

Dated: [●]

**THE UGANDA ELECTRICITY TRANSMISSION
COMPANY LIMITED**

-and-

DISTRIBUTION COMPANY LIMITED

WHEELING AGREEMENT

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This **WHEELING AGREEMENT** is made on _____ day of _____ 201[●]

BETWEEN:

- (1) **THE UGANDA ELECTRICITY TRANSMISSION COMPANY LIMITED** a company incorporated under the laws of Uganda whose registered office is situated at [●] (“**UETCL**”); and
- (2) [●] **DISTRIBUTION COMPANY LIMITED** a company incorporated under the laws of Uganda whose registered office is situated at [●] (“**DISCO**”).

WHEREAS:

- (A) DISCO is Licensed to operate and maintain the Distribution Infrastructure owned by [Uganda Electricity Distribution Company] [Rural Electrification Agency];
- (B) DISCO in terms of its Licence is obliged to provide access to the Distribution Infrastructure to any Licensee desiring to wheel electricity;
- (C) UETCL in its capacity as Single Buyer entered into a Power Purchase Agreement with an IPP whereby UETCL is obliged to make use of the Distribution Infrastructure for the wheeling of electricity in order to meet its purchase obligations; and
- (D) UETCL requires DISCO to provide Wheeling Service across the Distribution Infrastructure from the Point of Entry to the Point of Exit.

NOW IT IS HEREBY AGREED as follows:

1. Definitions and Interpretation

1.1 Defined Terms

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

“Adjacent Transmission Infrastructure” means the transmission infrastructure owned, operated and maintained by UETCL as part of the National Grid (as described in the Transmission Licence held by UETCL) directly adjacent to and connected to the Distribution Infrastructure at the Point(s) of Exit;

“Applicable Law” means the Electricity Act the Grid Code, the Approvals, the Licence and any other laws (including land, tax, investment, exchange and fiscal benefits laws and environmental laws), decrees, regulations, orders, and any other legislative instrument (including codes, standards, rules, normative regulatory directives, resolutions, ordinances, notifications, or other similar directives or rules) which must be complied with in Uganda, issued by the GOU or a Government Authority or, in the case of any orders which must be complied with, otherwise published in accordance with the Applicable Law(s) pursuant to which any such orders are issued;

“Approval” means the Licences, any approval, consent, permit, authorisation, granted or to be granted by GOU or a Governmental Authority which is:

(a) in respect of each Party, necessary for the validity or the exercise of rights or performance of obligations by that Party under this Wheeling Agreement, including any environmental approvals and health and safety approvals in Uganda;

(b) in respect of DISCO, required by DISCO to carry on business as an owner and/or operator of the Distribution Infrastructure in Uganda; or

(c) in respect of UETCL, required by UETCL to carry on the business of Single Buyer and/or System Operator in Uganda;

“Availability Factor” means the availability of the Distribution Infrastructure at the Delivery Point(s) (inclusive of any Scheduled Outages), as calculated in accordance with Annexure C: *Network Payments*

“Central Bank Lending Rate” means the interest rate at which the Bank of Uganda is prepared to lend money to local commercial banks;

“Change in Law” means the occurrence of any of the following events after the Signature Date:

(a) the effective start, revocation, amendment, extension or alteration of the interpretation or application of any Applicable Law;

(b) the enactment, promulgation or adoption of any Applicable Law;

(c) the requirement for an Approval that was not required on the Signature Date;

(d) a change to the terms and conditions or to the interpretation or application of any Approval or addition of new terms and conditions after granting said Approval;

(e) any delay in granting or renewing an Approval that has been properly applied for or renewing;

(f) the revocation or cessation of effectiveness of any Approval prior to the expiration date of such Approval: Provided that a Party is in compliance with the material requirements and conditions established therein as applied in a non-discriminatory manner, or if any Approval was granted for a limited period its non-renewal (or its renewal in terms or subject to conditions less favourable to a Party): Provided that the Party has observed all the requirements applicable to the grant of that renewal as applied in a non-discriminatory manner;

(g) the expropriation, compulsory acquisition or nationalisation by the Government or any Government Authority of all or a material part of the Distribution Assets operated or owned by DISCO; or

(h) the imposition or levying of any new taxes or the increase in the rate of any existing taxes;

["Connection Agreement” means an agreement for connecting the Adjacent Transmission Infrastructure of UETCL to the Distribution Infrastructure of the DISCO, that is also a Wheeling Related Contract;]

“Concession Agreement” means the concession agreement entered into between DISCO and [UEDCL]/[REA]¹ for the operation and maintenance of the Distribution Infrastructure identified in that Concession Agreement;

“Co-ordination Committee” means a co-ordination committee to develop Operating Procedures established in terms of Clause 3.1;

“Contracted Wheeling Capacity” means the capacity of the Distribution Infrastructure requested by UETCL per Delivery Point and made available by DISCO for the Wheeling Service, as defined in **Error! Reference source not found.**;

“Delivery Point” means the Point of Entry;

“DISCO” means the distribution company described in the recitals;

“DISCO Event of Default” has the meaning ascribed thereto in Clause 12;

“DISCO Representative” means the person appointed from time to time by DISCO under Clause 3.3, who acts on behalf of DISCO;

“Distribution Infrastructure” means any distribution and related infrastructure [owned] operated and maintained by DISCO (as described in the Distribution Licence held by the DISCO) required for the Wheeling Service between the Point(s) of Entry and the Point(s) of Exit, and includes the Distribution Infrastructure at the Point(s) of Entry;

“Distribution Infrastructure Works” means any distribution and related infrastructure that needs to be designed, procured and constructed with respect to the Distribution Infrastructure between or at the Point(s) of Entry and the Point(s) of Exit, prior to the Wheeling Service Commencement Date, in order for DISCO to provide Wheeling Service to UETCL²;

“Distribution Licence” means a distribution and sales Licences held by the Embedded Disco and/or the DISCO on the Wheeling Agreement Effective Date;

“Electricity Act” means the Electricity Act, 1999, Chapter 145 of the Laws of Uganda, as amended from time to time;

“Electricity Disputes Tribunal” means the Electricity Disputes Tribunal established in terms of the Electricity Act;

“ERA” means the regulatory authority established pursuant to section 4 of the Electricity Act;

“Expiry Date” means the expiry date of this Wheeling Agreement, being [ten [(10) years from the Wheeling Service Commencement Date];

¹ Will depend on who the actual party is – at this point in time, either UETCL or REA, but this may change in future

² Note that this excludes connection infrastructure or other infrastructure (e.g. deep upgrades) outside the entry and exit points

³ Note that the Wheeling Service Term and the period of any concession under which DISCO acts as operator of the Distribution Infrastructure may not be aligned. Accordingly, DISCO may not be able to enter into the Wheeling Agreement for longer periods than the concession agreement is valid, unless the owner of the infrastructure (UEDCL or REA) accedes thereto. This is not a wheeling agreement issue *per se*, but need to be kept in mind when determining the wheeling term.

“Force Majeure Event” means a Natural Force Majeure Event or a Political Risk Event.

