
**DEVELOPMENT OF WAPP MARKET DESIGN AND
MARKET RULES**

DELIVERABLE:

Implementation and Recommendations Report (Draft)

Prepared for:



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DEVELOPMENT OF WAPP MARKET DESIGN AND MARKET RULES

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I BACKGROUND

The West African Power Pool (WAPP) was established in 1999 by Economic Community of West African States (ECOWAS) countries members to promote regional energy integration. The main missions of the WAPP is to facilitate the establishment of an institutional and regulatory framework conducive to investments, the development of generation and transmission infrastructures and the creation of a regional market for electric power.

In January 2003 the “Energy Protocol” was signed in Dakar (Senegal). This Protocol establishes a legal framework in order to promote long-term co-operation in the energy field, based on complementarities and mutual benefits, with a view to achieving increased investment in the energy sector, and increased energy trade in the West Africa region.

In January 2006, pursuant to Decision A/DEC.20/01/06 of the Authority of Heads of States and Governments of ECOWAS, the WAPP Secretariat was established as a specialized institution of ECOWAS embracing the private and public power utilities within the ECOWAS Member States.

The above mentioned milestones (together with other decisions) provide for a strong legal basis for the development of WAPP as a regional organisation and provide the required tools to achieve its objectives.



II INTRODUCTION

1. OBJECTIVES

The project's general objective is "to design and develop an electricity market for the West Africa Power Pool".

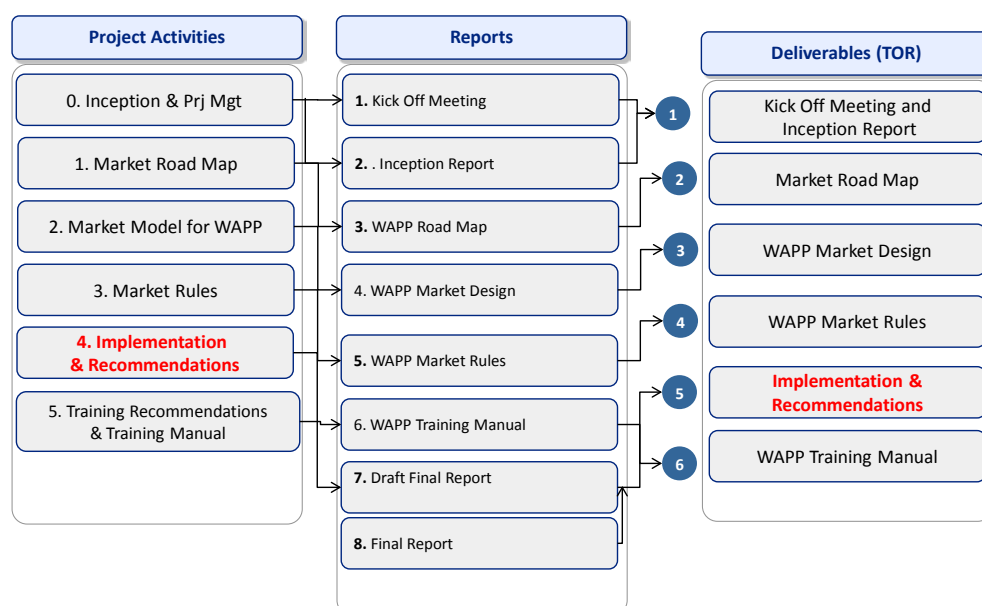
This general objective should be achieved by means of the following specific objectives / activities:

1. Develop a Road Map required to transit from the present technical and commercial status to a regional electricity market.
2. Analyze and recommend market model.
3. Develop electricity market rules.
4. Assist in the establishment of comprehensive trading rules.
5. Develop a systematic and detailed integrated action plan.
6. Review and advice on consolidation of existing agreements.
7. Develop guidelines for establishing the Wholesale Electricity Market (WEM), relevant Transmission Tariff and transition to a competitive energy market.
8. Training recommendations and training manual.

2. PROJECT ORGANISATION

The project is organised in activities which are directly linked to the specific project's objectives mentioned in the previous point. The next figure shows the activities and their relationship with the main products or reports and the deliverables established in the terms of reference; this report corresponds to the deliverable marked in red.

Figure 1: Project Organisation: Activities, Reports and Deliverables



3. THE TASK

The task scope as agreed during the Inception Mission is described as:

This task consists of providing recommendations for the establishment of the mechanisms, institutions and processes agreed in previous tasks, that would enable the market implementation as well as dealing with transitional aspects rising from existing situations that have to be managed.

We consider that the key areas that will require an effort in implementation and where we will provide the corresponding recommendations are:

1. *The transactions and contracts that will be the core of the regional market.*
2. *The implementation of institutions or certain activities within already existing institutions.*
3. *PPAs:*
4. *Transmission infrastructure and transmission tariff:*
5. *Physical infrastructure:*
6. *Countries adaptations*

3.1. THE MARKET PHASES (EVOLUTION OF TRANSACTIONS AND CONTRACTS THAT WILL BE THE CORE OF THE REGIONAL MARKET)

This implies:

- *Identify and analyse the issues that need to be implemented for an actual launch of each market stage.*
- *Establish the minimum "conditions precedent" for each market stage and the elements that "trigger" the transition from one stage to the following.*
- *Identify the required key procedures that need to be put in place which means that they have been developed, tested, approved and adopted by the market participants.*
- *Organise the identified needs in a "work plan" and recommendations on how to best put in place the main requirements*

3.2. THE IMPLEMENTATION OF INSTITUTIONS OR CERTAIN ACTIVITIES WITHIN ALREADY EXISTING INSTITUTIONS

This implies:

- *Definition of institutions needed in each market stage*
- *Definition of key activities the institutions need to perform in each market stage*
- *Creation / adaptation of each institutions to the needs (required activities) of each market stage*

3.3. PPAs

This implies:

- *If there are agreements / contracts that represent a hurdle for regional trade, design the manner to mitigate the effect of these agreements / contracts in a "transition"*
- *Identify the agreements / contracts that are relevant to the regional trade*

- *Analysis of the impact they may have in the regional market development*
- *Proposal of mitigation actions if needed*
- *Proposal of guidelines to be taken into account for future PPAs so they do not interfere / hinder the development of regional trade.*

3.4. TRANSMISSION INFRASTRUCTURE

This implies:

- *WAPP has already addressed the problem of developing transmission infrastructure and we consider that the way this has been solved is creative and adapted to the region.*
- *Transmission tariff: a way for compensating the use of the transmission system. This should consider two aspects:*
 - *The revenues for the use of the interconnectors.*
 - *The revenues that should receive a country which is hosting flows in its domestic transmission network.*
- *We will analyze the existing transmission tariff methodology and we will make recommendations in case some adjustments or eventually different approaches are required for consistency with the market design.*

3.5. PHYSICAL INFRASTRUCTURE (RECOMMENDATIONS)

This implies addressing:

- *Requirements at regional institutions level (ICC?)*
 - *SCADA?*
 - *Commercial metering system*
 - *Communication systems*
 - *IT systems for managing the market*
 - *Data bases*
- *Requirements at countries' level*

3.6. MINIMUM REQUIREMENTS TO MEET FOR CROSS BORDER TRADING AT COUNTRY LEVEL

This implies addressing:

- *Legal / regulatory aspects:*
 - *Recommendation on key elements to facilitate regional trade (i.e. licenses export/import, policy regarding cross border trading, opportunity exchanges, etc)*
- *Technical aspects:*
 - *Recommendations on additional harmonization between countries' operational rules and regional operational rules, if required.*

4. THE DOCUMENT

This document (Implementation and Recommendations) is organised in the following sections:

- An Introduction: this section
- The Implementation and Recommendations: involving the following points:
 - ✓ Introduction
 - ✓ Aspects dealing with contracts, agreements and procedures needed.
 - ✓ Institutional aspects
 - ✓ PPAs and bilateral agreements
 - ✓ Aspects dealing with the transmission infrastructure (system expansion and transmission tariff)
 - ✓ Physical requirements to implement the regional market
 - ✓ Key requirements at country level for developing the regional market
 - ✓ A summary of activities needed for the establishment and development of the regional market
- An Annex presenting a "concept paper" on transmission tariffs for the region.
- Standard bilateral Agreements presented in Annex.

III IMPLEMENTATION AND RECOMMENDATIONS

1. INTRODUCTION

The development of the regional power market in the WAPP area has been designed in stages; these stages have the following characteristics:

1. **Phase 1:** from now and 2015 approximately when most regional transmission infrastructure is expected to be commissioned. Main characteristics of this phase would be:
 - a. Formalise trading that today is carried out on a “case by case” basis and standardise procedures such as:
 - ✓ Bilateral agreements (countries, regional companies)
 - ✓ Commercial Instruments (type of contracts, short term exchanges)
 - b. Transmission pricing agreed between parties
 - c. Initiate the regional operational and commercial coordination
 - d. Preparation for the following stage
 - e. Regional regulator: development of rules, enforcement of rules and dispute resolution
2. **Phase 2:** based on the preparations carried out during the 1st phase, and will include but not limited to the following:
 - a. Bilateral agreements with transit through third countries, based on standard commercial instruments
 - b. Back up of contracts in the market (possibility)
 - c. Short term exchanges through day ahead market (regional optimization model)
 - d. Regional transmission pricing
 - e. Regional System Operation/Market Operations functions¹
3. **Phase 3:** a long term vision with a liquid day ahead market, dynamic trade in the bilateral market, and introduction of other markets (ancillary services, financial products).

The transit from one market phase to the following one is not done according to specific dates or a certain fixed calendar, it is triggered by a certain number of conditions that are necessary to be fulfilled to pass from one phase to the following one and will be specified for each case.

Therefore, launching each of the market phases requires a set of tasks and conditions to be accomplished, and the market phase will not be able to be launched unless these conditions and tasks have been fulfilled first.

There are some tasks/conditions that are mandatory and without them, the launching of a phase is not possible, others contribute for a better development of the regional market. In this document we will establish tasks and conditions needed, we will mark those that are indispensable for the market evolution and we

¹ The System Operation functions we are referring to here are not the classical functions of a SO which involve management of generation assets. They refer to a monitoring of the cross border trading from the operational point of view and fostering the coordination with domestic TSOs.

will indicate those which are desirable for a better regional market development but will not prevent the market working if they are not fulfilled or partially fulfilled.

The following points in this section approach in an ordered manner the different aspects to take into account and make possible the launching and operation of market phase 1 and market phase 2. This is made by presenting a series of activities that have to be carried out for the implementation of the regional power market and during the operation of the regional market. It is also detailed who should participate in the development of each activity and when needed who should give the final approval before the activity's output is official and enforceable.

