<i>Specify the Scheduled COD</i>
19.	Article 1. Seller's Account	<i>Specify Seller's Account</i>
20.	Article 1.2 (g) Currency	<i>Specify currency</i>
21.	Article 3.4:Target Effective Date	<i>Specify Target Effective Date</i>
22.	Article 12.3 Computation and Indexation	<i>Establish indexation formula for the Energy Price</i>
23.	Article 17. Representations, Warranties and Covenants	<i>Specify seller country</i>
24.	Article 17. Representations, Warranties and Covenants	<i>Specify buyer country</i>
25.	Article 17. Representations, Warranties and Covenants	<i>Specify Seller's legal form (private company, government's corporatized company, TSO, etc) and country</i>
26.	Article 17. Representations, Warranties and Covenants	<i>Specify Buyer's legal form (private company, government's corporatized company, TSO, etc) and country</i>
27.	Article 27. Governing Law and Dispute Resolution	<i>Specify country.</i>
28.	Article 27.3.(b) Governing Law and Dispute Resolution	<i>Specify the name of the institution/organisation to appoint the Expert</i>
29.	Article 28. Addresses	<i>Specify addresses, and details on the Seller and the Buyer</i>
30.	Schedule 1. Price and Quantities	<i>Establish agreed Energy Price [currency] [amount] /MWh in numerals and words with the required detail. If there is a load curve with different prices for different periods, detail so.</i>
31.	Schedule 1. Price and Quantities	<i>Specify Contracted Capacity</i>
32.	Schedule 1. Price and Quantities	<i>Establish agreed quantities in MWh in numerals and words with the required detail. If there is a load curve with different quantities for different periods, detail so.</i>



33.	Schedule 2. Insurance Policies	<i>Detail Insurance Policies</i>
34.	Schedule 3. Commercial Operation Date and Term	<i>Specify Commercial Operation Date</i>
35.	Schedule 3. Commercial Operation Date and Term	<i>Specify Term.</i>



**Model Short / Medium Term Bilateral Agreement**  
**[For Agreement lasting up to one Year]**

**[Version N° 1.00]**

**Between**

***[Insert Seller's name]***

**And**

***[Insert Buyer's name]***

*AP*



## Contents

<i>Article 1. Definitions and Interpretations</i> .....	6
1.1 Definitions.....	6
1.2 Interpretation .....	14
<i>Article 2. Sale and Purchase of Delivered Energy</i> .....	15
<i>Article 3. Conditions Precedent</i> .....	15
3.1 Seller's Conditions Precedent .....	15
3.2 Buyer's Conditions Precedent.....	15
3.3 Satisfaction of Conditions Precedent .....	16
3.4 Status of Agreement.....	16
3.5 Failure to Satisfy Conditions Precedent .....	16
<i>Article 4. Term of the Agreement</i> .....	17
<i>Article 5. Nominations</i> .....	17
<i>Article 6. Commercial Operation Date</i> .....	17
<i>Article 7. Delivery</i> .....	18
7.1 Transfer of title.....	18
7.2 Transfer of Risk.....	18
7.3 Transmission and Other Services.....	18
<i>Article 8. Ancillary Services</i> .....	18
<i>Article 9. Metering and Data Collection</i> .....	18
<i>Article 10. Operation and Maintenance</i> .....	19
10.1 General principles of operation.....	19
10.2 Unscheduled Outages.....	19
<i>Article 11. Reports, Records and Monitoring</i> .....	19
<i>Article 12. Price and Quantities</i> .....	20
12.1 Energy Price .....	20
12.2 Quantity .....	20
12.3 Computation and Indexation .....	20
<i>Article 13. Tax</i> .....	20
<i>Article 14. Billing and Payment</i> .....	21
14.1 Operating Period Invoices.....	21
14.2 Settlement.....	21
14.3 Billing Disputes.....	21
14.4 Set-off.....	21
<i>Article 15. Payment Guarantee</i> .....	21
<i>Article 16. Insurance</i> .....	22
<i>Article 17. Representations, Warranties and Covenants</i> .....	22



17.1 Seller's Representations and Warranties.....	22
17.2 Buyer's Representations and Warranties .....	23
17.3 Mutual Representation and Warranty .....	23
17.4 Duration of Representations and Warranties .....	24
<i>Article 18. Force Majeure.....</i>	<i>24</i>
18.1 Nature of Relief.....	24
18.2 Exclusions from Relief from Force Majeure.....	24
18.3 Notification of Force Majeure Event .....	24
18.4 Conditions of claim .....	24
18.5 Mitigation.....	24
18.6 Access.....	25
18.7 Allocations .....	25
18.8 Termination for Prolonged Force Majeure Event .....	25
18.9 Extension of Agreement for Force Majeure.....	25
<i>Article 19. Confidentiality.....</i>	<i>25</i>
19.1 Principle .....	25
19.2 Exceptions .....	25
19.3 Disclosure of Confidential Information to Affiliate.....	26
19.4 Confidential Information to other Persons.....	26
19.5 Use of the Confidential Information by other Persons.....	26
<i>Article 20. Default.....</i>	<i>27</i>
20.1 Seller's Default.....	27
20.2 Buyer's Default .....	27
20.3 Termination for Default .....	27
20.4 Remediation of Default .....	27
20.5 Rights or obligations on termination.....	28
<i>Article 21. Liabilities .....</i>	<i>28</i>
21.1 Limitation of Liability .....	28
21.2 Limitation of Remedy .....	28
21.3 Mitigation of Damages.....	28
21.4 Willful Misconduct and Gross Negligence.....	28
<i>Article 22. Indemnities.....</i>	<i>28</i>
22.1 General Indemnification.....	28
22.2 Indemnification Process .....	29
22.3 Defence or settlement of any third party claim .....	29
22.4 Limitations .....	29
<i>Article 23. Transfer .....</i>	<i>29</i>
23.1 Obligation.....	29

*E a H*



23.2 Successors and Permitted Transferees .....	30
23.3 Financing.....	30
<i>Article 24. Change in Trading Regime.....</i>	<i>30</i>
<i>Article 25. Change in Law.....</i>	<i>30</i>
<i>Article 26. Termination .....</i>	<i>31</i>
26.1 Termination .....	31
26.2 Suspension of obligations.....	31
<i>Article 27. Governing Law and Dispute Resolution.....</i>	<i>31</i>
27.1 Governing Law.....	31
27.2 Dispute Resolution .....	31
27.3 Expert Determination .....	31
27.4 Legal proceedings .....	32
27.5 Condition of appointment of Experts and arbitrators.....	33
27.6 Continuation of performance .....	33
<i>Article 28. General Provisions .....</i>	<i>33</i>
28.1 Conflict of Interest .....	33
28.2 Reporting Violations and Reimbursements.....	33
28.3 Exceptions .....	33
28.4 No Reliance .....	34
28.5 No Partnership or agency .....	34
28.6 Further Assurances.....	34
28.7 Waiver of Sovereign Immunity.....	34
28.8 Waiver .....	34
28.9 Waiver Limits.....	34
28.10 No Third Party Beneficiaries .....	35
28.11 Severability .....	35
28.12 Modification.....	35
28.13 Notices .....	35
28.14 Counterparts.....	36
28.15 Entire Agreement.....	36
<i>SCHEDULE 1: PRICE AND QUANTITIES.....</i>	<i>38</i>
<i>SCHEDULE 2 : INSURANCE POLICIES.....</i>	<i>39</i>
<i>SCHEDULE 3 : COMMERCIAL OPERATION DATE AND TERM.....</i>	<i>40</i>
<i>SCHEDULE 4 : SPECIAL CONDITIONS .....</i>	<i>41</i>
<i>SCHEDULE 5: DATA SHEET .....</i>	<i>42</i>

*E* *ch* *H*



This **AGREEMENT** is made as of [*insert Execution Date: day/month/year*]

## **BETWEEN**

[*Insert Seller's name*], a Market Participant, having the Market Participant identification [*Insert Market Participant identification*] and having its registered office at [*insert physical address*] and official registration number [*insert number*], represented by [it's] [*insert the designation of the duly authorized representative of the Seller*], [*insert the Name of the duly authorized representative of the Seller*], (hereinafter referred to as the “**Seller**”) on the one part;

## **AND**

[*Insert Buyer's name*], a Market Participant having the Market Participant identification [*insert identification for the Market Participant*] and having its registered office at [*insert physical address*] and official registration number [*insert number*], represented by [it's] [*insert the designation of the duly authorized representative of the Buyer*], [*insert the Name of the duly authorized representative of the Buyer*] (hereinafter referred to as “**Buyer**”) on the other part;

(The Seller and the Buyer are hereinafter together referred to as “**Parties**” or individually as “**Party**”).

## **WHEREAS**

1. The Buyer is engaged in the electricity business, including distribution, marketing, brokering, purchasing, selling and/or bulk trading of electricity and has been registered as West African Power Pool (WAPP) market participant and is desirous of buying electricity within the framework of the Regional Electricity Market (as defined under the Regional Market Rules).
2. The Seller is a company in the electricity supply industries that has followed the procedure and has been registered as West African Power Pool (WAPP) market participant and is desirous of selling electricity within the framework of the Regional Electricity Market (as defined under the Regional Market Rules).
3. The Seller wishes to sell to the Buyer, and the Buyer wishes to purchase from the Seller the Electrical Energy (as defined in this Agreement) within the framework of the Regional Electricity Market (as defined under the Regional Market Rules) and on the terms and conditions of this Agreement.
4. The Parties accordingly wish to enter into this Agreement on the terms and conditions set out below.



## Article 1. Definitions and Interpretations

### 1.1 Definitions

Unless the context indicates otherwise, words beginning with upper case used in this Agreement, including the Schedules shall have the corresponding meaning set out below. Any term used herein and not otherwise defined shall have the meaning given to that term in the Regional Market Rules or the Operation Manual.

