

NBET POWER PURCHASE AGREEMENT (PPA)

GAS

Power Purchase Agreement

Between

Nigerian Bulk Electricity Trading Plc

And

XXXXXXXXXXXXXX

Table of Contents

| | |
|--|--|
| CLAUSE 1 DEFINITIONS..... | 2 |
| 1.1. Definitions..... | 2 |
| 1.2. Approvals..... | 16 |
| 1.2. Interpretation..... | 17 |
| CLAUSE 2 SALE AND PURCHASE OF AVAILABLE CAPACITY AND NET ELECTRICAL OUTPUT | 19 |
| 2.1. Obligation to Buy and Sell Capacity and Energy After Commencement Date.... | 19 |
| 2.2. Reduction in Available Capacity Due to Failure to Deliver Dispatched Energy.. | 19 |
| 2.3. Ancillary Services | 19 |
| 2.4. Transmission Services, Loss Factor | 19 |
| 2.5. Purchase for Resale | Error! Bookmark not defined. 20 |
| CLAUSE 3 COMMENCEMENT, TERM AND CONDITIONS PRECEDENT . ERROR! BOOKMARK NOT DEFINED. 0 | |
| 3.1. Commencement and Term of Agreement..... | Error! Bookmark not defined. 0 |
| 3.2. Due Diligence Letter | Error! Bookmark not defined. 1 |
| 3.3. Conditions Precedent | Error! Bookmark not defined. 1 |
| 3.4. Satisfaction of Conditions Precedent 6 Closing Date Notice | Error! Bookmark not defined. 2 |
| 3.5. Failure to Satisfy Conditions Precedent | 22 |
| CLAUSE 4 COVENANTS, REPRESENTATIONS AND WARRANTIES | ERROR! BOOKMARK NOT DEFINED. 23 |
| 4.1. Seller's Representations and Warranties | 23 |
| 4.2. Seller's Covenants | 25 |
| 4.3. Buyer's Representations and Warranties..... | Error! Bookmark not defined. 25 |
| 4.4. Buyer's Covenant | Error! Bookmark not defined. |
| 4.5. Conduct of the Parties..... | 27 |
| 4.6. Effect and Duration of Representations and Warranties | 27 |
| 4.7. Disclaimer of Other Representations and Warranties | 27 |
| CLAUSE 5 ADDITIONAL COMMITMENTS OF THE PARTIES | 28 |
| 5.1. Market Rules and Grid Code | 28 |
| CLAUSE 6 PLANT AND FACILITIES..... | 28 |
| 6.1. Representations of Warranties as to Seller's Plant and Facilities | 28 |
| CLAUSE 7 COMMENCEMENT TESTING | 29 |
| 7.1. Standards..... | 29 |
| 7.2. Commencement Testing Period | 29 |
| 7.3. Commencement Testing Procedures | 30 |
| 7.4. Commencement Testing; Commencement Date..... | 30 |

| | | |
|---|---|----|
| 7.5. | Output During Commencement Testing Period ... Error! Bookmark not defined. | |
| 7.6. | Authorisations | 31 |
| CLAUSE 8 AVAILABLE CAPACITY, CAPACITY TESTING | | 31 |
| 8.1. | Calculation of Available Capacity | 31 |
| 8.2. | Capacity Testing | 32 |
| 8.3. | Maintenance of Operating Records | 33 |
| 8.4. | Monthly Reports..... | 34 |
| 8.5. | Annual Report | 34 |
| 8.6. | Rebate on Overpayment..... | 34 |
| CLAUSE 9 OPERATION AND MAINTENANCE | | 35 |
| 9.1. | Operation and Maintenance | 35 |
| 9.2. | Scheduled Maintenance Outages..... | 35 |
| 9.3. | Scheduling of Scheduled Maintenance Outages | 36 |
| 9.4. | Rescheduling of Scheduled Maintenance Outages | 36 |
| 9.5. | Unscheduled Outages | 36 |
| 9.6. | Notification of Forced Outages or Partial Forced Outages..... | 37 |
| CLAUSE 10 SCHEDULING NOTICES | | 37 |
| 10.1. | Declarations | 37 |
| 10.2. | Dispatch Projection by Buyer | 38 |
| 10.3. | Buyer Nominations..... | 38 |
| CLAUSE 11 METERING..... | | 40 |
| 11.1. | Metering..... | 40 |
| 11.2. | Main Meters and Back Up Meters | 40 |
| 11.3. | Metering Code..... | 40 |
| 11.4. | Delivery of Meter Data..... | 40 |
| 11.5. | Meter Failure or Inaccuracy..... | 41 |
| 11.6. | Assurances Regarding Meter Tampering | 41 |
| 11.7. | Notice of Meter Tampering..... | 42 |
| 11.8. | Meter Design; Commissioning and Sealing | 42 |
| 11.9. | Daily Meter Reading | 42 |
| 11.10. | Metering Inspection and Testing..... | 42 |
| CLAUSE 12 DELIVERY..... | | 42 |
| 12.1. | Delivery Point | 42 |
| 12.2. | Title and Risk | 43 |
| CLAUSE 13 BILLING AND PAYMENT..... | | 44 |
| 13.1. | Settlement Statement Quantities used for Invoicing | 43 |
| 13.2. | Invoice | 43 |
| 13.3. | Daily Settlement Statements from Seller..... | 43 |
| 13.4. | Billing and Payment | 45 |
| 13.5. | First and Last Billing Period | 45 |

| | |
|--|--------|
| CLAUSE 14 PRICES..... | 45 |
| 14.1. Capacity Payments | 45 |
| 14.2. Energy Payments..... | 46 |
| 14.3. Change in Electricity Market Fundamentals..... | 46 |
| 14.4 í í í í í í í í í í í | 46 |
| 14.5 Refinancing of the Plantí | 48 |
| CLAUSE 15 INSURANCE..... | 49 |
| 15.1. Required Insurance Coverage | 49 |
| CLAUSE 16 TAXES | 49 |
| 16.1. Liability for Taxes | 49 |
| 16.2. Proof of Payment..... | 49 |
| 16.3. Tax Indemnity | 49 |
| CLAUSE 17 LIABILITY AND INDEMNIFICATION..... | 50 |
| 17.1. Limitation of Liability | 50 |
| 17.2. Mitigation of Damages | 50 |
| 17.3. Mutual Indemnifications..... | 50 |
| 17.4. Notice of Claims..... | 51 |
| 17.5. Defence of Claims | 51 |
| 17.6. Limitation on Indemnification | 52 |
| 17.7. Fines and Penalties | 52 |
| 17.8. No Fine or Penalty..... | 52 |
| 17.9. Allocation of Liability | 52 |
| CLAUSE 18 DEFAULT & EARLY TERMINATION..... | 53 |
| 18.1. Early Termination..... | 53 |
| 18.2. Seller Default | 53 |
| 18.3. Buyer Default..... | 55 |
| 18.4. Cure Period..... | 56 |
| 18.5. Termination for Seller Default or Buyer Default | 57 |
| CLAUSE 19 SOLE REMEDIES UPON TERMINATION..... | 57 |
| 19.1. Sole Remedy | 57 |
| CLAUSE 20 TRANSFERS AND PROHIBITED SHAREHOLDERS..... | 57 |
| 20.1. Transfer of Ownership Interests..... | 57 |
| 20.2. Transfer of the Agreement | 59 |
| 20.3. Prohibited Shareholder | 59 |
| CLAUSE 21 FORCE MAJEURE..... | 59 |
| 21.1. Definition of Force Majeure Event..... | 59 |
| 21.2. Effect of Force Majeure..... | 62 |
| 21.3. Payment During Force Majeure Event | 62 |

