

MODEL POWER PURCHASE AGREEMENT

This **POWER PURCHASE AGREEMENT** is made this day of, 20...

BETWEEN

(Insert Company A) a company incorporated in **(insert country where Coy A is incorporated)** and having its registered office **(insert location of registered office)** (hereinafter referred to as “**acronym of Coy A**” which expression shall where the context so admits, be deemed to include its successors and assigns of the one PART;

AND

(Insert Company B) a company incorporated in **(insert country where Coy B is incorporated)** and having its registered office **(insert location of registered office)** (hereinafter referred to as “**acronym of Coy B**” which expression shall where the context so admits, be deemed to include its successors and assigns of the other PART;

WHEREAS:

- A.** Brief description of the main business of Coy A and licence(s) held or applied for that are of relevance to this Power Purchase Agreement (Agreement);
- B.** Brief description of the main business of Coy B and licence(s) held or applied for that are of relevance to this Agreement;
- C.** Coy A desires to purchase electrical energy in bulk from Coy B for (specify purpose, whether for own use or resale to other Parties);
- D.** Coy B is willing to sell electrical energy in bulk to Coy A;

NOW THEREFORE in consideration of the mutual benefits to be derived and the presentations and warranties, conditions and promises herein contained, and intending to be legally bound, the PARTIES HEREBY AGREE AS FOLLOWS:-

1. DEFINITIONS AND INTERPRETATION

1.1. DEFINITIONS

In this Agreement, unless the context otherwise requires, the following italicized words and expressions shall have the following meanings:-

The definitions shall be agreed upon by the parties as the circumstances may warrant.

1.2. INTERPRETATION

In this Agreement,

- a) Headings are for convenience only and shall not be considered in construing this Agreement;

- b) Abbreviations and Acronyms used in this Agreement are as set out in Schedule 1 of this Agreement;
- c) The singular includes the plural and vice versa;
- d) References to Articles, Sections and Annexes are, unless the context otherwise requires or states, references to Articles, Sections of and Annexes to this Agreement;
- e) Unless otherwise provided herein, where a consent or approval is required by one of the Parties from the other Party, such consent or approval shall not be unreasonably withheld or delayed.

2. APPROVAL BY THE ELECTRICITY REGULATORY BOARD

This Agreement is not binding on the Parties unless it has been approved by the Electricity Regulatory Board.

3. BINDING NATURE AND DURATION OF THE AGREEMENT

This Agreement binds and inures to the benefit of the Parties and their respective successors and permitted assigns, but may not be assigned by either Party other than by mutual agreement between the Parties in writing.

4. DURATION

This Agreement shall come into force on the date of signing hereof and shall remain in force until the expiry of a duration of **(Insert period in years)** unless earlier terminated by one of the Parties in accordance with its terms.

The duration may be extended, subject to agreement in writing by the Parties to such extension at the latest twelve months (or such other reasonable period as the Parties may agree) prior to its expiry, and on such terms as the Parties shall agree.

5. CONDITIONS PRECEDENT

Conditions precedent that either Party shall be required to fulfill are set out in the Schedules to this Agreement and may include obtaining the necessary approvals and licences.

6. TECHNICAL ISSUES

This Article shall deal with (without limitation):-

- a) compliance with applicable environmental, health and safety laws and regulations;
- b) responsibilities of the Parties relating to construction of the relevant generating station and interconnection facilities;
- c) commissioning and testing;
- d) compliance with applicable rules, regulations and codes issued by the Board;
- e) operating and despatch procedures;

- f) maintenance and repair

Details of these may be set out in Schedules to the Agreement

7. SALE AND PURCHASE OF ELECTRICITY AND FUEL PROCUREMENT

In this Article the Parties shall set out:-

- a) terms and conditions for sale and purchase of electricity and ancillary services;
- b) the quantum of payments for energy, capacity and ancillary services;
- c) terms and conditions for the procurement of fuel for the generating station(s);

8. METERING AND BILLING

In this Article the Parties shall set out the metering and billing arrangements, which shall include (without limitation):-

- a) obligations of each Party;
- b) repair, adjustment and replacement of defective metering equipment;
- c) sealing of metering equipment;
- d) meter tampering;
- e) reading, testing, adjusting and recalibrating the metering equipment;
- f) preparation and issue of bills;
- g) content of bill;
- h) due date of payment;
- i) late payments;
- j) disputed payments;
- k) currency of payments;