“GOU” means the Government of the Republic of Uganda;

“Government Authority” includes Parliament or any legislative organ (either national or of any part of the Republic of Uganda) any court, tribunal, any ministry (department or division thereof), the ERA, parastatals, any authority or division thereof (including any regional and local authorities of Uganda) and any agency or entity or other body owned or controlled by GOU and having statutory competence to regulate or promulgate rules and regulations governing or touching and concerning matters, transactions and issues contained or relating to this Wheeling Agreement and any Wheeling Related Contract;

“Grid Code” means the Electricity (Primary Grid Code) published under the Electricity (Primary Grid Code) Regulations, 2003, as amended from time to time;

“Insolvency Event” means, in relation to a Party, that:

(a) that Party, is or has become unable to pay its debts when due, has ceased to pay its debts, has become insolvent or filed an application for, or initiated, recovery proceedings under any applicable insolvency law;

(b) proceedings were initiated or that measures were taken to obtain an order (provisional or definitive, voluntarily or involuntarily) for the dissolution, liquidation or receivership, or the appointment of administrators, liquidators or other similar officials to ensure the administration of its assets, said proceedings and/or appointment not being declared discharged, dismissed or suspended within one hundred twenty (120) days of the initiation or appointment thereof; or

(c) that Party has convened a meeting (either that person’s meeting or its creditors’ meeting), filed an application or taken other steps towards the implementation of any agreement, compromise, settlement or assignment of its debts with or involving its creditors;

“IPP” means a licensed independent power producer selling power to UETCL in terms of a PPA;

“Lapse of Consent” means any Approval -

(a) not being issued (or, having lapsed, not being renewed or replaced) within [one hundred eighty (180) days] of a properly and timely made and diligently pursued application by the affected Party for that Authorisation to be issued, renewed, or replaced, as the case may be, and as a result whereby such Party’s ability to perform its obligations under this Agreement is materially and adversely affected;

(b) being made subject, upon renewal or otherwise, to any terms or conditions that materially and adversely affect a Party’s ability to perform its obligations under this Agreement; or

(c) being withdrawn, cancelled, or suspended other than as provided under Applicable Law Laws and as a result the affected Party’s ability to perform its obligations under this Agreement is materially and adversely affected,

in each of the above instances despite compliance with the applicable procedural and substantive requirements as applied in a non-discriminatory manner;

“Licence” means an export, distribution, generation, import, sales or transmission licence issued by ERA under the Electricity Act;

“Licensee” means the holder of valid Licence;

“Licensed” means the holding of a valid Licence;

“Long Stop Wheeling Agreement Effective Date” means the date falling [one hundred and eighty (180) days] after the Signature Date;

“Long Stop Wheeling Service Commencement Date” means the date falling [three hundred and sixty five (365) days] after the Wheeling Agreement Effective Date;

“Loss Factor” means the percentage value used in the determination of the Wheeling Losses Charge in accordance with Annexure C: *Network Payments*;

“Lower Availability Limit” means a threshold value at a Delivery Point; such that if the Availability Factor falls below this value, a Wheeling Penalty Payment will apply;

“Metered” means the Metering of electricity at the Point of Entry, or at the Point of Exit as the case may be, in accordance with a Power Sales Agreement entered into between UETCL and the DISCO, or a Power Purchase Agreement between UETCL and the IPP;

“Metering” means the measuring and recording of a quantity of electricity delivered, in accordance with approved industry standards;

“Minimum Works Requirements” means the minimum Distribution Infrastructure technical requirements required by the [System Operator] [UETCL] [ERA] for DISCO to provide the Wheeling Service;

“National Grid” means the national interconnected high voltage transmission system of the Republic of Uganda, under the jurisdiction of the System Operator;

“Natural Force Majeure Event” means any act, event, or circumstance or combination thereof (other than any act, event or circumstance or combination thereof which constitutes a Political Risk Event) which:

- (a) is directly or indirectly outside the reasonable control (direct or indirect) of the affected Party or its contractors;
- (b) is not the direct or indirect result of material breach or act of negligence by the affected Party or its contractors of its or their obligations under this Wheeling Agreement or a Wheeling Related Contract;
- (c) could not, despite the exercise of reasonable diligence, have been prevented or avoided by the affected Party; and

(d) prevents, hinders, or delays the fulfilment by the affected Party of all or any part of its obligations under the Wheeling Agreement or a Wheeling Related Contract:

Provided that, without prejudice to the generality of the above provisions, a Natural Force Majeure Event may include any of the following acts, events, or circumstances, but only to the extent it satisfies the requirements provided for in the above paragraphs (a) to (d) -

- (i) acts of God, lightning, earthquake, volcanic eruption, hurricane, storm, typhoon, cyclone, tornado, washout, landslide, lightning strike, subsidence, flood, drought and other natural disasters, extreme weather or environmental conditions;
- (ii) meteorites, objects falling from aircraft, the occurrence of pressure waves caused by aircraft or other aerial devices travelling at supersonic speeds;
- (iii) fire, explosions, well blowouts, radioactive, chemical or other hazardous contamination or ionizing radiation (other than where caused by a Political Risk Event, in which case it shall be a Political Risk Event);
- (iv) epidemic or plague;
- (v) piracy, air crash, shipwreck, or major failure or stoppage of transportation (other than where caused by a Political Risk Event, in which case it shall be a Political Risk Event); and
- (vi) the non-performance by a Contractor under this Wheeling Agreement or any Wheeling Related Contract by reason of force majeure under such contract: Provided that the non-performance by the Contractor was caused by an event that would constitute a Natural Force Majeure Event under this Wheeling Agreement;

“Operating Procedures” means procedures and practices developed by the Coordination Committee to facilitate the implementation and operation of this Wheeling Agreement;

“Payment” means the payment in Uganda shillings or equivalent credit note by UETCL to DISCO for wheeling energy, as set out in Annexure C: *Network Payments*;

“Party” or “Parties” means UETCL, DISCO and the Embedded DISCO;

“Point of Entry” means the interconnection point(s) between the IPP and the Distribution Infrastructure where –

- (a) electricity is delivered under a Power Purchase Agreement entered into between UETCL and the IPP (as further identified and described in **Error! Reference source not found.**);
- (b) the Wheeling Service commences; and
- (c) payment for the Wheeling Service is calculated in terms of Annexure C: *Network Payments*;

“Point of Exit” means the interconnection point(s) between the Distribution Infrastructure and the Adjacent Transmission Infrastructure where –

- (a) electricity is delivered and metered under a Power Sales Agreement entered into between UETCL and the DISCO; and
- (b) the Wheeling Service terminates.

“Political Risk Event” means any of the following acts, events or circumstances, or a combination thereof (and their corresponding effects): acts of war (whether declared or not), invasions, armed conflicts, acts of foreign enemies or blockades;

- (e) insurrections, uprisings, civil unrest, revolutions, riots, acts of sabotage, acts of or threats of terrorism or civil conflict;
- (f) a Change in Law;
- (g) strikes, lock-outs, go slows or other industrial action or labour-union motivated initiatives or labour disputes, taking place in Uganda (other than where such events are restricted to the DISCO or UETCL workforce);
- (h) a breach by a Government Authority under this Wheeling Agreement or any Wheeling Related Contract; and
- (i) any other event or circumstance of a similar nature to those described in paragraphs (a) to (h):

Provided that (in each case), such events, circumstances, or actions described in paragraphs (a) to (h) above:

- (i) are outside the reasonable control of the affected Party;
- (ii) cannot, despite the exercise of reasonable diligence, be prevented or avoided by the affected Party;
- (iii) are not the direct consequence of material breach by the affected Party of its obligations under this Wheeling Agreement; and
- (iv) occur in or affect Uganda;

“Power Purchase Agreement” means a power purchase agreement entered into between UETCL as the Single Buyer and the IPP, that is also a Wheeling Related Contract;

“Power Supply Agreement” means a power supply agreement entered into between UETCL as the Single Buyer and the DISCO, that is also a Wheeling Related Contract;

“Prudent Operator Practice” means the degree of skill, care, diligence, prudence and foresight which could reasonably be expected from a properly qualified, skilled and experienced operator engaged in the same or a similar type of undertaking under the same or similar circumstances and in respect of DISCO including in respect of the construction

(where applicable), operation and maintenance of the Distribution Infrastructure, those so expected from a contractor, operator or maintainer of distribution infrastructure of similar in size, scope, complexity and characteristics of the Distribution Infrastructure;

“REA” means the Rural Electrification Agency of Uganda contemplated under the Electricity Act;

“Single Buyer” means UETCL acting as the Licensed sole purchaser of electricity from IPPs and other generators connected to the Grid and the seller thereof on a wholesale basis to its customers;

“Signature Date” means the last date of signing of this Wheeling Agreement by the Parties thereto.