| | | |
|---|---|-------------------------------------|
| 21.4. | Notification Obligations | 63 |
| 21.5. | Responsibilities of the Parties | 64 |
| 21.6. | Delay Caused by Force Majeure Event | 64 |
| 21.7. | Access | 64 |
| 21.8. | Prolonged Force Majeure Events | 64 |
| 21.9. | Option to Terminate Following a Local Political Force Majeure Event | 65 |
| 21.10 | Voluntary Restoration of the Plantí í í í í í í í í í í í í í í í í 65 | |
| CLAUSE 22 CHOICE OF LAW AND DISPUTE RESOLUTION..... | | 66 |
| 22.1. | Governing Law..... | 66 |
| 22.2. | Informal Dispute Resolution | 66 |
| 22.3. | Arbitration of Disputes | 66 |
| 22.4. | Interim Relief & Enforcement of Arbitral Awards | 67 |
| 22.5. | Disputes under Related Agreements | 67 |
| 22.6. | Expert Determination | 68 |
| CLAUSE 23 NOTICES..... | | 70 |
| 23.1. | Method of Providing Notices | 70 |
| 23.2. | Time of Receipt | 70 |
| CLAUSE 24 MISCELLANEOUS PROVISIONS | | 70 |
| 24.1. | Amendment | 70 |
| 24.2. | Third Parties | 70 |
| 24.3. | No Implied Waiver | 71 |
| 24.4. | Relationship of the Parties | 71 |
| 24.5. | Conflict of Interest..... | 71 |
| 24.6. | Survival | 71 |
| 24.7. | Language..... | 72 |
| 24.8. | Entirety and Conflict | 72 |
| 24.9. | Waiver of Sovereign Immunity | 72 |
| 24.10. | Confidentiality..... | 73 |
| 24.11. | Severability | Error! Bookmark not defined. |
| 24.12. | Counterparts | Error! Bookmark not defined. |

| | |
|--|---|
| SCHEDULE 1 TERMS SPECIFIC TO THIS AGREEMENT | 1 |
| SCHEDULE 2 DESCRIPTION OF PLANT AND FACILITIES..... | 1 |
| SCHEDULE 3 PLANT COMMERCIAL OPERATIONS TESTING PROCEDURES | 1 |
| SCHEDULE 4 TEST PROCEDURES | 1 |
| SCHEDULE 5 FUNCTIONAL SPECIFICATIONS & OPERATING PARAMETERS .. | 1 |
| SCHEDULE 6 TARIFF SCHEDULE | 1 |
| SCHEDULE 7 DISTRIBUTION COMPANIES | 1 |
| SCHEDULE 8 DELIVERY POINT DIAGRAM..... | 1 |
| SCHEDULE 9 OPERATING RECORDS | 1 |
| SCHEDULE 10 MAINTENANCE SCHEDULE | 1 |
| SCHEDULE 11: PLANT CAPACITY RECOVERY í í í í í í í í í í í í í í í . | 1 |

DRAFT FOR DISCUSSION

THIS POWER PURCHASE AGREEMENT (this "Agreement") is entered into this ____ day of _____ 2022, by and between:

- (1) **NIGERIAN BULK ELECTRICITY TRADING PLC**, with RC No: 903079, a company duly incorporated under the laws of the Federal Republic of Nigeria and having its principal place of business at 2nd & 3rd Floors, Nigerian Electricity Regulatory Commission (NERC) Building, Plot No. 1387 Cadastral Zone, A00, Central Business District, Abuja, Nigeria (hereinafter referred to as **Buyer**), which expression shall where the context so admits include its successors-in-title and assigns) of the first part; and
- (2) **XXXXXXX**, with RC No _____, a company duly incorporated under the laws of the Federal Republic of Nigeria and having its registered office at _____, Nigeria (hereinafter referred to as **Seller**), which expression shall where the context so admits include its successors-in-title and assigns) of the second part.

Seller and Buyer are hereinafter together referred to as "Parties" or individually as a "Party".

RECITALS

- (A) Pursuant to the Electric Power Sector Reform Act No. 6 of 2005 (the "Act"), the Federal Government of Nigeria (FGN) intends as a matter of policy to involve the private sector in the generation of electric power in Nigeria, in furtherance of its commitment to improve electric power generation in the country and in consideration of the socio-economic transformational impact of enhanced private investments in the country.
- (B) Buyer is a limited liability company established by the National Council on Privatisation of FGN pursuant to the provisions of section 8 of the Act, incorporated under the laws of the Federal Republic of Nigeria, and licenced by the Commission (as hereinafter defined), for the business of bulk electricity purchase and resale in the transitional stage of the Wholesale Electricity Market, with licence number NERC/LC/055.
- (C) Seller is a limited liability company, incorporated under the laws of the Federal Republic of Nigeria and licenced by the Commission (as hereinafter defined), to own, operate and maintain a gas-fired electric power generation facility, licence number NERC/LC/---, with an installed capacity of ----- MW (as hereinafter defined, the "Plant") located on the Site (as hereinafter defined).
- (D) In alignment with the FGN's policy objective of increasing private investments in the power generation segment of the electricity value chain in Nigeria, all the shares of Seller have been sold to a strategic investor, -----, pursuant to a privatization transaction.
- (E) Seller wishes to sell and Buyer wishes to purchase the Available Capacity (as hereinafter defined) up to the Contract Capacity (as hereinafter defined) and all of the Net Electrical Output of the proposed Plant, on and pursuant to the terms and conditions contained herein.

- (F) Seller proposes to rehabilitate the Plant with a view to fully attaining its installed capacity, as provided for in Schedule 11.
- (G) The Parties have negotiated the terms and conditions of power purchase from the proposed Plant, including a tariff.
- (H) The Parties have complied with all due process requirements as provided under Applicable Law and obtained the necessary Authorizations prior to the execution of this Agreement.

