# Short Term Bilateral Agreement

[Model]

**Between**

[Insert Seller’s name] **And**

[Insert Buyer’s name]

Contents

[Short Term Bilateral Agreement 1](#_Toc433960045)

[1. Article 1. Definitions and Interpretations 6](#_Toc433960046)

[1. Definitions 6](#_Toc433960047)

[2. Interpretation 14](#_Toc433960048)

[2. Article 2. Reserved Rights 15](#_Toc433960049)

[3. Article 3. Conditions Precedent 15](#_Toc433960050)

[1. Seller’s Conditions Precedent 15](#_Toc433960051)

[2. Buyer’s Conditions Precedent 15](#_Toc433960052)

[3. Satisfaction of Conditions Precedent 15](#_Toc433960053)

[4. Status of Agreement 16](#_Toc433960054)

[5. Failure to Satisfy Conditions Precedent 16](#_Toc433960055)

[4. Article 4. Term 16](#_Toc433960056)

[1. Term 16](#_Toc433960057)

[2. Extension of Term 17](#_Toc433960058)

[5. Article 5. Nominations 17](#_Toc433960059)

[6. Article 6. Deliver and Extraction Points 17](#_Toc433960060)

[1. Title 17](#_Toc433960061)

[2. Risk 17](#_Toc433960062)

[7. Article 7. Ancillary Services 17](#_Toc433960063)

[8. Article 8. Metering and Data Collection 17](#_Toc433960064)

[9. Article 9. Operation and Maintenance 18](#_Toc433960065)

[1. Maintenance 18](#_Toc433960066)

[2. Unscheduled Outages 18](#_Toc433960067)

[10. Article 10. Reports, Records and Monitoring 18](#_Toc433960068)

[11. Article 11. Price and Quantity 19](#_Toc433960069)

[1. Energy price 19](#_Toc433960070)

[2. Quantity 19](#_Toc433960071)

[3. Computation and Indexation 19](#_Toc433960072)

[12. Article 12. Taxes 19](#_Toc433960073)

[13. Article 13. Billing and Payment 19](#_Toc433960074)

[14. Article 14. Payment Guarantee 20](#_Toc433960075)

[15. Article 15. Insurance 20](#_Toc433960076)

[16. Article 16. Representations, Warranties and Covenants 21](#_Toc433960077)

[1. Seller’s Representations and Warranties 21](#_Toc433960078)

[2. Buyer’s Representations and Warranties 22](#_Toc433960079)

[3. Mutual Representation and Warranty 22](#_Toc433960080)

[4. Duration of Representations and Warranties 23](#_Toc433960081)

[5. Disclaimer of Other Representations and Warranties 23](#_Toc433960082)

[17. Article 17. Force Majeure 23](#_Toc433960083)

[1. Nature of Relief 23](#_Toc433960084)

[2. Exclusions from Relief from Force Majeure 23](#_Toc433960085)

[3. 3. Notification 23](#_Toc433960086)

[4. 4 Conditions of claim 23](#_Toc433960087)

[5. 5. Remedy 24](#_Toc433960088)

[6. 6. Access 24](#_Toc433960089)

[7. 7. Allocations 24](#_Toc433960090)

[8. Termination for Prolonged Force Majeure Event 24](#_Toc433960091)

[18. Article 18. Confidentiality 24](#_Toc433960092)

[1. Confidentiality 24](#_Toc433960093)

[2. 2. Exceptions 25](#_Toc433960094)

[3. Confidential Information to Affiliate 25](#_Toc433960095)

[4. Confidential Information to other Persons 25](#_Toc433960096)

[5. Use the Confidential Information other person 26](#_Toc433960097)

[19. Article 19. Default 26](#_Toc433960098)

[1. Seller’s Default: 26](#_Toc433960099)

[2. Buyer’s Default: 26](#_Toc433960100)

[3. Occurrence of a Default 26](#_Toc433960101)

[4. Default Termination 26](#_Toc433960102)

[5. Rights or obligations on termination 27](#_Toc433960103)

[6. Other remedies 27](#_Toc433960104)

[20. Article 20. Liabilities 27](#_Toc433960105)

[1. Limitation of Liability 27](#_Toc433960106)

[2. Limitation of Remedy 27](#_Toc433960107)

[3. Mitigation of Damages 27](#_Toc433960108)

[4. Willful Misconduct and Gross Negligence 27](#_Toc433960109)

[21. Article 21. Indemnities 28](#_Toc433960110)

[1. General Indemnification 28](#_Toc433960111)

[2. 2. Indemnification Process 28](#_Toc433960112)

[3. Defence or settlement of any third party claim 28](#_Toc433960113)

[4. Limitations 28](#_Toc433960114)

[22. Article 22. Transfer 29](#_Toc433960115)

[1. Obligation 29](#_Toc433960116)

[2. Successors and Assigns 29](#_Toc433960117)

[3. Financing 29](#_Toc433960118)

[23. Article 23. Change in Trading Regime 30](#_Toc433960119)

[24. Article 24. Change in Law 30](#_Toc433960120)

[25. Article 25. Termination 30](#_Toc433960121)

[1. Termination 30](#_Toc433960122)

[2. Early Termination 30](#_Toc433960123)

[3. Notice of Early Termination 31](#_Toc433960124)

[4. Suspension of obligations 31](#_Toc433960125)

[26. Article 26. Governing Law and Dispute Resolution 31](#_Toc433960126)

[1. Governing Law 31](#_Toc433960127)

[2. Dispute Resolution 31](#_Toc433960128)

[3. Arbitration 32](#_Toc433960129)

[4. Agreement 32](#_Toc433960130)

[5. Expert Determination 32](#_Toc433960131)

[6. Right to commence or maintain any legal proceedings 33](#_Toc433960132)

[7. Condition of appointment of Experts and arbitrators 33](#_Toc433960133)

[8. Continuation of performance 33](#_Toc433960134)

[27. Article 27. General 33](#_Toc433960135)

[1. Conflict of Interest 33](#_Toc433960136)

[2. Reporting Violations and Reimbursements 34](#_Toc433960137)

[3. Provisions 34](#_Toc433960138)

[4. No Reliance 34](#_Toc433960139)

[5. No Partnership 34](#_Toc433960140)

[6. Further Assurances 35](#_Toc433960141)

[7. Waiver of Sovereign Immunity. 35](#_Toc433960142)

[8. Waiver 35](#_Toc433960143)

[9. Waiver Limits 35](#_Toc433960144)