“System Operator” means UETCL acting in its capacity as the Licensed operator of the National Grid;

“System Operator Directive” means a directive or instruction given by the UETCL acting in its capacity as System Operator that directly or indirectly affects the provision of Wheeling Service by DISCO;

“Transmission Licence” means the transmission Licence held by UETCL on the Wheeling Agreement Effective Date;

“UEDCL” means the Uganda Electricity Distribution Company Limited, as incorporated under the laws of Uganda with registration number [●];

“UETCL” means the Uganda Electricity Transmission Company Limited, as defined in the recital, that owns, operates and maintains the National Grid, including the Adjacent Transmission Infrastructure;

“UETCL Event of Default” has the meaning ascribed thereto in Clause 11;

“UETCL Representative” means the person appointed by UETCL from time to time by UETCL under Clause 3.1, who acts on behalf of UETCL;

“Upper Availability Limit” means a threshold value at a Delivery Point; such that if the Availability Factor rises above this value, a Wheeling Reward Payment will apply

“Wheeling Agreement” means this Wheeling Agreement and the Annexures thereto;

“Wheeling Agreement Effective Date” has the meaning given to it in Clause 2.1.1;

“Wheeling Payments” means the Wheeling Investment Payment; the Wheeling O&M Payment and the Wheeling Losses Payment payable by UETCL to DISCO for the Wheeling Service;

“Wheeling Investment Payment” means the payment payable by UETCL to the DISCO for the provision of the Distribution Infrastructure and the Distribution Infrastructure

Works, calculated at the Point(s) of Entry in accordance with Annexure C: *Network Payments*;

“Wheeling Losses Payment” means the payment payable by UETCL to the DISCO for technical network losses over the Distribution Infrastructure calculated at the Point(s) of Entry in accordance with Annexure C: *Network Payments*;

“Wheeling O&M Payment” means the payment payable by UETCL to the DISCO for the provision of network operating and maintenance services, calculated at the Point(s) of Entry in accordance with Annexure C: *Network Payments*;

“Wheeling Related Contract” means any contract(s) for the procurement of the [Distribution Infrastructure Works], the [Connection Agreement(s)], the Power Sales Agreement(s) between UETCL and the DISCO, and the Power Purchase Agreement between UETCL and the IPP, to the extent that such contract gave rise to or is directly linked with the provision of Wheeling Service under this Agreement;

“Wheeling Penalty Payment” means a payment for network performance below the Lower Availability Limit, as calculated in terms of Annexure C: *Network Payments*;

“Wheeling Reward Payment” means a payment for network performance above the Upper Availability Limit, as calculated in terms of Annexure C: *Network Payments*;

“Wheeling Service” means the electricity transportation, metering, scheduling and related services provided by DISCO to UETCL in terms of this Wheeling Agreement between the Point(s) of Entry and the Point(s) of Exit, as more fully described in Annexure B: *Wheeling Service*;

“Wheeling Service Commencement Date” means the date upon which Wheeling Service commence as defined in Clause 6.1;

“Wheeling Phase” means the period of time commencing on and from the Wheeling Service Commencement Date and expiring on the Expiry Date;

“Wholesale Customer” means a customer purchasing electricity from UETCL as Single Buyer on a wholesale basis;

1.2 *Interpretation*

In this Wheeling Agreement, unless the context otherwise requires:

- 1.2.1 reference to a day, month or year is a reference to a calendar day, month or year;
- 1.2.2 references to Clauses, Schedules and Sections are references to Clauses, schedules and sections of, to or contained in this Wheeling Agreement;
- 1.2.3 words in the singular shall be interpreted as including the plural and vice versa, and words denoting natural persons shall be interpreted as referring to corporations and nay other legal entities and vice versa;

- 1.2.4 in the event of any conflict between the Clauses and the Schedules, the Clauses shall prevail;
- 1.2.5 headings are for convenience only and shall not affect the construction of this Wheeling Agreement;
- 1.2.6 where an obligation is required to be performed by a specified time and is not so performed, such obligation shall continue (until performed) notwithstanding that the time specified for its performance has elapsed, without prejudice to any remedy that any party may have under or in connection with this Wheeling Agreement in respect of the failure to perform the obligation by a specified time;
- 1.2.7 references to any statutes, acts or regulations shall include references to statutes, acts or regulations as amended from time to time;
- 1.2.8 references to this Wheeling Agreement or any other document including any other Wheeling Agreement shall be construed as references to this Wheeling Agreement or that other document, as amended, varied, novated, supplemented or replaced from time to time;
- 1.2.9 any covenant by a Party not to do an act or thing shall be deemed to include an obligation not to permit or suffer such act or thing to be done by another person so far as this is within its power or control;
- 1.2.10 the expression “person” shall include any legal or natural person;
- 1.2.11 if a definition of a particular term or expression in this Wheeling Agreement imposes substantive rights and obligations on a Party to this Wheeling Agreement such rights and obligations shall be given effect to and shall be enforceable notwithstanding that they are contained in a definition;
- 1.2.12 words indicating one gender include all genders;
- 1.2.13 provisions including the word “agree”, “agreed” or “Wheeling Agreement” require the Wheeling Agreement to be recorded in writing
- 1.2.14 “day” means any day falling on a day other than a Saturday, Sunday or public holiday; and
- 1.2.15 references to a Party to this Wheeling Agreement shall include its legal successors in title and permitted assignees.

2. Conditions Precedent, Wheeling Agreement Effective Date and Term

2.1 Conditions Precedent and Effective Date

- 2.1.1 All Clauses of this Wheeling Agreement, other than the provisions of this Clause 2 and Clauses 1, 17, 18, 19 and 20 and the rights and obligations of the Parties arising out of or in connection with them that come into effect on the Signature Date, shall take effect on the date on which DISCO notifies UETCL in writing that the following conditions have been fulfilled (the “**Wheeling Agreement Effective Date**”):

Provided that DISCO may in writing waive the conditions set out in paragraphs (a) and (b), and UETCL may in writing waive the condition set out in paragraph (e) -

- (a) [DISCO has concluded a Connection Agreement with⁴UETCL;]
- (b) [DISCO has concluded a Connection Agreement with the Embedded DISCO];⁵]
- (c) DISCO is Licensed to operate the Distribution Infrastructure and provide Wheeling Service;
- (d) ERA, [REA] and [UEDCL] has indicated that it has no objection to the Wheeling Agreement being entered into⁶; and
- (e) DISCO has delivered to UETCL certified true copies of resolutions of the board of directors of DISCO approving this Wheeling Agreement.

2.1.2 If the Wheeling Agreement Effective Date does not occur on or before the Long Stop Wheeling Agreement Effective Date, or such later date as the Parties may agree to, then this Wheeling Agreement shall terminate.

2.2 *Term*

2.2.1 This Wheeling Agreement and the rights and obligations of the Parties arising out of or in connection with it (or the relevant part thereof) shall take effect on the Effective Date provided for pursuant to Clause 2.1 and shall continue in full force and effect until the Expiry Date (the “**Term**”).

2.2.2 The Parties may, subject to approval by the ERA, agree to extend the Term of this Wheeling Agreement by a period to be determined jointly by the Parties.

3. **Co-ordination Committee and Representatives**

3.1 *[Co-ordination Committee]*

3.1.1 The Parties may, with the assistance and support of ERA, appoint a Co-ordination Committee consisting of such technical, financial, legal and other members as the Parties may agree upon to develop Operating Procedures for the proper implementation and operation of this Wheeling Agreement.

3.1.2 The members of the Co-ordination Committee shall meet as often as may be necessary to meet its objectives and the costs of such meetings shall be shared by the Parties.

3.1.3 Operating Procedures developed by the Co-ordination Committee shall be binding between the Parties for the implementation and operation of this Agreement: Provided that ERA has given its no-objection thereto.]

⁴ These agreements should be in place.

⁵ These agreements should be in place.

⁶ If applicable, where REA and UEDCL are the owners and the DISCO is the operator of the networks concerned via a concession agreement or service provision agreement.

3.2 *UETCL Representative*

- 3.2.1 UETCL may appoint a UETCL representative to act on its behalf under this Wheeling Agreement. In this event, UETCL shall give notice to DISCO of the name, address, duties and authority of the UETCL representative.
- 3.2.2 Unless and until UETCL notifies DISCO otherwise, the UETCL representative shall be deemed to have the full authority of UETCL under this Wheeling Agreement.
- 3.2.3 If UETCL wishes to replace any person appointed as the UETCL representative, UETCL shall give DISCO not less than 7 days' notice to DISCO of the replacement's name, address, duties and authority, and of the date of appointment.

3.3 *DISCO Representative*

- 3.3.1 DISCO may appoint a DISCO representative to act on its behalf under this Wheeling Agreement. In this event, DISCO shall give notice to UETCL of the name, address, duties and authority of the DISCO representative.
- 3.3.2 Unless and until DISCO notifies UETCL otherwise, the DISCO representative shall be deemed to have the full authority of DISCO under this Wheeling Agreement.
- 3.3.3 If DISCO wishes to replace any person appointed as the DISCO representative, DISCO shall give UETCL not less than 7 days' notice of the replacement's name, address, duties and authority, and of the date of appointment.

