ECOWAS REGIONAL ELECTRICITY MARKET PARTICIPATION AGREEMENT

OCTOBER 2018

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AGREEMENT

This Market Participation Agreement (hereinafter called this "**Agreement**") is made as of [*insert Execution Date: day/month/year*] at Cotonou, Republic of Benin

BETWEEN:

1. The **System and Market Operator** (hereinafter called the **SMO**), as established by the Chapter III of the Regional market Rules which shall include its successors and/or permitted assigns, an International Organization having its principal office at Cotonou in the Republic of Benin.;

   and

2. [*Insert Applicant's name*], a company having its principal office at [*insert physical address*] in [Specify Country], incorporated as [*insert category/type of incorporation*] under the [*Insert Country relevant National Laws of incorporation*], (hereinafter called the **Participant**, which expression shall include its successors and/or permitted assigns)

The SMO and the Participant are herinafter together referred to as "Parties" or individually as "Party"

WHEREAS

(a) This Agreement is entered into pursuant to the Regional Market Rules and specifically Article 6, 27 and 28.

(b) The Regional Market Rules specify that no person shall be registered as a Participant unless the SMO is satisfied that the person has complied with all relevant requirements and has executed a Regional Electricity Market Participation Agreement.

(c) The Applicant wishes to be registered as a participant in the Regional Electricity Market under the Regional Market Rules and has submitted an Application to participate as a [*Distributor, or Generator, or Trader, or Transmission System Operator, or Eligible Customer or Others*];

(d) The SMO has successfully reviewed the admission Application, having verified that all relevant information has been submitted and all applicable requirements for participation have been duly met, as established in the Regional Market Rules.

(e) Pursuant to Article 27 and 28 of the Regional Market Rules, the approved form and procedure for applying as a market participant shall be publicised in the SMO and ERERA's web sites and Applicants for registration as market participants shall be required to complete the approved form and follow the approved procedure. Once the Applicant becomes formally a market participant its obligations are set by the "Market Participation Agreement".

(f) The Parties wish to enter into this Agreement to satisfy the conditions contained in the Regional Market Rules, the ECOWAS Regional Electricity Market Procedures and any other relevant regional electricity market documents in order for the Applicant to be registered as market participant by the SMO

NOW THEREFORE IT IS HEREBY AGREED AS FOLLOWS:

Article 1. DEFINITIONS AND INTERPRETATIONS

1.1 Definitions

In this Agreement, and unless otherwise specified or the context otherwise requires, the following words and expressions shall have the meaning given below:

TERM	DEFINITIONS
"Admission Date"	means the date the Participant has been admitted as participant of the Regional Electricity Market pursuant to the Procedure of Application for Admission in the Regional Electricity Market.
"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, which person or entity directly or indirectly controls, is controlled by or is under the common control of such Party. For the purposes of clarity, Affiliate includes any ultimate holding company, any holding company and any subsidiary (direct or indirect) of such Party.
"Agreement"	means this Market Participation Agreement (including the Annexes), as may be amended from time to time
"Applicable Laws"	means all laws, treaties, ordinances, decrees, statutes, rules and regulations of any Governmental Authority. Any reference to an Applicable Law shall include all statutory and administrative provisions consolidating, amending or replacing such Applicable Law and shall include all rules and regulations promulgated there under.
"Applicant"	Any company applying for admission to the Regional Electricity Market as participant
"Application"	means the request for admission submitted to the SMO by an Applicant, pursuant to the Procedure of Application for Admission in the Regional Electricity Market, for registration as participant in the Regional Electricity Market pursuant;
"Business Day"	means any day excluding Saturdays and Sundays or a public holiday as gazetted by the [*Government/Republic*] of [*insert name of SMO host country*] and [*insert name of Participant host country*] from time to time.
"Dispute"	means any dispute, *controversy*, or claim of any kind or type arising out of, relating to, or connected with this Agreement, or the operations carried out under this Agreement, including any dispute concerning the existence, validity, interpretation, performance, breach, or termination of this Agreement.

