Ministry of Energy

PARTICIPATION AGREEMENT

Date of Submission: 8th August 2025

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TABLE OF CONTENTS

1. PARTIES

This Market Participation Agreement (this **‘’Agreement”**) is made on this……day of …….[*year*] …….. between

1.1 (*Market Operator, as established under the Open Access Regulation and Market Guidelines, and the legal status incorporating it, the registered office and address*...), the entity established under the Open Access Regulation and Market Guidelines, responsible for operating the open access market. (hereinafter referred to as **“Market Operator”**), which expression where the context so admits shall be deemed to include all its successors and permitted assigns, of the one part; and

1.2 (*Insert particular name of the Market Participant and the legal status incorporating it, the registered office and address*...) (hereinafter referred to as **“Market Participant”),** which expression where the context so admits shall be deemed to include all its successors and permitted assigns, of the other part.

The Market Operator and the Market Participant may be referred to individually as a “Party” and collectively as the “Parties”).

2. PREAMBLE

WHEREAS

a) The Ministry of Energy (MoE) has approved the development of the electricity market in Zambia with different market segments where other market segments may be considered as the markets matures.

b) The terms of existing bilateral agreements which conflict with the [Market Guidelines/Market Rules] shall continue to apply [until [2030]/ [for a period to be determined by the Energy Regulation Board (ERB)] [, whereupon such terms shall be aligned with the [Market Guidelines/Market Rules], unless a specific exemption is provided by the ERB]

c) Domestic market transactions will continue to be based on bilateral arrangements unless and until a domestic competitive market is established, while market participants will be permitted to participate on the Southern Africa Power Pool (SAPP) either directly or through the Market Operator, subject to satisfying any applicable requirements.

It is agreed as follows:

3. DEFINITIONS AND INTERPRETATIONS

3.1. Definitions

3.1.1. **“Agreement”** means this Market Participation Agreement as may be amended from time to time.

3.1.2. **"Business Day"** means any day other than a Saturday, Sunday, or public holiday in Zambia.

3.1.3. **"Confidential Information"** has the meaning ascribed in Clause 9 (Confidentiality) of this Agreement.

3.1.4. **"Cross Border Trading License"** refers to the authorization issued by the ERB or relevant authority permitting a Market Participant to engage in electricity trading across national borders.

3.1.5. **"Effective Date" means the date on which the last Party signs this Agreement.**

3.1.6. **“ERB” means the Energy Regulation Board of Zambia as defined in the Electricity Act.**

3.1.7. **"Force Majeure Notice"** means the written notice issued by an Affected Party under Clause 14 (Force Majeure) detailing the occurrence and impact of a Force Majeure event.

3.1.8. **“Governing Documents” c**ollectively refers to this Agreement, the Market Guidelines, the Electricity Act, Grid Code, Open Access Regulations, and other legally binding instruments applicable to the Parties.

3.1.9. **“Market Guidelines”** means rules, procedures, and regulations governing the operation of the Open Access Market, issued by the ERB and amended from time to time.

3.1.10. “**Market Participant Event of Default**” means each of the circumstances listed in Clause **Error! Reference source not found.** (*Market Participant Events of Default*)

3.1.11. **“Market Operator (MO)”** means the entity established under the Open Access Regulation and Market Guidelines, responsible for operating the electricity market.

3.1.12. **“Market Participant (MP)”** means an entity participating in the electricity market, as defined in the Agreement.

3.1.13. **“Non-Affected Party”** means the Party not impacted by a Force Majeure event.

3.1.14. **“Open Access Market”** means

3.1.15. **"Operating Documents"** includes all schedules, annexes, codes, manuals, and other documents referenced in this Agreement.

3.1.16. **"Prudent Utility Practices"** means internationally accepted standards, methods, procedures or activities consistent with reliability, safety, environmental protection, and efficiency in the electric power industry.

3.1.17. **"Termination"** means termination of this Agreement in accordance with its terms.

3.1.18. **"Suspension"** means the suspension of a Market Participant's rights and obligations under this Agreement, as detailed in Clause 5.

3.2. Interpretation

3.3. In this Agreement including its annexes/schedules, unless the context otherwise specifies or requires:

a) References in the singular shall include references in the plural and vice versa, and words denoting natural persons shall include legal persons and their successors and permitted assignees;

b) references to the words "include", "includes" and "including" are to be construed without limitation;

c) Except to the extent that the context requires reference to a particular Clause, Clauses or Schedule shall be references to that Clause or Schedule in or to this Agreement;

d) Except to the extent that the context requires any reference to "this Agreement" or any other agreement or document is a reference to such document or agreement as amended, supplemented, modified or replaced from time to time and includes a reference to any document which amends, is supplemental to, modifies or replaces or is entered into, made or given pursuant to or in accordance with the terms of such agreement or document;

e) The headings and paragraph numbers are inserted for convenience only and are to be ignored for the purposes of construction;

f) The language of this Agreement is English, and all documents, notices, waivers and all other communications, written or otherwise, between the Parties in relation to this Agreement shall be in English.