NOW, THEREFORE, for and in consideration of the promises and mutual covenants contained herein, and intending to be legally bound, the Parties hereby agree as follows:

Clause 1 Definitions

1.1. Definitions

Unless the context indicates otherwise:

- (a) capitalized and bolded words used in this Agreement, including the Recitals and Schedules, shall have the corresponding meaning set out below; and
- (b) capitalized terms that are not defined in this Agreement but are defined in a Schedule to this Agreement shall have the meaning given in the Schedule when used in this Agreement.

“**Act**” means the Electric Power Sector Reform Act No. 6 of 2005.

“**Acts of Insolvency**” means in respect of a Party, (i) the admission in writing of such Party of its inability generally to pay its obligations as they come due, (ii) winding-up (excluding a solvent winding up for the purposes of a corporate restructuring), dissolution, administration or liquidation, (iii) the making by it of any arrangement or composition with its creditors (excluding a solvent winding up for the purposes of a corporate restructuring), (iv) the taking of possession by an encumbrance of, or the appointment of a liquidator (other than in respect of a solvent liquidation), a receiver, administrative receiver, compulsory manager or similar officer over, the whole or any material part of its property or assets, or (v) the commencement against a Party of any involuntary procedure analogous with any of the above procedures that is not stayed within one hundred and eighty (180) Days.

“**Actual Capacity**” means the actual net generating capacity of the Plant expressed in MW that Seller dispatches to the Buyer at the Delivery Point for a settlement period. The actual capacity equals to an equivalent of energy recorded by Main Meters at the Delivery Point for a Settlement Period, “**ö**”.

“**Affiliate**” means, as to any Person, any other Person that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with such Person. For purposes of this definition, “**control**” (including, with correlative meanings, the terms “**controlling**,” “**under common control with**,” and “**controlled by**”), as used with respect to any

Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting stock or other equity interests, by contract, or otherwise.

ö**Agreed Financial Model**ö means the financial model and accompanying data book in respect of the Project prepared by Seller in Microsoft Excel, titled ö [REDACTED] ö, delivered to Buyer by electronic mail on [REDACTED], and agreed with the Buyer, as may be amended by agreement of the Parties.

ö**Agreed Interest Rate (Foreign)**ö means LIBOR plus the margin set forth in Schedule 0.

ö**Agreed Interest Rate (Local)**ö means NIBOR plus the margin set forth in Schedule 0.

ö**Agreement**ö means this document together with the Schedules hereto and any extensions, renewals or amendments of this document agreed to in writing by the Parties.

ö**Ancillary Services**ö means those functions necessary for reliable operation of a power system, which may include, but are not limited to, services that would provide or permit the following: (a) facilities scheduling, control and dispatch; (b) reactive power and voltage control; (c) frequency regulation; (d) operating reserves; and (e) black start.

ö**Ancillary Services Agreement**ö means the ancillary services agreement between Seller and Transmission Company of Nigeria for the provision of, and payment for Ancillary Services.

ö**Applicable Law**ö means all laws, codes, treaties, ordinances, decrees, statutes, rules, guidelines and regulations (including without limitation the Grid Code, Market Rules and Metering Code) of the FGN, including any agencies thereof, or any state, local, municipal, regional, or any other duly constituted governmental body, instrumentality, agency in the Federal Republic of Nigeria, each having jurisdiction and lawful authority over the Parties in the performance of obligations herein which a Party is under lawful obligation to comply. Any reference to an Applicable Law shall include all duly constituted statutory and regulatory action on the part of the FGN, including any agencies thereof, or any state, local, municipal, regional, or any other duly constituted governmental body, instrumentality, agency in the Federal Republic of Nigeria gazetted or circulated by public notice by any such government or governmental agency charged by the relevant authority to consolidate, amend or replace such Applicable Law and shall include all rules and regulations duly promulgated or waived thereunder.

ö**Authorisation**ö means any applicable approval, consent, exemption (including waiver), licence, order or permit of or duly issued by or from any Relevant Authority required for the due performance by either Party of any covenant or obligation hereunder.

ö**Available Capacity**ö means the net generating capacity of the Plant expressed in MW that Seller makes available to Buyer at the Delivery Point; provided, however, that Available Capacity may not exceed the lower of Tested Capacity and Initial Tested Capacity.

ö**Availability Event**ö means an event which occurs after the occurrence of the Commencement Date, that is beyond the reasonable control of Seller and that reduces the Actual Capacity of the Plant or delivery of Net Electrical Output except to the extent caused by (i) Seller Default or an

action or inaction of Seller in breach of any Project Document; or (ii) the Gross Negligence or Wilful Misconduct of Seller. No event shall be treated as an Availability Event under this Agreement.

“**Btu**” means one (1) British Thermal Unit and is the amount of heat required to raise the temperature of one (1) pound of water from fifty-nine degrees Fahrenheit (59°F) to sixty degrees Fahrenheit (60°F) at a constant pressure of fourteen and sixty-five hundredths (14.65) psia.

“**Back Up Meter**” has the meaning given to that term in Clause 11.2.

“**Billing Period**” means a Month for which Seller has issued an invoice to Buyer pursuant to Clause 13.

“**Business Day**” means any Day other than a Saturday or Sunday, that is not a national public holiday in Nigeria or a Day on which banks are authorized by law or executive order to be closed in Abuja, Nigeria.

“**Buyer**” has the meaning given to that term in the Recitals.

“**Buyer Default**” has the meaning given to that term in Clause 18.3.

“**Buyer Payment Security**” means the Seller’s prorated share of the payment escrow arrangement in the electricity market for the revenues of Distribution Companies or the prorated share of any payment security that the Distribution Companies have made available to the Buyer pursuant to their respective Vesting Contracts and/or orders of the Commission.

“**Capacity Demonstration**” means a demonstration of the net generating capacity of the Plant through dispatch of the Plant at full load for a period specified in Schedule **Error! Reference source not found.**, during which period the net generating capacity may be demonstrated by readings on the Main Meter using the methods set out in Schedule **Error! Reference source not found.** with regards to a Capacity Test.

“**Capacity Payments**” means payments by Buyer to Seller that reflect as separate elements the capital cost recovery payment for the Plant and fixed operation and maintenance payment, as provided in Schedule 0.

“**Capacity Recovery Plan**” has the meaning given to that term in Schedule 11.

“**Capacity Test**” a test of the net generating capacity of the Plant conducted in accordance with the capacity test procedures set out in Schedule **Error! Reference source not found.**

“**Certificate of Occupancy**” means the certificate or certificates of occupancy issued to Seller that grants a right of occupation and use of the Site for the generation of electricity.

“**Charge Rates**” has the meaning given to that term in 0.

“**Closing Date**” means the date on which all Conditions Precedent have been satisfied or waived as applicable in accordance with the terms of this Agreement.