TERM	DEFINITIONS
<b>“Act of Insolvency”</b>	means in respect of a Party and whether provisional or final and whether voluntary or compulsory, its insolvency, winding-up, dissolution, administration or liquidation, the making by it of any arrangement or composition with its creditors or the taking of possession by an encumbrance of, or the appointment of a receiver over, the whole or any substantial part of its property or assets or its ceasing or threatening to cease to carry on business, or the commencement of any analogous proceeding by whatsoever name known against it or any of its assets in whatsoever jurisdiction.
<b>“Affiliate”</b>	means for either Party hereto (a) an entity that is a subsidiary of that Party; (b) a person or entity of which that Party is a subsidiary or (c) an entity that is the subsidiary of another person or entity of which that Party is a subsidiary, which person or entity directly or indirectly controls, is controlled by or is under the common control of such Party. For the purposes of clarity, Affiliate includes any ultimate holding company, any holding company and any subsidiary (direct or indirect) of such Party.
<b>“Agreement”</b>	means this document together with the Schedules hereto and any extensions, renewals or amendments of this document agreed to in writing by the Parties.
<b>“Agreed Interest Rate”</b>	means such interest rate as agreed between the Parties and detailed in Schedule 4 ( <i>Special Conditions</i> ).
<b>“Ancillary Services”</b>	means such other services provided by the Seller other than the provision of Electrical Energy, including the provision of reactive power, voltage control, frequency regulation and black start capability.
<b>“Applicable Laws”</b>	means all laws, treaties, ordinances, decrees, statutes, rules and regulations of any Governmental Authority. Any reference to an Applicable Law shall include all statutory and administrative provisions consolidating, amending or replacing such Applicable Law and shall include all rules and regulations promulgated there under.
<b>“Authorisation”</b>	means any authorisation, approval, clearances, consent, exemption, license, order or permit of or from any Governmental Authority required for the due performance by either Party of any covenant or obligation under this Agreement.

*E. A. H.*



TERM	DEFINITIONS
“Back-up Meter ”	means a back-up metering system for electricity, used for reading and measurement of Electrical Energy and installed, tested, commissioned, operated and maintained in accordance with the Operation Manual and/or Regional Metering Code.
“Billing Period”	means a period commencing at 00.00 hours on the first day of a Month, and ending at 24.00 hours on the last day of that Month, save that the first Billing Period shall commence at 00.00 hours on the Effective Date and end at 24.00 hours on the last day of the Month on which the first Billing Period commenced and the last Billing Period shall commence at 00.00 hours on the first day of the Month in which the date of termination occurs and ends at 24.00 hours on the date of termination of this Agreement.
“Breach of Material Provision Period”	means the period stated in Schedule 4 ( <i>Special Conditions</i> ) within which a defaulting Party has to remedy a breach of a material obligation under this Agreement.
“Business Day”	means any day excluding Saturdays and Sundays or a public holiday as gazetted by the [Government/Republic] of [ <i>insert name of Seller host country</i> ] and [ <i>insert name of Buyer host country</i> ] from time to time.
“Buyer's Account”	means the Buyer's bank account detailed in Schedule 4 ( <i>Special Conditions</i> ), which account cannot be changed without giving prior written notice of at least thirty (30) Business Days to the Seller.
“Buyer's Conditions Precedent”	has the meaning given to it in Article 3.2 ( <i>Buyer's Conditions Precedent</i> )
“Change in Law”	means the occurrence after the Execution Date, of any of the following: (a) the enactment or issuance of any new Applicable Law; (b) the modification or repeal of any existing Applicable Law; (c) the commencement of any Applicable Law that was not in existence on the Execution Date; (d) the reissue of the Regional Market Rules (such that the new rules are fundamentally changed which results in trading arrangements materially different from those previously in use and originally contemplated by the Parties); and/or (e) the change in the terms or conditions of any Authorisation by an imposition of additional terms or conditions, which occurrence was (i) not reasonably foreseen by the Parties as at the Execution Date and which makes the continued performance of this Agreement on the terms herein set forth materially less favourable to either or both Parties; and (ii) shall not include any Applicable Law that was enacted or not yet in force as at the Execution Date, or any bill or draft law that was promulgated for comment at any time before the Execution Date if and to the extent that such bill or draft law is materially unchanged when enacted and brought into effect. For the

*E a AP*



TERM	DEFINITIONS
	avoidance of doubt, the Parties acknowledge that (i) any procedural change of rules or change in trading regime contemplated in the Regional Market Rules, and (ii) any change in Tax of a general, discriminatory and/or project specific nature, shall not be construed as a Change in Law event.
“Claiming Party”	means a Party that claims relief under Article 18 ( <i>Force Majeure</i> )
“Commercial Operation Date” (COD)	means the date specified in Schedule 4 ( <i>Special Conditions</i> ).
“Conditions Precedent”	means the Seller's conditions precedent and the Buyer's conditions precedent as set out in Article 3 ( <i>Conditions Precedent</i> ).
“Confidential Information”	means all information and data of whatsoever nature, which any Party may from time to time receive or obtain (orally or in written or electronic form) as a result of entering into, or performing its obligations pursuant to, this Agreement (including engineering data, maps, models and interpretations, commercial, contractual and financial information).
“Confidential Information Period”	has the meaning ascribed to it in Schedule 4 ( <i>Special Conditions</i> ).
“Contracted Transmission Capacity”	means the transmission capacity reserved for evacuating electricity to the Buyer in accordance with the Regional Market Rules as allocated and approved by the System and Market Operator and as specified in Schedule 1 ( <i>Price and Quantities</i> ).
“Contracted Quantities”	means the quantities of energy as specified in Schedule 1 ( <i>Price and Quantities</i> )
“Delivered Energy”	means the Electrical Energy delivered during a given period to the Delivery Point.
“Delivery Point”	means the physical point in the interconnector at which the Electrical Energy is delivered from the Seller to the Buyer as further detailed in Schedule 4 ( <i>Special Conditions</i> ).
“Dispute”	means any dispute, controversy, or claim of any kind or type arising out of, relating to, or connected with this Agreement, or the operations carried out under this Agreement, including any dispute concerning the existence, validity, interpretation, performance, breach, or termination of this Agreement.
“Dispute Resolution Procedure”	means the dispute resolution procedures contained in article 40 of the Regional Market Rules.
“Effective Date”	means the date on which all of the Conditions Precedent have been satisfied or waived in accordance with Article 3 ( <i>Conditions Precedent</i> ).



TERM	DEFINITIONS
“Electrical Energy”	means, the generation or consumption of electric power by a device over a period of time, expressed in kilowatthours (kWh) or megawatthours (MWh)
“Energy Price”	means, for each Billing Period, the payment to be made by the Buyer to the Seller for Delivered Energy in accordance with Article 12 ( <i>Price and Quantity</i> ).
“Execution Date”	means the date on which this Agreement is duly signed by the last Party signing.
“Expert”	means any competent person appointed for the determination of disputes expressly reserved for expert determination in this Agreement.
“Force Majeure Event”	<p>means any act, event or occurrence or combination thereof, for which a Party claims relief under Article 18 (<i>Force Majeure</i>) (“<b>Claiming Party</b>”) and:</p> <ul style="list-style-type: none"><li>(a) is beyond a Claiming Party's reasonable control;</li><li>(b) was not foreseeable or, if foreseeable, could not have been (including by reasonable anticipation) avoided or overcome by the Claiming Party having taken all reasonable precautions, due care and reasonable alternative measures in order to avoid the effect of such act, event or occurrence or combination thereof on the Claiming Party's ability to perform its obligations under this Agreement and to mitigate the consequences of such circumstances;</li><li>(c) could not have been (including by reasonable anticipation) or cannot reasonably be avoided or overcome by the Claiming Party, any of its direct or indirect contractors and/or Affiliates exercising Prudent Operating Practices and Reasonable Efforts, having taken all reasonable precautions, due care and reasonable alternative measures in order to avoid the effect of such event on the Claiming Party's ability to perform its obligations under this Agreement and to mitigate the consequences of such circumstances; and</li><li>(d) prevents, hinders or delays a Claiming Party in its performance of any (or any part) of its obligations under, or in connection with this Agreement.</li></ul> <p>A Force Majeure includes, but is not limited to, the following:</p> <ul style="list-style-type: none"><li>(a) acts of war (whether declared or undeclared), armed conflict, civil unrest or insurrection, blockade, embargo, riot, sabotage, acts of terrorism or the specific threats of such acts or events, or conditions attributable to such acts or events;</li><li>(b) strike, work slowdown, lockout or other industrial disturbance or labour dispute that are widespread, nationwide or regional;</li><li>(c) fire, earthquake, cyclone, hurricane, flood, drought, storms, navigational and maritime perils, or other acts of God; and</li></ul>



TERM	DEFINITIONS
	<p>(d) ionising radiation or contamination, radio activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive assembly or nuclear component.</p> <p>Where a Force Majeure Event is directly or indirectly as a result of negligence, willful misconduct or default of a Claiming Party, including breach by the Claiming Party of any of its obligations under this Agreement, it will not constitute a Force Majeure Event.</p> <p>For the avoidance of doubt, the following events or circumstances shall not constitute a Force Majeure Event:</p> <p>(a) late delivery to the Seller of machinery, equipment, materials, spare parts or consumables in relation to the generation facility, save where such late delivery is itself due to a Force Majeure Event;</p> <p>(b) a delay in the performance of any contractor, save where such delay is itself due to a Force Majeure Event;</p> <p>(c) any breakdown in equipment related to the generation facility, save where such breakdown is itself due to a Force Majeure Event;</p> <p>(d) unavailability of funds; and</p> <p>(e) normal wear and tear or flaws or defects in materials and equipment related to the generation facility.</p>
<p><b>“Governmental Authority”</b></p>	<p>means any regional, municipal, national, state or local government, or any regulatory or administrative agency, instrumentality, commission, body or other authority, and any court or tribunal, lawfully exercising jurisdiction over this Agreement, the performance of obligations of the Parties under this Agreement or either Party's facilities.</p>
<p><b>“Indemnified Party”</b></p>	<p>means the Party that receives the benefit of an indemnity pursuant to Article 22 (<i>Indemnities</i>), together with such Party's directors, officers, and employees and such Party's Affiliates, their directors, officers and employees.</p>
<p><b>“Indemnifying Party”</b></p>	<p>means the Party that gives an indemnity pursuant to Article 22 (<i>Indemnities</i>).</p>
<p><b>“kW”</b></p>	<p>means kilowatt, a unit of electric power.</p>
<p><b>“kWh”</b></p>	<p>means kilowatt-hour, a unit of electrical energy.</p>
<p><b>“Main Meter”</b></p>	<p>means a main metering system for electricity used for reading and measurement of Electrical Energy and installed, tested, commissioned, operated and maintained in accordance with the Operation Manual and/or the Regional Metering Code.</p>
<p><b>“Metering Point”</b></p>	<p>means the location of the Metering System, being at or electrically close to the Delivery Point.</p>
<p><b>“Metering System”</b></p>	<p>means all forms of meters and metering devices, consisting of the Main Meter and Back-up Meter and the associated current transformers (CTs)</p>