4. TERM

4.1. Term

This Agreement shall be effective from the Effective Date and thereafter shall continue in full force and effect unless and until it is terminated in accordance with its terms.

5. PARTICIPATION IN THE MARKET

5.1. By entering into this Agreement, the Parties upon acceptance of, and agrees to be bound by and to comply with all of the terms and conditions set out in the Market Guidelines so far as they are applicable to the Market Participant.

5.2. The Market Operator hereby agrees to be bound by and to comply with all of the provisions of the Market Guidelines so far as they are applicable to the Market Operator.

5.3. Each of the Market Participant and the Market Operator herewith acknowledges and confirms that the Market Guidelines may be modified, amended or updated by the ERB from time to time in accordance with the Market Guidelines, the Electricity Act and the Energy Regulation Act.

6. DEFAULT, SUSPENSION AND TERMINATION

6.1.1. The default, suspension and termination under this agreement shall be done in accordance with the rules in the Market Guidelines, chapter 2, article 10.

7. SURVIVAL OF OBLIGATIONS

Notwithstanding any performance, or suspension or termination or expiration of this Agreement, any accrued obligations under this Agreement including payment obligations or obligations to provide information regarding operations or activities conducted prior to, performance or termination or expiration, shall survive the termination or expiry of this Agreement until all obligations have been fulfilled by the Parties.

8. ASSIGNMENT

8.1. The Market Participant shall not assign, cede, sub-contract or otherwise transfer this Agreement, any rights or obligations hereunder without the prior written consent of the Market Operator which consent shall not be unreasonably withheld.

9. MODIFICATION AND AMENDMENTS

9.1. Any Party to the Agreement may propose modifications and amendments of this Agreement in writing.

9.2. No modification, variation of or addition to this Agreement will be of any force or effect unless reduced to writing and signed by or on behalf of the Parties.

9.3. No amendment, modification or variation of this Agreement shall be construed or deemed to amend, modify and vary the Market Guidelines or any other Governing Document.

9.4. The Market Operator shall transmit or communicate any proposed amendments, modifications and variations to the ERB and the Attorney General for approval.

10. DATA PROTECTION

10.1. Each Party each undertakes that it shall at all times comply with all the relevant data protection laws, as applicable.

11. CONFIDENTIALITY

11.1. The Parties agree to treat as confidential the terms of this Agreement and all information, which a disclosing Party discloses in connection with this Agreement ("Confidential Information"). The receiving party in each case shall not disclose confidential information which it has received from the disclosing party same to third parties without:

9.1.1 the prior written authorization of said disclosing Party; and

9.1.2 if required by the disclosing Party, obtaining a written undertaking of confidentiality from any third-party recipient(s).

11.2. The confidentiality obligations in this Agreement relating to the Confidential Information shall not apply to:

9.2.1 information which at the time of disclosure is in the public domain.

9.2.2 information which the receiving Party is bound to disclose by applicable law; and

9.2.3 disclosures to either Party's auditors, regulatory authorities or financiers, guarantors of any loans to such Party and to their respective commercial advisors, tax or legal advisors who are required to have access to such information for the purpose of their function in respect of the Party in question and or the provision of their professional advice and which in all cases should be bound by the same confidentiality obligation as the receiving Party.

11.3. The confidentiality obligations set forth in this Agreement shall survive termination of this Agreement.

12. EXCLUSION OF LIABILITY

12.1. The Parties acknowledge that the Market Operator has no control over the operating systems, the dispatching of energy traded or the receipt thereof. As such, subject to Clause 12.2, the Market Operator shall have no liability for any damage or loss that the Market Participant may suffer because of the failure of transmission of energy or as a result of market conditions.

12.2. Any liability of the Market Operator resulting from its failure to perform any of its obligations under this Agreement or its obligations set out in the Market Guidelines shall not be excluded.

12.3. Nothing in this Clause excludes or limits any liability for fraud.

13. WAIVER OF DEFAULT

A waiver at any time by a Party of some or all of its rights with respect to a default arising under or in connection with this Agreement, shall not be deemed to be a waiver of a Party's right in any further default by the defaulting Party or with respect to any such other matter arising in connection with this Agreement thereafter.