[10. No Third Party Beneficiaries 35](#_Toc433960145)

[11. Severability 35](#_Toc433960146)

[12. Variation 36](#_Toc433960147)

[13. Notices 36](#_Toc433960148)

[14. Counterparts 36](#_Toc433960149)

[15. Entire Agreement 36](#_Toc433960150)

[28. SCHEDULE 1 Price and Quantities 38](#_Toc433960151)

[29. SCHEDULE 2 [INSURANCE PROGRAMME] 39](#_Toc433960152)

[30. SCHEDULE 3 [COMMERCIAL OPERATION DATE AND TERM] 40](#_Toc433960153)

[SPECIAL CONDITIONS 41](#_Toc433960154)

This **TRADING AGREEMENT** (hereinafter referred to as “this Agreement”) is made as of [*insert day*] [*month*], [*year*]:

**BETWEEN**

*WAPP’s identification for the market participant*] and having its registered office at [*insert address*] (hereinafter referred to as “Seller”) of the one part; [*Insert Seller’s name*], a Market Participant duly incorporated under the rules of the WAPP, having the Market Participant identification [*insert address*] (hereinafter referred to as “Seller”) of the one part

**AND**

[*Insert Buyer’s name*], a Market Participant duly incorporated under the rules of the WAPP, having the Market Participant identification [*insert WAPP’s identification for the market participant*] and having its registered office at [*insert address*] (hereinafter referred to as “Seller”) of the other part.

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

**WHEREAS**

1. Pursuant to the creation of the West African Power Pool (WAPP), Seller is desirous of selling energy in the frame of the WAPP Regional Market.

2. Buyer is engaged in the business of marketing, brokering, purchasing, selling and or bulk trading of electricity and ancillary services with electricity distribution companies, and single major or significant load and is desirous of buying energy in the frame of the WAPP Regional Market.

3. Seller desires to sell and Buyer desires to purchase energy and capacity pursuant to the terms and subject to the conditions hereinafter stated.

In consideration of the premises set out above and the mutual covenants, assurances and undertakings hereinafter contained, the Parties hereby agree as follows:

# Article 1. Definitions and Interpretations

## Definitions

Unless the context indicates otherwise, capitalised and bolded words used in this Agreement, including the recitals and Schedules shall have the corresponding meaning set out below