TERM	DEFINITIONS
	and voltage transformers (VTs) and associated auxiliary equipment used for reading and measurement of Electrical Energy, which are to be located at the Metering Point. " <b>Meters</b> " shall be construed accordingly.
"Month"	means a gregorian calendar month and " <b>monthly</b> " shall be construed accordingly.
"MW"	means megawatt, a unit of electric power being one thousand (1,000) kW.
"MWh"	means megawatt-hour, a unit of electrical energy being one thousand (1,000) kWh.
"Nomination"	means the hourly/daily declaration, for the day ahead, of power supply, of purchase and sale or of import and export made to the Transmission System Operator by the balance responsible party
"Operating Period"	means the period commencing on the Commercial Operation Date until the expiration of the Term by effluxion of time or its earlier termination in accordance with the terms of the Agreement.
"Operation Manual"	means the operation manual of the West African Power Pool adopted by ECOWAS Regional Electricity Regulatory Authority (ERERA) under Resolution N°007/ERERA/15 on the 29 <sup>th</sup> September 2015, as may be amended from time to time.
"Payment Guarantee"	means an unconditional, irrevocable, on demand payment guarantee, capable of being ceded, provided by the Buyer to the Seller in accordance with Article 15 ( <i>Payment Guarantee</i> ) and, in a form and from a financial institution acceptable to the Seller.
"Payment Guarantee Amount"	means the Payment Guarantee Amount specified in Schedule 4 ( <i>Special Conditions</i> ).
"Person"	means any individual, partnership, corporation, company, association, trust or other legal entity.
"Prolonged Force Majeure Event"	has the meaning ascribed in Article 18 of this Agreement ( <i>Force Majeure</i> ).
"Prolonged Force Majeure Period"	means the prolonged Force Majeure Event period specified in Schedule 4 of this Agreement ( <i>Special Conditions</i> ).
"Prudent Operating Practices"	means the practices, methods and acts engaged in or accepted by a significant portion of the international electric generating and utility industry for facilities using the same type of fuel, being of a similar size and being located in a similar geographic environment that, at a particular time, in the exercise of reasonable judgment and in light of the facts known or that reasonably should have been known at the time a decision was made, would be expected to accomplish the desired result in respect of the design, engineering, construction, operation and

*E. A. H.*



TERM	DEFINITIONS
	maintenance of electric generating or transmission equipment of the type applicable to the Parties facilities or the relevant portion of the Transmission System, as applicable, in a manner consistent with Applicable Law, Authorisations, reliability, safety, economy, environmental protection and due consideration to the construction, operation and maintenance standards recommended by the suppliers and manufacturers of such equipment.
“Reasonable Efforts”	means for any action required to be made, attempted or taken by a Party under this Agreement, all necessary efforts that a prudent Person would undertake to meet its obligations under this Agreement in order to protect the interests of the Parties, including commercial interests, taking into account the conditions affecting such action, including the amount of notice to act, recognition of the need to act, the duration and type of the action, the competitive environment in which such action occurs, and the projected benefit, cost and risk to the Party required to take such action.
“Regional Electricity Market”	means all cross-border electricity trading and related services made through the regional interconnected transmission networks within the ECOWAS sub-region.
“Regional Market Rules”	means the regional market rules for West African Power Pool (WAPP) adopted by the ECOWAS Regional Electricity Regulatory Authority (ERERA) under Resolution N°005/ERERA/15, on the 18 <sup>th</sup> August 2015, as may be amended from time to time.
“Regional Metering Code”	means the metering code as mentioned in the Operation Manual.
“Scheduled COD”	means the date determined by the Seller as the date the generation facility is scheduled to achieve Commercial Operation Date and as specified in Schedule 4 ( <i>Special Conditions</i> ).
“Seller's Account”	means the Seller's bank account detailed in Schedule 4 ( <i>Special Conditions</i> ), which account cannot be changed without giving prior written notice of at least thirty (30) Business Days to the Buyer.
“Seller's Conditions Precedent”	has the meaning given to it in Article 3.1 ( <i>Seller's Conditions Precedent</i> )
“Target Effective Date”	means the date specified in Article 3.4 ( <i>Status of the Agreement</i> ), as may be extended in accordance with this Agreement.
“Transmission Tariff Methodology”	means the transmission tariff methodology for the West African Power Pool adopted by the ECOWAS Regional Electricity Regulatory Authority (ERERA) under Resolution N°006/ERERA/15, on the 18 <sup>th</sup> August 2015, as may be amended from time to time.
“Tax”	means any charge, fee, levy or other assessment imposed by any Governmental Authority, whether federal, state, local or otherwise; including all income, withholding, gross receipts, business,



TERM	DEFINITIONS
	environmental, value added, capital gain, duties, capital stock, registration, excise, ad valorem, real property, personal property, land, local development, license, sales, production, occupation, use, service, transfer, payroll, employment, social security, travel, franchise, severance, bonus, or other tax of any kind, as well as any charges and assessments (including any interest, penalties or additions to tax attributable to or imposed on or with respect to any such assessment, whether disputed or not) and all stamp or documentary taxes and fees.
“Term”	means the duration of this Agreement specified in Article 4 ( <i>Term of the Agreement</i> ).
“Transfer”	means any transfer of direct or indirect ownership interests of a Party, or any change in control of a Party as described in Article 23 ( <i>Transfer</i> ). For the avoidance of doubt lender bank step-in does not constitute a Transfer.
“Transmission Network Operator”	means the licensed or authorized entity that operates a Transmission System.
“Transmission System”	means the network of high voltage transmission lines, transformers, switchgear and other transmission equipment controlled by a System Operator or System and Market Operator, as applicable, and utilized for the conveyance of electrical energy from generating plants to distribution systems and/or international interconnectors.
“Wheeling or Transit of electricity”	means the transportation of electricity from a seller to a buyer via third party country/countries.
“Wheeling Agreement”	means an agreement between a System and Market Operator and the Buyer in terms of which the System and Market Operator guarantees wheeling services and access to transmission capacity.
“Year”	means a period of twelve (12) consecutive Months.

*E. A. H.*



## 1.2 Interpretation

In this Agreement, including the Schedules except where expressly provided to the contrary:

- (a) Schedules hereto shall form part of this Agreement and in the event of any conflict between the main body of this Agreement and a Schedule, the main body of this Agreement shall prevail over the provisions of the Schedule;
- (b) reference to any consent not to be unreasonably withheld means that it includes the requirement that such consent shall not be unreasonably conditioned or delayed;
- (c) reference to “include” and “including” shall not be construed as being by way of limitation nor shall they take effect as limiting the generality of any preceding words;
- (d) reference to any publication, statute, rule, regulation, instrument or standard means the same as amended, supplemented or re-enacted from time to time;
- (e) reference to any agreement means the same as amended, supplemented or replaced from time to time;
- (f) any requirement that an action may or shall be taken within a specified number of days means that such action may or shall be taken within the number of days so specified starting at 00:00 hours on the day on which the requirement to take such action arose;
- (g) reference to any amount of money means that amount in [**Specify Currency**];
- (h) reference to Articles and Schedules means reference to Articles and Schedules to this Agreement unless otherwise specified;
- (i) headings are inserted for ease of reference only and shall not form part of this Agreement, affect its interpretation or construction or have any legal effect;
- (j) any remedy which provides for the payment of damages by a Party represents a genuine pre-estimate of the likely or possible loss or damage which might otherwise be suffered by the Party to whom such damages are payable in consequence of the act or omission of the Party liable to pay such damages and shall not in any way be construed as a penalty;
- (k) any good faith best estimate which is given by a Party when required in accordance with this Agreement is non-binding and given for information only and the Party giving such good faith best estimate shall have no liability to the other Party for any inaccuracy thereof;
- (l) reference to any notice or notification means a notice or notification made in writing;
- (m) all measurements and calculations shall be in metric system;
- (n) any activities not specifically governed by this Agreement are outside of the scope of this Agreement;
- (o) in the event of any ambiguity or discrepancy in this Agreement, the following shall apply:
  - i. between two Articles of this Agreement, the provisions of a specific Article relevant to the issue under consideration shall prevail over those in the other Article;
  - ii. between the written description of any drawing and the specifications and standards, the latter shall prevail;
  - iii. between the dimension scaled from the drawing and its specific written dimension, the latter shall prevail; and



- iv. between any value written in numerals and that in words, the latter shall prevail.

## **Article 2. Sale and Purchase of Delivered Energy**

- 2.1 The Seller shall sell and deliver the Electrical Energy at the Delivery Point in accordance with the Contracted Quantities and up to the Contracted Capacity.
- 2.2 The Buyer shall purchase the Delivered Energy for the Energy Price in accordance with the terms and conditions of this Agreement.

## **Article 3. Conditions Precedent**

### **3.1 Seller's Conditions Precedent**

The Seller shall use Reasonable Efforts to satisfy each of the conditions of the Seller's Conditions Precedent on or prior to the Target Effective Date, unless such condition has been extended or waived in writing by the Buyer:

- (a) the Seller has obtained all Authorisations, or if applicable, all waivers or exemptions necessary to fulfill its obligations under this Agreement;
- (b) the Seller and the national Transmission Network Operator have executed a transmission connection and use of Transmission System agreement, and a copy of such agreement has been delivered to the Buyer;
- (c) the regional System and Market Operator has allocated and approved the transmission capacity reserved for evacuating the Electrical Energy to the Buyer according to the provisions of the Regional Market Rules; and
- (d) the Seller has obtained the required insurances as set out in Article 16 (Insurance).

### **3.2 Buyer's Conditions Precedent**

The Buyer shall use Reasonable Efforts to satisfy each of the conditions of the Buyer's Conditions Precedent on or prior to the Target Effective Date, unless such condition has been extended or waived in writing by the Seller:

- (a) the Buyer has delivered to the Seller the Payment Guarantee for the Payment Guarantee Amount in accordance with the provisions of Article 15 (Payment Guarantee);
- (b) the Buyer has obtained all Authorisations, or if applicable, all waivers or exemptions necessary to fulfill its obligations under this Agreement;
- (c) the Buyer and the national Transmission Network Operator have executed a transmission connection and use of system agreement, and a copy of such agreement has been delivered to the Seller;
- (d) the Buyer and the regional System Market Operator have executed the Wheeling Agreement and a copy of such agreement has been delivered to the Seller; and

*[Guidance Note: This provision shall not apply to a Short Term Bilateral Agreement because in terms of the Regional Market Rules (Article 29.8), the Short Term Bilateral Agreements should be limited to adjacent countries during Market Phase 1.]*



- (e) the Buyer has obtained the required insurances as set out in Article 16 (Insurance).

### 3.3 Satisfaction of Conditions Precedent

Each Party shall use Reasonable Efforts to satisfy or obtain the satisfaction of each Condition Precedent for which such Party is primarily responsible.