“Commencement Date” means the date immediately following the first date on which:

- a) the Closing Date has occurred; and
- b) the Commencement Tests have been satisfactorily completed in accordance with Clause **Error! Reference source not found.**,

which shall be the Day following the Day Buyer receives a satisfactory Engineer's Certificate

“Commencement Tests” means tests run in accordance with Schedule **Error! Reference source not found.**

“Commencement Testing Period” means the period during which the Commencement Tests are conducted.

“Commencement Testing Procedures” has the meaning given to that term in Clause 7.3.

“Commission” means Nigerian Electricity Regulatory Commission, a body established under the Act.

“Conditions Precedent” has the meaning given to that term in Clause 3.3.

“Confidential Information” has the meaning given to that term in Clause 24.10.1.

“Connection Agreement” means the grid connection agreement to be entered into between Seller and the Transmission Company of Nigeria.

“Contract Capacity” has the meaning given to that term in Schedule 0, subject to Schedule 11.

“Contract Year” means each period of twelve (12) consecutive months commencing on the Execution Date and on each anniversary thereof and ending at the end of the Day immediately prior to each immediately following anniversary of the first Day of the Contract Year and the final Contract Year shall end on the termination of this Agreement.

“Contractor” means each of the contractor under the Operation and Maintenance Agreement and the Long-Term Service Agreement, any of their subcontractors and any other contractor of Seller that carries out obligations of Seller under this Agreement.

“Cure Notice” has the meaning given to that term in Clause 18.4.1.

“Daily Notices” has the meaning given to that term in Clause 10.3.1(a).

“Day” means each period of twenty-four (24) Hours commencing at 00:00 Hours, and **“Daily”** shall be construed accordingly.

“Default” means a Seller Default or Buyer Default.

“Defective Metering Event” means, in relation to any Metering System that (a) such Metering System is not in service, (b) any seal on a metering device constituting part of that Metering System

is found to be broken, or (c) a metering device constituting part of that Metering System fails to register or, upon testing, is found to vary by more than the Metering Tolerance.

“Degradation” means the reduction in capacity that would be experienced by a generating unit or plant based on the design of the Plant during normal operations in accordance with Applicable Law and in accordance with Good Industry Practices, as estimated and projected in good faith and agreed by the Parties as set forth in 0.

“Degradation Factor” means the factor applicable to the relevant Contract Year as set out in the third column titled “Degradation Factor” of Table 2 to Attachment A in Schedule 6.

“Delivery Point” means

- a) for the purpose of determining Actual Capacity and Net Electrical Output, the Metering Point at the Plant located at the high voltage side of the step-up transformer at 132 KV or higher, net of transformer losses and any load consumption by Seller.
- b) for all other purposes the low voltage side of the transformer that steps up the voltage to the Grid voltage (which is owned by the Transmission Company of Nigeria).

is identified in the diagram in Schedule 8.

“Delivery Term” means the period commencing on the Execution Date and expiring upon the expiration of the Term of this Agreement either by passage of time or by early termination.

“Dispatch Instructions” means instructions from the System Operator relating to the operation of the Plant in relation to commencement of interconnected operations or termination of interconnected operations, including instructions relating to the delivery of Net Electrical Output.

“Dispute” means any dispute, controversy, or claim of any kind or type, whether based on contract, tort, statute, regulation, or otherwise, arising out of, relating to, or connected with this Agreement, or the operations carried out under this Agreement, including any dispute concerning the existence, validity, interpretation, performance, breach, or termination of this Agreement.

“Distribution Companies” means those companies set out in Schedule 7, as may be amended.

“Energy Payments” means the amount payable for Net Electrical Output as calculated in accordance with Schedule 0.

“Engineer’s Certificate” has the meaning given to that term in Clause 7.4.2.

“Exchange Rate” means the applicable official rate for the conversion of US Dollars to Naira issued by the Central Bank of Nigeria .

“Execution Date” means the date of this Agreement.

“Expert” means the individual appointed under Clause 22.6 for the purposes specified therein.

“Expert Determination” has the meaning given to that term in Clause 22.6.

“**FGN**” means the Federal Government of Nigeria.

“**Force Majeure Event**” has the meaning given to that term in Clause 21.1.

“**Forced Outage or Partial Forced Outage**” means a total or partial interruption of the Plant’s generating capability, excluding any total or partial interruption that is the result of:

- (a) a request by Buyer in accordance with this Agreement or by System Operator in accordance with the Grid Code;
- (b) a Scheduled Maintenance Outage or an Unscheduled Outage;
- (c) a Force Majeure Event; or
- (d) an Availability Event.

“**Foreign Non-Escalatable Capacity Payments**” has the meaning given thereto in Schedule 0.

“**Foreign Political Force Majeure Event**” has the meaning given to that term in Clause 21.1.3.

“**Fully Effective**” means that the Agreement is valid, legally binding, and all parts thereof, and all obligations therein, are fully enforceable by and against the Parties.

“**Gas Supplier**” means the supplier under the Gas Supply Agreement.

“**Gas Supply Agreement**” or “**GSA**” means the contractual agreement related to the supply of natural gas for the Plant by Gas Supplier to Seller.

“**Good Industry Practices**” means those practices, methods, and procedures conforming to safety and legal requirements that are attained by exercising that degree of skill, diligence, prudence and foresight that would reasonably and ordinarily be expected from a skilled and experienced generator of electricity engaged in the same or a similar type of undertaking or activity under the same or similar circumstances and conditions to those pertaining in Nigeria and satisfying the health, safety, and environmental standards of reputable international electric generation companies. Good Industry Practices are not limited to optimum practices, methods or acts to the exclusion of all others, but rather are a spectrum of possible practices, methods and acts that would reasonably and ordinarily have been expected to accomplish the desired result at reasonable cost consistent with reliability and safety. Such practices, methods and actions shall include (and shall be adjusted if necessary to take account of):

- (a) the operations and maintenance guidelines recommended by the manufacturers of the plant, machinery and equipment included in the Plant, including those guidelines that are required to be followed in order to avoid voiding any warranty of any component of the Plant;
- (b) the Technical Limits; and
- (c) the conditions at the Site.

For the avoidance of doubt, in the event of a conflict between Applicable Law and Good Industry Practices, Applicable Law shall prevail.

Grid means the network of high voltage transmission lines, transformers, switchgear and other transmission equipment which is owned and/or maintained by the Transmission Company of Nigeria and operated by the System Operator and utilized for the conveyance of energy from generating plants to distribution systems, and to which the Plant is to be interconnected.

Grid Code has the meaning given to that term in the Act.

Gross Negligence means any act or failure to act (whether sole, joint or concurrent) which seriously and substantially deviates from a diligent course of action or which is in reckless disregard of or indifference to, foreseeable harmful consequences.

Hour means each period of sixty (60) minutes commencing at 00:00, and **Hourly** shall be construed accordingly.

HV means High Voltage.

Import Capacity means the portion of the Available Capacity in MW associated with the electric energy which the Plant consumed from the Grid, for use within the Plant.