14. WAIVER OF SOVEREIGN IMMUNITY

To the extent that the Market Operator may in any jurisdiction claim for itself or its assets where any, or revenues, immunity from suit, execution, attachment or other legal process and to the extent that in any such jurisdiction there may be attributed to the Market Operator or its assets or revenue such immunity (whether claimed or not), the Market Operator agrees not to claim and irrevocably waives such immunity to the full extent permitted by the laws of such jurisdiction.

15. SEVERABILITY

The Parties agree that they will perform their obligations under the terms of this Agreement in accordance with all applicable laws, rules and regulations now or hereafter in effect. If any Clause in this Agreement is found to be illegal or unenforceable, then the Parties shall take all possible steps to restructure the affected Clause of the Agreement in such a manner that it will comply with provisions of such laws. In such event the remaining Clauses of this Agreement shall remain binding on the Parties.

16. DISPUTE RESOLUTION

Any dispute arising out of this Agreement shall be resolved in accordance with the dispute resolution process provided for under the Market Guidelines.

17. FORCE MAJEURE

17.1. Definition of Force Majeure

For the purposes of this Agreement, "Force Majeure" is any event which is not within the reasonable control, directly or indirectly, of the Party affected ("Affected Party") and which could not reasonably have been foreseen, prevented or guarded against by the Affected Party resulting in or causing a total or partial failure or delay of the Affected Party in the fulfilment of any of its obligations under this Agreement (except the payment of money), but only if and to the extent that:

17.1.1. the Affected Party took, or has taken, all reasonable precautions, due care and reasonable alternative measures to avoid the effect of such event on the Affected Party's ability to perform its obligations under this Agreement and to mitigate the consequences of that event;

17.1.2. the event is not, or was not, the direct or indirect result of the breach by the Affected Party of any of its obligations under this Agreement;

17.1.3. the Affected Party has given the other Party (Non-Affected Party) notice under Clause 17.2.

17.2. In the absence of proof to the contrary and unless otherwise agreed between the Parties expressly or impliedly, the Affected Party shall be presumed to have established the conditions described in Clause 17.1, but always subject to the conditions under Clause 17.2, Force Majeure events, include but are not limited to, the following events, but only to the extent that each event satisfies the requirements set out in clause 14.1

17.2.1. war (whether declared or not), armed conflict or the serious threat of same (including but not limited to hostile attack, blockade, military embargo), hostilities, invasion, act of a foreign enemy, extensive military mobilization;

17.2.2. civil war, riot rebellion and revolution, military or usurped power, insurrection, civil commotion or disorder, mob violence, act of civil disobedience;

17.2.3. act of terrorism, sabotage or piracy;

17.2.4. act of God, plague, epidemic, natural disaster such as but not limited to violent storm, cyclone, typhoon, hurricane, tornado, blizzard, earthquake, volcanic activity, landslide, tidal wave, tsunami, flood, damage or destruction by lightning, drought;

17.2.5. boycotts, strikes, lock-outs or other similar work stoppages by employees which are not caused by unreasonable actions on the part of a Party to this Agreement; and

17.2.6. Change of law.

17.3. Responsibilities of the Parties during a Force Majeure event

17.3.1. The Affected Party must advise the Non-Affected Party in writing (Force Majeure Notice) of:

17.3.2. the date of commencement of the Force Majeure event;

17.3.3. the nature and expected duration of the Force Majeure event;

17.3.4. the anticipated effect of the Force Majeure event on the performance by the Affected Party of its obligations under this Agreement.

17.4. The Affected Party must send the Force Majeure Notice not later than fifteen (15) Business Days after the date on which the Affected Party first had knowledge of the Force Majeure event. If the Affected Party does not deliver the Force Majeure Notice in accordance with this clause, the Affected Party is not entitled to the benefits of this clause.

17.5. The Affected Party must:

14.5.1 make all reasonable efforts to prevent and reduce to a minimum and mitigate the effect of any delay occasioned by any Force Majeure event; and

14.5.2 use its best efforts to ensure resumption of normal performance of this Agreement after the cessation of any Force Majeure event as promptly as possible and otherwise perform its obligations in accordance with this Agreement.

17.6. Force Majeure Effect

Any delay or non-performance attributable to a Force Majeure event is considered an excusable breach and neither Party is entitled to claim compensation because of it. The Affected Party shall resume performance of its obligations under this Agreement promptly after the Force Majeure no longer exists. If the Affected Party's performance of its obligations under the Agreement is prevented by a Force Majeure event, then, provided that the provisions of Clause 17 have been complied with, the Affected Party is entitled to suspend performance of its obligations under this Agreement.