- (a) Each Party, upon the request of the other Party and at such other Party's expense, shall use Reasonable Efforts to assist the other Party in satisfying each Condition Precedent for which the Party is primarily responsible.
- (b) Each Party shall keep the other informed on a timely basis as to progress in relation to the satisfaction of the Conditions Precedent.
- (c) Upon satisfaction of a Condition Precedent the Party responsible for the satisfaction of the Condition Precedent shall notify the other Party of its satisfaction. Such notice shall include necessary supporting documentation to substantiate the satisfaction of the Condition Precedent. The other Party may, by notice within three (3) Business Days, dispute whether such Condition Precedent has been satisfied.
- (d) Where satisfaction of any Condition Precedent is waived or extended, such waiver or extension shall be confirmed in writing by the Party entitled to grant such waiver or extension, as applicable.

### 3.4 Status of Agreement

3.4.1 Except for the undertakings set out in Article 3 (Conditions Precedent), and the provisions of Article 1 (*Definitions and Interpretations*), Article 19 (*Confidentiality*), Article 22 (*Indemnities*), Article 23 (*Transfer*), Article 27 (*Governing Law and Dispute Resolution*), and Article 28 (*General Provisions*), neither Party shall be obligated or become legally bound by this Agreement until all Conditions Precedent have been satisfied or waived or extended in accordance with this Article 3 (*Conditions Precedent*).

3.4.2 Without prejudice to this Article 3 (*Conditions Precedent*), the Parties undertake to use all Reasonable Efforts to satisfy all Conditions Precedent on or before the Target Effective Date specified in Schedule 4 (*Special Conditions*), whereupon this Agreement shall become effective and endure for the benefit of the Parties for the Term set out in Article 4 (*Term of the Agreement*).

### 3.5 Failure to Satisfy Conditions Precedent

If any of the Conditions Precedent are not satisfied or waived before the Target Effective Date, then:

- (a) the Party responsible for satisfying such Condition Precedent may give notice to the other Party giving reasons for the delay or failure to satisfy the Condition Precedent and the revised date by which it is reasonably expected that the Condition Precedent shall be satisfied and the Parties may mutually agree in writing to extend the Target Effective Date; and
- (b) except where the Target Effective Date is extended pursuant to paragraph 3.5(a) above, this Agreement shall immediately lapse and be of no further force and effect. The Parties shall be discharged from any further obligations or liabilities under this Agreement, except for any rights, obligations or liabilities, which have accrued up to the date of termination of the Agreement.



#### **Article 4. Term of the Agreement**

Subject to Article 3 (*Conditions Precedent*) this Agreement shall come into force on the Effective Date and shall, subject to the provisions hereof, continue in full force and effect and endure for the benefit of the Parties for the period of time detailed in Schedule 3 (*Commercial Operation Date and Term*).

#### **Article 5. Nominations**

- 5.1 Subject to the terms and conditions of this Agreement and according to the Regional Market Rules and the regional Market Procedures Manual, the Buyer shall issue day ahead Nominations to the System and Market Operator provided that all such Nominations shall be in agreement and will follow the procedures established by the Regional Market Rules and the regional Market Procedures Manual.
- 5.2 Subject to the terms and conditions of this Agreement and according to the Regional Market Rules and the regional Market Procedures Manual, the Seller shall issue day ahead Nominations to the regional System and Market Operator provided that all such Nominations shall be in agreement and will follow the procedures established by the Regional Market Rules and the regional Market Procedures Manual.

*[Guidance Note: In terms of the Regional Market Rules applicable during Market Phase 1, the Medium/Short Term Bilateral Agreement will be based on the Power Pool notification of available transmission capacity in the coming period, which in turn will be based on the declarations made by each of the participating organisations and will be available between the two counterparties. The "Market Procedures Manual" (which compliments the Regional Market Rules) contains detailed information around the scheduling process.]*

#### **Article 6. Commercial Operation Date**

- 6.1 The Seller shall use its Reasonable Efforts to achieve the Commercial Operation Date by the Scheduled COD.
- 6.2 If the Seller becomes aware that, for any reason, the Commercial Operation Date will not be achieved by the Scheduled COD, the Seller shall, without any unreasonable delay, notify the Buyer in writing of that fact and measures that it will take to mitigate such delay and of the impact of such measures on its ability to achieve Scheduled COD.
- 6.3 The Seller shall give the Buyer no less than thirty (30) Business Days' notice of the date the Seller will achieve Commercial Operation Date.

*[Guidance Note: if the key reason for concluding this Agreement is the purchase of energy at or by a particular date, then the Buyer may consider imposing penalties if the Seller does not meet the Scheduled COD due to Seller act, omission or default. These penalties can take the form of agreed liquidated damages]*

*[Handwritten signature]*



## **Article 7. Delivery**

### **7.1 Transfer of title**

Title to, and custody of Electrical Energy delivered under this Agreement shall pass from the Seller to the Buyer at the Delivery Point.

*[Guidance Note: when considering and agreeing the Delivery Point in market phase 1, the optimal Delivery Point is at the border of the two countries. Where WAPP is responsible for the delivery of Electrical Energy between the selling point and the Delivery Point, this will be dealt with in the Transmission Agreement]*

### **7.2 Transfer of Risk**

The risk of loss of Electrical Energy delivered in accordance with this Agreement shall pass from the Seller to the Buyer at the Delivery Point.

### **7.3 Transmission and Other Services**

- 7.3.1 The Seller shall be responsible for obtaining the transmission services and any ancillary or control area services required by the regional System and Market Operator, the transmission provider, or any independent system operator or other transmission utility with respect to the delivery and transmission of Electrical Energy up to the Delivery Point.
- 7.3.2 The Buyer shall reimburse to the Seller the costs, if any, that the Seller is obliged to pay for the transmission services, provided that such costs do not exceed the transmission services costs as determined and approved in the Transmission Tariff Methodology.

## **Article 8. Ancillary Services**

The Seller shall not contract for the provision of Ancillary Services or any other services, which shall adversely impact the Seller's ability to deliver Electrical Energy to the Buyer in terms of this Agreement.

## **Article 9. Metering and Data Collection**

- 9.1 Electrical Energy delivered to the Buyer pursuant to this Agreement shall be measured at the Main Meter and in accordance with the Operation Manual and/or Regional Metering Code.
- 9.2 The Main Meter shall be used for the invoicing purposes as provided in this Agreement.
- 9.3 The measurements made by the Main Meter will take precedence over any estimations or other metering registered on the Back-up Meter. In case of discrepancies between measurements of the Main Meter and the Back-up Meter, this will be treated as a Dispute and referred for determination by the Expert in accordance with Article 27 (*Governing Law and Dispute Resolution*).
- 9.4 The operation of the Metering System including data acquisition, data transmission and data processing shall be done in accordance with the Operation Manual and/or Regional Metering Code.



- 9.5 The Metering System shall be calibrated and tested by the regional System and Market Operator and/or a properly qualified technician approved by the regional System and Market Operator, in accordance with the Regional Market Rules and the Regional Metering Code, and the results shall be binding on the Parties.

*[Guidance Note: the Regional Metering Code will apply to this Agreement. In the event that the Regional Metering Code does not include any specific provision required by the Parties, then such provisions are to be included in this article]*

## **Article 10. Operation and Maintenance**

### **10.1 General principles of operation**

The Parties, acting in accordance with Prudent Operating Practices, shall operate, maintain and repair the Parties' facilities and components that they are responsible for during the Operating Period.

### **10.2 Unscheduled Outages**

- 10.2.1 Subject to the terms of this Agreement, Parties may, acting in accordance with Prudent Operating Practices, carry out maintenance or repair of their facilities at times other than during a Planned Outage where such maintenance or repair cannot be deferred to the next Planned Outage or upon the occurrence of an unexpected outage.
- 10.2.2 In such a case of unexpected outage, or where maintenance or repair cannot be deferred to the next Planned Outage, the Party carrying out such outage must immediately inform the other Party, the System and Market Operator and its Transmission System Operator of the characteristics of the outage and the time it estimates that will take to return to normal service.
- 10.2.3 The Seller shall be responsible for all reasonable costs incurred by and/or claimed on the Buyer in connection with or arising from any unexpected outage due to maintenance or repairs.

## **Article 11. Reports, Records and Monitoring**

- 11.1 The Parties shall maintain an operations log book, which shall include detailed information on its facility's operation and events. The operations record shall be available for inspection by the other Party upon reasonable advance written request, and the data shall be made available on a real-time basis by remote access to the other Party, if the other Party acquires the necessary equipment and software license to process the data by remote access.
- 11.2 All records and data required to be kept in accordance with this Article 11 (*Reports, Records and Monitoring*) shall be maintained for a minimum of [five (5) years] after the creation of such records or data, or as may be required by the WAPP operation manual and/or the regional market rules and procedures.
- 11.3 Notwithstanding the provisions of this Article 11 (*Reports, Records and Monitoring*), after the expiration of the [five (5) years] period neither Party shall be entitled to dispose of or destroy any such records or data unless the Party desiring to dispose of or destroy such records or data gives the other Party [ten (10)] Business Days prior written notice, generally describing the records or data to be destroyed or disposed of, and the Party



receiving such notice does not object thereto in writing within such prescribed period. Where a written objection is received within the prescribed period, the Party proposing to dispose of or destroy the records or data shall within [10 (ten)] Business Days make all such records and data available to the objecting Party at its offices to inspect and/or copy for a period of [five (5)] Business Days. After the expiration of such [5 (five)] Business Day period, the Party desiring to dispose of or destroy such records or data shall be permitted to do so.

*[Guidance Note: the timeline for the Parties to take actions or to maintain records indicated in Article 11 may be negotiated by the Parties in accordance with the regional market rules and procedures]*

## **Article 12. Price and Quantities**

### **12.1 Energy Price**

In accordance with the terms and conditions set out in the Agreement, during the Operating Period the Buyer shall pay the Seller, Monthly in arrears, the Energy Price specified in Schedule 1 (*Price and Quantities*).

### **12.2 Quantity**

The Seller will deliver to the Buyer the Contracted Quantities as specified in Schedule 1 (*Price and Quantities*) subject to Article 5 (*Nominations*).

### **12.3 Computation and Indexation**

*[Guidance Note: the Parties are to agree the indexation formula applicable to the Energy Price. Indexation normally applies on an annual basis and may not be applicable to short/Medium term bilateral agreements.]*

## **Article 13. Tax**

- 13.1 Each Party shall be liable for its own Tax payments arising out of its respective obligations under this Agreement.
- 13.2 The Parties shall upon written request, provide each other necessary proof to establish due satisfaction and payment of any Tax obligation.
- 13.3 Each Party agrees to indemnify in full and hold the other Party harmless against any claim, loss or damage that may arise, as a result of failure of the Indemnifying Party to discharge its Tax obligations.



## **Article 14. Billing and Payment**

### **14.1 Operating Period Invoices**

- 14.1.1 Not later than two (2) Business Days after the end of each Billing Period, the Seller shall submit an invoice to the Buyer based on the Contracted Quantities and Energy Price established in this Agreement for that Billing Period, and if applicable, adjusted to rectify any errors or discrepancies from previous Billing Periods in accordance with the terms of this Agreement.
- 14.1.2 All payments shall be due and payable by the Buyer within thirty (30) Business Days after the Buyer receives an invoice from the Seller, in immediately available funds to the Seller's Account.
- 14.1.3 The Buyer shall deposit the charge stated in the invoice in the Seller's Account, whether or not the Buyer disputes the invoiced amount.
- 14.1.4 The Buyer shall pay interest at the Agreed Interest Rate on any unpaid settlement amount due and payable under this Agreement from the date payment was due, up to and including the date on which final payment is made.

### **14.2 Settlement**

The regional System and Market Operator will make the settlement corresponding to the eventual differences between the Contracted Quantities and Delivered Energy values in accordance with the requirements of the Regional Market Rules. The regional System and Market Operator shall administer the billing and payment process of the above mentioned differences in accordance with the provisions of the Regional Market Rules.

### **14.3 Billing Disputes**

If any invoice or any portion thereof is disputed by the Buyer, payment of any part thereof shall not be withheld but shall be paid to the Seller when due. From then on, the disputed invoice will be dealt within the Dispute Resolution Procedure. Where the Buyer's contention regarding a disputed invoice is resolved in its favour, such amount shall bear interest at the Agreed Interest Rate and the amount plus the interest shall be set-off against the Buyer's future payment obligations under this Agreement.

### **14.4 Set-off**

All payments under this Agreement shall be made free and clear from, and without set-off, save to the extent that the Buyer is required to withhold any Tax from the Seller under any Applicable Law and as provided in Article 14 (*Billing and Payment*).

## **Article 15. Payment Guarantee**

- 15.1 The Buyer shall provide the Seller with a Payment Guarantee as continuing security for the due payment of the Buyer's obligations in terms of this Agreement for an amount equal to the Payment Guarantee Amount.
- 15.2 The Payment Guarantee shall be valid from the Effective Date and remain in full force and effect for so long as there are payments due and payable by the Buyer to the Seller (including disputed payments).
- 15.3 In the event that the Seller exercises its rights and calls on the Payment Guarantee in accordance with its terms as a consequence of a non-payment by the Buyer, then the Buyer shall immediately reinstate the Payment Guarantee to its full Payment Guarantee Amount.



- 15.4 The Parties acknowledge and agree that a failure by the Buyer to maintain a Payment Guarantee or reinstate the Payment Guarantee in accordance with the provisions of this Article 15 (*Payment Guarantee*) shall amount to a material breach of this Agreement.
- 15.5 After the expiry of the Term and when all the obligations of the Buyer have been carried out, completed or otherwise discharged, the Seller will return the Payment Guarantee to the Buyer.

#### **Article 16. Insurance**

- 16.1 During the Term, each Party shall obtain and maintain insurance for its respective facilities consistent with the requirements of Schedule 2 (*Insurance Policies*) in accordance with the standards of Prudent Operating Practices and Applicable Law.
- 16.2 To the extent reasonably possible, each Party shall require its insurers and underwriters to waive their rights of subrogation in favour of the other Party, its Affiliates, and their directors, officers, employees, agents and insurers.
- 16.3 The Parties shall apply any and all insurance proceeds received in connection with the damage and/or loss to the facilities toward the repair, reconstruction or replacement of the facilities in the first instance except in the event of any termination of this Agreement pursuant to Article 20.2 (*Buyer's Default*) or Article 18.8 (*Termination for Prolonged Force Majeure Event*).

#### **Article 17. Representations, Warranties and Covenants**

##### **17.1 Seller's Representations and Warranties**

The Seller represents and warrants to the Buyer that as of the Execution Date:

- (a) the Seller is a company, duly incorporated and validly existing under the laws of the [Specify Country] and is duly qualified and in good standing required for performance under this Agreement;
- (b) the Seller is registered as a Market Participant according to the Regional Market Rules and therefore authorised to participate in the Regional Electricity Market;
- (c) the Seller has full power, authority and legal right to own or possess its assets and conduct its business as currently conducted or contemplated and has obtained all necessary covenants and Authorisations to sign and deliver this Agreement and perform its obligations under this Agreement;
- (d) there are no actions, suits or proceedings pending or, to the Seller's knowledge, threatened against or affecting the Seller or any of its Affiliates before any court or administrative body or arbitral tribunal that might materially adversely affect the ability of the Seller to meet and carry out its obligations under this Agreement;
- (e) to the best of its knowledge after reasonable inquiry, no filing or registration with, no notice to and no Authorisation is required for the Seller to execute, deliver or perform its obligations under this Agreement, except for (i) the Authorisations specified as a Condition Precedent in Article 3 (Conditions Precedent) hereof, all of which have or will be obtained and are or will be in full force and effect and (ii) such Authorisations as may be required in the future to perform its obligations under the Agreement, which will be applied for in due course and diligently;
- (f) the execution, delivery and performance by the Seller of this Agreement will not contravene any provision of, or constitute a default under, any other agreement or



instrument to which it is a party or by which it or its property may be bound in relation to the performance of its obligations under this Agreement; and

- (g) it shall honour and perform its obligations under all agreements entered into relating to its performance of obligations under this Agreement and such agreements shall remain valid and subsist for the Term, provided that in the event that any such agreement is terminated during the Term, the Seller shall procure the negotiation and execution of an adequate substitute agreement.

### 17.2 Buyer's Representations and Warranties

The Buyer represents and warrants to the Seller that as of the Effective Date:

- (a) the Buyer is a company duly incorporated and validly existing under the laws of the [*Specify Country*] and is duly qualified and in good standing required for performance under this Agreement;
- (b) the Buyer is registered as Market Participant according to Regional Market Rules and therefore authorised to participate in the Regional Electricity Market;
- (c) the Buyer has full power, authority and legal right to own its assets and conduct its business as currently conducted or contemplated and has obtained all necessary covenants and Authorisations to sign and deliver this Agreement and perform its obligations under this Agreement;
- (d) there are no actions, suits or proceedings pending or, to the Buyer's knowledge, threatened against or affecting the Buyer or any of its Affiliates before any court or administrative body or arbitral tribunal that might materially adversely affect the ability of the Buyer to meet and carry out its obligations under this Agreement;
- (e) to the best of its knowledge after reasonable inquiry, no filing or registration with, no notice to and no Authorisation is required for the Buyer to execute, deliver or perform this Agreement, except for (i) the Authorisations specified as a Condition Precedent in Article 3 (*Conditions Precedent*) hereof, all of which have been or will be obtained and are or will be in full force and effect and (ii) such Authorisations as may be required in the future to perform its obligations under the Agreement, which will be applied for in due course and diligently pursued;
- (f) the execution, delivery and performance by the Buyer of this Agreement will not contravene any provision of, or constitute a default under, any other agreement or instrument to which it is a party or by which it or its property may be bound in relation to the performance of its obligations under this Agreement; and
- (g) it shall honour and perform its obligations under all agreements entered into relating to its performance of obligations under this Agreement and such agreements shall remain valid and subsist for the Term, provided that in the event that any such agreement is terminated during the Term, the Buyer shall procure the negotiation and execution of an adequate substitute agreement.

### 17.3 Mutual Representation and Warranty

Each Party represents and warrants to the other as of the Execution Date that neither it nor any of its Affiliates, shareholders, directors, officers, employees have made, offered or authorised with respect to the matters which are the subject of this Agreement, any payment, gift, promise or other advantage, whether directly, indirectly, through any other Person to or for the use or benefit of any public official, (including any individual holding a legislative,



administrative or judicial office) or any political party, where such payment, gift, promise or advantage would violate any Applicable Laws

#### **17.4 Duration of Representations and Warranties**

Each representation and warranty shall be true and accurate in all material respects for the Term.

### **Article 18. Force Majeure**

#### **18.1 Nature of Relief**

Subject to this Article 18 (*Force Majeure*), a Claiming Party shall be relieved from the duty to perform its obligations under this Agreement and excused from any liability for failure to perform such obligations, in whole or in part, under this Agreement to the extent such non-performance is caused by the occurrence of a Force Majeure Event.

#### **18.2 Exclusions from Relief from Force Majeure**

Notwithstanding any other provision in this Article 18 (*Force Majeure*), a Party shall not be relieved of its obligations to make payments that have become due and payable under this Agreement.

#### **18.3 Notification of Force Majeure Event**

A Claiming Party shall notify the other Party in writing, as soon as reasonably possible but no later than seven (7) days of it becoming aware of the relevant Force Majeure Event. This notice shall include reasonable details regarding the nature and effects of the Force Majeure Event. The Claiming Party shall keep the other Party informed fortnightly in writing regarding the steps that it is taking to overcome the effects of the Force Majeure Event and its current estimate as to when it will be able to resume performance of its obligations. The Claiming Party shall be relieved from its duty to perform and from liability under this Article 18 (*Force Majeure*) from the commencement of the Force Majeure Event.

#### **18.4 Conditions of claim**

A Claiming Party shall not be entitled to relief pursuant to this Article 18 (*Force Majeure*), or having become entitled shall cease to be so entitled, and a Force Majeure Event shall cease to be treated as a Force Majeure Event, to the extent that the Claiming Party fails to comply with the requirements of this Article 18 (*Force Majeure*), unless such failure would itself qualify as a Force Majeure Event.

#### **18.5 Mitigation**

The Claiming Party shall, as soon as practicable after the commencement of the Force Majeure Event, diligently proceed to do all things reasonably practicable at its own reasonable cost and acting in accordance with Prudent Operating Practices to expeditiously remedy and mitigate the Force Majeure Event causing the failure and to minimise the interruption of performance of its affected obligations. To the extent that a Claiming Party's facilities have been damaged or destroyed, then such Claiming Party shall repair and/or replace such facilities from the proceeds of the insurance policies required in terms of Article 16 (*Insurance*).



## 18.6 Access

At the request of the other Party, the Claiming Party shall provide, or use Reasonable Efforts to procure, access to the areas and facilities affected by the Force Majeure Event, and to its records relating to that Force Majeure Event, for a reasonable number of representatives of the other Party, at that other Party's sole risk and expense, in order that such representatives may verify the impact of the Force Majeure Event on the Claiming Party's performance and the likely duration of its effects.