Import Energy means the useful electric energy, expressed in MWh, which the Plant consumed from the Grid, as measured by the Metering System, for use within the Plant.

Indemnified Party means the Party that receives the benefit of an indemnity pursuant to Clause 16.3 or Clause 17.3, together with such Party's directors, officers, and employees and such Party's Affiliates, their directors, officers and employees.

Indemnifying Party means the Party that gives an indemnity pursuant to Clause 16.3 or Clause 17.3.

Independent Engineer means one of the suitably qualified Persons with requisite skills and experience listed in Schedule 0, selected from the list and appointed by Seller at its own cost and expense, and the identity of which is notified in writing to Buyer not later than forty-five (45) Days before commencement of Commissioning, to conduct inspections of the Plant and installations thereat and to issue independent certifications in respect thereof.

Initial Tested Capacity is the Tested Capacity as at the Commencement Date as certified in accordance with Clause 7.4.2(b).

Key Defined Milestones means the Closing Date and Commencement Date.

"KV" means kilovolts, a unit of one thousand volts.

"KW" means kilowatt, a unit of electrical capacity.

"KWh" means kilowatt-hour, a unit of electrical energy.

“Lapse of Authorisation” means any Authorisation:

- (a) that is revoked by the Relevant Authority which issued it;
- (b) that is not issued, renewed or, having lapsed, is not reissued, within one hundred eighty (180) Days (or such longer period allowed by Applicable Law) of application by Seller for that Authorisation to be issued, renewed or reissued, as the case may be, and as a result Seller’s ability to perform its obligations under this Agreement is materially and adversely affected,

in each instance, despite Seller’s compliance with the applicable procedural and substantive requirements in respect of the relevant Authorisation as applied in a non-discriminatory manner.

“LIBOR” means the London Interbank Offered Rate interest rate quoted by the ICE Benchmark Administration Limited (or any other person which takes over administration of that rate) for US\$ deposits for a six (6) months period displayed on page LIBOR01 of the Reuters screen (or any replacement Reuters page which displays that rate) or on the appropriate page of such other information service which publishes that rate from time to time in place of Reuters at or about 11.00 a.m., London time on the Day that is two (2) London business days before the first Day of the period in respect of which interest is to be calculated.

“Local Non-Escalatable Capacity Payments” has the meaning given thereto in Schedule 0.

“Local Political Force Majeure Event” has the meaning given to that term in Clause 21.1.2.

“Long Term Service Agreement” means the agreement by that name between Seller and Contractor related to the long-term service of the Plant.

“Loss Factor” or **“LF”** is defined in Clause 4.

“Main Meters” has the meaning given to that term in Clause 11.2.

“Market Operator” has the meaning given to that term in the Market Rules.

“Market Operator Settlement Statement” means the settlement statement issued Monthly by the Market Operator in accordance with the Market Rules and the Market Procedures.

“Market Procedures” means detailed procedures established by the Market Operator from time to time for the day-to-day operation of the Market Rules.

“Market Rules” means the rules approved under section 26(2) of the Act.

“Metering Code” means the metering code for the Nigerian electric sector, as approved by the Commission from time to time, and all rules, regulations and procedures established pursuant thereto.

“Metering Point” means the location of the Main Meter on the high voltage (132 kV or higher) side of the main transformer.

õMetering Systemö means all forms of meters and metering devices, consisting of the Main Meter and Back Up Meter and the associated current transformers (CTs) and voltage transformers (VTs) and metering protection equipment and low voltage LV electrical circuitry and associated ancillary equipment used for reading and measurement of Net Electrical Output, reactive power, and reactive power demand. **õMetersö** shall be construed accordingly.

õMetering Toleranceö means, in relation to any component of the Metering System, the less tolerant of (i) the metering tolerance specified in the Metering Code and (ii) plus or minus five tenths of a per cent (0.5%) from the measurement made by the standard meter used in a test of such component.

õMinimum Indemnification Amountö means the amount listed as such in Schedule 0.

õMonthö means a calendar month according to the Gregorian calendar, and **õMonthlyö** shall be construed accordingly.

õMonthly Reportö means the report to be prepared by Seller in accordance with Clause 8.

õMWö means megawatt, a unit of electric capacity, being one thousand (1,000) kW.

õMWhö means megawatt-hour, a unit of electric energy, being one thousand (1,000) kWh.

õNairaö or **õNö** means the currency of the Federal Republic of Nigeria.

õNatural Force Majeure Eventö has the meaning given to that term in Clause 21.1.4.

õNet Electrical Outputö or **õNEOö** means the useful electric energy, expressed in MWh, generated by the Plant, and delivered to the Delivery Point for sale to Buyer, as measured by the Metering System. For the avoidance of doubt, electric energy is deemed useful if it conforms to the standards of the System Operator or the Transmission Company of Nigeria or would have so conformed but for Grid conditions. Net Electrical Output is net of (i) all loads on Seller's side of the Delivery Point, and (ii) transformer losses for transformation to Grid voltage at the point of interconnection even if such transformer is owned by the Transmission Company of Nigeria.

õNigeria Inter-Bank Offer Rateö or **õNIBORö** means the interest rate for 90-day deposits determined by the Nigeria Inter-Bank Offer Rate Committee of the Money Market Association of Nigeria as published on the Money Market Association of Nigeria website, <http://fmnda.com.ng/>, or as may be obtained from the Executive Secretary of the Money Market Association of Nigeria at their registered office.

õNominated Quantityö means in respect of an Hour, the quantity of Net Electrical Output which has been nominated by Buyer in accordance with Clause 10.2.2(c) for delivery by Seller at the Delivery Point. Nominated Quantities shall be based on the projected Actual Capacity of the Plant. A Nominated Quantity shall include any Nominated Quantity which has been validly varied in accordance with Clause 10.3.2.

õNotice of Disputeö has the meaning given to that term in Clause 22.2.1.

“**Notice of Expert Determination**” has the meaning given to that term in Clause 22.6.2.

“**Notices**” has the meaning given to that term in Clause 23.1.

“**Operating Day**” means twenty-four (24) Hours beginning at 00:00 daily.

“**Operation and Maintenance Agreement**” means the agreement for the operation and maintenance of the Plant between Seller and Contractor providing the operation and maintenance services.

“**Operation and Maintenance Procedure Manual**” means a document that includes operating and maintenance procedures, training manual, and operation interfaces between Seller and System Operator and Buyer including, but not limited to: (i) method of day-to-day communication; (ii) key personnel list; (iii) clearances and switching practices; (iv) outage scheduling; (v) capacity and energy reporting; and (vi) operating log, which shall be consistent with this Agreement, Applicable Law, the designs of the Plant, Technical Limits and Good Industry Practices.