17.7. If a Force Majeure event occurs that exceeds a period of at least Sixty (60) consecutive days in the aggregate, then the Parties shall consult with each other in good faith in an attempt to determine a mutually acceptable basis upon which their obligations may be performed. If no resolution is reached, then the Market Operator can suspend the rights of the Market Participant to participate in the market.

17.8. In the event that a Force Majeure Event occurs for a period of 180 days and the Market Participant is unable to determine a basis upon which the Force Majeure situation is to be resolved, acceptable to the Market Operator, the Market Operator may give the Market Participant a written notice of termination of the Agreement, and the Agreement shall be

deemed terminated without the need for any further legal or judicial action; and in that case the termination shall take effect (7) days after the notice is given.

18. NOTICES / ADDRESSES

18.1. Any notice issued by either Party for all purposes arising out of or in connection with this Agreement shall be in writing and shall be delivered to the address of the Parties indicated below:

For Market Operator	**For Market Participant**
Address:	Address:
Anticipated via email as follows:	Anticipated via email as follows

18.2. For the purposes of sub clause 18.1 hereto, the Parties' respective addresses shall be published on the Market Operator web site.

18.3. Any notice given in terms of this Agreement, shall be in writing and shall:

16.3.1 if delivered by hand be deemed to have been duly received by the addressee on the date of delivery;

16.3.2 if posted by prepaid registered post be deemed to have been received by the addressee on the day of receipt;

16.3.3 if successfully transmitted by email be deemed to have been received by the addressee one day after successful dispatch.

18.4. Notwithstanding anything to the contrary contained in this Agreement, a written notice or communication, actually received by one of the Parties from the other, including by way of email transmission, shall be adequate written notice or communication to such Party.

19. GOVERNING LAW

This Agreement and the rights and obligations of the Parties under or pursuant to this Agreement shall be governed by and construed according to the Zambian Laws.

20. ENTIRE AGREEMENT

This Agreement constitutes the whole agreement amongst the Parties and supersedes all prior verbal or written agreements or understandings or representations by or between the Parties regarding the subject matter of this Agreement, and the Parties will not be entitled to rely, in any dispute regarding the subject matter of this Agreement, on any terms, conditions or representations not expressly contained in this Agreement.

21. COUNTERPARTS

This Agreement may be entered into in any number of counterparts, all of which, taken together, shall constitute one and the same instrument. Any Party may enter into this Agreement by executing any such counterpart

22. FURTHER ASSURANCE

Each Party undertakes to use reasonable endeavors to procure that any necessary third party shall, from time to time, execute such documents and do such acts and things as the requesting Party may reasonably require for the purpose of giving the full benefit of this Agreement to the requesting Party.

23. SUCCESSORS AND ASSIGNEES

This Agreement shall be to the benefit of and shall be binding upon the Parties hereto and their respective successors and permitted assignees

24. NO JOINT VENTURE OR PARTNERSHIP

Nothing in this contract shall create a partnership or joint venture between the parties hereto and save as expressly provided in this contract, neither party shall enter into or have authority to enter into any engagement or make any representation or warranty on behalf of or pledge the credit of or otherwise bind or oblige the other party hereto

25. CORPORATE AUTHORITY AND STANDING

The Market Operator has full power and authority to enter into and perform this Agreement and when executed, this Agreement shall constitute a valid and binding obligation on the MO, in accordance with its terms. The Market Participant is a company in good standing, duly organized and validly existing under the Laws of Zambia and has all corporate power and legal authority to carry on its business as now being conducted

26. JOINT VENTURE AND CONSORTIUM

If the Market Participant is a joint venture or consortium, all of the parties to the joint venture or consortium shall be jointly and severally liable to Market Operator for the fulfilment of the provisions of the Agreement and shall designate one party to act as a leader with the authority to bind the joint venture or consortium. The composition or the constitution of the joint venture or consortium shall not be altered without the prior consent of the Market Operator

27. INDEMNITY

The Parties each agree to indemnify and hold harmless the other party, its respective affiliates, officers, agents, employees, and permitted successors and assigns against any and all claims, losses, damages, liabilities, penalties, punitive damages, expenses, reasonable legal fees and costs of any kind or agreement whatsoever, which result from the negligence of or breach of this Agreement by the indemnifying party, its respective successors and assigns that occurs in connection with this Agreement. This section remains in full force and effect even after termination of the Agreement by its natural termination or the early termination by either party

SIGNED for and on behalf of the Market Operator

on _ _ _ _ _ _ _ _ _ _

_ _

[Insert signatory's name]

As Witnesses:

1. _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _

2. _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _

SIGNED for and on behalf of [Market Participant's Name]

on _ _ _ _ _ _ _ _ _

_ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _

[Insert signatory's name]

As Witnesses:

1. _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _

2. _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _