national electricity market of singapore

PSO-Market participant agreement

Between

***(“the Licensee”)***

***and***

**Energy Market Authority**

***(“ the PSO”)***

Table of contents

[ARTICLE 1: INTERPRETATION 4](#_Toc301281626)

[ARTICLE 2: RELEVANT LEGISLATION AND MARKET RULES 5](#_Toc301281627)

[ARTICLE 3: COMPLIANCE WITH MARKET RULES 5](#_Toc301281628)

[ARTICLE 4: REPRESENTATIONS AND WARRANTIES 5](#_Toc301281629)

[ARTICLE 5: TERM AND TERMINATION 7](#_Toc301281630)

[ARTICLE 6: LIABILITY AND DISPUTE RESOLUTION 8](#_Toc301281631)

[ARTICLE 7: MISCELLANEOUS 8](#_Toc301281632)

**THIS AGREEMENT** made by and between:

[insert name],a [insert form of business organisation] duly [incorporated/formed/registered] and organised under the laws of [•], having its [registered/head] address at [•].(the “Applicant”)

- and -

The Energy Market Authority of Singapore, being a body corporate established pursuant to the Energy Market Authority of Singapore Act (Cap. 92B), acting in its capacity as the Power System Operator for Singapore (“PSO”), having its registered address at 991G Alexandra Road #01-29 Singapore 119975

WHEREAS:

1. The Applicant wishes to be registered as a Market Participant with the Electricity Market Company (the “EMC”) under the Market Rules for the Singapore Wholesale Electricity Market (the “Market Rules”).
2. The Market Rules stipulate that no person may be registered as a Market Participant unless the EMC is satisfied that the person has executed the PSO/MP Agreement.
3. The Market Rules contemplate that the Market Rules will have the effect of a contract between each Market Participant and the PSO by virtue of the execution of the PSO/MP Agreement.
4. The Applicant and the PSO wish to enter into this Agreement to satisfy the conditions contained in the Market Rules that a PSO/MP Agreement be executed in order for the EMC to register the Applicant as a Market Participant.

Now therefore, in consideration of the mutual covenants set forth herein and of other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

# ARTICLE 1: INTERPRETATION

* 1. **Incorporation of Market Rules Definitions:** Unless otherwise indicated in this Agreement capitalised expressions used in this Agreement have the meanings ascribed thereto in Chapter 8 of the Market Rules.
  2. **Supplementary Definitions:** In this Agreement, the following capitalised expressions shall have the meanings set out below unless the context otherwise requires:

**“**Agreement” means this Agreement, including the recitals and any schedules to this Agreement, and the expressions “hereof”, “herein”, “hereto”, “hereunder”, “hereby” and similar expressions refer to this Agreement and not to any particular section or other portion of this Agreement; and

“Party” means a party to this Agreement and “Parties” means every Party.

* 1. **Interpretation:** In this Agreement, unless the context otherwise requires:

(a) words importing the singular include the plural and vice versa;

(b) words importing a gender include any gender;

(c) when capitalised, other parts of speech and grammatical forms of a word or phrase defined in this Agreement have a corresponding meaning;

(d) any expression importing a natural person includes any company, partnership, trust, joint venture, association, corporation or other private or public body corporate, and any government agency or body politic or collegiate;

(e) a reference to a thing includes a part of that thing;

(f) a reference to an article or to a section, subsection, provision, condition, part or schedule is to an article or a section, subsection, provision, condition, part or schedule of this Agreement;

(g) a reference to any statute or rule includes all its subsequent amendments or modifications;

1. a reference to a document or a provision of a document, including this Agreement and the Market Rules or a provision of this Agreement or the Market Rules, includes a Modification of or supplement to, or replacement or novation of, that document or that provision of that document, as well as any exhibit, schedule, appendix or other annexure thereto;
2. a reference to sections of a document, including this Agreement and the Market Rules, separated by the word “to” (e.g., “sections 1.1 to 1.4”) shall be a reference to the sections inclusively;
3. a reference to the word “including” means “including but not limited to”; and
4. a reference to the Market Rules includes a reference to:

(i) any Market Manual adopted by the EMC Board and approved by the Authority pursuant to section 8 of Chapter 1 of the Market Rules; and

(ii) the System Operation Manual adopted by the PSO pursuant to section 9 of Chapter 1 of the Market Rules.

1.4 **Headings:** The division of this Agreement into articles and sections and the insertion of headings are for convenience of reference only and shall not affect the interpretation of this Agreement, nor shall they be construed as indicating that all of the provisions of this Agreement relating to any particular topic are to be found in any particular article, section, subsection, provision, condition, part or schedule.

# 

# ARTICLE 2: RELEVANT LEGISLATION AND MARKET RULES

* 1. **The Electricity Act (Cap. 89A), the Market Rules, applicable Codes of Practice and the Electricity Licence Govern:** In the event of any inconsistency between the provisions of this Agreement and the provisions of any of the following:

1. The *Electricity Act (Cap. 89A)*;
2. the conditions contained in the Applicant’s Electricity Licence;
3. the Market Rules;
4. the Market Manual;
5. the System Operation Manual; and/or
6. any applicable Code(s) of Practice,

then, the relevant provision(s) of the *Electricity Act (Cap. 89A)*, the Electricity Licence, the Transmission Code, the Market Rules, the Market Manual, the System Operation Manual, or other the applicable Code(s) of Practice, as the case may be, shall prevail to the extent of the inconsistency.

# 

# ARTICLE 3: COMPLIANCE WITH MARKET RULES

* 1. **Applicant Compliance:** The Applicant hereby agrees to be bound by and to comply with all of the provisions of the Market Rules so far as they are applicable to the Applicant once it has been registered by the EMC as a Market Participant.
  2. **PSO Compliance:** The PSO hereby agrees to be bound by and to comply with all of the provisions of the Market Rules so far as they are applicable to the PSO.
  3. **Acknowledgment of Modifications:** Each of the PSO and the Applicant acknowledges and confirms that:

1. the Market Rules may be Modified by the EMC with the approval of the Authority from time to time in accordance with the Market Rules and the *Electricity Act (Cap. 89A)*;
2. a Market Manual may be Modified by the EMC Board or an EMC Board Committee, with the approval of the Authority where required, from time to time in accordance with the Market Rules; and
3. the System Operation Manual may be modified by the PSO from time to time in accordance with the Market Rules.

# 

# ARTICLE 4: REPRESENTATIONS AND WARRANTIES

* 1. **Representations and Warranties of the PSO:** The PSO hereby represents and warrants as follows to the Applicant, and acknowledges and confirms that the Applicant is relying on such representations and warranties without independent inquiry in applying to become registered by the EMC as a Market Participant:

1. that it has all the necessary corporate or other power to enter into and perform its obligations under this Agreement;
2. that it has been duly authorised by all necessary corporate, governmental and/or other action to enter into and perform under this Agreement;
3. that the execution, delivery and performance of this Agreement will not cause it to contravene (i) any of its constituent or by-law instruments; (ii) any contracts or instruments to which it is a party or by which it is bound; or (iii) any Applicable Law governing it;
4. that the individual(s) executing this Agreement, and any document in connection herewith, on its behalf has(ve) been duly authorised to execute this Agreement and any document in connection herewith, and has(ve) the full power and authority to bind it; and
5. that this Agreement constitutes a legal and binding obligation on it, enforceable against it in accordance with its terms.

4.2 **Representations and Warranties of the Applicant:** The Applicant hereby represents and warrants as follows to the PSO, and acknowledges and confirms that the PSO is relying on such representations and warranties without independent inquiry (save and except for any testing or inspection that the PSO may have participated in or in respect of any information which the PSO has received from the EMC or the Applicant under and in accordance with the Market Rules) in respect of the Applicant’s application to become registered by the EMC as a Market Participant:

(a) that it is a [insert form of business organisation] duly [incorporated/formed/registered] and existing under the laws of [•] and has all the necessary corporate or other power to enter into and perform its obligations under this Agreement;

1. that it has been duly authorised by all necessary corporate, governmental and/or other action to enter into and perform under this Agreement;
2. that the execution, delivery and performance of this Agreement will not cause it to contravene (i) any of its constituent or by-law instruments; (ii) any contracts or instruments to which it is a party or by which it is bound; or (iii) any Applicable Law governing it;
3. that the individual(s) executing this Agreement, and any document in connection herewith, on its behalf has(ve) been duly authorised to execute this Agreement and any document in connection herewith, and has(ve) the full power and authority to bind it;
4. that this Agreement constitutes a legal and binding obligation on it, enforceable against it in accordance with its terms;
5. that, except for registration as a Market Participant and/or the registration of any of its facilities under the Market Rules, it holds all permits, licences and other authorisations that may be necessary to enable it to carry on the business and perform the functions and duties of a Market Participant as described in this Agreement and the Market Rules;
6. that the information provided in its Participant Registration Application is true, accurate and complete in all respects;
7. that, subject to any derogation that it may have obtained pursuant to the Market Rules, its voice communication, monitoring and control and electronic communication facilities and equipment comply with all applicable technical requirements of Appendix 2A of Chapter 2 of the Market Rules; and
8. that it has adequate qualified employees and other personnel and organisational and other arrangements that are sufficient to enable it to perform all of the functions and duties applicable to Market Participants and to the class of Market Participant of which it forms part, as described in this Agreement and the Market Rules, and to each Wholesale Electricity Market in respect of which it wishes to be registered as a Market Participant.

# ARTICLE 5: TERM AND TERMINATION

* 1. **Term:** This Agreement shall come into force on the date on which the Applicant is registered by the EMC as a Market Participant and shall remain in full force and effect until terminated in accordance with section 5.2.
  2. **Termination:** The provisions of section 7 of Chapter 3 and section 1 of Chapter 8 of the Market Rules apply to this Agreement and are hereby incorporated by reference herein, with all references in such section to a Market Participant being deemed to be a reference to the Applicant for the purposes of this Agreement. This Agreement shall automatically terminate on the earlier of:

1. the date of issuance to the Applicant of a Termination Order by the EMC; or
2. the date on which the Applicant’s registration as a Market Participant expires, determined in accordance with section 4 of Chapter 2 of the Market Rules.
   1. **Ongoing Liability of Applicant:** Notwithstanding section 5.2, the Applicant shall remain subject to and liable for all of its obligations and liabilities as a Market Participant which were incurred or arose under the Market Rules prior to the date referred to in section 5.2(a) or 5.2(b), as the case may be, regardless of the date on which any claim relating thereto may be made, subject only to any applicable provisions of the *Limitation Act* (Cap. 163).
   2. **Ongoing Liability of PSO:** Notwithstanding section 5.2, the PSO shall remain subject to and liable for any obligations and liabilities owed to the Applicant which were incurred or arose under the Market Rules prior to the date referred to in section 5.2(a) or 5.2(b), as the case may be, regardless of the date on which any claim relating thereto may be made, subject only to any applicable provisions of the *Limitation Act* (Cap. 163).
   3. **Confidentiality Obligation of Applicant:** Notwithstanding section 5.2, the Applicant shall remain subject to any confidentiality provisions contained in the Market Rules.
   4. **Confidentiality Obligation of PSO:** Notwithstanding section 5.2, the PSO shall remain subject to any confidentiality provisions contained in the Market Rules in respect of all information obtained or produced by or provided to the PSO.
   5. **Survival:** Notwithstanding any other provision of this Agreement and for greater certainty, the provisions of Article 6, and of sections 5.3 to 5.6 and of this section shall survive termination of this Agreement for any reason.

# ARTICLE 6: LIABILITY AND DISPUTE RESOLUTION

* 1. **Limitation of Liability:** The provisions of section 13 of Chapter 1 of the Market Rules apply to this Agreement and are hereby incorporated by reference herein, with all references in such section to a Market Participant being deemed to be a reference to the Applicant.
  2. **Dispute Resolution:** The provisions of section 3 of Chapter 3 of the Market Rules apply to any dispute arising under this Agreement and are hereby incorporated by reference herein, with all references in such section to a Market Participant being deemed to be a reference to the Applicant.
  3. **Jurisdiction:** Subject to section 6.2 and to the Applicant’s Electricity Licence, each Party agrees:

(a) that any action or proceeding relating to this Agreement shall be brought in any court of competent jurisdiction in Singapore, and for that purpose that it hereby irrevocably and unconditionally submits to the jurisdiction of such Singapore court;

(b) that it hereby irrevocably waives any right to, and will not, oppose any such Singapore action or proceeding on any jurisdictional basis, including *forum non conveniens*; and

1. not to oppose the enforcement against it in any other jurisdiction of any judgment or order duly obtained from a Singapore court as contemplated by this section 6.3.

# 

# ARTICLE 7: MISCELLANEOUS

* 1. **Modification:** No Modification of this Agreement shall be effective unless made in writing, signed by the Parties and approved by the Authority.
  2. **Assignment by PSO:** The PSO may not assign or transfer, whether absolutely, by way of security or otherwise, all or any part of its rights or obligations under this Agreement without the prior written consent of the Applicant. Notwithstanding the foregoing, and for greater certainty, all or a part, as the case may be, of the rights or obligations of the PSO under this Agreement may, without the consent of the Applicant, be assigned or transferred by the PSO to a person that:

1. replaces it, in whole or in part, as the person responsible for performing the functions, powers or duties referred to in section 3(3)(e) of the *Electricity Act (Cap. 89A)*; or
2. substantially succeeds, in whole or in part, to its functions, powers or duties referred to in section 3(3)(e) of the *Electricity Act (Cap. 89A)*.
   1. **Assignment by Applicant:** The Applicant may not assign or transfer, whether absolutely, by way of security or otherwise, all or any part of its rights or obligations under this Agreement without the prior written consent of the PSO. Nothing in this section shall be construed as limiting the right of the Applicant to use such information systems, communication systems, business processes, personnel, service providers or other agents as the Applicant considers appropriate in accordance with and subject to the provisions of section 6.4 of Chapter 1 of the Market Rules provided nevertheless that nothing herein shall preclude an assignment by the Applicant of its rights under this Agreement to any person (and its successors and assigns), or any agent specified by such person, providing the Applicant with financing facilities as security for the Applicant’s obligation to such person under any financing agreement made between the Applicant and such person.
   2. **Successors and Assigns:** This Agreement shall enure to the benefit of, and be binding on, the Parties and their respective administrators, successors, substitutes (including persons taking by novation) and permitted assigns.
   3. **Further Assurances:** Each Party shall promptly execute and deliver or cause to be executed and delivered all further documents in connection with this Agreement that the other Party may reasonably require for the purposes of giving effect to this Agreement.
   4. **Waiver:** A waiver of any default, breach or non-compliance under this Agreement is not effective unless in writing and signed by the Party to be bound by the waiver. No waiver shall be inferred or implied by any failure to act or by the delay in acting by a Party in respect of any default, breach or non-compliance under this Agreement by the other Party or by anything done or omitted to be done by the other Party. The waiver by a Party of any default, breach or non-compliance under this Agreement shall not operate as a waiver of that Party’s rights under this Agreement in respect of any continuing or subsequent default, breach or non-compliance (whether of the same or any other nature).
   5. **Severability:** Any provision of this Agreement that is determined, by a court of competent jurisdiction from which no appeal can or has been made, to be invalid or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of that invalidity or unenforceability and shall be deemed severed from the remainder of this Agreement, all without affecting the validity or enforceability of the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.
   6. **Notices:** Any notice, demand, consent, request or other communication required or permitted to be given or made under this Agreement shall:
3. be given or made in the manner set forth in section 11.1 of Chapter 1 of the Market Rules;
4. be addressed to the other Party in accordance with the information set forth in Schedule A; and
5. be treated as having been duly given or made in accordance with the provisions of section 11.2 of Chapter 1 of the Market Rules.

Either Party may change its address and representative for notice as set forth in Schedule A by written notice to the other Party given as aforesaid. Such change shall not constitute a Modification of this Agreement for the purposes of the application of section 7.1.

* 1. **Governing Law:** This Agreement shall be governed by and construed in accordance with the laws of the Republic of Singapore.
  2. **Counterparts:** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument. Counterparts may be executed either in original or faxed form and the Parties adopt any signatures received by a receiving facsimile machine as original signatures of the Parties, provided that any Party providing its signature in such manner shall promptly forward to the other Party an original signed copy of this Agreement which was so faxed.

In witness whereof the Parties have, by their respective duly appointed and authorised representatives, executed this Agreement on the date(s) set forth below.

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: Name.\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: title\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Witnessed By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: Name of witness\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: title\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Energy Market Authority of Singapore, acting in its capacity as the Power System Operator for Singapore

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_ \_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_ \_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Witnessed By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

## Schedule A

**to the Agreement between [insert name of Applicant] and the PSO**

**Address and Representative for Notice**

**(Section 7.8)**

For the Applicant:

|  |  |
| --- | --- |
| Name of  Representative | Name of representative |
| Title | title |
| Address | address |
| Email Address | Email address |
| Telephone Number(s) | Tel No |
| Facsimile Number(s) | Fax No |

For the PSO:

|  |  |
| --- | --- |
| Name of  Representative | Dr Kang Cheng Guan |
| Title | Senior Director |
| Address | 36 Ayer Rajah Crescent  #02-00  Singapore 139945 |
| Email Address | Kang\_cheng\_guan@ema.gov.sg |
| Telephone Number(s) | 68727303 |
| Facsimile Number(s) | 68727300 |