TERM	DEFINITIONS
"Dispute Resolution Procedure"	means the dispute resolution procedures contained in Article 40 of the Regional Market Rules.
"ERERA"	means ECOWAS Regional Electricity Regulatory Authority – A Specialized Institution of ECOWAS established by the Supplementary Act A/SA.2/1/08 of 18 January 2008 and charged with regulating the regional electricity market as defined by Regulation C/REG.27/12/07 on the Composition, Organisation, Functions and Operation of the ECOWAS Regional Electricity Regulatory Authority.
"Procedure of Application for Admission in the Regional Electricity Market"	means the Procedure of Application for Admission in the Regional Electricity Market as approved by ECOWAS Regional Electricity Regulatory Authority (ERERA) under Resolution N°013/ERERA/18 on the 19th October 2018, as may be amended from time to time.
Market Procedure	means the Regional Electricity Market Procedures for the West African Power Pool adopted by ECOWAS Regional Electricity Regulatory Authority (ERERA) under Resolution N°010/ERERA/17 on the 11th December 2017, as may be amended from time to time.
"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 Electrical Energy, which are to be located at the Metering Point. "**Meters**" shall be construed accordingly.
"Operation Manual"	means the operation manual of the West African Power Pool adopted by ECOWAS Regional Electricity Regulatory Authority (ERERA) under Resolution N°007/ERERA/15 on the 29th September 2015, as may be amended from time to time.
"Regional Electricity Market"	means all cross-border electricity trading and related services made through the regional interconnected transmission networks within the ECOWAS sub-region.
"Regional Market Rules"	means the regional market rules for West African Power Pool (WAPP) adopted by the ECOWAS Regional Electricity Regulatory Authority (ERERA) under Resolution N°005/ERERA/15, on the 18th August 2015, as may be amended from time to time.
"Regional Metering Code"	means the metering code as mentioned in the Operation Manual.
"Transmission Tariff Methodology"	means the transmission tariff methodology for the West African Power Pool adopted by the ECOWAS Regional Electricity Regulatory Authority

TERM	DEFINITIONS
	under Resolution N°006/ERERA/15, on the 18th August 2015, as may be amended from time to time.
"Transmission Network Operator"	means the licensed or authorized entity that operates a Transmission System.
"Transmission System"	means the network of high voltage transmission lines, transformers, switchgear and other transmission equipment controlled by a System Operator or System and Market Operator, as applicable ,and utilized for the conveyance of electrical energy from generating plants to distribution systems and/or international interconnectors.

1.2 Interpretations

Any word or expression defined in the Market Rules or the WAPP Operation Manual or the Market Procedures or any other relevant Market document and that is not defined otherwise in this Agreement shall have, unless the contrary intention appears, the same meaning and interpretation when used in this Agreement, including its Annexes.

In this Agreement (including the Annexes), unless the context otherwise specifies or requires:

1.2.1 Capitalised words used shall have the meanings assigned to them in Article 1.1 above;

1.2.2 Words corresponding to persons shall include any individual, firm, joint venture and corporation, and all references to persons shall include their legal successors and permitted assignees;

1.2.3 Words in singular only also include the plural and vice versa where the context requires;

1.2.4 Any reference to a day, month or year shall be construed as reference to a Gregorian calendar day, month or year, as the case may be;

1.2.5 Words in the masculine shall include the feminine and neuter and vice versa;

1.2.6 The word "include" or "including" shall be construed without limitation;

1.2.7 Where reference is made to an amount or sum, it is to an amount or sum denominated in United States of America dollars (USD);

1.2.8 All references to a numbered clause is a reference to the clause bearing that number in this Agreement, unless indicated otherwise;

1.2.9 A reference to the Regional Market Rules, WAPP Operation Manual, Market Procedures, or any other relevant market regulation shall be construed to refer to such Regional Market Rules, WAPP Operation Manual, Market Procedures, or any other relevant market regulations as it may have been modified or replaced from time to time.

1.3 Clauses and Headings

The division of this Agreement into clauses and the headings are for convenience of reference only and shall not affect the interpretation of this Agreement, nor shall they be construed as indicating that all of the provisions of this Agreement relating to any particular topic are to be found in any particular clause.

1.4 Inconsistencies with other documents

1.4.1 In the event of any inconsistency between this Agreement and the licence of a Party, the licence respectively shall prevail to the extent of such inconsistency.

1.4.2 In the event of any inconsistency between this Agreement and the Regional Market Rules, or the WAPP Operation Manual, or the Market Procedures or any other relevant market regulation, the Regional Market Rules, or the WAPP Operation Manual, or the Market Procedures or the relevant market regulations, shall prevail to the extent of such inconsistency.

1.4.3 Any provision of this Agreement that is determined by a court of competent jurisdiction, to be invalid or unenforceable shall be ineffective to the extent of that

invalidity or unenforceability and shall be deemed severed from the remainder of this Agreement, all without affecting the validity or enforceability of the remaining provisions of this Agreement.