| **Term** | Definitions | | |
| --- | --- | --- | --- |
| **“Act of**  **Insolvency”** | means in respect of a Party, 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 encumbrancer 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. | | |
| **“Affiliate”** | 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. For purposes of this definition, an entity is a “subsidiary” of a person or entity if the latter owns legally, beneficially, directly or indirectly, the shares of the former that are sufficient to cast over fifty percent (50%) of the votes in a general meeting of shareholders, members, partners or other owners of the former. | | |
| **“Agreement”** | means this document together with the Schedules hereto and any  extensions, renewals or amendments of this document agreed to in writing by the Parties. | | |
| **“Agreed Interest**  **Rate”** | means such interest rates as may be published from time to time  and the ones the Parties agree on. | | |
| **“Ancillary**  **Services”** | means such other services provided by Seller other than the  provision of Gross Electrical Output, including without limitation the provision of reactive power, voltage control, frequency regulation and black start capability. | | |
| **“Applicable**  **Laws”** | mean all laws, treaties, ordinances, decrees, statutes, rules and  regulations of any national, state, municipal, regional or other governmental body, instrumentality, agency or other authority having jurisdiction over the Parties, the performance of obligations herein reserved or the provision of ancillary services hereunder. 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. | | |
| **“Authorisation”** | means any approval, 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 reserved hereunder | | |
| **“Availability”** | means the ability of the Plant, at a particular instant or over a  particular period of time, to deliver electricity to the Grid for onward transmission to Buyer’s Grid Supply Point and the terms “Available” and “Unavailable” shall be construed accordingly | | |
| **“Available**  **Capacity”** | means in any Settlement Period, the actual capacity the plant can  offer. | | |
| **“Bank”** | means the bank(s) the Parties agree to locate the accounts,  guarantees, bonds, etc, | | |
| **“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 following Month and the last Billing Period shall commence at 00.00 hours on the first day of the last Month prior to termination of this Agreement until 24.00 hours on the date of termination of this Agreement | | |
| **“Business Day”** | means any day excluding Saturdays and Sundays and those  days agreed by the Parties as a public holiday | | |
| **“Change in**  **Control”** | means any direct change in ownership of a Party (whether  through merger, sale of shares or other equity interests, or otherwise) through a single transaction or series of related transactions, from one or more transferors to one or more transferees, in which the market value of the Party's participating interest represents more than twenty percent [20%] of the aggregate market value of the assets of such Party and its Affiliates that are subject to the Change in Control. For the purposes of this definition, market value shall be determined based upon the amount in cash a willing buyer would pay a willing seller in an arms length transaction. For the avoidance of doubt Lender Bank Step-in does not constitute a change in control | | |
| **“Change in**  **Law”** | means the occurrence after the Execution Date, of any of the  following: (a) the enactment or issuance of any new Law, regulation or policy; (b) the modification or repeal of any  existing law, regulation or policy; (c) the commencement of  any law, regulation or policy that was not in existence on the Effective Date; (d) the complete reissue of the Market Rules (such that the new rules are fundamentally changed which results in trading arrangements radically different from those previously in use and originally contemplated by the Parties); (e) change in the rate of any applicable Taxes or (f)f the change in the terms or conditions of any Authorisation by an imposition of additional terms or conditions, which occurrence was not reasonably foreseen by the Parties and which makes the continued performance of this Agreement on the terms herein set forth materially less favourable to either or both Parties. For the avoidance of doubt, the Parties acknowledge that any procedural change of rules or change in trading regime contemplated in the Regional Market Rules shall not be construed as a Change in Law Event | | |
| **“Commercial**  **Operation Date”** | means the date the contract begins actually operating from the  commercial point of view. | | |
| **“Conditions**  **Precedent”** | means all the conditions set out in Article 3 that must be  satisfied or waived prior to this Agreement becoming effective | | |
| **“Confidential**  **Information”** | means all information and data of whatever 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) | | |
| **“Consequential**  **Loss”** | means for this Agreement and operations conducted under  this Agreement, any damages, costs, or liabilities, or any losses or deferments of revenue, profit, opportunity or use, regardless of cause, which are not immediately and directly caused by the relevant act or omission | | |
| **“Contract**  **Duration”** | is the duration of this Agreement specified in Article 4 from  the Effective Date | | |
| **“Contract Year”** | means a period of one (1) Year beginning on the first day of  the Month following the Commercial Operation Date or any anniversary thereof | | |
| **“Day”** | means a period of 24 hours commencing at *[indicate GMT hour]* hours and daily shall be construed accordingly |  |  |
|  | | |
| **“Default”** | means the occurrence of any one or more of the events  specified in Article 19 | | |
| **“Delivery Point”** | means the physical point in the interconnector at which the  energy is delivered from the Seller to the Buyer | | |
| **“Dispute”** | means any dispute, controversy, or claim of any kind or type,  whether based on contract, tort, statute, regulation, or otherwise, 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 | | |
| **“Effective Date”** | means the date specified in Article 3.4 | | |
| **“Energy Price”** | means the element of the price payable in accordance with  Article 11. | | |
| **“Execution**  **Date”** | means the date on which this contract is duly signed | | |
| **“Expert”** | means any competent person appointed for the determination  of disputes reserved for expert determination in this  Agreement | | |
| **“Force Majeure**  **Event”** | means any event or circumstance the occurrence of which is  beyond the reasonable control of the Claiming Party and results in the Claiming Party being unable to perform one or more of its obligations under this Agreement, which inability could not have been prevented or overcome by the Claiming Party or any of its Affiliates exercising reasonable foresight, planning and/or implementation. To the extent that they satisfy the requirements set out in the preceding sentence and subject to the proviso to this definition, Force Majeure Events include the following events and circumstances:  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;  b) strike, work slow down, lockout or other industrial disturbance or labour dispute;  c) fire, earthquake, cyclone, hurricane, flood, drought, storms, navigational and maritime perils, or other acts of God;  d) breakage, fire, explosion, mechanical breakdown or other damage or malfunction resulting in the partial or complete shutdown of the facilities of the Claiming Party;  e) failure of the Transmission System Operator to take delivery of and transmit electricity, | | |
| **“Governmental**  **Authority”** | means any national, state or local government, or any  regulatory or administrative agency, commission, body or other authority, and any court or tribunal, lawfully exercising jurisdiction over this Agreement, the performance of  obligations reserved hereunder or either Party’s facilities | | |
| **“Grid”** | means the network of high voltage transmission lines,  transformers, switchgear and other transmission equipment controlled by a System Operator and utilized for the conveyance of energy from generating plants to distribution  systems and/or international interconnectors | | |
| **“Independent**  **Engineer”** | means a suitably qualified Person with requisite skills and  experience, jointly appointed by the Parties or either of them, or a counterparty to any agreement referred to herein to conduct routine inspections of the Plant, installations and other facilities and also to issue independent certifications contemplated in this Agreement | | |
| **“Indemnified**  **Party”** | means the Party that receives the benefit of an indemnity  pursuant to Article 21, together with such Party’s directors, officers, and employees and such Party’s Affiliates, their  directors, officers and employees | | |
| **“Indemnifying**  **Party”** | means the Party that gives an indemnity pursuant to Article  21. | | |
| **“kV”** | means kilovolts, a unit of voltage | | |
| **“kW”** | means kilowatt, a unit of power | | |
| **“kWh”** | means kilowatt-hour, a unit of electrical energy | | |
| **“Market Rules”/ “Regional**  **Market Rules”** | means the rules currently in force or being developed for  regulation of energy trading in the regional market as approved by the WAPP | | |
| **“Material**  **Breach”** | means in the case of Seller, breach of its obligations and in  the case of Buyer, breach of its obligations | | |
| **“Metering Code**  **/ Regional**  **Metering Code”** | means the Metering Code developed and approved by the  relevant Regional Authority for the regional trade | | |
| **“Metering**  **Point”** | means the location where output is measured being at or  electrically close to the Delivery Point | | |
| **“Metering**  **System”** | means all forms of meters and metering devices, consisting of  the Main Meter and Back up Meter and the associated current transformers (CTs) and Voltage Transformers (VTs) and associated auxiliary equipment used for reading and measurement of Electric Output. Meters shall be construed accordingly | | |
| **“Month”** | means a calendar Month and “monthly” shall be construed  accordingly | | |
| **“MW”** | means megawatt, a unit of power being one thousand (1,000)  kW | | |
| **“MWh”** | means megawatt-hour, a unit of electrical energy being one  thousand (1,000) kWh | | |
| **“Operating**  **Period”** | means a period of the Contract Duration commencing on the  Commercial Operation Date until the expiration of the Term of this Agreement by effluxion of time or its sooner termination | | |
| **“Operation**  **Manual”** | means the rules, regulations, principles and procedures  governing operation, coordination and use of the regional grid and / or international interconnectors as approved by the  WAPP | | |
| **“Person”** | means any individual, partnership, corporation, association,  trust, Governmental Authority, or other legal entity | | |
| **“Prolonged Force Majeure Event”** | has the meaning ascribed in Article 17.8 | | |
| **“Prudent Utility**  **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 maintenance of electric generating or transmission equipment of the type applicable to the Plant or the relevant portion of the Grid, as applicable, in a manner consistent with Law, Governmental 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 protect its own interests, 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 | | |
| **“Settlement**  **Period”** | means a period of twenty four (24) hours beginning at 00.00  hours daily or any such part of a Day as the Parties may mutually agree or such period as may be defined in the Regional Market Rules | | |
| **“System Market**  **Operator”** | means the entity being responsible for energy and financial  settlement within the Regional Market, allocation of transmission capacity and others as established by the  Regional Market Rules | | |
| **“System**  **Operator” or**  **SO”** | means the entity licensed to provide system operation  services | | |
| **“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, 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  from the Effective Date | | |
| **“Transfer”** | means a change of ownership or control described in Article  22 | | |
| **“Transmission**  **Network Operator” or “TNO”** | means the licensed entity that owns and maintains a  transmission grid | | |
| **“Willful**  **Misconduct”** | means any intentional, conscious or reckless disregard of any  provision of this Agreement by any supervisory or managerial staff of either Party which is not justifiable by any special  circumstances which however shall not include any omission,  error of judgment or mistake made by any such supervisory or managerial staff in the exercise in good faith of any function, authority or discretion | | |
| **“Year”** | means a period of twelve calendar Months | | |

## Interpretation

In this Agreement, including the recitals and schedules except where expressly provided to the contrary:

1. 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;
2. reference to any consent not to be unreasonably withheld is deemed to be qualified by the requirement that such consent shall not be unreasonably conditioned or delayed;
3. reference to include and including is deemed to be qualified by the additional term without limitation;
4. reference to any publication, statute, rule, regulation, instrument or standard means the same as amended, supplemented or re-enacted from time to time;
5. reference to any agreement means the same as amended, supplemented or replaced from time to time;
6. 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;
7. reference to any amount of money means that amount in [*Specify Currency*];
8. reference to Articles and Schedules means reference to Articles hereof, and
   1. Schedules to this Agreement;
9. headings are inserted for ease of reference only and shall not form part of this
   1. Agreement, affect its interpretation or construction or have any legal effect;
10. 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;
11. 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;
12. reference to any notice or notification means a notice or notification made in writing;
13. all measurements and calculations shall be in metric system;
14. in the event of any ambiguity or discrepancy in this Agreement, the following shall apply:
    * 1. between two Articles of this Agreement, the provisions of a specific Article relevant to the issue under consideration shall prevail over those in other Articles;
      2. between the written description of any drawing and the specifications and standards, the latter shall prevail;
      3. between the dimension scaled from the drawing and its specific written dimension, the latter shall prevail;
      4. between any value written in numerals and that in words, the latter shall prevail

# Article 2. Reserved Rights

For greater certainty, the Parties confirm that any activities not specifically governed by this Agreement are outside of the scope of this Agreement.

# Article 3. Conditions Precedent

## Seller’s Conditions Precedent

Except as set out in Article 3.4, Seller is not obligated under this Agreement, unless and until Seller’s Conditions Precedent set out below are satisfied or waived by Seller:

1. Seller is a registered and authorised participant in the Regional Market according the Regional Market rules.
2. Seller has obtained all Authorisations, waivers or exemptions incidental to exporting electricity.
3. Seller and the domestic Transmission Network Operator have executed and delivered a Use of System Contract. (This will applicable in the future when Generation companies are accepted as participants in the regional market)
4. Seller has obtained the corresponding transmission capacity reserved for evacuating the power to the Buyer according to the provisions of the Regional Market Rules.
5. Seller has the required insurances valid as set in Article 15 Insurance

## Buyer’s Conditions Precedent

Except as set out in Article 3.4, Buyer is not obligated under this Agreement, unless and until the conditions set out below are satisfied or waived by Buyer:

1. Buyer is a registered and authorised participant in the Regional Market according the Regional Market rules.
2. Buyer has obtained all Authorisations, waivers or exemptions incidental to importing electricity.
3. Buyer and the domestic Transmission Network Operator have executed and delivered a Use of System Contract. (This will applicable in the future when Distribution companies eligible consumers are accepted as participants in the regional market)
4. Buyer has the required insurances valid as set in Article 15 Insurance

## 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.

1. 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 such other Party is primarily responsible.
2. Each Party shall keep the other informed on a timely basis as to progress in relation to the satisfaction of the Conditions Precedent.
3. Upon satisfaction or waiver 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 [xx] Days dispute whether such Condition Precedent has been satisfied; provided that where satisfaction of any Condition Precedent is waived, such waiver shall be confirmed in writing by the Party entitled to grant such waiver..

## Status of Agreement

Except for the undertakings set out in Article 3 (Conditions Precedent-Satisfaction of Conditions Precedent), and the provisions of Article 1 (Definitions and Interpretations), Article 21 (Indemnities), Article 26 (Governing Law and Dispute Resolution), Article 22 (Transfer), Article 18 (Confidentiality), Article 27 (General), either Party shall not be obligated or become legally bound by this Agreement until all Conditions Precedent have been satisfied or waived in writing by the Parties.

Without prejudice to Article 3.4 above, the Parties undertake to use all Reasonable Efforts to satisfy or waive all Conditions Precedent on or before [XXX] (“Effective Date”) except extended in writing by mutual agreement, whereupon this Agreement shall become effective and inure for the benefit of the Parties for the Term set out in Article 4.

## Failure to Satisfy Conditions Precedent

1. If any condition is not satisfied or waived before the Effective Date, then:
   1. 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;
   2. except the Effective Date is extended pursuant to paragraph (i) above, either Party may terminate this Agreement with immediate effect by notice to the other Party. On termination of this Agreement under this Article 3.5, 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.

# Article 4. Term

## Term

This Agreement shall come into force on the “Effective Date” and shall, subject to the provisions hereof, continue in full force and effect and inure for the benefit of the Parties, for the Contract Duration from the Commercial Operations Date (“Term”) as established in Schedule 3.

## Extension of Term

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

1. Subject to the terms and conditions of this Agreement and according to the Regional Market Rules, Buyer shall issue day ahead Nominations to the System Market Operator provided that all such Nominations shall be in agreement and will follow the procedures established by the Regional Market Rules.
2. Subject to the terms and conditions of this Agreement and according to the Regional Market Rules, Seller shall issue day ahead Nominations to the Pool Operator provided that all such Offers shall be in agreement and will follow the procedures established by the Regional Market Rules.

# Article 6. Deliver and Extraction Points

Except as otherwise provided in this Agreement, Delivery Point for the Buyer will be considered as the node [*indicate the node in the interconnector*].

Except as otherwise provided in this Agreement, Extraction Point will be considered as the node [*indicate the node in the interconnector*].

## Title

Title to, and custody of electrical energy delivered under this Agreement shall pass from

Seller to Buyer at the Delivery Point.

## Risk

The risk of loss of energy delivered in accordance with this Agreement shall pass from

Seller to Buyer at the Delivery Point.

# Article 7. Ancillary Services

Seller shall not contract for the provision of Ancillary Services or any other services which shall adversely impact Seller’s ability to generate electricity for the Buyer up to the Contracted Capacity.

# Article 8. Metering and Data Collection

1. Apart from any checking or back up meters that may be installed, metering will be carried out according to the Operation Manual / Regional Metering Code and this metering will have precedence to any other metering or estimations. In case of discrepancies this has to be treated as a dispute and referred to the corresponding dispute resolution procedures,
2. The operation of the Metering System including data acquisition, data transmission and data processing will be done according to the Operation Manual / Regional Metering Code,
3. The Meters shall be calibrated and tested by the SMO in accordance with the Regional Metering Code and the results will be accepted by the parties.

# Article 9. Operation and Maintenance

## Maintenance

Parties acting in accordance with Prudent Utility Practices shall maintain and repair the Plant, components and other facilities they are responsible for during the Operating Period.

