ANNOTATED REFERENCE — WORKING DRAFT

PPA & Concession Term Sheet

22 core provisions for IPP and concession negotiations in OHADA/CEMAC and neighboring markets, with commercial annotations and local-law touchpoints.

This working reference covers 22 provisions across the full deal lifecycle — from procurement route to asset handover — drawn from transaction experience across West and Central Africa, generalized and anonymized. It is a working reference to verify, tighten, and correct, not a finished publication.

Note: Statutory and institutional references (OHADA Uniform Acts, CEMAC regulations, national investment codes) are flagged at the level of general legal literacy to show where deal-specific verification is needed — treat every citation as a pointer to check, not a confirmed authority. This is not legal advice.

Phase 1 — Structuring & Origination

1. Procurement route

Whether the project reaches the PPA stage via competitive tender or unsolicited/direct negotiation shapes almost everything downstream — tariff benchmarking, public scrutiny, and timeline. Competitively bid projects usually clear regulatory review faster because the tariff is market-tested; unsolicited proposals move faster to signature but face more scrutiny at financial close.

OHADA / CEMAC: Several OHADA/CEMAC states mandate competitive tender above defined thresholds, with narrow exceptions for unsolicited proposals meeting technical-innovation criteria — confirm the applicable procurement law and threshold before assuming a direct-negotiation route is available.

2. Conditions precedent (CPs) and timing to financial close

The CP list is the checklist a lender uses to decide the deal is real — every open CP is a source of closing delay.

Typical CPs: Land title or site control instrument finalized; Generation/concession license issued; ESIA approval obtained; Government/off-taker guarantee or credit support instrument executed; Insurance placed; Independent engineer's certification of the financial model.

A vague or open-ended CP creates closing risk because it's unclear when the condition is actually satisfied — each CP should name the specific document and issuing authority.

3. Related project agreements

The PPA rarely stands alone — it sits inside a suite of agreements that each carry their own risk allocation: Implementation Agreement with government; Land/site agreement; Interconnection/grid connection agreement; EPC contract and O&M contract; Fuel supply agreement, where applicable.

OHADA / CEMAC: Land documentation in OHADA states typically distinguishes state land from customary tenure — the applicable domanial law determines whether a lease, concession, or emphyteutic lease is correct, and customary tenure verification is frequently the slowest CP to close.

4. Bankability criteria

This is less a standalone clause than the lens lenders apply across everything else in this reference: creditworthy revenue, enforceable security, and a termination regime that repays debt regardless of why the contract ends.

Phase 2 — Credit Support & Financing Structure

5. Credit support for off-taker payment obligations

Because most off-takers are public utilities with limited standalone creditworthiness, credit enhancement is usually required. Common mechanisms: Sovereign guarantee from the Ministry of Finance; Letter of credit; Escrow account funded from a ring-fenced revenue source; Partial risk guarantee from a DFI or political risk insurance from MIGA/ATI.

Sovereign guarantees are increasingly resisted by finance ministries as contingent liabilities against public debt ceilings — expect pressure toward escrow or LC structures instead.

6. PPA direct agreements and lender step-in rights

A direct agreement between lender and off-taker (separate from the PPA) is what gives the lender enforceable step-in rights — a precondition for financing, not a negotiable extra.

OHADA / CEMAC: Security over PPA receivables and project-company shares is typically perfected under OHADA's Uniform Act on Secured Transactions — confirm registration/perfection requirements at the relevant RCCM.

Phase 3 — Financial Provisions

7. Tariff structure and escalation mechanism

A two-part tariff (capacity charge plus energy charge) separates fixed-cost recovery from dispatch risk. Escalation indexing is usually the most contested line item — developers want FX pass-through; off-takers and regulators resist because it shifts currency risk onto consumers.

OHADA / CEMAC: In CEMAC states, the XAF operates under a fixed peg to the euro; a USD-indexed tariff creates basis risk between USD/EUR/XAF. Confirm current repatriation rules under CEMAC's exchange regulations.

8. Invoicing and payment mechanics

A "pay now, dispute later" principle is critical for cash flow certainty but often resisted by off-takers since it removes their leverage in billing disputes.