## 18.7 Allocations

Notwithstanding the provisions of Article 4 (*Term of the Agreement*) above, if due to a Force Majeure Event, the Seller is unable to make available all or part of the Contracted Capacity, the Parties shall meet and in good faith negotiate an amicable allocation of Contracted Capacity during the subsistence of the Force Majeure Event.

## 18.8 Termination for Prolonged Force Majeure Event

If a Force Majeure Event, which prevents or substantially impairs the satisfaction of any material condition required to be satisfied under this Agreement or a Claiming Party's performance of any material obligation required to be performed under this Agreement, continues for the Prolonged Force Majeure Period, then either Party shall have the right, but not the obligation, to terminate this Agreement pursuant to Article 26 (*Termination*); provided that such material condition has not been completely satisfied and/or the performance of such material obligation has not been completely restored (insofar as may reasonably be determined by the Party giving notice of termination) as of the time such right of termination is exercised.

## 18.9 Extension of Agreement for Force Majeure

Subject to the right of termination under Article 18.8 (*Termination for Prolonged Force Majeure Event*), if a Force Majeure Event occurs, the duration of the relevant period and the Term shall be deemed to be automatically extended by a period of time equal to the impact on the Claiming Party's ability to perform its obligations under the Agreement; provided that (i) such automatic extension shall not extend the relevant period or in the Term in violation of any Applicable Laws, or (ii) one of the Parties informs the other Party in writing that it wants to maintain the original Term and not extend it. This communication has to be made not later than 5 (five) calendar days after the Force Majeure Event has ceased.

## Article 19. Confidentiality

### 19.1 Principle

Subject to the provisions of this Article 19 (*Confidentiality*), the Parties shall keep all Confidential Information strictly confidential and shall not disclose Confidential Information during the Term and for the Confidential Information Period after termination to any Person not a Party to this Agreement, except pursuant to Article 19.2 (*Exceptions*).

### 19.2 Exceptions

19.2.1 A Party shall not disclose Confidential Information unless he gets the prior written consent of the other Party.

19.2.2 Nonetheless, a Party may disclose Confidential Information without the other Party's prior consent to the extent such information:



- (a) is already known to the Party receiving the information as of the date of disclosure under this Agreement;
- (b) is already in possession of the public or becomes available to the public other than through the act or omission of such disclosing Party or of any other Person to whom Confidential Information is disclosed pursuant to this Agreement;
- (c) is required to be disclosed by such Party and or an Affiliate of the disclosing Party under Applicable Law, or by an order, decree, regulation or rule of a Governmental Authority, or if required by any court, arbitration or administrative tribunal in the course of proceedings before it to which the disclosing Party is a party; provided that such disclosing Party shall use Reasonable Efforts to give prompt notice to the other Party before such disclosure;
- (d) is acquired independently from a third party that represents that it has the right to disseminate such information at the time it is acquired by such disclosing Party; or
- (e) is developed by such disclosing Party independently of the Confidential Information received from the other Party.

### 19.3 Disclosure of Confidential Information to Affiliate

A Party may disclose Confidential Information without the other Party's prior consent to an Affiliate; provided that such Party hereby warrants and guarantees that it shall take all necessary steps to ensure that its Affiliate shall adhere to the terms of this Article 19 (*Confidentiality*).

### 19.4 Confidential Information to other Persons

A Party may disclose Confidential Information without the other Party's prior written consent to any of the following Persons for the purposes of enabling the disclosing Party to comply with its obligations under this Agreement:

- (a) employees, officers and directors of such Party;
- (b) any consultant, adviser, agent or legal counsel retained by such Party;
- (c) any bona fide prospective transferee of a Party's rights and obligations under this Agreement (including a prospective transferee with whom a Party and or its Affiliates are conducting bona fide negotiations directed toward a merger, consolidation or the sale of a majority of its or an Affiliate's shares), and any consultant retained by such prospective transferee, in order to enable such prospective transferee to assess such Party's rights and obligations; and
- (d) any bank or other financial institution or entity funding or proposing to finance such Party and or/an Affiliate, including any consultant retained by such bank or other financial institution or entity for that purpose.

### 19.5 Use of the Confidential Information by other Persons

Prior to making any disclosure of the Confidential Information to Persons under Article 19.4 (*Confidential Information to other Persons*) the Party desiring to make such disclosure shall obtain an undertaking of strict confidentiality and non-disclosure and to use the Confidential Information solely for the stated purpose, enforceable by either Party, but otherwise substantially in the same form and content as the obligations under this Agreement, from each such Person. With respect to outside legal counsel, a Party shall only be required to ascertain that such legal counsel is bound by an obligation of confidentiality.



## **Article 20. Default**

### **20.1 Seller's Default**

For the purposes of this Agreement, default by the Seller shall be any of the following events or circumstances, other than where solely due to a Force Majeure Event:

- (a) any breach by the Seller of any of its material obligations under this Agreement, which remains unremedied by the Seller after receipt of written notice from the Buyer and after the Breach of Material Provision Period;
- (b) the occurrence of an Act of Insolvency affecting the Seller;
- (c) the Seller ceases to be a Market Participant for any reason whatsoever;
- (d) revocation, cancellation or withdrawal of any Authorisation due to an act or omission of the Seller; and
- (e) any statement, representation or warranty made by the Seller herein in terms of Article 17 (Representations, Warranties and Covenants) or in any certificate or other document delivered or made under or pursuant to this Agreement proving to have been incorrect, in any material respect which has significant effect, when made or when deemed to have been made.

### **20.2 Buyer's Default**

For the purposes of this Agreement, default by the Buyer shall be any of the following events or circumstances, other than where solely due to a Force Majeure Event:

- (a) any failure to pay any sum of money due and owing under this Agreement for a period of thirty (30) Business Days from the date when such sum was first due and payable;
- (b) the occurrence of an Act of Insolvency affecting the Buyer;
- (c) the failure to maintain and/or reinstate the Payment Guarantee;
- (d) the Buyer ceases to be a Market Participant for any reason whatsoever;
- (e) revocation, cancellation or withdrawal of any Authorisation due to an act or omission of the Buyer; and
- (f) any other breach by the Buyer of any of its material obligations under this Agreement, which remain unremedied by the Seller after receipt of written notice from the Seller and after the Breach of Material Provision Period.

### **20.3 Termination for Default**

Upon the occurrence of an event of default in Article 20.1 (*Seller's Default*) or Article 20.2 (*Buyer's Default*), the non-defaulting Party may serve a notice on the defaulting Party terminating this Agreement.

### **20.4 Remediation of Default**

In the event that any default set out in Article 20.1 (*Seller's Default*) or Article 20.2 (*Buyer's Default*), is not capable of remedy within a period of ten (10) Business Days from a notice received from the non-defaulting Party, then the defaulting Party shall furnish the non-defaulting Party with a detailed programme ("Remedial Programme") within such ten (10) Business Day period. Any Remedial Programme shall be agreed between the Parties and in



the event of a Dispute in relation to the Remedial Programme, such dispute shall be referred to an Expert for determination.

#### 20.5 Rights or obligations on termination

The expiry or termination of this Agreement shall not affect any rights or obligations which may have accrued prior to such expiry or termination and shall not affect obligations of each of the Parties under this Agreement or, any other Authorisations, or agreement or document between the Parties, which are expressed to continue after such expiry or termination.

### Article 21. Liabilities

#### 21.1 Limitation of Liability

Except as expressly provided in this Agreement, a Party shall not be liable to the other Party for any loss or damage which does not immediately or directly arise from the relevant act or omission relating to this Agreement, including indirect losses, consequential or special losses, losses or deferments of revenue, profit or opportunity.

#### 21.2 Limitation of Remedy

Except as expressly provided for elsewhere in this Agreement, a Party's remedy against the other Party for non-performance or breach of this Agreement or for any other claim of whatsoever nature arising out of or in relation to this Agreement shall be in contract, and no Party shall be liable to the other Party (or its Affiliates, their respective directors, officers, employees and agents) in respect of any damages, losses or claims for any alleged breach of statutory duty, tortuous act or omission.

#### 21.3 Mitigation of Damages

Each Party shall use Reasonable Efforts to mitigate or avoid any loss or damage caused by the failure of the other Party to meet its obligations under this Agreement, whether or not such failure is the result of a Force Majeure Event.

#### 21.4 Willful Misconduct and Gross Negligence

To the extent that a Party's breach of its obligations under this Agreement results solely from such Party's willful misconduct and or gross negligence, Article 21.2 (*Limitation of Remedy*) shall not apply to limit the liability of such Party or the remedies available to the other Party.

### Article 22. Indemnities

#### 22.1 General Indemnification

Each of the Seller and the Buyer respectively, as an "**Indemnifying Party**", shall indemnify, defend, and hold harmless the other Party, as an "**Indemnified Party**", from and against all losses or damages relating to third party claims arising from:

- (a) the breach of any representation, warranty, covenant or obligation of the Indemnifying Party under this Agreement; and
- (b) any other act, omission or event for which the Indemnifying Party is liable pursuant to this Agreement.



## 22.2 Indemnification Process

The Indemnified Party shall promptly notify the Indemnifying Party of the assertion or commencement of any claim, demand, investigation, action, suit or other legal proceeding for which indemnity or defence is or may be sought under this Agreement; provided however, that this notice requirement shall not apply to any claim, demand, investigation, action, suit or other legal proceeding in which the Parties are adversaries. The failure by the Indemnified Party to so notify the Indemnifying Party shall not relieve the Indemnifying Party of its obligations under this Article 22 (*Indemnities*), except to the extent, if any, that it has been prejudiced by the lack of timely and adequate notice.

## 22.3 Defence or settlement of any third party claim

The Indemnifying Party shall at the Indemnified Party's request assume the defence or settlement of any third party claim with legal counsel reasonably satisfactory to the Indemnified Party; provided however, that the Indemnifying Party shall not settle or compromise any third party claim without the Indemnified Party's prior written consent to such settlement or compromise.

## 22.4 Limitations

Notwithstanding the foregoing:

- (a) the Indemnified Party shall have the right, at its option and expense, to participate fully in the defence or settlement of any third party claim; and
- (b) if the Indemnifying Party does not diligently defend or settle any third party claim within a reasonable period of time after it is notified of the assertion or commencement thereof, then:
  - i. the Indemnified Party shall have the right, but not the obligation, to undertake the defence or settlement of such third party claim for the account and at the risk of the Indemnifying Party; and
  - ii. the Indemnifying Party shall be bound by any defence or settlement that the Indemnified Party may make as to such third party claim.
- (c) the Indemnified Party shall be entitled to join the Indemnifying Party in any third party claim to enforce any right of indemnity under this Agreement; and
- (d) the Indemnified Party shall cooperate with the Indemnifying Party in the defence or settlement of any Third Party Claim and, at the expense of the Indemnifying Party, and subject to obligations of confidentiality to other Persons, the Indemnified Party shall furnish any and all materials in its possession and try to make any and all witnesses under its control available to the Indemnifying Party for any lawful purpose relevant to the defence or settlement of the third party claim.