9. RECORDS AND CONFIDENTIALITY

Each Party agrees that it will, and will ensure that its employees, officers and directors will, hold in confidence all information, documentation, data and know-how disclosed to it by the other Party and designated in writing as “confidential” (“Confidential Information”) and will not disclose to any third Party or use Confidential Information or any part thereof without the other Party’s prior written approval, provided that:-

- a) this Article shall not apply to Confidential Information which is in the public domain other than by reason of a breach of this Article, or was already in the rightful possession of the recipient Party, or was obtained by the recipient Party in good faith from a third Party entitled to disclose it;
- b) a Party may disclose Confidential Information in accordance with any Legal Requirement to do so, or to consultants and contractors whose duties reasonably require such disclosure; and

- c) a Party may disclose Confidential Information, subject to obtaining an undertaking to keep the same confidential, to
 - i. any prospective assignee of the Party and its advisers;
 - ii. any banker or financial institution or investor from whom the Party is seeking finance, or
 - iii. any expert or arbitrator under this Agreement.

10. FORCE MAJEURE

For the purposes of this Agreement, Force Majeure means any event or circumstance which affects either Party and is not within the reasonable control (directly or indirectly) of the part affected, to the extent that such event or circumstance or its effects cannot be prevented, avoided or removed by such Party, in accordance with prudent operating practice. Force Majeure shall include each of the following events or circumstances to the extent that they satisfy the following requirements:-

- a) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, civil commotion, act of terrorism, or sabotage provided that any such event occurs within or directly affects the Republic of Kenya;
- b) an act of God including but not limited to lightning, fire, earthquakes, volcanic activity, floods, storms, cyclones, typhoons, or tornados;
- c) epidemics or plagues;
- d) explosions or chemical contamination (other than resulting from an act of war);
- e) labour disputes including strikes, works to rule or go-slows or lockouts that extend beyond the undertakings or are widespread or nationwide and
- f) change in law

If a part is prevented from or delayed in performing any obligation under this Agreement by reason of Force Majeure the affected Party shall:-

- a) be relieved from the consequences of its failure to perform that obligation;
- b) promptly notify the other Party of the occurrence of the event and
- c) use all reasonable endeavours to overcome the consequences of the event and where the Force Majeure event has been eliminated or no longer affects a Party, the obligations in this Agreement shall be recommenced forthwith.

11. LIABILITY AND INSURANCE

This Article shall set out issues relating to insurance requirements and the liabilities of each part under the Agreement.

12. DEFAULT, TERMINATION, DISPUTES

12.1. DEFAULT

Either Party reserves the right to terminate the Agreement if there is a default on the part of the other Party by service of a notice of twelve months.

12.2. TERMINATION

If either Party hereto desires that this Agreement be terminated for any other reason it shall give to the other Party prior notice of six (6) months in writing, failing which the Agreement shall continue to be in force.

12.3. DISPUTES

All disputes and/or material differences arising in respect of any provision of this Agreement or with reference to anything arising out of or incidental hereto shall be amicably settled by the Parties within a period of 30 days after arising of the dispute or material difference.

Any dispute or difference which cannot be amicably settled shall be filed for determination by either Party in the East African Court of Justice in Arusha whose decision shall be final and binding on the Parties.

13. JURISDICTION, CHANGES OF LAW, TAXES AND STATUTORY LEVIES

The rights and remedies of the Parties as specified under this Agreement will be interpreted and governed in all respects by the laws of Kenya and Country Y, but if there is any inconsistency in the two laws, then the laws of Kenya shall prevail.

IN WITNESS WHEREOF the Parties hereto have signed this Agreement in the presence of the witnesses on the dates hereinbefore written.

(Authorized officers of the parties shall append their signatures as appropriate)

14. SCHEDULES TO POWER PURCHASE AGREEMENT

(Pease note that these schedules are only a guide and they may be varied as the circumstances may warrant and as the Parties may agree.)

SCHEDULE 1. ABBREVIATIONS AND ACRONYMS

SCHEDULE 2. CONDITIONS PRECEDENT

SCHEDULE 3. FACILITIES TO BE INSTALLED BY COYA AND COY B

SCHEDULE 4. METERING SYSTEM

SCHEDULE 5. DELIVERY POINTS

SCHEDULE 6. TESTING AND COMMISSIONING PROCEDURES

SCHEDULE 7. OPERATING AND DESPATCH PROCEDURES

SCHEDULE 8. PAYMENTS

8.1. ENERGY CHARGES

8.2. CAPACITY CHARGES

8.3. CHARGES FOR ANCILLARY SERVICES

SCHEDULE 9. ADD OTHER SCHEDULES AS MAY BE NECESSARY

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