9. Tax exemptions and fiscal incentives

VAT/customs exemptions, tax holidays, and tax stabilization clauses are common. Stabilization clauses are often the most politically contested item since they bind future governments to a regime that may later look generous.

OHADA / CEMAC: Fiscal incentives are typically anchored in the national Investment Code rather than the PPA itself — confirm the incentive is statutory/decree-based, not just a ministerial letter.

Phase 4 — Risk Allocation

10. Development and construction phase risk allocation

Land acquisition delay, permitting delay, EPC cost overrun, and completion delay dominate pre-COD risk. ESIA approval timelines are frequently the binding constraint on schedule.

11. Operational phase risk allocation

Resource risk is usually allocated to the developer; grid-related curtailment risk is usually allocated to the off-taker or transmission utility — confirm this split is explicit.

12. Foreign exchange and currency convertibility risk

Convertibility — the ability to convert local-currency revenue into hard currency and repatriate it — is distinct from currency depreciation. CEMAC's exchange control framework can constrain fund transfers abroad for debt service.

13. Change in law and regulatory/political risk

Distinguish discriminatory change in law (targeted at the project) from general change in law (broad-based). Confirm whether investment-code stabilization and PPA change-in-law clauses actually overlap rather than assuming it.

14. Force majeure

PPAs typically define force majeure exhaustively (political and natural) rather than relying on general civil law doctrine, which can be narrower or broader than what a bankable PPA needs.

15. Insurance requirements

Construction all-risk, business interruption, third-party liability, and political risk insurance (MIGA/ATI) are standard — worth pricing early rather than as a late addition.

Phase 5 — Default & Termination

16. Default events and cure periods

Developer defaults (missed COD, underperformance, insolvency) and off-taker defaults (non-payment, unauthorized curtailment) each need clearly defined cure periods. Cross-default provisions linking PPA, EPC, and loan agreement defaults are standard lender requirements.

17. Non-default termination events

Prolonged force majeure (commonly beyond 12 months) and prolonged change in law are typical non-default grounds. The threshold for "prolonged" matters — too short risks premature exit; too long locks the developer into an unworkable situation.

18. Post-termination compensation and buy-out mechanics

Termination payment formulas differ by cause: government-caused termination usually entitles full outstanding debt plus equity return; developer-caused termination typically limits compensation to outstanding debt; force majeure sits between the two. The debt calculation methodology needs to be agreed and annexed.

Phase 6 — Other Key Provisions

19. Dispute resolution

Seat and rules of arbitration, governing law, and language need to be fixed at term sheet stage.

OHADA / CEMAC: The OHADA CCJA (seated in Abidjan) is the default venue for OHADA arbitration, with awards directly enforceable across member states without separate exequatur. International sponsors often prefer ICC (Paris) or LCIA (London) instead — confirm New York Convention ratification for the host country.

20. Local content and ownership requirements

Employment quotas, local supplier preference thresholds, and technology transfer commitments are increasingly negotiated terms.

OHADA / CEMAC: Local content obligations are more commonly embedded in the national Investment Code or a sector PPP law than a standalone statute — confirm which instrument governs.

21. Expiration and asset handover provisions

For BOT/BOOT concessions, assets typically revert to government at expiry. A vague handover condition standard invites dispute exactly when the developer has least incentive to maintain the asset — a defined technical standard with independent inspection is worth the extra language.

Phase 7 — Deal-Type Variations

22. Captive power / C&I, cross-border power, and emergency power

Captive power / C&I: Direct sale to an industrial off-taker; creditworthiness shifts from sovereign/utility to corporate credit; often requires a separate self-generation authorization.

Cross-border power: Requires bilateral/intergovernmental agreements, sits within a regional power pool framework, needs dual regulatory approval plus currency/tariff harmonization.

Emergency power: Short-term, frequently sole-sourced given urgency, priced at a premium for speed of deployment, shorter tenor with simplified risk allocation.

Next Steps

This is a working draft for review — the OHADA/CEMAC references should be checked against current statutory text before this goes out under your name. Flag anything that reads generic rather than jurisdiction-specific.