## Article 23. Transfer

### 23.1 Obligation

23.1.1 Any Transfer shall be effective only if, and a transferee shall not have any rights under this Agreement unless and until, the following requirements are satisfied:

- (a) The transferee expressly undertakes in an instrument reasonably satisfactory to the other Party to perform the obligations of the transferring Party under this Agreement, obtains any necessary Authorisations for the Transfer and furnishes any guarantees required under this Agreement or any Applicable Law; and except in the case of a



Transfer to an Affiliate, the other Party has consented in writing to such Transfer, which consent shall be denied only if the transferee fails to establish to the reasonable satisfaction of the other Party its technical and financial capability to perform its obligations under this Agreement.

- (b) No consent shall be required for a Transfer to an Affiliate, if the transferring Party agrees in an instrument reasonably satisfactory to the other Party to remain liable for its Affiliate's performance of its obligations under this Agreement.
- (c) Notwithstanding any Transfer, both the transferring Party and the transferee shall be liable to the other Party for the transferring Party's obligations (financial or otherwise), which have vested, matured or accrued under the provisions of this Agreement before such Transfer.

23.1.2 If the transferring Party makes a Transfer without satisfying in all material respects the requirements of Article 23 (*Transfer*), then the other Party shall have the right to terminate this Agreement.

### 23.2 Successors and Permitted Transferees

Subject to the provisions of Article 23 (*Transfer*), this Agreement shall be binding upon and endure for the benefit of the respective successors in title and permitted transferees of each Party.

### 23.3 Financing

Nothing contained in this Article 23 (*Transfer*) shall prohibit a Party from mortgaging, pledging, or otherwise encumbering its rights and benefits under this Agreement to a third party in order to provide security relating to financing, provided that:

- (a) such Party shall remain liable for all of its obligations under this Agreement and relating to such security interest;
- (b) the security interest shall be expressly subordinated to the rights of the other Party under this Agreement; and
- (c) such Party shall ensure that any such security interest shall be expressed to be without prejudice to the provisions of this Agreement.

## Article 24. Change in Trading Regime

Upon the declaration by a relevant Authority that different rules in the Regional Electricity Market be applied and such rules impact the Parties in carrying out its obligations under this Agreement, the Parties shall as soon as practicable but not later than five (5) Business Days from the declaration, or the Parties becoming aware of the declaration, meet to review the impact of such rules on the obligations of the Parties under this Agreement and shall agree such changes to this Agreement as may be required to enable the Parties comply with and sufficiently adjust their operations to accommodate the change in rules in the Regional Electricity Market

## Article 25. Change in Law

In the event that a Change in Law results in a material increase or decrease in the Seller's costs there shall be an equitable adjustment of the pricing regime specified in this Agreement to adjust the pricing taking into account such material increase or decrease as the case may



be, provided the Seller shall be in no less or no more favourable financial position than the Seller was prior to such Change in Law.

## **Article 26. Termination**

### **26.1 Termination**

This Agreement shall be deemed to be terminated on the date of the occurrence of any of the following:

- (a) the effluxion of the Term or as extended; or
- (b) the date specified in a notice of termination under Article 20.3 (Termination for Default).

### **26.2 Suspension of obligations**

Without prejudice to the Seller's rights under Article 4 (*Term of the Agreement*), the Seller may suspend its obligations to make the Contracted Quantities available under this Agreement with immediate effect by giving the Buyer a notice of termination pursuant to this Article 26 (*Termination*).

*[Guidance Note: The Parties to consider whether it may be appropriate to impose penalties on the defaulting Party for termination arising from default. In considering an appropriate penalty, Parties are to note that consequential loss, indirect loss and loss of profit is excluded from claims]*

## **Article 27. Governing Law and Dispute Resolution**

### **27.1 Governing Law**

This Agreement shall be governed by, construed and enforced in accordance with the laws of the [*specify country*] and the rules governing the Regional Electricity Market.

### **27.2 Dispute Resolution**

Any Dispute arising from or in connection with this Agreement (including its validity) shall be treated in accordance with the Dispute Resolution Procedure as provided by article 40(4) of the Regional Market Rules.

### **27.3 Expert Determination**

Where this Agreement provides that any Dispute or other matter shall be referred to an Expert or the Parties otherwise so agree the following provisions shall apply:

- (a) The Expert shall be a suitably qualified person with requisite experience jointly appointed by the Parties and willing to act.
- (b) The procedure for appointing an Expert is as follows:
  - i. The Party calling for the appointment of an Expert shall provide to the other Party a notice specifying:
    - a. the breach, act, omission or other circumstance that is the basis for the Dispute;



- b. the provision within this Agreement or other basis for the Dispute;
  - c. the nature of the Dispute (technical, financial, or legal); and
  - d. the quantum, or likely quantum, of any amount claimed in connection with the Dispute.
- ii. If, within [*ten (10) Business Days*] of the notice, the Parties fail to agree on a single Expert, then the Party who has called for the appointment of the Expert shall request:
- a. in the case of technical engineering or financial matters, the chair for the time being of [*insert the name of the agreed institution/organisation*] to appoint the Expert, within a period of [*ten (10) Business Days*] of referral; or
  - b. in the case of legal matters, the chair for the time being of [*insert the name of the agreed institution/organisation*], to appoint the Expert, within a period of [*ten (10) Business Days*] of referral.
- (c) Other than in the case of invoices disputed by the Buyer in accordance with Article 14 (*Billing and Payment*), within a period of five (5) Business Days after the appointment of the Expert or such other period as the Parties may agree, each Party may make such written submissions as it wishes to the Expert and shall simultaneously provide a copy to the other Party, and at the end of such period each Party shall have an additional period of five (5) Business Days to make counter-submissions to the Expert (with a copy to the other Party) in reply to the other Party's written submissions made during the aforementioned period provided that neither Party shall during such period make any written counter-submission which purports to reply to, raise or refer to, any new matters not raised or referred to in any submission made during the aforementioned period.
- (d) At the end of the additional five (5) Business Days referred to in Article 27.3.(c) above, and no later than five (5) Business Days thereafter, either Party may, with the consent of the Expert and at a time and place decided by the Expert, make an oral presentation to the Expert in the presence of the other Party commenting on or explaining matters previously submitted to the Expert in writing;
- (e) The Expert shall render his determination in writing within [*fifteen (15) Business Days*] of the completion of the oral presentation made in accordance with Article 27.3(d) and give reasonable details of the reasons for his determination.
- (f) The decision of the Expert shall be final and binding on the Parties save in the event of fraud or manifest error or mistake.
- (g) The Expert shall act as an expert and not as an arbitrator.
- (h) The costs of the Expert shall be borne as determined by the Expert:
- i. in the case of Dispute, by the failing Party or equally by the Parties, where there is no failing Party;
  - ii. equally by the Parties in other matter.

#### 27.4 Legal proceedings

Neither Party shall have any right to commence or maintain any legal proceedings pertaining to a Dispute until the Dispute has been resolved in accordance with Article 27.2



(*Dispute Resolution*) or Article 27.3 (*Expert Determination*), and then only to enforce or execute the award under such procedure.

#### **27.5 Condition of appointment of Experts and arbitrators**

The Parties shall each ensure that all Experts, conciliators and arbitrators shall agree to be bound by the provisions of Article 19 (*Confidentiality*) of this Agreement as a condition of appointment.

#### **27.6 Continuation of performance**

The Parties shall continue to perform their respective obligations under this Agreement during any Expert or arbitration proceeding, provided that the right to terminate pursuant to Article 26 (*Termination*) on grounds, different to those referred to an Expert or arbitrators, shall not be restricted by this Article 27.6 (*Continuation of Performance*).

### **Article 28. General Provisions**

#### **28.1 Conflict of Interest**

No director, employee or agent of a Party or its Affiliates may engage in any of the following activities without the other Party's prior written consent:

- (a) Give to or receive from any director, employee or agent of the other Party or its Affiliates in connection with this Agreement, either of the following:
  - i. any gift, entertainment or other benefit exceeding the value of 2000 kWh as per the Energy Price indicated in Schedule 1 (Price and Quantities); or
  - ii. any commission, fee or rebate; and
- (b) enter into any business arrangement with any director, employee or agent of the other Party or any Affiliate of the other Party (other than as a representative of the other Party or the Affiliate of the other Party).

#### **28.2 Reporting Violations and Reimbursements**

28.2.1 A Party shall immediately notify the other Party of any violation of Article 28 (*General Provisions*) or of the occurrence of any event prior to the Execution Date which, if it had occurred after the Execution Date, would constitute a violation of Article 28 (*General Provisions*). In addition to any other remedies to which the other Party may be legally entitled, the Party in violation of Article 28 (*General Provisions*) shall reimburse or issue a credit to the other Party equal to the value of the benefit received by or given to the director, employee or agent of the other Party or any of its Affiliate as a consequence of that violation or event.

28.2.2 A Party may audit the relevant records of the other Party and of any director, employee or agent of the other Party or its Affiliates for the sole purpose of determining whether they have complied with Article 28 (*General Provisions*).

#### **28.3 Exceptions**

The provisions of the preceding Article 28.2 (*Reporting Violations and Reimbursements*) shall not apply to:

- (a) Party's performance which is in accordance with Applicable Laws or policies of any Governmental Authority; or

A handwritten signature in black ink, appearing to be 'E. du A.', is located in the bottom right corner of the page.



- (b) a Party's acquisition of products or services from an Affiliate, or the sale thereof to an Affiliate, made in accordance with this Agreement.

#### **28.4 No Reliance**

Each Party affirms for itself and its Affiliates that in entering into this Agreement it has not relied on any representation or warranty or undertaking which is not contained in this Agreement. Without prejudice to any liability for fraudulent misrepresentation or fraudulent misstatement, either the Seller or the Buyer shall not be liable for and shall have no remedy for any misrepresentation or untrue statement unless and to the extent that a claim lies under this Agreement.

#### **28.5 No Partnership or agency**

Nothing in this Agreement, in any document referred to in it or in any arrangement contemplated by it shall be deemed to create a partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided in this Agreement. The signing, completion and implementation of this Agreement shall not be deemed to empower either Party to bind or impose on the other Party any obligations to any third parties or to pledge the credit of the other Party.