4. **Authorisations**

- 4.1 Without prejudice to the provisions of Clause 4.2, either Party shall, at its own cost:
 - 4.1.1 apply for and obtain any Approvals, prior to the date that such Approvals are required in performing this Wheeling Agreement and shall at all times during the term keep in force all Approvals for the performance of any other of its obligations under and in accordance with this Wheeling Agreement; and
 - 4.1.2 indemnify, defend and hold the other Party harmless from and against all reasonable losses, costs (including legal fees), expenses, damages, penalties, fines and any other liability arising out of or in connection with the performance or non-performance of his obligations under Clause 4.1.1.
- 4.2 Each Party shall at its own cost, on reasonable notice and at all reasonable times use reasonable endeavours to assist the other Party, where possible, in applying for, obtaining on a timely basis and maintaining in force all Approvals required to be obtained and maintained by the other Party (as appropriate): Provided that in respect of any such Approvals it shall first be necessary for the Party responsible for applying for, obtaining and maintaining the relevant Approval to demonstrate that it has first diligently attempted to obtain such Approval and if the processes required by such duty of diligence have not been exhausted such processes have been and are still being diligently pursued by the relevant Party.

5. Distribution Infrastructure Works

5.1 DISCO's obligations

- 5.1.1 DISCO shall be responsible for carrying out and the completion of any Distribution Infrastructure Works⁷, including the maintenance and replacement thereof as may be required for purposes of this Wheeling Agreement.
- 5.1.2 DISCO shall or shall procure that any Distribution Infrastructure Works is carried out in such a manner that:
- (a) the Distribution Infrastructure Works fully comply with and meet all the requirements of this Wheeling Agreement (including any Minimum Works Requirements), all Applicable Law and Approvals, the Grid Code and all applicable technical standards and codes of practice and Prudent Operator Practice;
 - (b) the Distribution Infrastructure Works shall be fit for the purposes for which the Distribution Infrastructure Works are intended as required in this Wheeling Agreement or as may be reasonably inferred therefrom;
 - (c) the Distribution Infrastructure Works is commissioned and available for the provision of Wheeling Service at or prior to the Wheeling Service Commencement Date.

6. Distribution Infrastructure Wheeling Phase

Wheeling Service Commencement

- 6.1 The Wheeling Phase shall commence on the date indicated by DISCO to UETCL in writing (the “**Wheeling Service Commencement Date**”) and terminate on the Expiry Date.
- 6.2 DISCO shall be liable towards UETCL for costs incurred or damages sustained by UETCL under this Wheeling Agreement or a Wheeling Related Contract as a result of any delay in achieving the Wheeling Service Commencement Date that can be attributed to DISCO: Provided that -
- (a) DISCO shall not be liable towards UETCL if:
 - (i) the delay has been caused or contributed to by a breach by UETCL of its obligations under this Wheeling Agreement or a Wheeling Related Contract;
 - (ii) the delay is the result of a Natural Force Majeure Event or a Political Risk Event;
 - (iii) DISCO has acted in accordance with Prudent Operator Practice; or
 - (iv) the delay is the result of a System Operator Directive; and

⁷ Note this excludes infrastructure outside the point of entry and point of exit.

[(b) the maximum liability of DISCO towards UETCL (including all costs incurred by UETCL in claiming damages from DISCO) shall be limited to [1% (one per cent)] of its average monthly turnover in electricity sales, calculated on the basis of the annual electricity sales of such DISCO for the financial year immediately preceding the year in which such liability arises, divided by twelve: Provided that if such DISCO has been in operation for less than a financial year, the expected turnover of the DISCO as set out under its application for a Licence for the supply of electricity shall be deemed to be the annual turnover of that DISCO for the financial year concerned.]⁸

- 6.3 If the Wheeling Service Commencement Date does not occur on or before the Long Stop Wheeling Service Commencement Date, or such later date as the Parties may agree to, then this Wheeling Agreement shall terminate.

Wheeling Phase

- 6.4 During the Wheeling Phase, DISCO shall be responsible to provide Wheeling Service from the Point(s) of Entry to the Point(s) of Exit in accordance with this Wheeling Agreement, all Applicable Law and Approvals, the Grid Code, all applicable technical standards and codes of practice and Prudent Operator Practice.

Operation and Maintenance Services

- 6.5 DISCO will be responsible for ensuring on a continuing basis that the Distribution Infrastructure is available for Wheeling Service, is kept in good structural order and is fit for the purpose intended.
- 6.6 DISCO will ensure that the Distribution Infrastructure operation and maintenance services are performed by appropriately qualified and trained personnel.
- 6.7 DISCO will perform the Distribution Infrastructure operation and maintenance services in accordance with a schedule of programmed maintenance agreed on an annual basis with UETCL.
- 6.8 DISCO shall provide the Wheeling Service subject to System Operator directives and in accordance with the specified operating characteristics of the Distribution Infrastructure, including the monitoring thereof.

New Entrants

- 6.9 DISCO shall be entitled to allow new entrants access to the Distribution Infrastructure and provide Wheeling Service to other customers during the Wheeling Phase: Provided that -
- a) Wheeling Service provided to new entrants will not negatively impact the Wheeling Service provided to UETCL;

⁸ It may be necessary to limit the liability of smaller or less able DISCO's to a capped amount that they would be able to meet. The threshold of what is a "smaller" DISCO should preferably be determined by ERA, and may differ from case to case depending on the capacity of the DISCO concerned, the age of the infrastructure etc.

b) DISCO complies with all Applicable Law and Permissions and the Grid Code in permitting a new entrant; and

c) ERA, [REA] and [UEDCL] has indicated that it has no objection to Wheeling Service being provided to the new entrant.

7. Metering

7.1 Metering for purposes of determining the Wheeling Payments, Rewards and Penalties payable under Clause 8 shall –

(a) be done at the Point(s) of Entry identified in Annexure A: *Points of Entry*; and

(b) be dealt with in accordance with the metering principles set out in the Power Purchase Agreement between UETCL and the IPP.

7.2 A Party shall make any relevant Metered information available to another Party if necessary to:

(a) enable such Party to calculate the Wheeling Payments, Rewards and Penalties due under this Agreement;

(b) enable such Party to dispute any amount payable as a Wheeling Payment, Reward or Penalty; or

(c) enable such Party to otherwise enforce its rights under this Agreement.

8. Wheeling Payments, Rewards and Penalties

8.1 UETCL shall pay to DISCO as compensation for the Wheeling Service the Wheeling Payment as calculated in accordance with Annexure C: *Network Payments*.

8.2 If the Availability Factor from and after the Wheeling Service Commencement Date is higher than the Upper Availability Limit, at a Delivery Point, then UETCL shall, in addition to the Wheeling Payment, be liable towards DISCO for the payment of the Wheeling Reward Payments provided for in Annexure C: *Network Payments* (the “**Rewards**”)

8.3 If the Availability Factor from and after the Wheeling Service Commencement Date is less than the Lower Availability Limit, at a Delivery Point, (a “**Capacity Unavailability Event**”), then DISCO shall, notwithstanding UETCL’s obligation for the Wheeling Payment, be liable towards UETCL for the payment of Wheeling Penalty Payments provided for in Annexure C: *Network Payments* (the “**Penalties**”) as a result of such Capacity Unavailability Event: Provided that -

(a) DISCO shall not be liable towards UETCL where:

(i) a Capacity Unavailability Event has been caused or contributed to by a breach by UETCL of its obligations under this Wheeling Agreement or a Wheeling Related Contract;

- (ii) a Capacity Unavailability Event has been caused or contributed to by the IPP;
- (iii) a Capacity Unavailability Event is the result of a Natural Force Majeure Event or a Political Risk Event;
- (iv) DISCO has acted in accordance with Prudent Operator Practice, or
- (v) a Capacity Unavailability Event is the result of a System Operator Directive; and