“**Ownership Interest**” means with respect to any corporation, limited liability company, partnership or other business organization, shares, ownership interests, or other similar interests in such business organization with voting or other rights of management and control and securities of such business organization that are convertible into same at the option of the holder, whether such shares, ownership interests or other similar interests are held directly or indirectly through one or more intermediate entities or affiliates.

“**Outage**” means any condition that reduces the Available Capacity of the Plant to less than the Tested Capacity, and includes Availability Events, Unscheduled Outages, Scheduled Maintenance Outages, and Forced Outages or Partial Forced Outages.

“**Parties**” has the meaning given to that term in the Recitals.

“**Person**” means any individual, corporation, partnership, joint venture, trust, unincorporated organisation, Relevant Authority, or other legal entity.

“**Plant**” means the electricity generating facilities on Seller’s side of the Delivery Point, to be constructed for and owned by Seller at the Site, whether completed or at any stage of its construction, including without limitation or regard to level of development, land and rights to use of land, engineering and design documents, construction contracts, all energy producing equipment and its auxiliary equipment and all transmission and interconnection facilities on Seller’s side of the Delivery Point including the step-up transformer to convert internal plant voltages to 132 kV or higher, metering equipment, control room, water treatment facilities, solid waste disposal facilities, gas receiving and handling facilities and any residential facilities made available to certain employees of Seller and its Contractors. Plant includes whenever acquired, (i) all facilities and equipment included in the Construction Contract, (ii) all other facilities, and equipment acquired in addition to that under the Construction Contract or in replacement of such facilities and equipment, (iii) rights to use of land in conjunction with operation of the Plant, and (iii) all other property used or useful in connection with the electricity generating facilities and Seller’s business; *provided that* Plant does not include equipment that has been removed from

service and disposed of in the ordinary course of business conducted in accordance with Good Industry Practices.

“**Preliminary Conference**” has the meaning given to that term in Clause 22.6.4.

“**Prohibited Shareholder**” means a Person who is proposed to become a shareholder in Seller that is owned or controlled by, or is under the management, in any capacity of, any Person who:

- (a) has been named on a list of sanctioned persons promulgated by the United Nations Security Council or its committees pursuant to resolutions under Chapter VII of the Charter of the United Nations;
- (b) has been named on the World Bank’s list of ineligible firms (see, www.worldbank.org/debarr);
- (c) that is listed on a list, published by the Federal Government of Nigeria or Central Bank of Nigeria, of individuals or companies prohibited by the Federal Government of Nigeria or any agency thereof (FGN) from involvement in transactions involving the FGN, or
- (d) in the reasonable opinion of Buyer, otherwise poses a risk to the reputation of the Project (or any part thereof).

“**Project**” means the testing, operation and maintenance of the Plant and all activities incidental thereto.

“**Project Documents**” has the meaning given to that term in Paragraph 1 of Schedule 1.

“**Prolonged Force Majeure Events**” has the meaning given to that term in Clause 21.8.

“**Protected Assets**” has the meaning given to the term in Clause 24.9.

“**Public Sector Entity**” means a Person (other than a Relevant Authority) in which the Federal Republic of Nigeria or any Relevant Authority holds a majority ownership interest.

“**Reallocated Capacity**” has the meaning given to that term in Clause 2.1.3

“**Reallocation Notice**” has the meaning given to that term in Clause 2.1.3

“**Reasonable Endeavours**” means, for any action required to be made, attempted or taken by a Party under this Agreement, the efforts that a prudent Person would undertake to protect its own interests, including commercial interests, taking into account the conditions affecting such action, including the amount of notice to act, recognition of the need to act, the duration and type of the action, and the projected benefit, cost and risk to the Party required to take such action.

“**Reasonable and Prudent Operator**” means a Party using a degree of diligence, prudence, and foresight which would reasonably and ordinarily be exercised by an experienced operator engaged in the same type of undertaking under the same or similar circumstances and conditions.

“**Recitals**” means recitals to this Agreement.

“**Reduced Available Capacity**” has the meaning given to that term in Clause 2.2.1.

“**Reference Site Conditions**” has the meaning given to that term in Schedule 0.

“**Refinancing**” has the meaning given to that term in Clause 14.5.

“**Related Agreement**” has the meaning given to that term in Clause 22.5.

“**Relevant Authority**” means any department, authority, instrumentality, agency, or any other relevant entity within the Federal Republic of Nigeria from which an Authorisation is to be obtained from time to time and any authority, body or other person within the Federal Republic of Nigeria having jurisdiction under Applicable Law with respect to Seller, Buyer, or the Project.

“**Relevant Change**” has the meaning given to that term in Clause **Error! Reference source not found.**

“**Relevant Event**” has the meaning given to that term in Clause 17.6.

“**Remedial Plan**” has the meaning given to that term in Clause 8.3.

“**Remedial Plan Notice Period**” has the meaning given to that term in Schedule 0.

“**Schedule**” means a schedule to this Agreement.

“**Scheduled Maintenance Outage**” means a planned interruption of the Plant’s generating capability or any material part thereof that:

- (a) has been scheduled by Seller and agreed to by the System Operator in accordance with the Grid Code and Buyer in accordance with Clause 9; and
- (b) is for inspection, testing, preventive maintenance, corrective maintenance, repairs, replacement or improvement of the Plant or any material part thereof.

“**Seller**” has the meaning given to that term in the Recitals.

“**Seller Connection Works**” means the equipment constructed by Seller and required for the Grid to accept the Net Electrical Output of the Plant, including the Main Meter and all other equipment that will be operated as part of the Grid, by the Transmission Company of Nigeria.

“**Seller Default**” has the meaning given to that term in Clause 18.2.

“**Seller Settlement Statement**” has the meaning given to that term in 13.3.1.

“**Settlement Period**” means a period of one (1) Hour, or such shorter time as may be stipulated in the Grid Code or Market Rules as the dispatch period from time to time.

“**Shortfall**” has the meaning given in Clause 2.2.1.

“**Site**” has the meaning given to that term in Schedule 0.

“**Sponsors**” has the meaning given to that term in Schedule 0.

“**Start Up**” means any start-up of a Unit that qualifies as a start according to the manufacturer’s guidelines, following an outage of that Unit.

“**System Operator**” has the meaning given to that term in the Market Rules.

“**Tax**” means any charge, fee, levy or other assessment imposed by any Relevant Authority, whether federal, state, local or otherwise; including all income, withholding, gross receipts, business, environmental, value added, capital gain, duties, capital stock, registration, excise, ad valorem, real property, personal property, land, local development, licence, sales, production, occupation, use, service, transfer, payroll, employment, social security travel, franchise, severance, bonus, or other tax of any kind, as well as any charges and assessments (including any interest, penalties or additions to tax attributable to or imposed on or with respect to any such assessment, whether disputed or not and all stamp or documentary taxes and fees.