## Unscheduled Outages

Subject to the terms of this Agreement, Parties may, acting as a Reasonable and Prudent Operator, carry out maintenance or repair of their facilities at times other than during Scheduled Maintenance where such maintenance or repair cannot be deferred to the next Scheduled Maintenance or upon the occurrence of a Forced Outage.

In such a case of unexpected outage or need of maintenance, the Party who is defaulting has to inform immediately to the other Party, to the System Market Operator and to his TSO of the characteristics of the outage and the time he estimates that will take to return to normal service.

*[Parties may agree on the remuneration from the defaulting part to the other in case of outage]*

# Article 10. Reports, Records and Monitoring

1. Parties shall maintain an operations log, which shall include detailed information on the plant and other facilities operation and events. The operations record shall be available for inspection by the other Party upon reasonable advance request, and 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.

3. All records and data required to be kept in accordance with Article 10.1 shall be maintained for a minimum of [twenty four (24)] Months after the creation of such records or data provided that each Party shall not dispose of or destroy any such records or data after such [ XXX] Months unless the Party desiring to dispose of or destroy such records or data gives [ XXX] Days prior notice to the other Party, 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 [xx] Days. Where a written objection is received within such [ XXX] Day period, the objecting Party shall have a period of [ XXX] Days after the date of such written objection within which to inspect and copy the records or data proposed to be disposed of or destroyed, which records and data shall be made available within such XXX] Day period by Buyer or Seller as the case may be, at such Party’s offices in [ XXX]. After the expiration of such [ XXX] Day period, the Party desiring to dispose of or destroy such records or data shall be permitted to do so.

# Article 11. Price and Quantity

## Energy price

From and after the Commercial Operation Date, Buyer shall pay Seller, Monthly in arrears, an energy payment for each kWh of the specified quantity in accordance with the billing and payment provisions of Article 13 (Billing and Payment). Price details are set in Schedule 1

## Quantity

Seller will deliver to Buyer the quantities as specified in Schedule 1.

## Computation and Indexation

ESTABLISH INDEXATION FORMULA FOR THE PRICE Establish periods for adjustment

*[Normally the indexation is not necessary for contracts with a short duration like these. However these contracts may be long enough to justify an indexation formula when they are done by a thermal power plant during periods where fuel prices have important spikes.]*

# Article 12. Taxes

1. The Parties shall be severally liable to pay Taxes arising in respect of their respective facilities and activities according to the domestic regulations of each of the Parties’ countries.

2. The Parties shall upon request, provide each other necessary proof to establish due satisfaction of any tax obligation.

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 13. Billing and Payment

1. Seller and Buyer shall each maintain an account in a bank agreed by both parties to administer the payment system and shall not effect any change to any particulars of the designated bank accounts without giving prior written notice of at least thirty (30) Business Days to the other Party.

2. Buyer shall operate a Payment Guarantee, which shall be maintained with the Bank appointed by the Seller.

3. Not later than [ XXX] Days after the end of each Month, the Seller shall invoice the

Buyer based on the quantities and price (or adjusted price if it corresponds) established in this Agreement but adjusted to rectify any errors or discrepancies from previous periods.

4. The System Market Operator will make the settlement corresponding to the eventual differences between the contract and actual values in accordance with the requirements of the Regional Market Rules. The System Market Operator shall administer the billing and payment process of the above mentioned differences in accordance with the provisions of the Regional Market Rules.

5. No later than on the fifth (5th) Business Day after Buyer receives an invoice from the Seller assigning charges under this Agreement to it in accordance with a settlement statement, Buyer shall deposit the charge stated in the invoice in the Seller Account, whether or not Buyer disputes the invoiced amount. Where Buyer disputes an invoice or any portion thereof, it shall declare a dispute, and refer same for determination in accordance with the provisions of Article 26 (Governing Law and Dispute Resolution) hereof.

6. If Buyer does not make deposit on time, Seller is entitled to notify Buyer in written of the Default.

7. Upon receiving notification of such Default from the Seller, the Buyer will have to discharge its payment obligations not later than the next two Business Days.

8. If after the deadline expires Buyer remains in default of its payment obligations, the

Seller shall be entitled to execute the Payment Guarantee.

9. 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 payment is made, except in circumstances where Buyer disputes an invoice or any portion thereof, and any dispute referred in relation thereto is resolved in its favour.

10. If any invoice or any portion thereof is disputed by Buyer, payment of any part thereof shall not be withheld but shall be paid to Seller when due. From then on, the disputed invoice will be dealt within the Dispute Resolution Procedure specified by the Regional Market Rules. Where 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 Buyer’s future payment obligations under this Agreement.

11. All payments under this Agreement shall be made free and clear from, and without set-off, save to the extent that Buyer is required to withhold tax from Seller under any Applicable Law.

# Article 14. Payment Guarantee

After receiving the payment corresponding to the last invoice the Seller will liberate the

Buyer’s Payment Guarantee.

# Article 15. Insurance

1. Insurance of Facilities *[This may be needed when individual generators are authorised to participate in the regional market]*

During the Term, the Parties shall obtain and maintain insurance for its respective facilities consistent with the requirements of Schedule 2.

2. The policies of insurance to be obtained and maintained by or for the Parties pursuant to this Article 15 (Insurance) shall be obtained and maintained with insurers of sound financial reputation.

3. The Parties shall apply any and all insurance proceeds received in connection with the damage to the Plant and/or other facilities toward the repair, reconstruction or replacement of the Plant and/or other facilities except in the event of any termination of this Agreement pursuant to Article 19.2 (Buyer’s Default:) or Article 17.8 (Termination for Prolonged Force Majeure Event).

4. Other Insurance

During the Term, each Party shall obtain and maintain policies of insurance as required by Applicable Laws, and to the extent available, such 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.

# Article 16. Representations, Warranties and Covenants

## Seller’s Representations and Warranties

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

a) 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) Seller is registered as Regional Market Participant according to Regional Market

Rules and therefore authorised to participate in the Regional Market;

c) Seller 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 Seller’s knowledge, threatened against or affecting Seller or any of its Affiliates before any court or administrative body or arbitral tribunal that might materially adversely affect the ability of 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 permit, authorisation, consent or approval of any Person is required for Seller to execute, deliver or perform this Agreement, except for (i) the permits, Authorisations, consents and approvals specified as a Condition Precedent in Article 3 (Conditions Precedent) hereof, all of which have been obtained and are in full force and effect and (ii) such permits, authorisations, consents and approvals as may be required in the future, which will be applied for in due course and diligently pursued;

f) the execution, delivery and performance by 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; and

g) it shall honour and perform its obligations under all contracts entered into which touch and concern its performance of obligations under this Agreement and such contracts shall remain valid and subsisting for the life of this Agreement, provided that in the event that any such contract or agreement is terminated during the Operating Period, Seller shall procure the negotiation and execution of an adequate substitute contract.