The amount of work identified justifies from our point of view the establishment of a group or task force within the Secretariat to overview, coordinate and monitor the accomplishment of these tasks in the coordinated manner that it is needed.

We recommend then the creation (officially) of this “task force” with the overall objective of “implementing and developing the regional power market”.

2. CONTRACTS, AGREEMENTS AND PROCEDURES

This point details the key contract templates, agreements and procedures that have to be put in place for the start up of each of the market phases.

2.1. MARKET PHASE 1

1. **Road Map:** this TA developed a global road map for the implementation of the regional market in the WAPP area. It is convenient that this document is approved by the WAPP authorities (General Assembly) to serve as a guide for implementation and monitoring of the market development.
2. **Bilateral Agreements:** market phase 1 is characterised by the fact that all transactions in the regional market are carried out through bilateral agreements. These agreements can be long, medium or short term. It has been strongly recommended and agreed that these bilateral transactions should use standard formats to reduce transaction costs and facilitate the task of the regional system market operator. More detail on these agreements is presented in a next point and a proposal of standard format is presented in annex.
3. **Market Participation Agreement:** this agreement to be signed to become a market participant in the regional market establishes the basic rights and obligations of the market participants as well as the fact that by signing this agreement they accept the legal, regulatory and institutional framework of WAPP and participate in the market abiding by the regional rules and regulations.
4. **Market Rules:** regional market rules have been developed in this TA. They have to be officially approved by the ERETA before they are enforceable.
5. **Operation Manual:** the Operation Manual has been approved by the WAPP authorities; countries in the region have neither the same technical standards nor operational procedures. It is needed that before operating regularly as a participant in the regional market the countries agree on certain technical standards to achieve in a period of time, the implementation plan to achieve this objective and detailed operational procedures for operating with the systems synchronised.

6. **Procedures:** the market rules mention a series of procedures that are needed for the regional market to work and have to be developed.
7. **Registers and Databases:** there are registers and databases that have to be implemented before the market is initiated, namely the market participants register, the contracts register and the databases on market operations.

The following table shows these different items indicating who develops each of them and who approves them before they are enforceable or applicable.

Item	Developed by	Approved by
Road Map	Consultant	WAPP General Assembly
Bilateral agreements	Consultant	ERERA
Market Participation Agreement	ERERA	ERERA
Market Rules	Consultant	ERERA
Operation Manual / regional standards / implementation plan	Engineering and Operating Committee	ERERA
Operating procedures	SMO /Control areas	ERERA
Market monitoring procedure	SMO	ERERA
Applying for admission procedure	SMO	ERERA
Contract approval and contract registering procedure	SMO	ERERA
Procedure to allocate transmission capacity	SMO	ERERA
Procedure to inform (daily) to the SMO the operation of contracts.	SMO	SMO
Dispute resolution procedure (Has to be developed and implemented during this phase as soon as possible)	ERERA	ERERA
Market participants register	SMO	
Contracts register	SMO	
Operational databases	SMO	

Table 1: Contracts, Agreements, Procedures – Market Phase 1

2.2. MARKET PHASE 2

Market phase 2 involves as basic difference with market phase 1 the day ahead market and the regulated transmission tariff. The following points are additional or modification of the points listed for market phase 1.

1. **Market Participation Agreement:** should be the same as the previous one provided it foresaw the second market phase.
2. **Market Rules:** market rules corresponding to this phase may have been adjusted before the market phase begins. These adjustments have to be approved by the procedures established in the market rules.
3. **Procedures:** the market rules mention a series of procedures that are needed for the regional market to work and have to be developed.
4. **Registers and Databases:** there are registers and databases that have to be implemented before the market is initiated, market phase 2 will involve more sophisticated data bases for registering transactions in the day ahead market.
5. **Transmission tariff:** it is needed to develop a transmission tariff methodology, calculate the tariff and implement it.

Item	Developed by	Approved by
Market Participation Agreement	May not be needed to modify ERERA	ERERA
Market Rules	According to procedures established in the rules	ERERA
Applying for admission procedure (There are different market participants than in phase 1)	SMO	ERERA
Contract approval and contract registering procedure (Phase 2 involves possibility of contracts different from phase 1)	SMO	ERERA
Dispute resolution procedure (Has to be operational before market phase 2 begins)	ERERA	ERERA
Market participants register	SMO	
Contracts register	SMO	
Operational databases (Phase 2 involves different databases than phase 1)	SMO	

Item	Developed by	Approved by
Submitting offers and bids for day ahead market procedure	SMO	ERERA
Settlement procedure (day ahead market)	SMO	ERERA
Billing and payment procedure (day ahead market)	SMO	ERERA
Methodology for setting transmission tariffs	SMO/ERERA	ERERA
Setting and implementation of transmission tariff	SMO/ERERA	ERERA

Table 2: Contracts, Agreements, Procedures – Market Phase 1

3. INSTITUTIONAL ASPECTS

3.1. MARKET PHASE 1

From the institutional point of view, the following aspects have to be considered before commencement of market phase 1 or during market phase 1.

3.1.1. SMO

In the current institutional framework, there is no institution which can fully perform the role of a regional market operator with some functions of regional system operator.

It has been agreed that the best solution is to appoint the ICC as the institutions that performs the SMO role during market phase 1 since many of the activities required are already foreseen in the status of the ICC. However, not all functions are taken into consideration.

It is therefore required that the WAPP appoints the ICC to perform the functions of SMO during market phase 1. These functions are the ones established by the regional market rules.

It is needed that the ICC is officially appointed as the SMO for market phase 1 following the existing procedures in the WAPP. We consider this could be done with a decision of the Executive Board to be ratified by the General Assembly.

Market Phase 1 could not officially begin until this designation is official.

Apart from the official designation of the ICC as the SMO during market phase 1, the ICC has to:

1. Establish a clear plan for the implementation of the infrastructure and systems needed to operate. These aspects are partially covered already since a process for purchasing and installing systems is ongoing, however, it is needed to maintain an updated schedule for these activities and strictly monitor the achievement of them.
2. Testing of systems and training: systems have to be thoroughly tested before they are actually used for operation and professional staff has to be

trained not only in the use of the systems but in all aspects dealing with the regional trade.

3.1.2. ERERA

The ERERA is today established but partially operative since it has not been properly staffed yet. The ERERA has already a plan for the institutional development.

The ERERA prior commencement of market phase 1 should implement the development plan and give priority to two subjects:

1. Training of the professional staff so this staff is capable of carrying out the tasks which are ERERA's responsibility.
2. Develop and implement as soon as possible the dispute resolution procedure since the tools available today are not sufficient.

3.2. MARKET PHASE 2

3.2.1. SMO

From the institutional point of view, during market phase 1 there is a decision to make: if the SMO functions will be continue to be carried out by the ICC or if the ICC will be transformed in a new institution independent from the Executive Secretariat and reporting to the Executive Board and the General Assembly through the Executive Secretariat.

From the point of view of the Consultant it is recommended that this last institutional framework is adopted as proposed in the Market Design. This would imply the following steps:

1. A decision is made during market phase 1 by the General Assembly to implement the SMO as an institution of the WAPP, through the Executive Secretariat to the Executive Board.
2. The objectives, activities, responsibility and reporting of the SMO are the ones established in the market rules.
3. The SMO's Board is appointed by the General Assembly.
4. The SMO's Board establishes the procedures required to perform the activities.
5. The SMO's Board approves an action plan to:
 - a. Develop and implement an internal structure in the institution
 - b. Designs and approves the procedures needed by the Board to function
 - c. Designs and implement an action plan to:
 - i. Staff the institution
 - ii. Obtain the hardware and software needed for the market phase 2
 - iii. Trains the staff
 - iv. Tests the systems

3.2.2. ERERA

From the institutional point of view there are no changes required in the ERERA for the initiation of the market phase 2.

From the point of view of procedures that have to be in place and operative, the dispute resolution procedures has to be operative before commencement of market phase 2.

The panels established in the market rules have to be implemented and operative before beginning market phase 2.

4. PPAS AND BILATERAL AGREEMENTS

4.1. *EXISTING AND FUTURE PPAS*

The following aspects / actions have to be considered regarding existing PPAs and standard bilateral agreements:

1. It has to be adopted as a basic principle that existing contracts will be honoured and modified only if there is agreement between the parties.
2. A survey of existing contracts is carried out.
3. Countries are informed about conditions for new contracts so if they are in the process of signing any type of trading agreement they try to adjust it to the market requirements even if market phase 1 has not yet begun.
4. Existing contracts are analysed and parties are called to make their best efforts to agree on modifications to adapt the contracts to the new conditions.
5. Standard bilateral agreements are approved and communicated to the countries.
6. The existing contracts (with their agreed modifications if any) are communicated to the SMO (in this case the ICC).
7. It is very probable that the region will keep on using traditional PPAs to manage system expansion. Even if these PPAs are domestic ones, and countries are sovereign to make decisions regarding the form their PPAs will take, it is strongly recommended in order not to hinder the regional market development that these PPAs follow the next recommendations:
 - a. Pricing formula is a two term formula, one term paying for capital costs (capacity – US\$/MW) and the other term paying for variable costs (energy – US\$/MWh).
 - b. No “take or pay” clause is included.
 - c. The PPA makes available the transmission capacity it does not use; the use of transmission capacity is declared on a daily basis (day – ahead) to the SMO and the SMO makes available the spare capacity for other transactions.

4.2. *BILATERAL AGREEMENTS*

The market rules foresee 3 types of bilateral agreements; in annex to this document standard forms for these agreements are proposed.

5. TRANSMISSION INFRASTRUCTURE

Two aspects have to be addressed regarding the transmission infrastructure:

1. Transmission system expansion
2. Payment for transmission services (transmission tariff)

5.1. TRANSMISSION SYSTEM EXPANSION

WAPP has already a system for the implementation of regional projects; this method does not need to be modified. It is expected that more emphasis is given to generation projects to fast track the development of capacity in the region and approach to a reasonable level of reserve margins which is important in a competitive market to avoid (as far as possible) prices spiking and mitigate the possibility of exercising market power or prices manipulation in the market.

The implementation of projects is based in a regional master planning activity; currently WAPP has an approved transmission master plan which has emphasis in the transmission infrastructure.

It is recommended that:

1. The master planning activity is established as a permanent activity in the WAPP.
2. Master planning should be carried out permanently, with periodic adjustments of the master plan and periodic revisions in depth of the master plan.
3. The Strategic Planning Committee should lead the activity.
4. The master planning should include generation and be carried out as a generation – transmission regional master planning.