“**Technical Limits**” means the operating limits of the Plant specified in Schedule **Error! Reference source not found.**

“**Technically Qualified Operator**” means an entity:

- (a) with the technical, legal and financial ability to operate the Plant and which has significant experience in the operation and maintenance of power plants similar to the Plant; and
- (b) which has entered into an agreement for the operation and maintenance of the Plant on terms that meet with the operation and maintenance requirements of this Agreement, Applicable Laws and Good Industry Practices.

“**Technically Qualified Shareholder**” a shareholder or proposed shareholder in Seller that:

- (a) is entitled to appoint a member of the Board of Directors of Seller; and
- (b) has significant experience or is an Affiliate of a company which has significant experience in the operation and maintenance of power plants similar to the Plant and is not a Prohibited Shareholder.

“**Term**” means the time period commencing on the Execution Date and expiring on the 20th year anniversary of the Execution Date, less the time period between the commencement of Grid electric power supply by the Plant and the Execution Date.

“**Termination Notice**” means a Notice specifying a date on which this Agreement shall terminate, which date shall occur no less than thirty (30) Days after the date of the Termination Notice and no more than sixty (60) Days after the date of the Termination Notice.

“**Tested Capacity**” means the net generating capacity of the Plant expressed in MW adjusted to Reference Site Conditions, in effect from time to time during the Term as demonstrated by the then most recent Capacity Test or Capacity Demonstration. The Tested Capacity shall not exceed the Contract Capacity.

Test Power means the Net Electrical Output generated during the testing of a Unit or the Plant prior to Commissioning of the Plant including Net Electrical Output during the Commissioning of a Unit or the Plant.

Transfer means a transfer or event requiring consent of the other Party in accordance with Clause 20.

Transmission Company of Nigeria or **TCN** has the meaning given to that term in the Act.

Unit means a separate electricity generating unit or section (comprising multiple components) forming part of the Plant, which is or are capable of generating and delivering energy to Buyer at the Delivery Point independently of other such generating units or sections forming part of the Plant.

Unscheduled Outage means an interruption or reduction of the Actual Capacity that:

- (a) is not a Scheduled Maintenance Outage or a Forced Outage or Partial Forced Outage;
- (b) is necessary in accordance with Clause 9.5; and
- (c) is for the purpose of performing work on specific components, which, considering Good Industry Practices, should not, in the reasonable opinion of Seller, be postponed until the next Scheduled Maintenance Outage.

US Dollars or **US\$** or **USD** means the lawful currency of the United States of America.

Variation Notice has the meaning given to that term in Clause 10.3.2.

Vesting Contracts means the vesting contracts for the resale by Buyer to each of the Distribution Companies of a portion of the Available Capacity and Net Electrical Output purchased under this Agreement.

Voluntary Restoration has the meaning given to that term in Clause 21.10.

“Wholesale Electricity Market” means the wholesale electricity market for Nigeria, as provided for in the Market Rules.

Wilful Misconduct means any act or failure to act (whether sole, joint, concurrent, or otherwise) taken or not taken with an intentional disregard of foreseeable harmful consequences.

Year means a period of twelve calendar Months, beginning each January 1, according to the Gregorian calendar.

Year End has the meaning given to that term in Clause 17.6.

1.2. Approvals

1.2.1. This Agreement has been or will be submitted to the Commission and any other Relevant Authority for review, and this Agreement will not be executed by the Parties until Buyer shall have received an official, written: (i) approval of this Agreement by the Commission and any other Relevant Authority, (ii) statement of no objection to the execution of this Agreement by the Commission and any other Relevant Authority, or (iii) statement from the Commission and any other Relevant Authority that this Agreement is not subject to review by the Commission or such other Relevant Authority.

1.2.2. After the receipt of the action of the Commission and each other Relevant Authority in Clause 1.2.1 in form and substance acceptable to both Parties,

- a) Buyer will provide a Notice to Seller (i) that the conditions to execution of the Agreement specified in Clause 1.2.1 have been met and are accepted by Buyer, and (ii) affirming, if possible, that the representations and warranties of Buyer herein are correct as of the date of such Notice; and
- b) Seller shall as soon as reasonably practicable following receipt of the Notice from Buyer provide a Notice to Buyer (i) that the conditions to execution of the Agreement specified in Clause 1.2.1 have been met and are accepted by Seller, and (ii) affirming, if possible, that the representations and warranties of Seller herein are correct as of the date of such Notice, and
- c) Upon exchange of such Notices, the Parties will execute this Agreement.

1.3. Interpretation

In this Agreement, including the Recitals and Schedules except where expressly provided to the contrary:

1.3.1 Schedules hereto shall form part of this Agreement and in the event of any conflict between the main body of this Agreement and a Schedule, the provisions in the Schedules shall prevail over the provisions in the main body of this Agreement;

1.3.2 reference to any consent "not to be unreasonably withheld" is deemed to be qualified by the requirement that such consent shall not be unreasonably conditioned or delayed;

1.3.3 reference to "include" and "including" is deemed to be qualified by the additional term without limitation;

1.3.4 reference to any publication, statute, rule, regulation, instrument or standard means the same as amended, supplemented or re-enacted from time to time;

1.3.5 references to this Agreement or any other agreement, document, or instrument shall mean this Agreement or such other agreement, document or instrument as the same

may be amended, modified, supplemented, novated or replaced from time to time *provided, that*, in the event that an amendment, modification, supplement, novation or replacement to an agreement other than this Agreement has a material effect on the rights or obligations of a Party under this Agreement, then such amendment, modification, supplement, or replacement shall not be considered in interpreting the rights or obligations of a Party under this Agreement unless such Party has consented to or ratified the amendment, modification, supplement, novation, or replacement of such other agreement;

- 1.3.6 any requirement that an action may or shall be taken within a specified number of Days means that such action may or shall be taken within the number of Days so specified starting at 00:00:00 Hours on the Day on which the requirement to take such action arose and ending at 23:59:59 Hours on the last Day;
- 1.3.7 any reference to time shall be to the time in Abuja, Nigeria;
- 1.3.8 reference to any amount of money means that amount in Naira, except where indicated otherwise;
- 1.3.9 reference to Clauses and Schedules means reference to Clauses hereof, and Schedules to this Agreement;
- 1.3.10 headings are inserted for ease of reference only and shall not affect the interpretation or construction of this Agreement or have any legal effect;
- 1.3.11 any remedy that provides for the payment of damages by a Party represents a genuine pre-estimate of the likely loss or damage which will be suffered by the Party to whom such damages are payable in consequence of the act or omission of the Party liable to pay such damages and shall not in any way be construed as a penalty;
- 1.3.12 any good faith best estimate which is given by a Party when required in accordance with this Agreement is non-binding and given for information only and the Party giving such good faith best estimate shall have no liability to the other Party for any inaccuracy thereof;
- 1.3.13 reference to any notice or notification or consent means a notice or notification or consent made in writing or as otherwise expressly provided in this Agreement;
- 1.3.14 All calculations done to two (2) decimal places unless such calculation is made to a higher or lesser degree of precision in accordance with Applicable Law or in accordance with Good Industry Practices, with the final digit of five (5) or above being rounded up and below five (5) being rounded down;
- 1.3.15 in the event of any ambiguity or discrepancy in this Agreement, the following shall apply:

1.3.15.1 in the case of any ambiguity or discrepancy between the written description of any drawing and the specifications and standards, the latter shall prevail;

1.3.15.2 in the case any ambiguity or discrepancy between the dimension scaled from the drawing and its specific written dimension, the latter shall prevail; and

1.3.15.3 in the case of any ambiguity or discrepancy between any value written in numerals and that in words, the latter shall prevail.