## Buyer’s Representations and Warranties

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

a) 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) Buyer is registered as Regional Market Participant according to Regional Market

Rules and therefore authorised to participate in the Regional Market;

c) 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 Buyer’s knowledge, threatened against or affecting Buyer or any of its Affiliates before any court or administrative body or arbitral tribunal that might materially adversely affect the ability of 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 permit, authorisation, consent or approval of any Person is required for Buyer to execute, deliver or perform this Agreement, except for (i) the permits, Authorisations, consents and approvals specified as a Condition Precedent in Article 3 (Conditions Precedent) hereof, all of which have been obtained and are in full force and effect and (ii) such permits, authorisations, consents and approvals as may be required in the future, which will be applied for in due course and diligently pursued;

f) the execution, delivery and performance by 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; and

g) it shall honour and perform its obligations under all contracts entered into which touch and concern its performance of obligations under this Agreement and such contracts shall remain valid and subsisting for the life of this Agreement, provided that in the event that any such contract or agreement is terminated during the Operating Period, Buyer shall procure the negotiation and execution of an adequate substitute contract.

## Mutual Representation and Warranty

Each Party represents and warrants to the other as of the Effective 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.

## Duration of Representations and Warranties

Each representation and warranty shall be true and accurate in all material respects when made and shall remain actionable for the duration of this Agreement.

## Disclaimer of Other Representations and Warranties

To the full extent permitted by Applicable Laws, except as expressly stated in this Agreement, the Parties negate any other representation or warranty written or oral, express, implied including any representation or warranty for merchantability, conformity to samples, or fitness for any particular purpose.

# Article 17. Force Majeure

## Nature of Relief

Subject to this Article 17 (Force Majeure), a Claiming Party shall be relieved from the duty to perform its obligations under this Agreement and 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 Article 17.2 (Exclusions from Relief from Force Majeure).

## Exclusions from Relief from Force Majeure

Notwithstanding any other provision in this Article 17 (Force Majeure), a Party shall not be relieved of its obligations to make payments that have become due and payable under this Agreement.

## 3. Notification

A Claiming Party shall promptly notify the other Party, as soon as reasonably possible but no later than seven (7) Days after the non-performance, of the occurrence of the 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 reasonably informed 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 17 from the beginning of the Force Majeure Event not from notice by the Claiming Party.

## 4 Conditions of claim

A Claiming Party shall not be entitled to relief pursuant to this Article 17, 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 17, unless such failure would itself qualify as a Force Majeure Event.

## 5. Remedy

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 to expeditiously remedy and mitigate the Force Majeure Event causing the failure and to minimise the interruption of performance of its affected obligations, provided that:

a) Claiming Party shall not be required to settle any labour dispute or industrial or public disturbance, except in such manner as it shall in its own judgment consider acceptable;

b) Claiming Party shall not be required to incur any extraordinary costs or to act other than in accordance with Prudent Utility Practices;

provided that if a Claiming Party’s facilities have been damaged or destroyed, then such Claiming Party shall repair or replace such facilities to the extent of the proceeds from insurance required under Article 15.

## 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 those representatives may verify the impact of that Force Majeure Event on the Claiming Party’s performance and the likely duration of its effects.

## 7. Allocations

If due to a Force Majeure Event, Seller is unable to make all or part of the Contracted Capacity available, the Parties shall meet and in good faith negotiate an amicable allocation of energy during the subsistence of the Force Majeure Event.

## 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 a period of at least [*establish a period that should be in relationship with the contract’s Term*], then either Party shall have the right, but not the obligation, to terminate this Agreement pursuant to Article 25; 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.

# Article 18. Confidentiality

## Confidentiality

Subject to the provisions of this Article, the Parties shall keep all Confidential Information strictly confidential and shall not disclose Confidential Information during the term of this Agreement and for a period of [*establish a reasonable period consistent with the contracts duration*] after termination to any Person not a Party to this Agreement, except pursuant to Article 18.2.

## 2. Exceptions

A Party may disclose Confidential Information without the other Party's prior written consent to the extent such information:

a) is already known to such Party 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 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 under Applicable Law, or by an order, decree, regulation or rule of a Governmental Authority; provided that such 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 Party; or

e) is developed by such Party independently of the Confidential Information received from the other Party.

## Confidential Information to Affiliate

A Party may disclose Confidential Information without the other Party’s prior written consent to an Affiliate; provided that such Party guarantees that its Affiliate shall adhere to the terms of this Article 18.

## 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 to the extent that such Persons have a clear need to know the Confidential Information:

a) employees, officers and directors of such Party in order to enable such Party to perform its obligations;

b) employees, officers and directors of an Affiliate of such Party in order to enable such Party and or an Affiliate to perform its obligations;

c) any consultant, agent or legal counsel retained by such Party or its Affiliate in order to enable such Party to perform its obligations;

d) 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;

e) 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;

## Use the Confidential Information other person

Prior to making any such disclosures to Persons under Article 18.2 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 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 19. Default

## Seller’s Default:

For the purposes of this Agreement, Default by Seller shall be:

a) the Material Breach by Seller of any of its obligations under this Agreement;

b) the occurrence of an Act of Insolvency affecting Seller; and

c) any statement, representation or warranty made by Seller herein 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

## Buyer’s Default:

For the purposes of this Agreement, Default by Buyer shall be:

a) the Material Breach by Buyer of any of its obligations under this Agreement other than the failure to make any payment under this Agreement when due and payable;

b) the occurrence of an Act of Insolvency affecting the Buyer; and

c) any failure to pay any sum of money due and owing for thirty (30) Business Days or more from the date when such sum was first due and demanded where such sum is not subject to a bona fide dispute.

## Occurrence of a Default

Upon the occurrence of a Default, the non-defaulting Party may give notice to the defaulting Party of the occurrence of such Default if the Default is not capable of remedy or if the defaulting Party does not remedy the Default.

## Default Termination

Upon the occurrence of an Event of Default, the non-defaulting Party may upon giving not less than [ XXX] Days notice to the defaulting Party terminate this Agreement.

## 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 licence, agreement or document between the Parties which are expressed to continue after such expiry or termination.

## Other remedies

Notwithstanding other provisions of this Article, either Party may pursue such other remedies as may be available to it under any Applicable Law if this Agreement is terminated in accordance with this Article.

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# Article 20. Liabilities

## Limitation of Liability

Except as expressly provided in this Agreement, a Party shall not be liable to the other Party for Consequential Losses arising from any act or omission relating to this Agreement.

## 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.

## 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.

## 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 20.2 shall not apply to limit the liability of such Party or the remedies available to the other Party.

# Article 21. Indemnities

## General Indemnification

Each of Seller and 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) from any other act, omission or event for which the Indemnifying Party is liable pursuant to this Agreement.

## 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 21, except to the extent, if any, that it has been prejudiced by the lack of timely and adequate notice.

## 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.

## 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 (in the light of the circumstances) after it is notified of the assertion or commencement thereof, then:

c) 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

d) the Indemnifying Party shall be bound by any defence or settlement that the

Indemnified Party may make as to such third party claim.

e) 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.

f) 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 22. Transfer

## Obligation

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.

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.

If the transferring Party makes a Transfer without satisfying in all material respects the requirements of Article 22, then the other Party shall have the right to terminate this Agreement.

## Successors and Assigns

Subject to the provisions of Article 22, this Agreement shall be binding upon and inure for the benefit of the respective successors in title and permitted transferees of each Party.

## Financing

Nothing contained in this Article 22.3 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;

c) such Party shall ensure that any such security interest shall be expressed to be without prejudice to the provisions of this Agreement.

# Article 23. Change in Trading Regime

1. Upon the declaration by the Authorities that different rules in the regional electricity market or international trading regime be applied and this rules impact in the possibilities of execution of the current Agreement, the Parties shall as soon as practicable but not later than [ XXX] Days from the declaration, meet to review the operational procedures and information flows under this Agreement and shall agree such changes as may be required to enable the Parties comply with the Market Rules and sufficiently adjust their operations to accommodate the change in trading regime.

# Article 24. Change in Law

*In long term agreements there is always a section to deal with eventual situations of “Changes in Law”. Given the relatively short term of this kind of agreements, it is considered that any future Change in Law can be foreseen before signing the contract, so provisions should be taken by the Parties to internalise this change in law before signing the contract. Therefore it would be not necessary this Article.*

# Article 25. Termination

## Termination

1. This Agreement shall be deemed terminated on the date the first of the following occurs:

a) notice of immediate termination is given by either Party pursuant to Article 3.5;

or

b) the effluxion of the Contract Duration plus the duration of all Force Majeure events from the Commercial Operations Date; or

c) the date specified in a notice of early termination under Article 25.2.

## Early Termination

Either Party shall have the right exercisable for [ XXX] Days upon the occurrence of any of the following events to give to the other Party a notice of early termination of this Agreement:

a) revocation, cancellation or withdrawal of any Authorisation; or

b) a prolonged Force Majeure Event is continuing pursuant to Article 17; or

c) the other Party fails or refuses to perform any of its obligations under this Agreement, which failure or refusal constitutes a Material Breach of this Agreement..

## Notice of Early Termination

Without prejudice to any of its other rights in this Agreement, the Party giving the notice of early termination under this Article 25 shall specify the basis for early termination and a termination date not less than [ XXX] Days after the date of the notice of early termination. Unless before such specified date for early termination of this Agreement, the Party receiving the notice of early termination remedies or cures the specified basis for early termination or disputes such early termination and initiates resolution of the Dispute pursuant to Article 25, Article 26 this Agreement shall end on the date designated in the early termination notice.

## Suspension of obligations

Without prejudice to Seller’s rights under Article 4, Seller may suspend its obligations to make energy available under this Agreement with immediate effect by giving Buyer a notice of early termination pursuant to this Article 25.

# Article 26. Governing Law and Dispute Resolution

## Governing Law

This Agreement shall be governed by, construed and enforced in all respects in accordance with the laws of the [*specify country*] and the rules governing international trade in the WAPP.

## Dispute Resolution

Any dispute between the Parties with regard to the interpretation of the Regional Market Rules, the Operation Manual, the Regional Metering Code or any other regulations issued by the relevant Authority shall be referred to the Dispute Resolution Procedures established under the Regional Market Rules and shall finally be settled in accordance with the dispute resolution procedure provided in the Regional Market Rules. If parties cannot agree that a dispute is an interpretation issue or commercial issue, the matter will be referred to arbitration.

## Arbitration

Subject to Article 26.2, Article 26.5 any dispute or difference of any kind between the Parties in connection with or arising out of this Agreement including the interpretation of this Agreement, its validity and any purported breach or termination (“Dispute”) shall be finally settled by arbitration under the rules of ECOWAS.

## Agreement

It is hereby agreed that:

a) the seat of the arbitration shall be [ XXX];

b) there shall be three (3) arbitrators, one appointed by each Party and the third as agreed by the Parties provided that where Parties are unable to agree on the third Arbitrator, same shall be appointed by the [ XXX];

c) the language of the arbitration shall be [specify language];

d) the award rendered shall apportion the costs of the arbitration;

e) the award shall be in writing and shall set forth in reasonable detail the facts of the Dispute and the reasons for the tribunal’s decision; and

f) the award in such arbitration shall be final and binding upon the Parties, save in the event of fraud or manifest error, and judgment thereon may be entered in any Court having jurisdiction for its enforcement; and the Parties renounce any right of appeal from the decision of the tribunal insofar as such renunciation can validly be made.

## 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. If the Parties are unable to agree on the choice of an Expert within [ XXX] Days, the Expert shall upon a request in writing by either Party, be appointed by [ XXX];

b) Other than in the case of invoices disputed by Buyer in accordance with Article

13, for a period of [ XXX] 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 [ XXX] Day period each Party shall have a period of [ XXX] 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 [ XXX] Day period provided that neither Party shall during such [ XXX] Day 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 [ XXX] Day period;

c) At the end of the [ XXX] day period referred to in Article 26.5.b) above, and no later than [ XXX] 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;

d) The Expert shall render his determination in writing within [ XXX] days of the completion of the oral presentation made in accordance with Article 26.5.c) and give reasonable details of the reasons for his determination;

e) The decision of the Expert shall be final and binding on the Parties save in the event of fraud or manifest error or mistake;

f) The Expert shall act as an expert and not as an arbitrator;

g) The costs of the Expert shall be borne as determined by the Expert or, in the absence of such determination, equally by the Parties.