#### **28.6 Further Assurances**

The Parties shall undertake all further acts and execute and deliver all further instruments, deeds and documents as shall be reasonably required in order to perform and carry out the purpose, intent and provisions of this Agreement.

#### **28.7 Waiver of Sovereign Immunity**

Each Party recognizes and acknowledges that this Agreement constitutes a commercial transaction, and that its rights and obligations under this Agreement are of a commercial and not a governmental nature. To the fullest extent not prohibited by any Applicable Law, each Party hereby irrevocably waives on behalf of itself and its assets, any and all immunities from jurisdiction, from enforcement and for any other purpose whatsoever.

#### **28.8 Waiver**

No waiver of any term, provision or condition of this Agreement shall be effective unless it is in writing and signed by the waiving Party.

#### **28.9 Waiver Limits**

The waiver of any term, provision or condition of this Agreement or of any action pursuant to this Agreement on any occasion shall not constitute a waiver of:

- (a) any other term, provision, or condition of, or action pursuant to, this Agreement; or
- (b) such terms, provisions or conditions of, or actions pursuant to, this Agreement on any future occasion.



### 28.10 No Third Party Beneficiaries

The Parties intend that the terms and conditions of this Agreement shall be solely for the benefit of the Parties and shall not confer any rights upon any third parties.

### 28.11 Severability

If any provision of this Agreement is finally determined to be illegal, invalid, void or unenforceable under any Applicable Laws, then such provision shall be deemed to be deleted and the remaining provisions of this Agreement shall continue in full force and effect and if necessary, be so amended as shall be necessary to give effect to the spirit and intent of this Agreement to the extent possible.

### 28.12 Modification

This Agreement shall only be amended or modified by a written instrument duly executed by the Parties.

### 28.13 Notices

#### (a) Methods of delivery

Unless otherwise provided in this Agreement, all notices, requests, statements and other communications required or permitted between the Parties by this Agreement shall be in writing and either hand-delivered or sent by pre-paid registered post, email or facsimile to the address or number of the Party concerned set out in Article 28.13(b) (*Addresses*) or such other address or number as contemplated in Article 28.13(c) (*Change in Address*). No communication shall be effective until received by the addressee and a communication shall be deemed to have been received:

- i. if delivered by hand during ordinary business hours, to its physical address in Article 28.13(b) (*Addresses*), when so delivered;
- ii. if delivered by pre-paid registered post, to its postal address in Article 28.13(b) (*Addresses*), seven (7) Business Days after posting, subject to proof of posting;
- iii. if delivered by email, upon receipt by the sender of a return email from the recipient in which the sender's communication is acknowledged (it being the responsibility of the sender to obtain such acknowledgement); and
- iv. if delivered by facsimile, upon sending, subject to confirmation of uninterrupted transmission on a transmission report and provided that a hard copy is promptly dispatched to the recipient in the manner provided in clauses Article 28.13(b)(i) or Article 28.13(b)(ii) above.

#### (b) Addresses of the Parties

The Parties choose the postal and physical addresses and contact details set out below:

##### i. The Seller:

Postal Address: [*insert*]

Physical Address: [*insert*]

Country of Registered Office [*insert Country within the Regional Electricity Market*]

Email Address: [*insert*]

Fax No.: [*insert*]



Tel No.: [insert]

Attention: [insert]; and

ii. The Buyer:

Postal Address: [insert]

Physical Address: [insert]

Country of Registered Office [insert Country within the Regional Electricity Market]

Email Address: [insert]

Fax No.: [insert]

Tel No.: [insert]

Attention: [insert];

(c) Change in address

Either Party may change its nominated physical or postal address to another physical or postal address, as the case may be, or its contact details by giving at least fifteen (15) days' prior written notice to the other Party.

**28.14 Counterparts**

This Agreement may be executed in any number of counterparts and each such counterpart shall be deemed an original Agreement for all purposes; provided that no Party shall be bound to this Agreement unless and until both Parties have executed a counterpart. For purposes of assembling all counterparts into one document, the Parties are authorized to detach the signature page from one or more counterparts and, attach each signed signature page to a counterpart.

**28.15 Entire Agreement**

This Agreement contains and expressly refers to the entire agreement between the Parties with respect to its subject matter and expressly excludes any warranty, condition or other undertaking implied at law or by custom and supersedes all previous agreements and understandings between the Parties with respect to its subject matter and each Party acknowledges and confirms that it does not enter into this Agreement in reliance on any representation, warranty or other undertaking by the other Party not fully reflected in the terms of this Agreement.



**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement, by their duly authorized representatives with full rights, power and authority to enter into and perform this Agreement, the day and year first above written.

The Common Seal of the within named

For the “**Seller**” [*Insert the Seller official name*]

Signature: [*Duly authorised Signature*]

Name: [*Full Name of the Signatory*]

Designation: [*Designation of the Signatory*]

has been affixed hereto In the presence of:

Signature: [*Duly authorised Signature*]

Name: [*Full Name of the Signatory*]

Designation: [*Designation of the Signatory*]

The Common Seal of the within named

For the “**Buyer**” [*Insert the Buyer official name*]

Signature: [*Duly authorised Signature*]

Name: [*Full Name of the Signatory*]

Designation: [*Designation of the Signatory*]

has been affixed hereto In the presence of:

Signature: [*Duly authorised Signature*]

Name: [*Full Name of the Signatory*]

Designation: [*Designation of the Signatory*]



## SCHEDULE 1: PRICE AND QUANTITIES

### Energy Price

The price is [*insert amount*] [*insert currency*]/ MWh

### Contracted Capacity

[*insert*] MW

### Contracted Quantities

The quantities under this Agreement are [*insert*]

*[Guidance Note: The quantities may be subject to modulation according to a load curve. In this case, the load curve or modulation has to be precisely described]*



## SCHEDULE 2 : INSURANCE POLICIES

*[Guidance Note: This schedule is to provide the required details of all necessary insurances to be arranged, so as to ensure the commercial value of the facilities is protected]*

*Handwritten signature/initials in blue ink.*



### SCHEDULE 3 : COMMERCIAL OPERATION DATE AND TERM

The **Commercial Operation Date** shall be [*day*] [*month*] [*year*]

The **Term** of this Agreement is established as [*insert period*]

*[Handwritten signature]*



#### SCHEDULE 4 : SPECIAL CONDITIONS

1	Breach of Material Provision Period (Article 1)	<i>Parties to specify agreed period</i>
2	Agreed Interest Rate (Article 1)	<i>Parties to specify Agreed Interest Rate</i>
3	Buyer's Account (Article 1)	<i>Parties to specify Buyer's Account</i>
4	Commercial Operation Date (Article 1)	<i>Parties to specify Commercial Operation Date</i>
5	Confidential Information Period (Article 1)	<i>Parties to specify Confidential Information Period</i>
6	Delivery Point (Article 1)	<i>Parties to specify the details of the Delivery Point</i>
7	Payment Guarantee Amount (Article 1)	<i>Parties to specify Payment Guarantee Amount</i>
8.	Prolonged Force Majeure Period (Article 1)	<i>Parties to specify Prolonged Force Majeure Period</i>
9	Scheduled COD (Article 1)	<i>Parties to specify the Scheduled COD</i>
10	Seller's Account (Article 1)	<i>Parties to specify Seller's Account</i>
11	Target Effective Date (Article 3.4)	<i>Parties to specify the Target Effective Date</i>



## SCHEDULE 5: DATA SHEET

1.	Execution date	<i>Specify date</i>
2.	Seller's name	<i>Specify Name</i>
3.	Seller's identification as Market Participant	<i>Specify number</i>
4.	Seller's address	<i>Specify physical location</i>
5.	Buyer's name	<i>Specify Name</i>
6.	Buyer's identification as Market Participant	<i>Specify number</i>
7.	Buyer's address	<i>Specify physical location</i>
8.	Article 1. Breach of Material Provision Period	<i>Specify agreed period</i>
9.	Article 1. Agreed Interest Rate	<i>Specify agreed Rate</i>
10.	Article 1. Business Day	<i>Specify Seller host country</i>
11.	Article 1. Business Day	<i>Specify Buyer host country</i>
12.	Article 1. Buyer's Account	<i>Specify Buyer's Account</i>
13.	Article 1. Commercial Operation Date	<i>Specify Commercial Operation Date</i>
14.	Article 1. Confidential Information Period	<i>Specify Confidential Information Period</i>
15.	Article 1. Delivery Point	<i>Specify Delivery Point</i>
16.	Article 1. Payment Guarantee Amount	<i>Specify Payment Guarantee Amount</i>
17.	Article 1. Prolonged Force Majeure Period	<i>Specify Prolonged Force Majeure Period</i>



18.	Article 1. Scheduled COD	<i>Specify the Scheduled COD</i>
19.	Article 1. Seller's Account	<i>Specify Seller's Account</i>
20.	Article 1.2 (g) Currency	<i>Specify currency</i>
21.	Article 3.4: Target Effective Date	<i>Specify Target Effective Date</i>
22.	Article 12.3 Computation and Indexation	<i>Establish indexation formula for the Energy Price</i>
23.	Article 17. Representations, Warranties and Covenants	<i>Specify seller country</i>
24.	Article 17. Representations, Warranties and Covenants	<i>Specify buyer country</i>
25.	Article 17. Representations, Warranties and Covenants	<i>Specify Seller's legal form (private company, government's corporatized company, TSO, etc) and country</i>
26.	Article 17. Representations, Warranties and Covenants	<i>Specify Buyer's legal form (private company, government's corporatized company, TSO, etc) and country</i>
27.	Article 27. Governing Law and Dispute Resolution	<i>Specify country.</i>
28.	Article 27.3.(b) Governing Law and Dispute Resolution	<i>Specify the name of the institution/organisation to appoint the Expert</i>
29.	Article 28. Addresses	<i>Specify addresses, and details on the Seller and the Buyer</i>
30.	Schedule 1. Price and Quantities	<i>Establish agreed Energy Price [currency] [amount] /MWh in numerals and words with the required detail. If there is a load curve with different prices for different periods, detail so.</i>
31.	Schedule 1. Price and Quantities	<i>Specify Contracted Capacity</i>
32.	Schedule 1. Price and Quantities	<i>Establish agreed quantities in MWh in numerals and words with the required detail. If there is a load curve with different quantities for different periods, detail so.</i>



33.	Schedule 2. Insurance Policies	<i>Detail Insurance Policies</i>
34.	Schedule 3. Commercial Operation Date and Term	<i>Specify Commercial Operation Date</i>
35.	Schedule 3. Commercial Operation Date and Term	<i>Specify Term.</i>

*[Handwritten signature]*