5.2. TRANSMISSION TARIFF

The WAPP has carried out a study in 2008 on transmission pricing: "A Methodology to Calculate the Demand and Energy Components of a Transmission Tariff within WAPP" financed by USAID.

We consider the model proposed by this study can be difficult to implement and would not cover the regional market needs. It is convenient that the tariff methodology makes a difference between regional lines where the transmission tariff is applicable and the wheeling services when domestic services provide transit between countries. This methodology should contemplate the case of SPEs being implemented in the region.

We are enclosing as an annex a "concept paper" on transmission tariffs which we consider can guide to a transmission tariff more appropriate to the needs of the regional market as it has been designed.

It is therefore needed to follow the next steps to implement a regional transmission tariff before market phase 2 begins:

1. A methodology consistent with market phase 2 design is developed
2. The methodology is approved
3. The regional tariff is set.

6. PHYSICAL INFRASTRUCTURE

The physical infrastructure refers to the hardware, software and metering system required to run the market.

During our inception mission we were informed that a bidding process was ongoing to equip the ICC with this infrastructure. The detail of the goods and services that

are foreseen to purchase seem to be adapted to the needs of the proposed trading platform.

It is only needed to ensure that the software and other systems are correctly customised to the proposed market design and market rules and that the professional staff training is achieved by the time it is needed.

The main activities regarding this point are:

1. Purchase of systems and goods to equip the ICC (SMO) is achieved.
2. Systems are installed and tested, including “shadow running” of the systems and mock trading.
3. Professional staff from ICC (SMO) is trained.

7. REQUIREMENTS AT COUNTRY LEVEL

Requirements at country level to make possible cross border trading in a fluid manner can be organised in two categories: legal/ regulatory aspects and technical aspects.

Next points detail the need and importance of different issues that can facilitate, hinder or even prevent cross border trading in the region.

7.1. LEGAL / REGULATORY ASPECTS

The main issues that have to be treated at country level to facilitate and avoid hindering cross border trading are:

1. **Open access to spare capacity of transmission system:** this is a key and mandatory element without which fluid cross border trading would be seriously hindered.

Countries should process the required reforms so the spare capacity in tie lines and transmission domestic systems is made available for cross border trading. TSOs in the different countries should be able to inform the SMO (following the procedures the SMO defines) about the spare capacity in their domestic systems and automatically make it available so the SMO can allocate this capacity for cross border trading.

2. **Import / Export licenses:** it necessary that countries simplify as much as possible the licensing for import / export of energy in order not to transform the license requirement into a barrier for cross border trading.
3. **Opportunity exchanges:** TSOs should be authorised in a general manner and not in case by case basis. The opportunity for an exchange where both parties win may be lost if it is needed to get an authorisation in each opportunity.

7.2. TECHNICAL ASPECTS

The technical aspects and adaptation of the different countries to facilitate power trade in the region are all included in the implementation and adaptation plan on “Operation Manual, regional standards and operating procedures” mentioned before. This is a specific plan which established the parameters that have to be met in the future by all countries of the region, and a glide path for each country to adapt itself smoothly to the final regional parameters.

8. SUMMARY OF ACTIVITIES NEEDED AND RESPONSIBLE

The following table shows in a summarised manner the activities which are needed to implement and develop the regional power market in the form of an action plan, that is to say, activities in a timeline with responsible for each activity. The table shows who should be developing the activity and who should give a final approval when necessary before the activity's output is official and enforceable.

SUMMARY OF ACTIONS DURING THE DEVELOPMENT OF THE WAPP						
Id	Activity	Obligatory Prior Phase 1	During Phase 1	Obligatory Prior Phase 2	Developed by	Approved by
	<i>CONTRACTS, AGREEMENTS AND PROCEDURES - Market Phase 1</i>					
1	Road Map				Consultant	General Assembly
2	Bilateral agreements				Consultant	ERERA
3	Market Participation Agreement				ERERA	ERERA
4	Market Rules				Consultant	ERERA
5	Operation Manual / regional standards / implementation plan				EOC / SMO	ERERA
6	Operating procedures				SMO / Control Areas	ERERA
7	Market monitoring procedure				SMO	ERERA
8	Applying for admission procedure				SMO	ERERA
9	Contract approval and contract registering procedure				SMO	ERERA
10	Procedure to allocate transmission capacity				SMO	ERERA
11	Procedure to inform (daily) to the SMO the operation of contracts.				SMO	SMO
12	Dispute resolution procedure				ERERA	ERERA
13	Market participants register				SMO	SMO
14	Contracts register				SMO	SMO
15	Operational Databases				SMO	SMO
	<i>CONTRACTS, AGREEMENTS AND PROCEDURES - Market Phase 2</i>					
16	Market Participation Agreement				ERERA	ERERA

SUMMARY OF ACTIONS DURING THE DEVELOPMENT OF THE WAPP

Id	Activity	Obligatory Prior Phase 1	During Phase 1	Obligatory Prior Phase 2	Developed by	Approved by
17	Market Rules				According to RMR	ERERA
18	Applying for admission procedure				SMO	ERERA
19	Contract approval and contract registering procedure				SMO	ERERA
20	Market participants register				SMO	SMO
21	Contracts register				SMO	SMO
22	Operational databases				SMO	SMO
23	Submitting offers and bids for day ahead market procedure				SMO	SMO
24	Settlement procedure (day ahead market)				SMO	SMO
25	Billing and payment procedure (day ahead market)				SMO	SMO
26	Methodology for setting transmission tariffs				ERERA	ERERA
27	Setting and implementation of transmission tariff				ERERA / SMO	ERERA
	<i>INSTITUTIONAL ASPECTS - Market Phase 1</i>					
28	Appointment of ICC as SMO				Permanent Secretariat	General Assembly
29	Plan for the implementation of the infrastructure and systems (SMO)				ICC/SMO	EB
30	Testing of systems and training (SMO)				ICC/SMO	ICC/SMO
31	Training of the professional staff (SMO)				ICC/SMO	ICC/SMO
32	Training of the professional staff (ERERA)				ERERA	ERERA
33	Develop and implement dispute resolution procedure (ERERA)				ERERA	ERERA

SUMMARY OF ACTIONS DURING THE DEVELOPMENT OF THE WAPP						
Id	Activity	Obligatory Prior Phase 1	During Phase 1	Obligatory Prior Phase 2	Developed by	Approved by
	<i>INSTITUTIONAL ASPECTS - Market Phase 2</i>					
34	Decision on ICC as SMO separate from Permanent Secretariat				Permanent Secretariat	General Assembly
35	SMO's Board is appointed by the General Assembly				EB	General Assembly
36	SMO's Board establishes the procedures				SMO	SMO
37	SMO's Board approves an action plan				SMO	EB
38	Establishment of panels				ERERA	ERERA
	<i>PPAs and Bilateral Agreements</i>					
39	Survey of existing contracts				FC	
40	Existing contracts analysed and adjusted if possible				FC/SMO/ERERA/parties	
41	Approval of standard bilateral agreements					ERERA
42	Establishment of condition new PPAs should meet				Consultant	ERERA
	<i>Transmission Infrastructure</i>					
43	Establishment of regional planning activity as a permanent one					
44	Development of a transmission tariff methodology					
45	Approval of the transmission tariff methodology					
46	Transmission prices setting					
	<i>Physical Infrastructure</i>					

SUMMARY OF ACTIONS DURING THE DEVELOPMENT OF THE WAPP						
Id	Activity	Obligatory Prior Phase 1	During Phase 1	Obligatory Prior Phase 2	Developed by	Approved by
47	Purchase of systems and goods is achieved				ICC	Permanent Secretariat
48	Systems are installed and tested				ICC	ICC
49	Professional staff from ICC is trained				ICC	
	<i>Requirements at Country Level</i>					
50	Open access to spare capacity in the transmission system				Local authorities	Local authorities
51	Import / export licenses simplification				Local authorities	Local authorities
52	Authorisation TSO for opportunity exchanges				Local authorities	Local authorities

Table 3: Summary of Actions During the Development of WAPP

KEY	
The activity has to be accomplished in the indicated period	
The activity is developed during the indicated period	
Engineering and Operating Committee	EOC
Finance Committee	FC
System Market Operator	SMO
Information and Coordination Centre	ICC
Executive Board	EB

Table 4: Summary of Actions During the Development of WAPP - Key

IV ANNEX: TRANSMISSION TARIFFS – A CONCEPT PAPER

1. INTRODUCTION

The report is structure as follows:

- Section IV 2 reviews the principles that should be followed when designing transmission tariffs, describing the transmission costs that should be taken into account and different cost allocation methods (tariffs setting approaches) currently in use.
- Section IV 3 explains the difference between transmission flows within one electricity system and cross-border flows and why they should be treated differently.
- Section 4 goes over the main characteristics of the East Africa Power Pool market arrangements that are relevant for cross-border electricity tariffs.
- Finally, Section 5 presents our recommendations on the design of the cross-border tariffs arrangements.

2. TRANSMISSION TARIFFS

Setting transmission tariffs represents two different stages:

- determine the transmission costs that will be recuperated by the application of the transmission tariffs, and
- allocate those costs to the customers, deciding how much every customer should pay.

This section deals with both stages. First, by describing which are the costs of the transmission activity, which ones should be allocated to customers and how these costs are determined. Then, by describing different allocation methods that are use today in different countries or proposed by academics and practitioners. Although these methods are mainly used to set transmission tariffs within one given jurisdiction (i.e. a country), they are also used for cross-border transmission tariffs with the corresponding adjustments. It is necessary to understand these methodologies to develop later an approach for transmission tariffs in a regional context.

2.1. THE COSTS OF TRANSMISSION SERVICES

2.1.1. NATURE OF TRANSMISSION COSTS

Transmission tariffs should allow transmission companies to recover all the costs they have incurred to provide the transmission service, so they can continue developing the business and be able to fund new investments. Attending to when these costs are incurred, they can be classified as:

- Short-term costs: these costs are avoidable if no transmission of electricity is carried out. The only relevant avoidable cost of electricity transmission is the value of the energy that is lost in the networks.
- Long-term costs: these costs are not avoidable in the short run even if no transmission takes place. These costs include investment costs in physical assets, operation and maintenance cost, overheads...

Congestion costs are the difference in the energy dispatch costs that arise because transmission capacity is limited. If such limit is reached, electricity price may differ between locations because consumers at the importing location will be forced to buy power from more expensive local generators instead of importing cheaper energy. Congestion cost is the cost of the lack of enough transmission capacity, but it is not a cost of transmission itself and thus should not be included in cross-border transmission tariffs. Congestion costs will be revealed in later stages of the WAPP integration process, once the cross-border transmission capacity is allocated using a competitive tendering process.

In some countries the provision of ancillary services is included within the electricity transmission activity, and as a consequence the cost of these services is included in the transmission tariffs. However these costs are linked to the operation of the electricity system rather than with the wire business itself. They can include balancing, congestion management, charges for the provision of dispatching service, must run units' costs, charges paid to end users that provide service of load interruption, etc. Because these services are not in reality part of the transmission activity, their costs should not be recovered through the transmission tariffs for the benefit of transparency.

2.1.2. CALCULATION OF TRANSMISSION COSTS

Electricity transmission is an activity subject to natural monopolies characteristics. This implies that, from an economic point of view, it is more efficient that companies do not compete against each other but that only one company carries out the activity. But because the transmission company do not face competition from other companies, it should be regulated to avoid it from setting tariffs too high. The regulator should therefore set the revenue that the transmission company can earn or the tariffs it can charge. Regulators usually set regulated revenues according to some of the following approaches:

- The regulator allows the actual costs incurred by the company, and only review the costs and investments to ensure that they were prudently incurred.
- The regulator estimates the actual costs using some benchmark of unit costs of transmission assets (normally referred to as standard costs)
- The regulator allows costs as a result of a competitive tender (including or not the ownership of the asset). The lowest bid wins the tender and sets the allowed cost.

2.2. COST ALLOCATION

Setting transmission tariffs implies allocating the cost of the transmission network among its users. This cost allocation still presents a challenge for regulators worldwide, since there is not a unique theoretical sound approach for doing so. As the United States Federal Energy Regulatory Commission (FERC) acknowledges:²

“Our decisions regarding transmission cost allocation reflect the premise that allocation of costs is not a matter for the slide rule. It involves judgment on a myriad of facts. It has no claim to an exact science. We therefore allow regional flexibility in cost allocation and, when considering a dispute over cost allocation, exercise our judgment by weighing several factors. First, we consider whether a cost allocation proposal fairly assigns costs among participants, including those who cause them to be incurred and those who otherwise benefit from them. Second, we consider whether a cost allocation proposal provides adequate incentives to construct new transmission. Third, we consider whether the proposal is generally supported by state authorities and participants across the region.”

When allocating costs to customers, we should keep in mind that while short term transmission costs arise as a consequence of a transaction, longer term costs do not. These costs are caused by investment decisions that are not related to a specific transaction, but to the expectation about future usage of the network, and specifically to the usage in peak moments (given that investments provide capacity for these flows). Therefore, it is not cost reflective to allocate long-term transmission cost to customers in relation to their power flows.

This section provides an overview of the three approaches followed for setting transmission tariffs.

- Non-transaction based method: postage stamp rate
- Cost origination transaction based: flow-based methods
- “Beneficiary pays” principle

2.2.1. POSTAGE STAMP RATES

Under postage stamp rates every transmission customer pays a single rate for any transmission transaction within a defined region, regardless of the contractual origin and contractual destination of the electricity transmitted. That rate is the same for every customer and is an average rate because the total costs of the region's transmission network are divided by the total units transmitted (measured as energy transmitted, maximum capacity or a mixed of both).

Under postage stamp rates neither generators nor demand receive location price signal, what may lead to inefficient location of new generators (and an increase of new transmission costs). Despite these inefficiencies, this method is widely used because of its simplicity and because more complex methods may not provide large improvements in efficiency.³

2.2.2. FLOW-BASED METHODS

Flow-based tariffs are a family of methods that seek to allocate the cost of the transmission network to every user based on his location and use of the network. These methods first assign a cost to every component of the network and then use power flow models that are used to plan future transmission expansion and to determine locational marginal prices in energy markets to identify users' physical impacts on the transmission system by their location or the amount of power flows they affect. The main methods in this family are:

- Marginal participation
- Average participation
- Contract path
- Distribution Factors
- MW-mile

a) *Marginal participation*

The marginal participation method consist of estimating the marginal transmission cost in every node (or zone) of the grid. The marginal cost is the variation of the total cost due to a small variation of the electricity flows from one point of the network to another. The later of these points is selected arbitrarily as a reference node.

² United States Federal Energy Regulatory Commission, Order 890

³ Basically, because of the difficulties in estimating marginal costs by location of the transmission services.

b) Average participation

This method allocates the cost of the transmission network proportionally to the energy flowing through each transmission asset. The energy flows are drawn by allocating the energy consumed in a node to several injecting nodes (and vice-versa) by mean of an allocation rule (for example inflows are distributed proportionally between the outflows). The choice of the allocation rule is decisive but apparently arbitrary. Costs can be assigned to the generation, the demand or both sides of the transaction.

c) Contract path

Contract path is similar to the average participation method because transmission users are charged proportionally to the energy flowing through each transmission asset. Under this method the path the energy is supposed to follow is the most direct transmission line between two points, or "contract path". Thus this rule ignores Kirchhoff's laws

d) Distribution Factors

Another group of methods allocate the transmission costs according to one measurable impact of an event on every facility of the transmission network. This impact may be related to outages, leading to the so called Line Outage Distribution and Outage Transfer Distribution Factors, or to changes in flows, conducting to the Power Transfer Distribution Factor.

Although these methods are not intended primarily for cost allocation, some authors have suggested using them for this purpose, mainly to allocate reliability-oriented expansion costs. In order to do so, we must assume that this impact is the only relevant cost driver.

e) MW-mile

The MW-mile method allocates the costs of lines proportionally to the capacity used and distance from injection to withdrawal of the energy. It is more appropriate for hub and spoke or tree shaped networks, rather than for meshed networks.

2.2.3. "BENEFICIARY PAYS" PRINCIPLE

The "beneficiary pays" principle leads to the so called "Monetary Metris" method. This method aims at charging the network cost in proportion to the benefits that the transmission network, as if they had bargained and decided jointly to build the new transmission asset. These assets provide three main advantages for transmission users that can be measured in monetary units:

- Reduction in energy prices for the customers brought by the possibility of buying electricity from other areas or regions. At the same time some generators can finance a new transmission line because they benefit from selling their production to new customers.
- Increased reliability. New transmission lines that contribute to make the grid more meshed reducing the probability of outages.
- Increased competition in the market

While the benefits linked to lower dispatch costs can be estimated through long-term simulations of the short-term market, the two last advantages are much more difficult to measure. Estimation becomes more complex the more new assets modelled at the same time. Instability along time of the estimated benefits is also a problem.

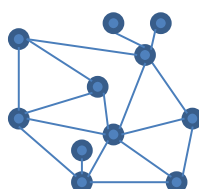
3. CROSS-BORDER FLOWS SPECIFICITIES

3.1. NATURE OF CROSS-BORDER TRANSMISSION SERVICE

When two or more electricity systems integrate in a wider electricity system, as the East Africa Power Pool, the nature of the electricity transmission services provided between different countries can be deemed as different from those within only one electricity system. The main reason is that every national TSO has planned and developed its transmission network basically so as to connect generation and consumption in its country and supply its domestic demand. These transmission facilities were developed by the individual companies to benefit their own systems and their own customers. Cross-border electricity flows have a different origin and destination and thus their use of the national transmission facilities is different. In addition, they sometimes require dedicated assets that are only or mainly intended to make these flows possible, but are not used directly by national customers.

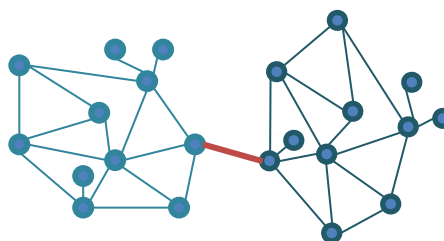
This section is devoted to explain why cross-border flows of electricity have a different nature and require different transmission tariffs arrangements than national flows. Figure 2 shows a schematic representation of a national isolated transmission network.

Figure 2 – Representation of an isolate electricity system



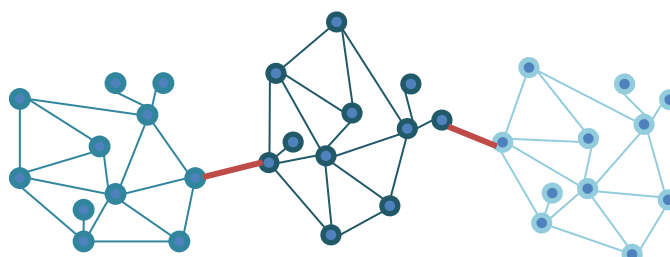
When two electricity systems connect to each other with a specific line, as shown in Figure 3, the new interconnection point is equivalent to a new generation or consumption point for the two systems. Because of that, the interconnection changes the electricity flows within any of the two systems (given that there is a new generator / demand), but only slightly.

Figure 3 – Interconnection of two electricity systems



However, when the integration occurs in a greater scale, for instance when several countries get interconnected as shown in Figure 4, the changes in electricity flows are also greater. In the situation represented in Figure 4, an electricity flow generated in the country on the left which ends at the country on the right has to cross through the country in the middle.

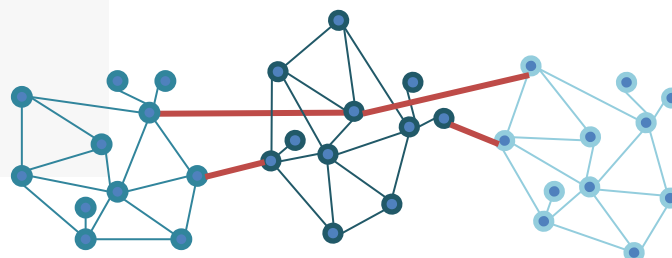
Figure 4 – Representation of multiple interconnected systems



Many times, cross-border flows go from one country to another using the transmission capacity built by the hosting countries for its own users, if this capacity is available. The paths followed by these flows are candidates to become part of a "regional transmission network". Existing facilities already fit

under existing cost allocation (tariffs) structures and therefore could be used under agreement of the different TSOs involved. In contrast, the development of new regional facilities requires greater certainty about the cost recovery of these projects. This implies having clear rules about regional / cross-border cost allocation and transmission tariffs. Figure 5 shows one of these regional lines connecting several systems.

Figure 5 –Multiple Interconnected systems with dedicated regional assets



Cross-border electricity flows are thus different from natural flows because they make use of the transmission grid following a different pattern, and using most of the time assets that have not been planned or developed specifically for hosting them (therefore, they usually use transmission capacity that is idle once the demand from national customers is covered), and only sometimes specific assets.. When considering transmission costs allocation between all the customers we have to keep in mind these differences.

3.2. TARIFFS STRUCTURE AND THE RISK OF PANCAKING

Transmission tariffs in any given country reflect a determined allocation of the cost of the transmission network among the electricity customers of that system. These tariffs probably reflect to some extent the pattern of use of the transmission network by these customers, but also that those facilities were planned and developed to serve those customers and they should therefore bear their cost.

As explained above, the use of a national transmission network made by a cross-border flow is of a different nature of that of the national customers. In addition the existing facilities of the transmission systems were not developed under common ownership and planning, or designed to benefit these cross-border flows.

Therefore, applying the national transmission tariffs to cross-border flows would not be either efficient, given that their pattern of use of the system is different, nor consistent with cost causation. If an electricity transaction would have to cross several countries and pay the national transmission tariffs in each of them, the cost burden would prevent that transaction to take place. This problem is known as "*pancaking*". That is why a specific cross-border transmission arrangement, different from the national ones, is required when there is an electricity system integration.

3.3. TSO COMPENSATIONS

We have seen above that cross-border flows of electricity are in essence different from those within a national transmission system, and that charging the same transmission tariffs to national flows and cross-border flows is not efficient and will lead to a deterrence of international trade. However, since these cross-border flows cause some costs to transmission operators, they should also be included in the allocation of transmission costs. Therefore, it is necessary to define cost allocation arrangements that treat differently national and cross-border flows.

The implementation of payments between the national TSO is a way of allowing the national transmission networks to recover the cost of hosting cross-border flows and, at the same time, allowing national TSOs to maintain their own independent transmission tariffs. These payments constitute the basis of the cross-border tariffs arrangements that need to be put in place. These arrangements can include explicit cross-border transmission tariffs and / or inter-TSO compensations (no-transaction based ex-post compensations).

Under an inter-TSO compensation mechanism, the TSOs agree on the costs that everyone bears as a consequence of hosting cross-border flows, and also in a method for allocating such costs. The first issue involves decisions over which costs to include, how to estimate them and when to determine them. The second issue includes aspects over how these costs are allocated among different TSOs. In

Section 5 we make a proposal for the implementation of an inter-TSO compensation mechanism, giving recommendations about the detailed aspects of it. We make this after reviewing in Section 4 the main characteristics of the WAPP relevant for the determination of common costs.

4. WAPP MARKET ARRANGEMENTS

The design of cross-border tariffs arrangements specific for the WAPP requires taking into account WAPP market model and other local constraints. This section recalls in a summarised manner those aspects of the regional market which are relevant for a "transmission tariff" design or which is necessary to consider for the proposal of a methodology for transmission tariffs.

According to the planned development of the market integration process, the region should have a region wide day-ahead market only in the second stage of the process. Therefore, in the first stage trade will be basically based on physical bilateral contracts with different timeframes: long, medium and short terms.

Agents in the market will be able to arrange international electricity trades by using the available interconnection capacity and the domestic spare transmission capacity in the WAPP member countries. These trades will take place basically between neighbouring countries in a first moment, but are expected to be possible between non adjacent countries later on (there is already a case in the region of trade with transit through third countries).

Interconnection capacity (including capacity to transit through third countries) will be granted by the System Market Operator on a first come-first served basis.

During this initial phase, when capacity is allocated on a first come-first served basis, agents with cross-border contracts are required to nominate daily to the SMO the energy that will be transferred. The unused cross-border transmission capacity will be made available by the SMO to other transactions. If the agents do not use the transfer capacity they have nominated (or fail to nominate the contract at all), they could be penalised. Monitoring of the use of cross-border capacity is important to prevent this capacity from being blocked to other participants.

National TSOs will be in charge of the energy balancing within their jurisdictions and of solving potential congestions that undermine the cross-border transmission capacity. Therefore, once a cross-border transmission capacity has been granted by the SMO, it should be considered as firm (no subject to curtail).

5. PROPOSED CROSS-BORDER TARIFFS ARRANGEMENTS

5.1. TARIFF ARRANGEMENTS FOR THE INITIAL STAGES

This section deals with the cross-border tariffs arrangements that should be put in place to allow for the compensation of the costs of hosting cross-border electricity trades in the WAPP region. These arrangements will consist of two different mechanisms:

- Explicit tariffs for cross-border trades using TSO infrastructure (wheeling charges)
- A compensation mechanism for the allocation of the cost of new regional infrastructures

In order to deal with the payments to and from the national TSOs, we recommend the implementation of a settlement system, henceforth named the Inter-Transmission System Operator Compensation Fund. This Compensation Fund is a “zero balance fund” and involves the following issues, covered in this section:

- Nature and governance
- The scope of the compensations
- Payments to the national TSO
- Payments from the national TSO
- Provisions for cross-border transactions with third countries

5.1.1. NATURE AND GOVERNANCE

The Inter-Transmission System Operator Compensation Fund is a settlement system adapted to deal with the payments related to the cross-border electricity flows between the countries that are part of the WAPP.

The Inter-Transmission System Operator Compensation Fund should be ruled by the Regional Regulator, since it is in charge of setting the tariffs methodology and approving transmission tariffs and operated by the SMO. The Regional Regulator should do this with the assistance of the SMO as necessary in the terms specified hereafter. The Regional Regulator functions regarding the Inter-Transmission System Operator Compensation Fund should be:

- Setting the relevant cross-border transmission tariffs for the use of the TSOs’ own assets (wheeling tariffs).
- Determine the annual amount that transmission companies are entitled to receive to recover the cost of new assets developed under regional planning.
- Determine the annual amount that national TSOs should contribute to pay for the recovery of the cost of new assets developed under regional planning.
- Oversee the implementation and management of the Inter-TSO Compensation Fund.

The SMO functions should be:

- Clear and settle the annual net amount payable to or by national TSOs or transmission companies.
- Provide the Regional Regulator with a proposal of the amount payable to or by national TSOs or transmission companies as a result of the Inter-Transmission System Operator Compensation.
- Share with the Regional Regulator all the information used for elaborating the previous proposal obtained from its own studies and from the different TSO: data on the national transmission networks, granted transmission capacity, trade flows between the countries so the regulator can carry out its functions regarding these matters.

5.1.2. PAYMENTS FOR COSTS OF TSO OWN INFRASTRUCTURE (WHEELING)

a) *Payments to the national TSO*

Payments to the national TSO for the wheeling across the national transmission networks are intended to compensate the national TSO for hosting cross-border flows of electricity. The amount that will be compensated to national TSO shall be related to the costs associated to hosting cross-border flows of electricity. These are the costs of assets directly affected by the cross border flows of electricity. We suggest that these assets be identified as those assets affected by cross-border flows in more than a five % of its capacity. In order to identify those assets affected by cross-border flows

of electricity, the SMO should run once a year a Regional Electricity Model⁴ which takes into account the regional transmission grid. This model should be run including the interconnection capacity between the countries and without including it. The identification of the assets affected by cross-border flows will be based on the comparison of the results of this exercise. Other rules or arrangements for determining the assets affected by cross border flows can be agreed and decided by the regulator as part of its responsibility regarding “tariff methodology”.

We recommend that in the first stages of the transition to an open competitive electricity market only the cross-border flows that have been scheduled by utilities or electricity traders are taken into consideration in the compensation scheme. Apart from these scheduled flows, there are always other unplanned flows resulting from internal imbalances or loop flows.

Regarding the level of these costs, we should take into account that existing and potential new transmission infrastructures in each country have been planned and developed with the purpose of covering national demand and were not designed to benefit the entire WAPP region. In this regard, and given that the use of this infrastructure for cross-border trading does not give rise to any further costs, the costs of these infrastructures could be allocated to the customers for whom they were constructed and whom they continue to serve to date with no charge for the cross border flows.

However, we acknowledge that from a dynamic point of view this capacity may be not readily available for cross-border transactions if there would not be a payment for its use. For instance, some facilities that are planned and developed for domestic users, and therefore not eligible as part of a regional transmission network, may increase interconnection capacity as a result of a modification of internal flows. TSO may also lack incentives to maintain the availability of the system spare capacity if it does not receive any payment from the cross-border users. Therefore, there is room on economic grounds to allow compensation for the use of existing transmission infrastructure, as long as this payment should never be high enough so as to provide incentives to the national TSO to curtail its own national demand with the purpose of providing a higher capacity for cross-border trades and at the same time, have a level that gives an incentive to the TSO to have this capacity available.

In view of the previous considerations, we recommend that the Inter-TSO Compensation Fund pays national TSOs the full cost of the national transmission capacity used for cross-border flows, although any share of the costs between zero and a hundred percent is possible, since as we have said the use of this assets for cross-border trade do not cause these costs and these assets are already under an existent cost recovery mechanism.

The cost of the national transmission capacity used for cross-border flows should be determined once a year and for each country by the Regional Regulator based on “standard efficient costs” following a proposal by the SMO. In order to estimate these costs, the SMO should run every year, and before the year begins, a Regional Electricity Model to determine for every affected asset the proportion of cross-border flows to total capacity during the system peak hours, and allocate this proportion of the total cost (evaluated as the standard cost of every type of asset) to cross border flows.

The income received by each TSO for wheeling services will be used by the TSO according to the domestic rules. Since the national assets used for wheeling are already paid by the national transmission tariff, these funds received for wheeling services are in a way “in excess” so the domestic regulators (or the corresponding national authority) will have to decide the destination of these funds. Alternatives are: reducing national transmission tariffs, utilisation of the fund for development of national systems (transmission, rural electrification, etc), improving access to electricity service, reducing national overall tariff, etc.

b) Payments from the national TSO

The Transmission System Operators of the countries participating in the WAPP should contribute to the Inter-TSO Compensation Fund for the use of existing and new infrastructure⁵ owned and developed by the national TSO.

Their contribution for the use of existing and new TSO facilities in other countries should be based on the application of regional homogeneous cross-border transmission tariffs to every country actual imports, applying the *postage stamp* allocation method. These tariffs should be calculated ex-ante by the SMO and approved by the Regional Regulator based on the costs and cross-border flows resulting from the Regional Electricity Model.

⁴ This model should be able to obtain an optimal dispatch of the existing generation assets taking into account the demand location and the transmission grid topography.

⁵ This “new infrastructure” we are referring here is the one decided by TSOs to satisfy their domestic needs and not an infrastructure decided at regional level which would constitute a “regional transmission asset” which has another method of compensation for its use (based on “beneficiary pays” method).