Article 2. SCOPE

On execution of this Agreement and until its termination, the Participant shall be granted Participant status and the rights to participate and trade in the Electricity Market.

Article 3. DURATION OF AGREEMENT

3.1 Effective Date

This Agreement shall commence and become effective on the Admission Date.

3.2 End of the Agreement

3.2.1 This Agreement shall automatically terminate on the earlier of:

a. The date of issuance to the Participant of a Termination Order by the SMO; or

b. The date on which the Participant withdraws its participation in the Regional Electricity Market, in accordance with the withdrawal conditions established in the Regional Market Rules.

3.2.2 Notwithstanding Article 3.2.1, the Participant shall remain subject to and liable for all of its obligations and liabilities as a Participant which were incurred or arose under the Regional Market Rules prior to the date referred to in 3.2.1 (a) or 3.2.1(b), as the case may be, regardless of the date on which any claim relating thereto may be made.

3.2.3 Notwithstanding Article 3.2.1, the SMO shall remain subject to and liable for any obligations and liabilities owed to the Participant which were incurred or arose under the Market Rules prior to the date referred to in section 3.2.1 (a) or 3.2.1 (b), as the case may be, regardless of the date on which any claim relating thereto may be made.

3.2.4 Notwithstanding any other provision of this Agreement and, for greater certainty, the provisions of Article 3.2.2 and 3.2.3 shall survive termination of this Agreement for any reason.

Article 4. MODIFICATIONS TO THIS AGREEMENT

4.1 The SMO may propose a modification to this Agreement if it is required as a result of a change in law, or in the Regional Market Rules, or in the WAPP Operation Manual, or in the Market Procedures or in any other relevant market regulations , or in the licence of a Party, to ensure that this Agreement operates in a manner which is consistent with the effect of the change in law, or in the Regional Market Rules, or in the WAPP Operation Manual, or in the Market Procedures or in any other relevant market regulations , or in the licence of a Party, as applicable, provided that any such modification to this Agreement will be of no greater extent than is required by reason of the same. Such changes shall have effect on the date upon which change in law, or in the Regional Market Rules, or in the WAPP Operation Manual, or in the Market Procedures or in any other relevant market regulations , or in the licence of a Party is

brought into force with such transitional arrangements as shall be reasonable and as are in compliance with the law, or the Regional Market Rules, or the WAPP Operation Manual, or the Market Procedures or any other relevant market regulations, or in the licence of a Party

4.2 If any modification proposed under Article 4.1. has not been agreed by the Parties within ninety (90) days of it being proposed (the Parties acting as soon as reasonably practicable), either Party may refer to the ERERA for determination and the Parties agree to abide by and to effect ERERA's determination.

4.3 Subject to Article 4.1. and 4.2, no modification to this Agreement shall be effective unless it is made in writing and signed by the Parties.

Article 5. OBLIGATIONS

5.1 Obligations of the SMO

The SMO undertakes to administer the Regional Electricity Market in compliance with the Regional Market Rules, the Market Procedures and any other relevant market regulations.

5.2 Obligations of the Participant

5.2.1 The Participant certifies that it is aware and accepts the Regional Market Rules, the WAPP Operation Manual and the Market Procedures without any condition or reservation, and that it undertakes, among others, to pay to the SMO the regional Market Fees as provided by the Market Procedures.

5.2.2 The Participant agrees to comply with and be bound in all respects with the provisions of the Regional Market Rules, the WAPP Operation Manual, the Market Procedures and any other relevant market regulations as may be amended from time to time and as applicable to the Participant. In particular, the Participant undertakes to:

a. Provide metering information in a timely manner and adequate format in accordance with the Market Procedures;

b. Provide when necessary security cover;

c. Settle in a timely manner any payment due;

d. To construct, maintain and operate any equipment, system or facility connected to the transmission system in compliance with the WAPP Operation Manual; and

e. To provide all relevant information to the SMO in a timely manner and in the established formats.

5.2.3 The Participant acknowledges that admission and participation in the Regional Electricity Market is subject to compliance with all relevant requirements. The Participant shall inform the SMO promptly of any change in any condition and information submitted in its Application.

5.3 Amendments to the Market regulations

5.3.1 The Parties acknowledge and agree that the Regional Market Rules, the WAPP Operation Manual, the Market Procedures and any other relevant market regulations may be amended from time to time and that each Party is obliged to comply with the amended market regulations.

5.3.2 The Parties acknowledge that each Party is responsible for any costs and expenses it may be required to incur arising from such amendments.