[(b) the maximum liability of DISCO towards UETCL (including all costs incurred by UETCL in claiming damages from DISCO) shall be limited to 1% (one per cent) of its monthly turnover in electricity sales, calculated on the basis of the annual electricity sales of such DISCO for the financial year immediately preceding the year in which such liability arises, divided by twelve: Provided that if such DISCO has been in operation for less than a financial year, the expected turnover of the DISCO as set out under its application for a Licence for the supply of electricity shall be deemed to be the annual turnover of that DISCO for the financial year concerned.]⁹

- 8.4 The currency of the Wheeling Payments, Rewards and Penalties will be Ugandan Shillings.
- 8.5 DISCO shall submit to UETCL invoices in respect of the Wheeling Service provided to UETCL under this Agreement, including any Penalty and Reward, and UETCL shall settle such invoices within thirty (30) days after receipt thereof: Provided that UETCL may offset such invoice in part or in full against any amounts owed to UETCL by the DISCO.¹⁰
- 8.6 If any sum due under this Wheeling Agreement is not paid by the due date, the Party to whom such sum is owed may charge daily interest on the outstanding balance of such invoice from the due date until the date payment in full is received at the same rate and on the same terms as provided for in the Power Sales Agreement between UETCL and DISCO.
- 8.7 If a Party disputes any portion of the amount shown as due on the invoice (the **“Disputing Party”**), the Disputing Party shall pay the undisputed portion and provide with its payment a detailed statement of the basis for any dispute. The Parties will meet within [twenty (20)] days of the date of receipt by the other party of the Disputing Party’s statement of disputed amounts and will negotiate in good faith to resolve such dispute, failing which either Party may refer the dispute to the Dispute resolution procedures.

⁹ Note that for smaller or less capable DISCO’s a cap may need to be set. We suggest that his cap is not more than 1% of monthly sales of the DISCO, averaged over the previous financial year.

¹⁰ Note that the invoicing could be linked to invoicing under the Power Sales Agreements. The actual methodology of invoicing in terms of those agreements may however need to be amended to take the provisions of the Wheeling Agreement into account.

9. Sub-contracting

DISCO shall be responsible for the acts, omissions, neglect or defaults of any of its sub-contractors of any tier, his agents or employees, as if they were the acts, omissions, neglect or defaults of DISCO.

10. Termination of Wheeling Agreement

This Wheeling Agreement shall terminate on the Expiry Date, or earlier:

- 10.1 through termination by DISCO for a UETCL Event of Default;
- 10.2 through termination by UETCL for a DISCO Event of Default;
- 10.3 as a result of the Long Stop Wheeling Agreement Effective Date having been reached in accordance with the provisions of Clause 2.1.2;
- 10.4 as a result of the Long Stop Wheeling Service Commencement Date having been reached in accordance with the provisions of Clause 6.1;
- 10.5 through notice by an affected Party as a result of a Lapse of Consent;
- 10.6 through notice by either UETCL or DISCO as a result of a Long Term Force Majeure Event in accordance with the provisions of Clause 15;or
- 10.7 through mutual agreement between UETCL and DISCO.

11. UETCL Event of Default

DISCO may terminate this Wheeling Agreement on the basis of one or more of the following grounds (each a "**UETCL Event of Default**"): Provided such UETCL Event of Default is not itself caused by any act or omission on the part of the DISCO, a Force Majeure Event or a System Operator Directive -

- 11.1 the occurrence of an Insolvency Event in respect of the UETCL;
- 11.2 the assignment or transfer by the UETCL of its rights or obligations under this Wheeling Agreement, other than in accordance with the terms of this Wheeling Agreement;
- 11.3 the termination of the Power Purchase Agreement;
- 11.4 failure to make use of the Wheeling Service at and after the Wheeling Service Commencement Date which is not remedied or (if not capable of remedy) mitigated within [sixty (60)] days after notice from DISCO to UETCL;
- 11.5 the breach by the UETCL of any of its other material obligations under this Wheeling Agreement which is not remedied or (if not capable of remedy) mitigated within [sixty (60) days] after notice from the DISCO to UETCL of the occurrence of such breach;
- 11.6 any representation or warranty made or deemed to be made by UETCL under or in connection with this Wheeling Agreement is or proves to have been incorrect or misleading in any material respect when made or deemed to have been made, and such

incorrect representation or warranty has a material adverse effect on either Party's ability to perform its obligations under this Wheeling Agreement;

- 11.7 a failure by UETCL to make any payment to the DISCO under this Wheeling Agreement within [thirty (30) days] after notice from DISCO to UETCL that such amount was not paid when due.

12. DISCO Event of Default

UETCL may terminate this Wheeling Agreement on the basis of one or more of the following grounds (each a "**DISCO Event of Default**"): Provided such DISCO Event of Default is not itself caused by any act or omission on the part of UETCL, a Force Majeure Event or a System Operator Directive:

- 12.1 the occurrence of an Insolvency Event in respect of DISCO;
- 12.2 the assignment or transfer by DISCO of its rights or obligations under this Wheeling Agreement, other than in accordance with the terms of this Wheeling Agreement;
- 12.3 failure to provide the Wheeling Service at and after the Wheeling Service Commencement Date which is not remedied or (if not capable of remedy) mitigated within [sixty (60)] days after notice from UETCL to DISCO;
- 12.4 the occurrence of a Capacity Unavailability Event which is not remedied or (if not capable of remedy) mitigated within [sixty (60)] days after notice from UETCL to DISCO;
- 12.5 the breach by the DISCO of any of its other material obligations under this Wheeling Agreement which is not remedied or (if not capable of remedy) mitigated within [sixty (60)] days after notice from the UETCL to DISCO of the occurrence of such breach;
- 12.6 any representation or warranty made or deemed to be made by DISCO under or in connection with this Wheeling Agreement is or proves to have been incorrect or misleading in any material respect when made or deemed to have been made, and such incorrect representation or warranty has a material adverse effect on either Party's ability to perform its obligations under this Wheeling Agreement.

13. Consequences of Termination

In the case of this Wheeling Agreement being terminated by DISCO as a result of:

- 13.1 an UETCL Event of Default, or
- 13.2 a failure to meet the Wheeling Service Commencement Date by the Long Stop Wheeling Service Commencement Date that can be attributed to UETCL,

UETCL shall be liable towards DISCO for any proven damages incurred by DISCO as a result of such termination.

14. Indemnities and Limitation of Liability

- 14.1 Subject to Applicable Law, DISCO shall indemnify UETCL against, and hold UETCL harmless from, at all times after the Signature Date, any and all claims, and any and all actions, claims and demands in respect of such claims, incurred, suffered, sustained, or required to be paid, directly or indirectly, by, or sought to be imposed upon, UETCL for personal injury or death to persons or damage to property arising out of the negligent or intentional acts or omissions of DISCO in connection with this Wheeling Agreement.
- 14.2 Subject to Applicable Law, UETCL shall indemnify DISCO against, and hold DISCO harmless from, at all times after the Signature Date, any and all claims, and any and all actions, claims and demands in respect of such claims, incurred, suffered, sustained, or required to be paid, directly or indirectly, by, or sought to be imposed upon, DISCO for personal injury or death to persons or damage to property arising out of the negligent or intentional acts or omissions of UETCL in connection with this Wheeling Agreement.
- 14.3 In the event that any claims result from the joint or concurrent negligent or intentional acts or omissions of UETCL or DISCO, each Party shall be liable under this indemnification in proportion to its relative degree of fault.
- 14.4 Each Party shall promptly notify the other Party of any claim, action, demand or proceeding in respect of which it is or may be entitled to indemnification. Such notice shall be given as soon as reasonably practicable after the relevant Party becomes aware of the claim, action, demand or proceeding. Failure to give such notice in a timely fashion shall not affect the indemnified Party's rights to indemnification except to the extent that the indemnifying Party is materially prejudiced thereby.
- 14.5 The indemnity obligations established in this Clause 14 shall remain in force after the termination of this Wheeling Agreement until the date of prescription applicable to the right to file such claims, action, suit or proceedings.
- 14.6 Neither Party to this Agreement shall be liable to towards the other Party in contract, tort, warranty, strict liability, or any other legal theory for any indirect, consequential, incidental, punitive, or exemplary damages.

15. Force Majeure Events

- 15.1 Any failure or delay in performing any obligations under this Wheeling Agreement by either Party as a result of a Force Majeure Event, including the occurrence of an event which is analogous to a Political Risk Event under a PPA which affects UETCL, shall not be deemed a default or a breach of this Wheeling Agreement: Provided that the Party affected by such Force Majeure Event has taken all prudent, reasonable precautions and reasonable alternative measures in order to prevent and to reduce to a minimum and mitigate the effect of any failure or delay caused by such Force Majeure Event and otherwise to comply with the terms and conditions of this Wheeling Agreement. For the avoidance of doubt, notwithstanding that a Force Majeure Event otherwise exists, the provisions of this Clause 15 shall not excuse any failure on the part of either Party to make any payment in accordance with its obligations under this Wheeling Agreement.
- 15.2 The Party affected by a Force Majeure Event under Clause 15.1 shall notify the other Party of such Force Majeure Event and an estimate of its likely duration as soon as reasonably

practicable and, in any event, no later than ten (10) days after the affected Party first had knowledge of the occurrence of a Force Majeure Event, and shall provide notice to the other Party of the termination of the relevant Natural Force Majeure Event as soon as possible following the cessation of such Natural Force Majeure Event or its effects.

- 15.3 To the extent that a Force Majeure Event in terms of Clause 15.1 prevents or delays the performance by the affected Party of any of its obligations under this Wheeling Agreement, the time limits stipulated in this Wheeling Agreement for the performance of such obligation(s) shall be deemed suspended during the occurrence of the Force Majeure Event, and any applicable milestone dates shall be extended for such period as is fair and reasonable to take account of the Force Majeure Event.
- 15.4 If a Force Majeure Event under Clause 15.1 continues for a period longer than 180 days (“**Long Term Force Majeure Event**”), a Party may immediately terminate this Wheeling Agreement upon notice to the other Party.

16. **Dispute Resolution Process**

Negotiations

- 16.1 In the case of any dispute, controversy or claim between the Parties arising out of or in connection with this Wheeling Agreement, including any question regarding its existence, termination, validity or any breach thereof (a "**Dispute**"), such Party may notify the other Party of the Dispute by way of a written notice, which shall identify the Dispute and contain sufficient information to enable the other Party to understand the nature of the Dispute.
- 16.2 Within 30 days of the date of provision of such notice of Dispute, the Parties shall attempt to resolve such Dispute in good faith through negotiation between the representatives of each Party, and these representatives should have the necessary authority to make binding decisions. If such individuals are unable to reach agreement within such thirty (30) days, or over a longer period if the Parties have so agreed, unless the Parties have agreed to refer the Dispute for determination by an independent expert (the "**Expert**") in accordance with Clause 16.3, either Party may refer the Dispute to arbitration in accordance with Clause 16.12. Where a Dispute is referred to an Expert or to arbitration, nothing in this Clause 16.2 shall prejudice the rights of a Party to raise claims, defences, counterclaims or cross-claims based on matters that were not set out in the notice of Dispute and/or were not the subject of negotiation and/or did not form part of the Dispute.

Expert Determination

- 16.3 Where a Dispute arises which relates to technical issues concerning the Distribution Infrastructure or any invoicing or metering disputes, either Party may refer the Dispute for determination by an Expert. A Party requesting the determination of a Dispute by an Expert must first give the other Party written notice of the request for such determination.
- 16.4 The Expert shall be selected by Agreement of the Parties within ten (10) days of provision of the notice requesting the submission of the Dispute to an Expert. The Expert shall not be a representative, employee or hired contractor, nor a former representative, employee or contractor hired by the Parties. If the Parties are unable to reach an Agreement on an Expert within such ten (10) day period, then upon the request of either Party the Expert

shall be promptly appointed by the ERA. The Expert's appointment commences upon the provision to the Parties by the Expert of a written acceptance of such appointment, and if such acceptance is provided at different times to the Parties, the time at which it was first provided to a Party.

- 16.5 The Party seeking that the Dispute be determined by an Expert shall provide to the Expert as well as to the other Party within ten (10) days of the appointment of the Expert, certain written materials comprising: (i) a description of the Dispute; (ii) a statement of that Party's position; and (iii) a copy of the records that support that Party's position. Within ten (10) days of the date on which the initiating Party has provided the documents described in the preceding sentence, the receiving Party may provide to the Expert and the other Party: (a) a description of the Dispute; (b) a statement of that Party's position; and (c) copies of any records that support that Party's position. In addition to the material which has been supplied to the Expert by the initiating Party, the Expert should also take into account all information, which has been provided by the receiving Party within such period of ten (10) days and, at the Expert's discretion, any additional information subsequently submitted by either Party. Any materials submitted by a Party to the Expert should also be provided by that Party to the other Party.
- 16.6 Each Party shall identify an individual who will be available to the Expert to answer any questions and provide any additional information requested by the Expert. Except as stated in relation to such individual, the Parties are not required to provide oral statements or representations to the Expert, nor to make any individuals available to the Expert, though they are permitted to do all these things. The Parties agree to cooperate fully in the expeditious conduct of the expert determination and to provide the Expert with access to all facilities, books, records, documents and information that the Expert considers are necessary to make a fully informed decision in an expeditious manner.
- 16.7 The Expert determination process will take place without prejudice to the Parties, and no evidence or any statements made during this process can be used against the respective Party in any other Dispute. The Expert shall act as an expert and not as an arbitrator and, for the avoidance of doubt, the legislation relating to commercial arbitration does not apply to such proceedings.
- 16.8 Following expiry of the ten (10) day period set out in Clause 16.5 during which the receiving Party may make submissions, the Expert shall provide a decision within sixty (60) days, unless the Expert reasonably determines that additional time is required in order to give adequate consideration to the issues raised. In such case, the Expert shall state in writing his reason for believing that additional time is required and shall specify the additional period required, which period shall not exceed thirty (30) days.
- 16.9 Save in the event of manifest error or fraud, the decision of the Expert regarding a Dispute shall be final and binding on the Parties. If the Expert has not provided such a decision within the period stipulated in Clause 16.8 either Party may initiate arbitration proceedings in accordance with Clause 16.12.
- 16.10 Each Party shall bear its own expenses for hiring the Expert, as well as expenses incurred making presentations to the Expert.

- 16.11 All proceedings before the Expert shall be conducted in the English language. All documents provided in connection with such proceedings shall be provided in the English language or, if in another language, accompanied by a certified English translation.

Resolution of Disputes

- 16.12 A Dispute that has not been resolved in accordance with the provisions of Clause 16.1 or 16.3 may be referred by a Party to the Electricity Disputes Tribunal in terms of section 109 of the Act for resolution in accordance with its provisions.

Consolidation of Disputes

- 16.13 The Parties agree that if a Dispute which is referred for resolution to the Electricity Disputes Tribunal arises out of substantially the same facts as, or raises issues which are substantially the same as, or are connected with, issues raised in:
- (a) a prior Dispute which has already been referred to arbitration but has not yet been adjudicated; or
 - (b) a dispute arising out of any Wheeling Related Contract and which has already been referred for resolution,
- (in either case an "**Existing Dispute**"), then, at the Parties' option, the Electricity Disputes Tribunal appointed in respect of the Existing Dispute shall also become the tribunal in respect of such Dispute.
- 16.14 In such case, the Electricity Disputes Tribunal may, having regard to the stage of the proceedings of the Existing Dispute and the interests of justice and efficiency, consolidate the proceedings arising out of the Existing Dispute and the Dispute.
- 16.15 For the purposes of such consolidated proceedings, where the Existing Dispute arises out of or in connection with another Wheeling Related Contract, the Parties adhere to and consent to be bound by the arbitration contained in that other Wheeling Related Contract.
- 16.16 In the event that there is any dispute as to whether a Dispute sufficiently related to an Existing Dispute for the purposes of this Clause 16.14, such dispute shall be resolved by the Electricity Disputes Tribunal.

17. Confidentiality and Publicity

The Parties shall keep confidential and shall ensure that the contractors or subcontractors hired by them, as well as the consultants and agents and each of their respective and permitted successors and assignees keep confidential, all documents and other information of a confidential nature, whether technical or commercial, that have been supplied by or on behalf of another Party and are related to this Wheeling Agreement, and shall not publish or disclose such information in any manner (except as required by Applicable Law, where such information is or becomes public (other than through a violation of this Clause 17) or where such information is disclosed to any of a Party's Affiliates, advisers, insurers, reinsurers, shareholders or any investors (together with their advisers) in connection with the Wheeling Agreement: Provided that such Affiliates, advisers, insurers, reinsurers, shareholders or any investors (together with their advisers) agree to keep the information

disclosed to them confidential. The provisions of this Clause 20 shall survive termination of the Wheeling Agreement, but expire on the fifth anniversary of the date of termination or expiry of the Wheeling Agreement.

18. Assignment of Right and Obligations

18.1 The Parties may assign their rights and obligations under this Wheeling Agreement to a third party (other than a Prohibited Party), with the prior consent of the other Party: Provided that -

(a) such Party demonstrates to the reasonable satisfaction of the other Party that the third party has the technical capability and financial capacity to comply with its obligations under the Wheeling Agreement;

(b) the rights and obligations of the assigning Party under the Wheeling Agreement are fully assumed by the third party for the remainder of the validity of the Wheeling Agreement;

(c) the third Party obtains all necessary Approvals prior to such assignment coming into effect.

19. Anti-Corruption Clause

Each of the Parties, their officers, administrators, agents and representatives must, when performing their obligations hereunder, fully comply with Applicable Law and with all applicable laws relating to the fight against corruption, bribery, money laundering, terrorism and boycott.

20. Miscellaneous Provisions

20.1 Binding Effect

This Wheeling Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors, legal representatives and permitted assigns.

20.2 Relationship of the Parties

This Wheeling Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties or to impose any partnership obligation or liability upon either Party. Neither Party shall have any right, power, or authority to enter into any Wheeling Agreement or undertaking for, to act on behalf of, to act as or be an agent or representative of, or to otherwise bind the other Party. Nothing in this Wheeling Agreement shall be construed as creating a partnership between the Parties, a relationship of principal and agent, or a relationship of employer and employee.

20.3 Governing law

This Wheeling Agreement, and any non-contractual rights or obligations arising out of or in connection with it, shall be governed by and construed in all respects in accordance with the laws of Uganda.

20.4 *Amendments*

Unless otherwise provided in this Wheeling Agreement, the Wheeling Agreement may only be amended by in writing, duly executed by the Parties.

20.5 *Notification*

(a) Any notices or other communications given or provided by one Party to the other Party shall have been properly given or provided, unless otherwise specified in this Wheeling Agreement, if: (i) given or provided in writing; (ii) delivered personally (by hand or by courier) to the other Party at the address which is shown below or to such other address as the other Party shall by notice require, sent by facsimile transmission (with receipt of transmission confirmation) to the facsimile number of the other Party which is shown below or to such other facsimile number as the other Party shall by notice require, or sent by electronic mail at the electronic mail address for the other Party which is shown below or to such other electronic mail address as the other Party shall by notice require; and (iii) marked for the attention of the person(s) designated below.

(b) Any notice or communication made by one Party to the other Party in accordance with this Clause 20.5 shall be deemed to be received by the other Party, if delivered by hand or by courier, on the day on which it is left at or delivered to that Party's address, or if sent by facsimile transmission or by electronic mail, on the next Business Day following the day on which it is sent to that Party's address.

(c) DISCO:

(d) UETCL:

(e) Either Party may from time to time change its address, facsimile number, email address or other information for the purpose of notices to such Party by providing notice specifying such change to the other Party.

(f) The language for communications shall be English.

20.6 *Entire Wheeling Agreement*

(a) This Wheeling Agreement contains and expressly refers to the entire Wheeling 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 of the Parties acknowledges and confirms that it does not enter into this Wheeling Agreement in reliance on any representation, warranty or other undertaking by the other Party not fully reflected in the terms of this Wheeling Agreement.

(b) This Wheeling Agreement may be executed in two counterparts and by each Party as a separate counterpart, each of which when executed and delivered shall constitute an original, but the counterparts shall together constitute one and the same instrument.

20.7 *Waiver of Rights*

No delay or forbearance by either Party in exercising any right, power, privilege or remedy under this Wheeling Agreement shall operate to impair or be construed as a waiver of such right, power, privilege or remedy.

20.8 *No Double Recovery*

Notwithstanding any other provisions of this Wheeling Agreement, neither Party shall be entitled to recover compensation or make a claim under or in connection with this Wheeling Agreement in respect of any loss that it has incurred to the extent that it has already been compensated in respect of that loss pursuant to this Wheeling Agreement or otherwise.

20.9 *Mitigation*

Notwithstanding any other provision of this Wheeling Agreement, whenever an event or circumstance occurs that will or may entitle a Party to an extension of time or the payment of cost or any other additional payment under the Wheeling Agreement the Party shall (and shall procure that his subcontractors and Representatives shall) take all reasonable steps to prevent, avoid, overcome and otherwise mitigate the impact of such event or circumstance and to keep any delay or increased cost to a minimum.

20.10 *Prior rights and obligations*

The expiry or termination of this Wheeling Agreement shall not affect any rights or obligations which may have accrued prior to such expiry or termination.

20.11 *Liquidated Damages*

The Parties acknowledge and agree that any amount they may become liable to pay the other pursuant to the provisions of this Wheeling Agreement are, in each case a genuine pre-estimate of the damages and loss likely to be suffered by UETCL or DISCO (as the case may be) and do not constitute a penalty.

IN WITNESS whereof this Wheeling Agreement has been executed by the Parties as a deed and delivered on the date stated above

FOR AND ON BEHALF OF DISCO:

Designation:

As Witnesses:

FOR AND ON BEHALF OF UETCL:

Designation:

As Witnesses:

Annexure A: Points of Entry

Description of Point(s) of Entry:

Number	Unique Description	Contracted Wheeling Capacity (kVA)	Wheeling Investment Charge (Shs/kVA/yr)	Wheeling Operating And Maintenance Charge (Shs/kVA/yr)	Technical Loss Factor (%)	Lower Availability Limit – LAL (%)	Upper Availability Limit – UAL (%)
1.							
2.							
3.							

“Wheeling Investment Charge” reflects the actual investments made up the year for which the wheeling charge is determined and discounted from the point the investment is made for the remaining period of the agreement and is determined in accordance with the following formula:

$$WIC_Y = \sum_{k=1}^Y (IWC_k) / \sum_{n=k}^R \left(\frac{CWC_n}{(1+i)^{n-1}} \right)$$

Where:

- WIC_Y = Wheeling Investment Charge in year Y (expressed in Shs/kVA)
- IWC_k = Incremental Wheeling Capex in year k (expressed in Shs)
- CWC_n = Contractual Wheeling Capacity in year k (expressed in kVA)
- i = Discount rate (expressed in percentage)
- R = Remaining period under this agreement (expressed in number of years) reference to year k

“Wheeling Operating and Maintenance Charge” reflects the O&M charge in relation to actual investments made up the year for which the wheeling charge is determined and discounted to the start of the agreement and is determined in accordance with the following formula:

$$WOMC_Y = \frac{OMF}{CWC_Y} \times \sum_{k=1}^Y \left(\frac{IWC_k}{(1+i)^{k-1}} \right)$$

Where:

- $WOMC_Y$ = Wheeling O&M Charge in year Y (expressed in Shs/kVA)
- OMF = O&M Factor being [●%] (expressed as a percentage)
- IWC_k = Incremental Wheeling Capex in year k (expressed in Shs)
- CWC_Y = Contractual Wheeling Capacity in year Y (expressed in kVA)
- i = Discount rate (expressed in percentage)

“Technical Loss Factor” will be determined in accordance with load flow studies:

Detailed loss factors will be calculated in accordance with load flow studies.

“Lower Availability Limit” and “Upper Availability Limit” shall be determined taking into account network conditions including age of assets and network redundancy, as determined by the Parties. For example, new network assets should have better availability performance than old assets and networks with high levels of redundancy will have higher availability than networks with low levels of redundancy.

Annexure B: *Wheeling Service*

Wheeling Service over the Distribution Infrastructure of the DISCO from the Point(s) of Entry to the Point(s) of Exit include:

1. The provision, operation and maintenance of Distribution Infrastructure
3. The management of electricity losses
4. The provision of customer services such as meter reading, billing, reconciliations and customer care.
5. The raising and collection of levies and subsidies approved by REA.

Annexure C: Network Payments

The total wheeling payment for month m calculation is shown below:

$$TWP_{mY} = WIP_{mY} + WOMP_{mY} + WLP_{mY} + WNPP_{mY}$$

Where

TWP_{mY}	=	Total Wheeling Payment in month m of year Y (expressed Shs)
WIP_{mY}	=	Wheeling Investment Payment in month m of year Y (expressed Shs), as defined below
$WOMP_{mY}$	=	Wheeling O&M Payment in month m of year Y (expressed Shs), as defined below
WLP_{mY}	=	Wheeling Losses Payment in month m of year Y (expressed Shs), as defined below
$WNPP_{mY}$	=	Wheeling Network Performance Payment in month m of year Y (expressed Shs), as defined below
m	=	a calendar month m in year Y
Y	=	The year for which the payment will be calculated with reference to the Effective Date of this agreement

Wheeling Investment Payment

The Wheeling Investment Payment covers the incremental investment costs incurred by the DISCO and is calculated in accordance with the following formula:

$$WIP_{m,Y} = \sum_{d=1}^D (WIC_{d,Y} \times CWC_{d,Y}) / 12$$

Where

$WIP_{m,Y}$	=	Wheeling Investment Payment in month m in year Y (expressed Shs)
$WIC_{d,Y}$	=	Wheeling Investment Charge at Delivery Point d in year Y (expressed in Shs/kVA/year) as defined in Annexure A: <i>Points of Entry</i> .
$CWC_{d,Y}$	=	Contractual Wheeling Capacity at Delivery Point d in year Y (expressed in kVA) as defined in Annexure A: <i>Points of Entry</i> .
m	=	As defined above
Y	=	As defined above
d	=	Delivery Point
D	=	Total number of Delivery Points, being the Points of Exit as described in Annexure A: <i>Points of Entry</i>

Wheeling O&M Payment

The Wheeling O&M Payment covers the incremental O&M costs incurred by the DISCO and is calculated in accordance with the following formula:

$$WOMP_{m,Y} = \sum_{d=1}^D \left(WOMC_{d,Y} \times \frac{INI_q}{INI_b} \times CWC_{d,Y} \right) / 12$$

Where

WOMP _{m,Y}	=	Wheeling Investment Payment in month m of year Y (expressed Shs)
WOMC _{d,Y}	=	Wheeling Operating and Maintenance Charge at Delivery Point d in year Y (expressed in Shs/kVA/year) as defined in Annexure A: <i>Points of Entry</i>
CWC _{d,Y}	=	Contractual Wheeling Capacity at Delivery Point d in year Y (expressed in kVA) as defined in Annexure A: <i>Points of Entry</i>
INI _q	=	Index of composite price inflation equal to the average quarterly value of end of month values as calculated and published by Uganda Bureau of Statistics over the three months prior to the date of calculation. The value of INI _q will be revised at the end of every quarter being March, June, September and December.
INI _b	=	Reference index of composite underlying consumer price inflation equal to the base reference rate, being the value of [●].
m	=	As defined above
Y	=	As defined above
d	=	As defined above
D	=	As defined above

Wheeling Losses Payment

The Wheeling Losses Payment covers the incremental losses cost incurred by the DISCO and is calculated in accordance with the following formula:

$$WLP_{m,Y} = \sum_{d=1}^D \left(\frac{TLF_{d,Y}}{(1 - TLF_{d,Y})} \times EP_{m,Y} \right)$$

Where

WLP _{m,Y}	=	Wheeling Losses Payment in month m of year Y (expressed in Shs)
TLF _{d,Y}	=	Technical Loss Factor at Delivery Point d in year Y as defined in Annexure A: <i>Points of Entry</i>
EP _{m,Y}	=	Energy Payment in month m of year Y (expressed in Shs) as defined below
m	=	As defined above
Y	=	As defined above
d	=	As defined above
D	=	As defined above

Network Performance Payment

The Network Performance Payment reflects the Wheeling Penalty Payment and the Wheeling Reward Payment and is calculated in accordance with the following formula:

$$WNPP_{m,Y} = \sum_{d=1}^D (WRP_{d,m,Y} - WPP_{d,m,Y})$$

Where

WNPP _{m,Y}	=	Wheeling Network Performance Payment in month m (expressed Shs)
WPP _{d,m,Y}	=	Wheeling Penalty Payment at a Delivery Point d in month m of year Y as defined below
WRP _{d,m,Y}	=	Wheeling Rewards Payment at a Delivery Point d in month m of year Y as defined below
m	=	As defined above
Y	=	As defined above
d	=	As defined above
D	=	As defined above

Note:

The value of WNPP_{m,Y} shall be subject to the limitation set out in Clause 8.2

Wheeling Penalty Payment

The monthly Wheeling Penalty Payment in respect of Network Performance is calculated as follows:

$$WPP_{d,m,Y} = (LAL_{d,Y} - AF_{d,m,Y}) \times \frac{EP_{d,m,Y}}{AF_{d,m,Y}}$$

Where

WPP _{d,m,Y}	=	Wheeling Penalty Payment at Delivery Point d in month m of year Y
LAL _{d,Y}	=	Lower Availability Limit at point d in year Y as defined in as defined in Annexure A: <i>Points of Entry</i>
AF _{d,m,Y}	=	Availability Factor (expressed as a factor) at Delivery Point d in month m of year Y, as defined below
EP _{d,m,Y}	=	Energy Payment at Delivery Point d in month m of year Y (expressed in Shs), as defined below
m	=	As defined above
Y	=	As defined above
d	=	As defined above
D	=	As defined above

Note:

- 1) If in any month m the value of WPP_{d,m,Y} is less than nil the value of WPP_{d,m,Y} shall be adjusted to nil (0)

Wheeling Reward Payment

The monthly Reward Payment in respect of Network Performance is calculated as follows:

$$WRP_{d,m,Y} = (AF_{d,m,Y} - UAL_{d,Y}) \times \frac{EP_{d,m,Y}}{AF_{d,m,Y}}$$

Where

WRP _{d,m,Y}	=	Wheeling Reward Payment at Delivery Point d in month m of year Y
AF _{d,m,Y}	=	Availability Factor (expressed as a factor) at Delivery Point d in month m of year Y as defined below
UAL _{d,Y}	=	Upper Availability Limit at Delivery Point d in year Y as defined in Annexure A: <i>Points of Entry</i>
EP _{d,m,Y}	=	Energy Payment at Delivery Point d in month m in year Y (expressed in Shs) as defined below
m	=	As defined above
Y	=	As defined above
d	=	As defined above

Note:

- 1) If in any month m the value of WRP_{d,m,Y} is less than nil the value of WRP_{d,m,Y} shall be adjusted to nil (0)

Energy Payment

The monthly energy payment in respect of delivered energy is calculated in accordance with the following formula:

$$EP_{d,m,Y} = \sum_{i=1}^{H_m} (DE_{d,h,m,Y} \times BST_{d,h,m,Y})$$

Where

EP _{d,m,Y}	=	Energy Payment at Delivery Point d in month m of year Y
DE _{d,h,m,Y}	=	Delivered Energy at Delivery Point d in hour h of month m of year Y (metered at the Delivery Point and expressed in kWh)
BST _{d,h,m,Y}	=	UETCL's Bulk Supply Tariff to the DISCO at Delivery Point d in hour h of month m of year Y (expressed in Shs/kWh)
h	=	An hour in month m
H _{m,Y}	=	Number of Hours in month m of year Y
m	=	As defined above
Y	=	As defined above
d	=	As defined above

Availability Factor

The Availability Factor reflect the availability with reference to a Delivery Point and is calculated as follows:

$$AF_{d,m,Y} = \frac{\sum_{h=1}^{H_m} AI_{d,h,m,Y}}{H_{m,Y}}$$

Where:

- $AF_{d,m,Y}$ = Availability Factor at Delivery Point d in month m in year Y (expressed as a factor)
 $AI_{d,h,m,Y}$ = Availability Indicator at Delivery Point d in hour h of month m if year Y (expressed as a “1” unless power flow is restricted by the DISCO in which case it is expressed as a “0” provided that the network flow will not exceed the maximum allowed flow)
 $H_{m,Y}$ = Number of Hours in month m of year Y (excluding hours subject to the limitations set out in set out in Clause 8.2(a).
h = As defined above
m = As defined above
Y = As defined above
d = As defined above
D = As defined above

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