The SMO shall be responsible for the financial clearing and settlement of the payments to and from the participating TSO with respect of the cross-border transmission tariffs, as well as establishing the procedures for the collection and disbursement of these amounts.

c) Summary of “Wheeling Methodology”

This is a summary of key characteristics of the methodology to be applied to implement the wheeling charges for transmission services:

- The regional system is simulated to identify the domestic assets affected by cross border trading. These assets are those whose flows are augmented at least 5% by cross border trading.
- Assets are valued according to “standard costs” and the asset value considered for the purpose of tariff calculation is this standard value times the percentage (calculated above) representing the use of the asset by the cross border flows.
- Tariff will be calculated as total value of assets affected divided by an indicator of volume of cross border flows. Although using MWh is not the best choice, it is the simplest. Wheeling tariff will be then the result of dividing total value of assets calculated by total energy of cross border flows (imports for example). Thus it is obtained a wheeling tariff as US\$/MWh

A tariff of the type US\$/MWh is a “transactional tariff” and can prevent some trades be carried out (because the transaction’s benefits are less than the transmission tariff). However, in principle it seems that the wheeling calculated this manner will be relatively low so it would not be an impediment for transactions in the region. This has to be checked with simulations.

5.1.3. COMPENSATION FOR COSTS OF NEW REGIONAL INFRASTRUCTURE

a) Payments to the national TSO or transmission companies

The Inter-TSO Compensation Fund should pay for the full cost recovery of new transmission facilities if and only if they are the result of regional transmission planning and their main purpose is to serve regional cross-border electricity trading or reliability. These assets have to be not only identified by the regional master planning but agreed / approved by the WAPP as assets to be built as “regional assets” and that will be paid for according to this proposed method.

The total cost to be compensated and the annual payments made in accordance to this compensation should be proposed by the SMO and approved by the Regional Regulator. This cost should be calculated following a transparent and non discriminatory methodology. We recommended that to the extent possible, a competitive procurements process is followed (in that case the allowed cost is the cost bided by the winning bidder), or if these facilities are developed by the local TSO, the evaluation of the cost should be based on recognised standard-costing methodologies.

b) Payments from the national TSO

The Transmission System Operators of the countries participating in the WAPP should contribute to the Inter-TSO Compensation Fund for the cost of new regional facilities.

Their contribution for the use of new regional facilities should be calculated before the facility is developed using the “beneficiary pays” principle. For the implementation of this cost allocation method, only the benefits deriving from the variation of dispatch costs should be taken into account. The initial cost allocation should be understood as fixed during the life of the asset, but should not be understood to provide ownership rights over the transmission capacity installed. Nevertheless, countries could in any moment reach an agreement to redistribute their contribution.

The SMO shall be responsible for the financial clearing and settlement of the payments to and from the participating TSO with respect of the Inter-TSO Compensation Fund, as well as establishing the procedures for the collection and disbursement of these amounts.

c) Summary of “Compensation of New Regional Infrastructure Methodology”

This point summarises the method to calculate and allocate the payments for new regional infrastructure. It has to be born in mind that these assets are those new assets qualified as “regional” and decided at regional level. New assets decided by TSOs to supply domestic demands and paid by the domestic demand, even if they contribute to regional trade, are in principle not considered here. The use made of these assets by cross border flows would be paid by the “wheeling tariff”. Eventually part of these assets (the ones decided by TSOs to supply national demand and that contribute for cross border trade) could be paid under this system (“beneficiary pays” system) if agreed at regional level the part of the assets that contribute to cross border trading. A procedure has to be designed and an agreement has to be reached at regional level to decide the part of the domestic assets that will be paid regionally by the “beneficiary pays” method.

Considering then new regional transmission infrastructure, the key characteristics of the method to pay for this infrastructure would be:

- Once a certain asset has been decided at regional level beneficiaries of this asset have to be identified.
- Beneficiaries are identified by modelling the regional system in the long run and estimating the benefits each country receives for the introduction of the asset. The benefits are calculated as the reduction in the operational costs the different countries.
- The cost of the asset is shared among the different countries proportionally to the benefits they receive.
- Countries pay their share on an annual or quarterly basis (as decided). These payments are fixed for the project life and modified only through an agreement among parties. It is worth mentioning in this point, that this is the recommendation followed by FERC to avoid later discussions on the modification on who has to pay and how much. This also provides certainty either for investors or those who "have to pay" and avoids disputes if modifications are made. The main element FERC has taken into account to make this decision is the extremely complicated disputes it could face if modifications on payments were considered.

5.1.4. COMPENSATION FOR LOSSES

Currently most countries in the WAPP region lack a liquid and transparent wholesale market which may provide a relevant electricity price and/or the option to buy the electricity associated to energy losses. In addition, different countries may have different arrangements to deal with losses in the transmission and distribution systems.

Therefore, we recommend that until liquid wholesale markets develop in all countries, losses be compensated in kind by the importing entity. The SMO should calculate a relevant set of Loss Adjustment Factors for trades between each of the participating countries and for every one of the relevant tariffs periods. The SMO should propose the number of tariff periods that should be used through the year and the Regulator has to approve them.⁶

In order to mitigate risks and provide transparency for energy traders, the calculation of Loss Adjustment Factors will be made in an ex-ante basis, without an ex-post revision of actual losses. The calculation of losses should be established as the difference between:

- The estimation of losses on the transmission system without cross-border flows during the relevant tariff period; and
- The estimation of losses on the transmission system with cross-border flows during the relevant period.
- In case the variation is negative (losses without cross border flows greater than losses with cross border flows) the TSO whose losses are reduced for hosting a cross border flow will not need to compensate other TSOs. In this case the same amount of energy injected in one point will be made available in the delivery point. Reduction of losses in the domestic system will be a net benefit of cross border trading for the TSO hosting the flow fostering then the activity.

5.1.5. PROVISIONS FOR CROSS-BORDER TRANSACTIONS WITH NON-MEMBERS

It is possible that further electricity system integration takes place in the region. TSOs in the WAPP region should be able to sign agreements on cross-border trade with other countries that are not part of the WAPP. In this case the energy imported from these countries will be considered for the purpose of the WAPP tariffs arrangements as produced in the importing country. TSOs should, at its own will, decide to impose fee on these transactions.

5.2. FUTURE ASPECTS OF TARIFFS ARRANGEMENTS

The WAPP region is planned to integrate gradually, allowing electricity utilities and institutions to adapt to the new environment. In the first stages simplicity of cross-border transmission arrangements is crucial to keep participating parties involved in the regional integration project. However, it is likely that in future stages, as the market become more liberalized, more liquid and transmission infrastructure develops then transmission arrangements should be developed further. We outline next some issues that we think will need to be addressed in later stages of the market integration process.

⁶ Although the energy losses in an electricity system varies according to the energy flows virtually instantaneously, in order to ease the calculation and compensation of such losses, we think it is not necessary nor appropriate to use as many periods as hours in the year, but group all the hours with similar flows patterns into a smaller number of periods.

Transmission capacity firmness and congestion management

Real, or close to real, time events in the national networks may reduce the transmission capacity available for cross-border flows. If the transmission rights already granted are higher than the capacity available, then congestion arises in the network. In such a congestion event, national TSO may respond by:

- curtailing the transmission capacity rights previously granted (that is, not allowing agents to transmit all the energy requested); this curtailment is usually made according to the length of the contract –i.e. short-term capacity contracts are curtailed first-, or
- relieving the congestion by means of counter-trading, although at a cost.⁷

The willingness of utilities to contract cross-border capacity will depend on the costs imposed by the counter-trading, the conditions of curtailment, or whether they are compensated for being curtailed. Therefore, current and future cross-border transmission capacity arrangements should specify these conditions in advance. Since in the first stages of the market integration process there will not be a transparent price signal and national TSO have the obligation to keep the transmission capacity that has been granted, we recommend that agents be not compensated in case of curtailment, at least in the first stages.

in case of curtailment of international contracts, the national TSO has the obligation to justify why they where necessary, and the parties of the contract have the right to appeal to the Regional regulator if they think it is not justified. The regulator will have the right also to initiate investigations on curtailments as deemed necessary during this period where curtailments are not compensated to ensure TSOs are performing correctly and there is no discrimination among market participants.

Transferable cross-border transmission rights

As mention above, the WAPP region is planned to integrate gradually, allowing electricity utilities and institutions to adapt to the new environment. In the first stages of the WAPP transmission rights will be allocated in a first-come first serve basis and only in subsequent stages it could be allocated following competitive procedures.

In order to keep simplicity in these first stages, we recommend that transmission capacity that has been granted for cross border trades not to be transferable, so the entity that first gets the right should exercise it. In case it does not use the capacity for cross-border flows, it should report to the SMO so the spare capacity can be allocated to someone else.

In following stages, if the transmission rights are allocated competitively, rights can (should) be transferable and a secondary market for these transmission rights will appear.

National transmission tariffs

Transmission tariffs applied to producers and consumers of electricity for access to the transmission system should not undermine the cross-border trade of electricity in the WAPP region. For this reason, in the future the Regional Regulator should ensure that costs included in the transmission charges and the allocation of transmission costs between the generation and the demand should be similar in order to avoid distortions in the regional trade.

For this reason, Europe is currently addressing the harmonization of the different countries transmission tariffs. One example of these distortions is that British generators, which pay transmission tariffs, are at a disadvantage when competing with respect to French generators, which do not pay these tariffs in their country. In UK transmission costs are allocated to generators and demand, on the other hand, in France, all transmission costs are allocated to the demand.

⁷ In a counter-trade action, the TSO trades power as to induce a power flow in the opposite direction of the congestion. For instance, if there is not enough capacity as to transmit 1 MW form the location A to B, the TSO sells 1 MW in A and buys 1 MW in B, but probably this will imply a cost because the price in 1 is equal o lower than in B.

V ANNEX: STANDARD BILATERAL AGREEMENTS

Long Term Bilateral Agreement

[Model]

Between

[Insert Seller's name]

And

[Insert Buyer's name]

11/05/2012

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

BETWEEN

[*Insert Seller'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 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 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.
4. [*Others as the parties wish*]

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

1. 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

“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

<p>“Change in Control”</p>	<p>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</p>
<p>“Change in Law”</p>	<p>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) 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</p>
<p>“Commercial Operation Date”</p>	<p>means the date the contract begins actually operating from the commercial point of view.</p>
<p>“Conditions Precedent”</p>	<p>means all the conditions set out in Article 3 that must be satisfied or waived prior to this Agreement becoming effective</p>

“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

<p>“Force Majeure Event”</p>	<p>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:</p> <ul style="list-style-type: none"> 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,
<p>“Governmental Authority”</p>	<p>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</p>
<p>“Grid”</p>	<p>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</p>

“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
“Wilful 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
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2. Interpretation

In this Agreement, including the recitals and 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 is deemed to be qualified by the requirement that such consent shall not be unreasonably conditioned or delayed;
- c) reference to include and including is deemed to be qualified by the additional term without limitation;
- 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 hereof, and Schedules to this Agreement;
- 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) 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 other Articles;
- (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;
- (iv) 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

1. 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:

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

2. 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:

- a) Buyer is a registered and authorised participant in the Regional Market according to the Regional Market rules.

- b) Buyer has obtained all Authorisations, waivers or exemptions incidental to importing electricity.
- c) Buyer and the domestic Transmission Network Operator have executed and delivered a Use of System Contract. (This will be applicable in the future when Distribution companies / eligible consumers are accepted as participants in the regional market)
- d) Buyer has the required insurances valid as set in Article 15 Insurance
- e) Others as the Buyer may be needed.

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 such other Party is primarily responsible.
- b) The Parties shall from time to time meet to discuss and coordinate their plans for the satisfaction of the Conditions Precedent and 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 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.

4. Status of Agreement

Except for the undertakings set out in Article 3.3, and the provisions of Article 1, 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.

- a) 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 [xx] ("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

5. Failure to Satisfy Conditions Precedent

- a) If any condition is not satisfied or waived, then:
 - (i) 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;
 - (ii) 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.
- b) The termination of this Agreement nonetheless, pursuant to Article 3.5.a)(ii) above, either Party shall be entitled to claim liquidated damages capped at [xx] where it can reasonably establish that the other Party delayed and or failed to use Reasonable Efforts to satisfy any Condition Precedent.

Article 4. Term

1. 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.

2. 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 System Market Operator provided that all such Offers shall be in agreement and will follow the procedures established by the Regional Market Rules.

Article 6. Delivery Point and Extraction Point

Except as otherwise provided in this Agreement, Delivery Point 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*].

1. Title

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

2. 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

1. 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 results from the Meters calibrated and tested in accordance with the Regional Metering Code will be accepted by the parties.

Article 9. Operation and Maintenance

1. 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.

2. Scheduled Maintenance

The programme of Scheduled Maintenance for each Contract Year shall have to be agreed between the Parties and taken into account in the profiles of the agreed quantities (Schedule 1).

3. 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.
2. Parties shall provide each other a Monthly report covering the information in Article 10.1, no later than seven (7) Days after the end of each Month in the format and contents the Parties may have agreed.
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 [xx] Months unless the Party desiring to dispose of or destroy such records or data gives [xx] 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 [xx] Day period, the objecting Party shall have a period of [xx] 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 [xx] Day period by Buyer or Seller as the case may be, at such Party's offices in [xx]. After the expiration of such [xx] Day period, the Party desiring to dispose of or destroy such records or data shall be permitted to do so.

Article 11. Price

1. 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

1. Quantity

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

2. Computation and Indexation

The energy payment payable shall be adjusted in accordance with the following formula:

ESTABLISH INDEXATION FORMULA FOR THE PRICE

Establish periods for adjustment

[Normally the indexation is not necessary for contracts with a short duration. 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 [xx] 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:).

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

1. 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.

2. 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.

3. 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.

4. 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.

5. 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

1. 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).

2. 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. 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.

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 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.

9. Extension of Agreement for Force Majeure

Subject to the right of termination under Article 25, 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 duration of the Force Majeure Event; provided that such automatic extension shall not extend the relevant period or term of this Agreement in violation of any Applicable Law or one of the Parties informs in written the other Party that it wants to maintain the original Term for the Agreement and not extend

it. This communication has to be made not after 5 days after the Force Majeur event has ceased.

Article 18. Confidentiality

1. 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.
3. 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.
4. 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;
5. 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

1. 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.

2. 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.

3. Upon the occurrence of a Default, the non-defaulting Party may give notice to the defaulting Party of the occurrence of such Default. If:
 - a) the Default is not capable of remedy; or
 - b) the Default is capable of remedy and the defaulting Party does not, where such Default is capable of remedy within [xx] Days, remedy the Default; or
 - c) the Default is capable of remedy but not within a [xx] Day period, the defaulting Party does not furnish to the non-defaulting Party a detailed programme (“Remedial Programme”) for the remedy as promptly as is practicable of the Default and the defaulting Party fails to remedy the Default in accordance with the Remedial Programme; then the non-defaulting Party may give notice to the defaulting Party that such Default is an “Event of Default”. Any Remedial Programme shall be agreed between the Parties (such agreement not to be unreasonably withheld or delayed) and in the event of a Dispute (including any Dispute in relation to the Remedial Programme) may be referred to an Expert for determination.
4. Upon the occurrence of an Event of Default, the non-defaulting Party may upon giving not less than [xx] Days notice to the defaulting Party terminate this Agreement.
5. 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.
6. 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.

Article 20. Liabilities

1. 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.

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, tortious act or omission.

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.

4. Wilful Misconduct and Gross Negligence

To the extent that a Party's breach of its obligations under this Agreement results solely from such Party's Wilful 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

1. 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

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.

3. 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.

4. 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.
5. 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

1. 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.

2. 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.

3. 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 [xx] 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

1. In the event that a Change in Law results in a material increase or decrease in Seller's costs there shall be an equitable adjustment of the pricing regime specified herein to correct such material increase or decrease as the case may be, Seller shall be in no less or no more favourable financial position than Seller was prior to such Change in Law Event.
2. Where there is a bona fide basis on which a Change in Law Event may be challenged or contested, Seller agrees that it will challenge or contest such Change in Law Event at the direction and expense of Buyer.

Article 25. Termination

1. This Agreement shall be deemed terminated on the date the first of the following occurs:
 - 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 and is not remedied or cured within a period of [xx] or within such longer period as is reasonably required to effect such remedy or cure; or the other Party voluntarily commences any proceeding, or files any petition seeking its liquidation, reorganization, dissolution, winding up, composition or other relief under any bankruptcy, insolvency, receivership or similar Laws applicable to such Party or consents to the commencement of any proceeding or the filing of any petition against it under any similar Law; or the other Party makes an assignment for the benefit of its creditors or admits in writing its inability to pay its debts generally as they become due; or the other Party consents to the appointment of a receiver, trustee or liquidator over the other Party or any part of the other Party's facilities; or a third party files a petition seeking the liquidation, reorganization, dissolution, winding-up, composition or other relief from the other Party pursuant to the provisions of any bankruptcy, insolvency, receivership or similar Laws applicable to such Party, and such petition is not dismissed within [xx] Days after such filing; or a court of competent jurisdiction enters an order or decree appointing a receiver, liquidator or trustee for the other Party or any of the other Party's facilities, and such receiver, liquidator or trustee is not discharged within [xx] Days after the date of such order or decree; or a court of competent jurisdiction enters an order or decree adjudicating the other Party to be bankrupt or insolvent, and such order or decree is not stayed or discharged within [xx] Days after the date of such order or decree; or the other Party makes a Transfer, or if applicable, has a Change in Control without satisfying the requirements of Article 22. For the avoidance of doubt, the novation or modification of this

Agreement which necessitates the splitting of this Agreement into multiple contracts as may be necessitated by change in trading regime shall not be construed as Transfer or Change in Control event.

2. 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 [xx] 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.

3. 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

1. 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.

2. 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.

3. 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.

4. It is hereby agreed that:

- a) the seat of the arbitration shall be [xx];
- 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 [xx];
- 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.

5. 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 [xx] Days, the Expert shall upon a request in writing by either Party, be appointed by [xx];
- b) Other than in the case of invoices disputed by Buyer in accordance with Article 13, for a period of [xx] 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 [xx] Day period each Party shall have a period of [xx] 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 [xx] Day period provided that neither Party shall during such [xx] 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 [xx] Day period;
- c) At the end of the [xx] day period referred to in Article 26.5.b) above, and no later than [xx] 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 [xx] 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.
- 6. 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.
- 7. 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.
- 8. 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

1. Conflict of Interest

- a) 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).

2. 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.

- a) 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.
 - b) 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.
3. The provisions of the preceding Article 27.2 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.
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 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.

5. 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.

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 provisions of this Agreement.

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.

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.

9. 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.

10. 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.

11. 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.

12. Variation

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

13. 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

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, [insert Seller or Buyer] is authorized to detach the signature page from one or more counterparts and, attach each signed signature page to a counterpart.

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 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 **XX** 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]

Medium Term Bilateral Agreement

(Includes Provision for Non Adjacent Countries)

[Model]

Between

[Insert Seller's name]

And

[Insert Buyer's name]

10/05/2012

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

BETWEEN

[*Insert Seller'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 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 Eastern Africa Power Pool, 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 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.
4. [*Others as the parties wish*]

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

1. 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

“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

<p>“Change in Control”</p>	<p>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</p>
<p>“Change in Law”</p>	<p>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) 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</p>
<p>“Commercial Operation Date”</p>	<p>means the date the contract begins actually operating from the commercial point of view.</p>
<p>“Conditions Precedent”</p>	<p>means all the conditions set out in Article 3 that must be satisfied or waived prior to this Agreement becoming effective</p>

“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

<p>“Force Majeure Event”</p>	<p>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:</p> <ul style="list-style-type: none"> 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,
<p>“Governmental Authority”</p>	<p>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</p>
<p>“Grid”</p>	<p>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</p>

“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
“Wilful 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
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2. Interpretation

In this Agreement, including the recitals and 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 is deemed to be qualified by the requirement that such consent shall not be unreasonably conditioned or delayed;
- c) reference to include and including is deemed to be qualified by the additional term without limitation;
- 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 hereof, and Schedules to this Agreement;
- 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) 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 other Articles;
- (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;
- (iv) 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

1. 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:

- a) Seller is a registered and authorised participant in the Regional Market according to the Regional Market rules.
- b) Seller has obtained all Authorisations, waivers or exemptions incidental to exporting electricity.
- c) Seller and the domestic Transmission Network Operator have executed and delivered a Use of System Contract. *(This will be applicable in the future when Generation companies are accepted as participants in the regional market)*
- d) Seller has obtained the corresponding transmission capacity reserved for evacuating the power to the Buyer according to the provisions of the Regional Market Rules.
- e) Seller has signed the "Wheeling Agreement" guaranteeing wheeling services in *[countries providing wheeling services]*.
- f) Seller has the required insurances valid as set in Article 15 Insurance
- g) Others as may be needed

2. 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:

- a) Buyer is a registered and authorised participant in the Regional Market according to the Regional Market rules.
- b) Buyer has obtained all Authorisations, waivers or exemptions incidental to importing electricity.
- c) Buyer and the domestic Transmission Network Operator have executed and delivered a Use of System Contract. (This will be applicable in the future when Distribution companies are accepted as participants in the regional market)
- d) Buyer has signed the “Wheeling Agreement” guaranteeing wheeling services in [countries providing wheeling services].
- e) Buyer has the required insurances valid as set in Article 15 Insurance
- f) Others as the Buyer may be needed.

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 such other 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 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.