Article 6. RIGHTS OF THE SMO AND THE PARTICIPANT

6.1 The SMO

6.1.1 The Participant acknowledges that during the Market Phase 2, the SMO will settle all trading of the Participant in accordance with and subject to the Regional Market Rules and the Market Procedures.

6.1.2 The Participant agrees and authorizes the SMO to prepare the market Settlement statements and issue the transfers resulting from the debits and credits arising from the final settlement statements, as provided in the Regional Market Rules.

6.1.3 The Participant acknowledges that the SMO may suspend or terminate its participation if the SMO considers and reasonably justifies that the Participant no longer satisfies the criteria and requirements on which it had been admitted or defaults to this Agreement.

6.1.4 The Participant acknowledges that the SMO may impose security cover obligations in accordance with the Regional Market Rules and Market Procedures, in the interest of protecting the proper functioning of the Regional Electricity Market and minimizing the non-payment risk.

6.2 The Participant

6.2.1 The SMO acknowledges that the Participant has the right to make offers and bids in the market and to bring before ERERA any dispute rising from the execution of this Agreement.

Article 7. REPRESENTATIONS AND WARRANTIES

7.1 Representations and Warranties of the SMO

The SMO hereby represents and warrants to the Participant that:

a. it has all the necessary corporate or other power to enter into and perform its obligations under this Agreement;

b. it has been duly authorised by all necessary corporate, governmental, regulatory and/or other action to enter into and perform under this Agreement;

c. the execution, delivery and performance by the SMO of this Agreement will not contravene any provision of, or constitute a default under, any Applicable Law governing it, any other agreement or instrument to which it is a party or by which it

or its property may be bound in relation to the performance of its obligations under this Agreement;

d. the individual executing this Agreement, and any document in connection herewith, on its behalf has been duly authorised to execute this Agreement and any document in connection herewith, and has the full power and authority to bind the SMO; and

e. this Agreement constitutes a legal and binding obligation on the SMO, enforceable against it in accordance with its terms.

7.2 Representations and Warranties of the Participant

The Participant hereby represents and warrants as follows to the SMO:

a. That it acknowledges and confirms that the SMO is relying on such representations and warranties in respect of the Application to register it as a Participant,

b. That it is duly incorporated and existing under the laws of an ECOWAS member state and has all the necessary corporate or other power to enter into and perform its obligations under this Agreement;

c. That the Participant 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;

d. That the execution, delivery and performance by the Participant of this Agreement will not contravene any provision of, or constitute a default under, any Applicable Law governing it, any other agreement or instrument to which it is a party or by which it or its property may be bound in relation to the performance of its obligations under this Agreement;

e. That the individual executing this Agreement, and any document in connection herewith, on its behalf has been duly authorised to execute this Agreement and any document in connection herewith, and has the full power and authority to bind the Participant;

f. That this Agreement constitutes a legal and binding obligation on it, enforceable against it in accordance with its terms;

g. That, except for registration as a Participant, it holds all permits, licences and other authorisations that may be necessary to enable it to carry on the business and perform its activity or activities as described in this Agreement and the Regional Market Rules, the WAPP Operation Manual, the Market Procedures and any other relevant market regulations ;

h. That the information provided in its Application is true, accurate and complete in all respects;

i. That its communication and metering equipment comply with all applicable requirements as established in the Regional Market Rules, the WAPP Operation Manual, the Market Procedures and any other relevant market regulations ; and

j. That it has adequate qualified staff, organisational and other arrangements that are sufficient to enable it to perform all of the functions and duties applicable to the class of Participant of which it forms part, as described in this Agreement, the Regional Market Rules, the WAPP Operation Manual, the Market Procedures and any other

relevant market regulations .

7.3 Mutual Representation and Warranty

Each Party represents and warrants to the other 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

7.4 Duration of Representations and Warranties

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

Article 8. EARLY TERMINATION

8.1 Conditions for Early Termination

8.1.1 The Participant acknowledges that any material breach of the Regional Market Rules, the WAPP Operation Manual, the Market Procedures and any other relevant market regulations, in particular late payment, shall be deemed to be a material breach of this Agreement and may lead to its termination.

8.1.2 The Participant acknowledges that the right of participation is subject to the Participant continuing to comply with all relevant requirements established in the Regional Market Rules, the WAPP Operation Manual, the Market Procedures and any other relevant market regulations.

8.1.3 The Participant acknowledges that if due to changes in the conditions and information submitted in its Application, the Participant no longer comply with all relevant requirements for its participation as established in the Regional Market Rules, the WAPP Operation Manual, the Market Procedures and any other relevant market regulations, this Agreement may be suspended or terminated by the SMO.

8.2 Suspension

Should the SMO issue the Participant a Suspension Notice in accordance with the Regional Market Rules and the Market Procedures, the participation and trading rights of the Participant shall be restricted as specified in the Suspension Notice. Within such Restrictions period specified in the Suspension Notice, this Agreement shall continue to be valid and the Participant has to remedy the situation of non-compliance.

8.3 Termination

Should the SMO issue the Participant a Termination Order in accordance with the Regional Market Rules, this Agreement shall automatically terminate.

Article 9. DISPUTE RESOLUTION

9.1. Any Dispute between the SMO and the Participant concerning the interpretation and application of this Agreement shall be resolved in accordance with the Dispute Resolution Procedure as provided by Article 40 of the Regional Market Rules.

Article 10. GENERAL PROVISIONS

10.1 Applicable Laws

This Agreement shall be governed by and construed in accordance with the laws of THE Republic of Benin.

10.2 Documents and Information

Each Party shall promptly execute and deliver or cause to be executed and delivered all further documents in connection with this Agreement that the other Party may reasonably require for the purposes of giving effect to this Agreement.

10.3 Conflict of Interest

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

(a) Give to or receive from any director, employee or agent of the other Party or its Affiliates in connection with this Agreement, either of the following:

i. any gift, entertainment or other benefit exceeding the value of US $ 200 or

ii. any commission, fee or rebate; and

(b) Enter into any business arrangement with any director, employee or agent of the other Party or any Affiliate of the other Party (other than as a representative of the other Party or the Affiliate of the other Party).

10.4 No Partnership or Agency

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

10.5 Waivers

A waiver of any default, breach or non-compliance under this Agreement is not effective unless in writing and signed by the Party to be bound by the waiver.

10.6 Notices

(a) Methods of delivery

Unless otherwise provided in this Agreement, all notices, requests, statements and other communications required or permitted between the Parties by this Agreement shall be in

writing and either hand-delivered or sent by pre-paid registered post, email or facsimile to the address or number of the Party concerned set out in Article 10.6(b) (*Addresses of the Parties*) or such other address or number as contemplated in Article 10.6(c) (*Change in Address*). No communication shall be effective until received by the addressee and a communication shall be deemed to have been received:

i. if delivered by hand during ordinary business hours, to its physical address in Article 10.6 (b) (*Addresses of the Parties*), when so delivered;

ii. if delivered by pre-paid registered post, to its postal address in Article 10.6(b) (*Addresses of the Parties*), seven (7) Business Days after posting, subject to proof of posting;

iii. if delivered by email, upon receipt by the sender of a return email from the recipient in which the sender's communication is acknowledged (it being the responsibility of the sender to obtain such acknowledgement); and

iv. if delivered by facsimile, upon sending, subject to confirmation of uninterrupted transmission on a transmission report and provided that a hard copy is promptly dispatched to the recipient in the manner provided in clauses Article 10.6(a)(i) or Article 10.6(a)(ii) above.

(b) Addresses of the Parties

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

i. The SMO:

Postal Address: [*insert*]

Physical Address: [*insert*]

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

Email Address: [*insert*]

Fax No.: [*insert*]

Tel No.: [*insert*]

Attention: [*insert*]; and

ii. The Participant:

Postal Address: [*insert*]

Physical Address: [*insert*]

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

Email Address: [*insert*]

Fax No.: [*insert*]

Tel No.: [*insert*]

Attention: [*insert*];

(c) Change in address

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

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

The Common Seal of the within named

For the "**SMO**" [*Insert the SMO official name*]

Signature: [*Duly authorised Signature*]

Name: [*Full Name of the Signatory*]

Designation: [*Designation of the Signatory*]

has been affixed hereto In the presence of:

Signature: [*Duly authorised Signature*]

Name: [*Full Name of the Signatory*]

Designation: [*Designation of the Signatory*]

The Common Seal of the within named

For the "**Participant**" [*Insert the Paricipant official name*]

Signature: [*Duly authorised Signature*]

Name: [*Full Name of the Signatory*]

Designation: [*Designation of the Signatory*]

has been affixed hereto In the presence of:

Signature: [*Duly authorised Signature*]

Name: [*Full Name of the Signatory*]

Designation: [*Designation of the Signatory*]