## Right to commence or maintain any 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 26.3 or Article 26.5, and then only to enforce or execute the award under such procedure.

## Condition of appointment of Experts and arbitrators

The Parties shall each secure that all Experts and arbitrators shall agree to be bound by the provisions of Article 18 of this Agreement as a condition of appointment.

## 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 4 on grounds different to those referred to an Expert or arbitrators shall not be restricted by this Article 26.8.

# Article 27. General

## Conflict of Interest

1. Prohibition. 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:

(i) 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:

 any gift, entertainment or other benefit of significant cost or value; or

 any commission, fee or rebate; and

(ii) 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).

## Reporting Violations and Reimbursements

A Party shall immediately notify the other Party of any violation of Article 27 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 27. In addition to any other remedies to which the other Party may be legally entitled, the Party in violation of Article

27 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.

1. Termination. Prior to the Effective Date, the non-violating Party may, at its sole option, terminate this Agreement with immediate effect for any violation of Article 27.
2. Audit Rights. 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 27.

## Provisions

The provisions of the preceding Article 27.2 shall not apply to:

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

## 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 Seller or 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.

## No Partnership

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 between the Parties. 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.

## 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 provisions of this Agreement.

## 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.

## 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.

## 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:

1. any other term, provision, or condition of, or action pursuant to, this Agreement; or
2. such terms, provisions or conditions of, or actions pursuant to, this Agreement on any future occasion.

## No Third Party Beneficiaries

The interpretation of this Agreement shall exclude any rights under legislative provisions or court made law conferring rights under a contract to Persons not a party to that contract.

## Severability

If any provision of this Agreement is finally determined to be illegal, invalid, void or unenforceable under any Applicable Law, 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.

## Variation

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

## Notices

Except for communication in accordance with the Operating and Dispatch Procedures, any notice or other communication to be given by one Party to the other under or in connection with this Agreement shall be given in writing and may be hand delivered or sent by prepaid mail or facsimile to the recipient as specified below or subsequently notified from time to time. Any such notice or communication shall be deemed received upon hand delivery, or five (5) Days after posting, or if sent by facsimile upon confirmation of uninterrupted transmission by a transmission report provided that any notice given by facsimile shall be subsequently confirmed by letter sent by hand or post, but without prejudice to the original facsimile notice if received in accordance with this Article 27.13

(a) For Seller: [ ] Limited

Facsimile

Attention: Managing Director

(b) For Buyer [ ] Limited

Facsimile

Attention: Managing Director

## 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, [*Insert Buyer or Seller*]is authorized to de tach the signature page from one or more counterparts and, attach each signed signature page to a counterpart.

## 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 in the manner hereinafter appearing, the day and year first above written.

The Common Seal of the within named

[ ] LIMITED (seller) has been affixed hereto In the presence of:

DIRECTOR

The Common Seal of the within named

[ ] LIMITED (Buyer) has been affixed hereto In the presence of:

DIRECTOR

# SCHEDULE 1 Price and Quantities

The price is XXX US$/MWh

The quantities under this contract are: [*Establish the quantities; this may have a modulation according to a load curve. In this case the load curve or modulation has to be precisely described]*

# SCHEDULE 2 [INSURANCE PROGRAMME]

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 is established the [*day*] [*month*] [*year*]

The contract Term is established as: [*Establish Term*]

Short Term Bilateral Agreement

[Model]

**Between**

[Insert Seller’s name] **And**

[Insert Buyer’s name]

# SPECIAL CONDITIONS

**SPECIAL CONDITIONS (DATA SHEET)**

|  |  |  |
| --- | --- | --- |
| 1 | Trading Agreement Date |  |
| 2 | Seller’s Name |  |
| 3 | Seller’s Identification as  WAPP market participant |  |
| 4 | Seller’s Address |  |
| 5 | Buyer’s Name |  |
| 6 | Buyer’s Identification as  WAPP market participant |  |
| 7 | Buyer’s Address |  |
| 8 | Article 2. Interpretation g) | Specify currency |
| 9 | Article 3. Conditions  Precedent 4) | Specify Effective Date |
| 10 | Article 6 Delivery 1) | Specify Delivery Point |
| 11 | Article 13 Billing and  Payment 1) | Specify Seller’s Bank / account |
| 12 | Article 13 Billing and  Payment 1) | Specify Buyer’s Bank / account |
| 13 | Article 13 Billing and  Payment 2) | Details of Buyer’s payment Guarantee |
| 14 | Article 13 Billing and  Payment 9) | Specify “Agreed Interest Rate” |
| 15 | Article 16. Representations,  Warranties and Covenants  1)a) | Specify Seller’s legal form (private company,  government’s corporatized company, TSO, etc) and country |
| 16 | Article 16. Representations,  Warranties and Covenants  2)a) | Specify Buyer’s legal form (private company,  government’s corporatized company, TSO, etc) and country |
| 17 | Article 17. Force Majeure 8) | Establish period for “Termination for Prolonged  Force Majeure Event” reasons. (*This period has to be consistent with the contract duration; this alternative can even be deleted from the contract if the duration is too short*) |
| 18 | Article 18. Confidentiality 1) | Establish period for which contract data must be  maintained confidential |

|  |  |  |
| --- | --- | --- |
| 19 | Article 19. Default 4) | Establish number of days of notice to terminate  Agreement because of Default.  (*This period has to be consistent with the contract duration; this alternative can even be deleted from the contract if the duration is too short*) |
| 20 | Article 25. Termination 3) | Specify Early Termination Date as required in  Article 25 |
| 21 | Article 26. Governing Law  and Dispute Resolution 1) | Specify country. |
| 22 | Article 26. Governing Law  and Dispute Resolution 4) a) | Seat of arbitration in arbitration process |
| 23 | Article 26. Governing Law  and Dispute Resolution 4) c) | Arbitration language |
| 24 | SCHEDULE 1 | Establish agreed price in [currency]/MWh in  figures and numbers with the required detail. If there is a load curve with different prices for different periods, detail so. |
| 25 | SCHEDULE 1 | Establish agreed quantities in MWh in figures and  numbers with the required detail. If there is a load curve with different quantities for different periods, detail so. |
| 26 | SCHEDULE 2 | Detail insurances  (C*an be deleted from the contract if the duration is too short*) |
| 27 | SCHEDULE 3 | Establish Commercial Operation Date |
| 28 | SCHEDULE 3 | Establish contract Term. |