4. 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 [xx] (“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.

5. Failure to Satisfy Conditions Precedent

- a) If any condition is not satisfied or waived before the Effective Date, then:
 - (i) 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;

- (ii) 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.
- b) The termination of this Agreement nonetheless, pursuant to Article 3.5.a)(ii) above, either Party shall be entitled to claim liquidated damages capped at [xx] where it can reasonably establish that the other Party delayed and or failed to use Reasonable Efforts to satisfy any Condition Precedent.

Article 4. Term

1. 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.

2. 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. Delivery

1. Delivery Point

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

2. Title

Title to, and custody of electrical energy delivered under this Agreement shall pass from Seller to Wheeling Country at the Delivery Point.

3. Risk

The risk of loss of energy delivered in accordance with this Agreement shall pass from Seller to Wheeling Country at the Delivery Point.

Article 7. Ancillary Services

1. 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 Operating 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 Operating 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

1. Maintenance

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

2. 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(s) 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.
2. 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 [xx] Months unless the Party desiring to dispose of or destroy such records or data gives [xx] 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 [xx] Day period, the objecting Party shall have a period of [xx] 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 [xx] Day period by Buyer or Seller as the case may be, at such Party's offices in [xx]. After the expiration of such [xx] 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

1. 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

2. Quantity

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

3. Computation and Indexation

The energy payment payable shall be adjusted in accordance with the following formula:

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 [xx] 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

1. 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.

2. 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.

3. 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.

4. 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.

5. 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

1. 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).

2. 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. 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.

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 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

1. 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.

3. 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.
4. 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;
5. 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

1. 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.

2. 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.
3. Upon the occurrence of a Default, the non-defaulting Party may give notice to the defaulting Party of the occurrence of such Default. If:
- a) the Default is not capable of remedy; or
 - b) the Default is capable of remedy and the defaulting Party does not, where such Default is capable of remedy within [xx] Days, remedy the Default; or
 - c) the Default is capable of remedy but not within a [xx] Day period, the defaulting Party does not furnish to the non-defaulting Party a detailed programme ("Remedial Programme") for the remedy as promptly as is practicable of the Default and the defaulting Party fails to remedy the Default in accordance with the Remedial Programme; then the non-defaulting Party may give notice to the defaulting Party that such Default is an "Event of Default". Any Remedial Programme shall be agreed between the Parties (such agreement not to be unreasonably withheld or delayed) and in the event of a Dispute (including any Dispute in relation to the Remedial Programme) may be referred to an Expert for determination.
4. Upon the occurrence of an Event of Default, the non-defaulting Party may upon giving not less than [xx] Days notice to the defaulting Party terminate this Agreement.
5. 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.
6. 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.

Article 20. Liabilities

1. 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.

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.

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.

4. Wilful Misconduct and Gross Negligence

To the extent that a Party's breach of its obligations under this Agreement results solely from such Party's Wilful 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

1. 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.

3. 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.
4. 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

1. 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.

2. 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.

3. 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 [xx] 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

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.
2. Early Termination

Either Party shall have the right exercisable for [xx] 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 and is not remedied or cured within a period of [xx] or within such longer period as is reasonably required to effect such remedy or cure; or the other Party voluntarily commences any proceeding, or files any petition seeking its liquidation, reorganization, dissolution, winding up, composition or other relief under any bankruptcy, insolvency, receivership or similar Laws applicable to such Party or consents to the commencement of any proceeding or the filing of any petition against it under any similar Law; or the other Party makes an assignment for the benefit of its creditors or admits in writing its inability to pay its debts generally as they become due; or the other Party consents to the appointment of a receiver, trustee or liquidator over the other Party or any part of the other Party's facilities; or a third party files a petition seeking the liquidation, reorganization, dissolution, winding-up, composition or other relief from the other Party pursuant to the provisions of any bankruptcy, insolvency, receivership or similar Laws applicable to such Party, and such petition is not dismissed within [xx] Days after such filing; or a court of competent jurisdiction enters an order or

decree appointing a receiver, liquidator or trustee for the other Party or any of the other Party's facilities, and such receiver, liquidator or trustee is not discharged within [xx] Days after the date of such order or decree; or a court of competent jurisdiction enters an order or decree adjudicating the other Party to be bankrupt or insolvent, and such order or decree is not stayed or discharged within [xx] Days after the date of such order or decree; or the other Party makes a Transfer, or if applicable, has a Change in Control without satisfying the requirements of Article 22. For the avoidance of doubt, the novation or modification of this Agreement which necessitates the splitting of this Agreement into multiple contracts as may be necessitated by change in trading regime shall not be construed as Transfer or Change in Control event.

3. 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 [xx] 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.

4. 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

1. 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.

2. Dispute Resolution

Any dispute between the Parties with regard to the interpretation of the Regional Market Rules, the Operating 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.

3. 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.

4. It is hereby agreed that:

- a) the seat of the arbitration shall be [xx];
- 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 [xx];
- 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.

5. 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 [xx] Days, the Expert shall upon a request in writing by either Party, be appointed by [xx];
- b) Other than in the case of invoices disputed by Buyer in accordance with Article 13, for a period of [xx] 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 [xx] Day period each Party shall have a period of [xx] 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 [xx] Day period provided that neither Party shall during such [xx] 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 [xx] Day period;
- c) At the end of the [xx] day period referred to in Article 26.5.b) above, and no later than [xx] 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 [xx] 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.
6. 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.
 7. 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.
 8. 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

1. Conflict of Interest

- a) 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).

2. 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.

- a) 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.
 - b) 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.
3. The provisions of the preceding Article 27.2 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.

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 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.

5. 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.

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 provisions of this Agreement.

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.

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.

9. 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.

10. 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.

11. 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.

12. Variation

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

13. 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

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, [insert Seller or Buyer] is authorized to detach the signature page from one or more counterparts and, attach each signed signature page to a counterpart.

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 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 **XX** 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]

GENERAL CONDITIONS

10/05/2010

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

BETWEEN

[*Insert Seller'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 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 Eastern Africa Power Pool, 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 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

1. 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

“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

<p>“Change in Control”</p>	<p>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</p>
<p>“Change in Law”</p>	<p>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) 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</p>
<p>“Commercial Operation Date”</p>	<p>means the date the contract begins actually operating from the commercial point of view.</p>
<p>“Conditions Precedent”</p>	<p>means all the conditions set out in Article 3 that must be satisfied or waived prior to this Agreement becoming effective</p>

“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

<p>“Force Majeure Event”</p>	<p>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:</p> <ul style="list-style-type: none"> 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,
<p>“Governmental Authority”</p>	<p>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</p>
<p>“Grid”</p>	<p>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</p>

“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
“Wilful 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
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2. Interpretation

In this Agreement, including the recitals and 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 is deemed to be qualified by the requirement that such consent shall not be unreasonably conditioned or delayed;
- c) reference to include and including is deemed to be qualified by the additional term without limitation;
- 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 hereof, and Schedules to this Agreement;
- 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) 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 other Articles;
- (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;
- (iv) 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

1. 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:

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

2. 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:

- a) Buyer is a registered and authorised participant in the Regional Market according to the Regional Market rules.
- b) Buyer has obtained all Authorisations, waivers or exemptions incidental to importing electricity.

- c) 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)
- d) Buyer has the required insurances valid as set in Article 15 Insurance

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 shall keep the other informed on a timely basis as to progress in relation to the satisfaction of the Conditions Precedent.
- b) 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.

4. 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 [xx] (“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.

5. Failure to Satisfy Conditions Precedent

- a) If any condition is not satisfied or waived before the Effective Date, then:
 - (i) 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;
 - (ii) 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

1. 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.

2. 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. Delivery

1. Delivery Point

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

2. Title

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

3. 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

1. 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

1. Maintenance

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

2. 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(s) 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.
2. 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. After this period, if the data has been disposed or destroyed, the data recorded in the System Market Operator's data banks will be valid. In any case the data from the System Market Operator's data banks will have precedence to any individual data (from Seller or Buyer).

Article 11. Price and Quantity

1. 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

2. Quantity

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

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 [5] Days after the end of each Month, the Seller shall invoice the Buyer based on the quantities and price 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 – Balancing Mechanism. 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

1. 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.

2. 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.

3. 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.

4. 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.

5. 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

1. 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).

2. 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 (2) 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. 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.

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 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

1. 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.
3. 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.
4. 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;
5. 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

1. 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.

2. 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.
3. 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.
 4. Upon the occurrence of an Event of Default, the non-defaulting Party may upon giving not less than [xx] Days notice to the defaulting Party terminate this Agreement.
 5. 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.
 6. 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.

Article 20. Liabilities

1. 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.

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.

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.

4. Wilful Misconduct and Gross Negligence

To the extent that a Party's breach of its obligations under this Agreement results solely from such Party's Wilful 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

1. 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.

3. 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.
4. 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

1. 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.

2. 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.

3. 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.

This full Article could be eventually eliminated since these are supposed to be short term agreements. This means that it should be known if for the duration of these contracts there will be a "Transfer". On the other hand, it can be argued that the fact of having on the short term foreseen a "Transfer" this cannot prevent the company from stopping all its contracts. It is recommended to maintain the Article and take its provision in consideration if a Transfer is going to be done during the contracts duration.

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 **five [5]** 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 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

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.
2. Early Termination

Either Party shall have the right exercisable for **two [2]** 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.
3. 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 **[xx]** 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.

4. 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

1. 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.

2. 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.

3. 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.

4. It is hereby agreed that:

- a) the seat of the arbitration shall be [xx];
- 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 [xx];
- 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.

5. 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 [xx] Days, the Expert shall upon a request in writing by either Party, be appointed by [xx];
 - b) Other than in the case of invoices disputed by Buyer in accordance with Article 13, for a period of [xx] 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 [xx] Day period each Party shall have a period of [xx] 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 [xx] Day period provided that neither Party shall during such [xx] 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 [xx] Day period;
 - c) At the end of the [xx] day period referred to in Article 26.5.b) above, and no later than [xx] 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 [xx] 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.
6. 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.
7. 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.

8. 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

1. Conflict of Interest

- a) 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).

2. 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.

- a) 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.
 - b) 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.
- ### 3. The provisions of the preceding Article 27.2 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.

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 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.

5. 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.

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 provisions of this Agreement.

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.

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.

- 9. 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.

10. 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.

11. 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.

12. Variation

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

13. 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

14. 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 **XX** 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

10/05/2012

**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. <i>(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)</i>
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. <i>(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)</i>
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 <i>(Can be deleted from the contract if the duration is too short)</i>
27	SCHEDULE 3	Establish Commercial Operation Date
28	SCHEDULE 3	Establish contract Term.