Clause 2

Sale and Purchase of Available Capacity and Net Electrical Output

2.1. Obligation to Buy and Sell Capacity and Energy after Commencement Date

2.1.1 Subject to Clause 2.1.3, on and after the Commencement Date until the expiry of the Term or earlier termination, Seller agrees to make the Available Capacity available to Buyer and Buyer agrees to pay for the Available Capacity.

2.1.2 Subject to Clause 2.1.3, on and after the Commencement Date until the expiry of the Term or earlier termination in accordance with this Agreement, Seller shall deliver to Buyer and Buyer shall accept and purchase from Seller all dispatched Net Electrical Output

2.1.3 Seller reserves the right to enter into other contracts besides this Agreement, for the sale of the Available Capacity and Net Electrical Output of the Plant, including the Available Capacity and Net Electrical Output resulting from the implementation of the Capacity Recovery Plan provided for in Schedule 11. At any time (and from time to time) after the Closing Date until the expiry of the Term or earlier termination in accordance with this Agreement, Seller may elect by notice (a Reallocation Notice) to Buyer to reduce the Contract Capacity and reallocate such capacity (Reallocated Capacity) for its own use or for sale to other Persons.

2.2. Reduction in Available Capacity Due to Failure to Deliver Dispatched Energy

2.2.1 Upon there being a shortfall in the delivery by Seller of Net Electrical Output dispatched by the System Operator during a given Hour and such shortfall is in excess of one percent (1.0%) of the Net Electrical Output that was dispatched (a "Shortfall"), the Available Capacity for that Hour used to calculate the Capacity Payment under Schedule 0 shall be reduced by the capacity corresponding to the Shortfall (the "Reduced Available Capacity"), *provided that*, Seller shall not be deemed to have failed to deliver Net Electrical Output dispatched for the given Hour if and to the extent the cause was an Availability Event.

2.2.2 Following any reduction in Available Capacity pursuant to Clause 2.2.1, Available Capacity shall be deemed not to exceed the Reduced Available Capacity for any

subsequent Hour until such time as Net Electrical Output delivered during an Hour actually exceeds the Net Electrical Output delivered during the Hour in which the Shortfall occurred.

2.3. Ancillary Services

During the Delivery Term, Buyer's payment obligation to the Seller shall not extend to payment for Ancillary Services that the Seller may provide to the System Operator.

2.4. Transmission Services, Loss Factor

2.4.1 Seller does not undertake in this Agreement to provide any transmission services to Buyer.

2.4.2 This Agreement is premised on the assumption that the Transmission Company of Nigeria will accept delivery of net generating capacity, Available Capacity and Net Electrical Output at the Delivery Point and an electric transmission loss factor imposed on Seller as a generator connected to the Grid (the "Loss Factor") will apply only to the Net Electrical Output component of the Energy Payments calculation. For the duration of the Term the agreed Loss Factor will be 7.5 per cent as specified by the Commission or any other percentage as may be approved by the Commission. The Parties' expectation is that the metered energy deliveries reported in the Market Operator's Settlement Statements will be reduced by a Loss Factor of 7.5% or any other percentage as may be approved by the Commission from those metered at the Delivery Point, and the Charge Rates established herein reflect that expectation. If the Loss Factor is not used as an adjustment to the metered energy deliveries reported in the Market Operator's Settlement Statements, or if the Loss Factor so used is changed from 7.5%, the Parties shall change the Charge Rates specified in Schedule 6 to provide the same effective Charge Rates such that Seller and Buyer are kept whole; the term Loss Factor shall be amended accordingly; and the Parties shall notify the Commission of all such changes.

2.4.3 The calculation of the Local Energy Payments and Foreign Energy Payments in Schedule 6 has been designed so that Seller will not bear the costs or enjoy the benefit of such Loss Factor. If additional charges not currently addressed in Schedule 6 are imposed on Seller for transmission services or transmission losses, the Capacity Payments and Energy Payments will be adjusted so that Seller will not bear such costs and if Seller obtains a net benefit of a negative Loss Factor or other similar credit relating to Transmission, the Capacity Payments and Energy Payments will be adjusted so that Buyer obtains such benefit.

2.5. Purchase for Resale

Buyer will purchase Available Capacity and Net Electrical Output for resale and may resell such capacity and energy in any manner allowed by law.

2.6. Reallocated Capacity

Seller shall be entitled to sell Reallocated Capacity and any Net Electrical Output related thereto to any third-party purchaser(s) in any manner allowed by law.

Clause 3 Commencement, Term and Conditions Precedent

3.1. Commencement and Term of Agreement

3.1.1 This Agreement commences on the Execution Date.

3.1.2 This Agreement shall only become Fully Effective on the Commencement Date upon the execution of a letter agreement by the Parties confirming that Closing Date has occurred, and the Commencement Tests have been satisfactorily completed in accordance with Clause **Error! Reference source not found..** It shall continue in full force and effect until the expiry of the Term, the earlier termination by either Party in accordance with Clause 18, or the expiry of this Agreement pursuant to Clause **Error! Reference source not found..**

3.1.3 The following Clauses shall become effective on the Execution Date:

- (a) Clause 1 (*Definitions*);
- (b) Clauses 4.2.5, 4.2.6, **Error! Reference source not found., Error! Reference source not found., and Error! Reference source not found.** (*Seller's Covenants*);
- (c) Clause 3 (*Term and Conditions Precedent*);
- (d) Clause 4.1 (*Seller's Representations and Warranties*);
- (e) Clause 4.3 (*Buyer's Representations and Warranties*);
- (f) Clause 4.4 (*Buyer's Covenant*),
- (g) Clause 4.5 (*Conduct of the Parties*),
- (h) Clause 4.6 (*Effect and Duration of Representations and Warranties*);
- (i) Clause 4.7 (*Disclaimer of Other Representations and Warranties*).
- (j) Clause 17 (*Liability and Indemnification*)
- (k) Clause 20 (*Transfers and Prohibited Shareholders*);

- (l) Clause 22 (*Choice of Law and Dispute Resolution*);
- (m) Clause 23 (*Notices*); and
- (n) Clause 24 (*Miscellaneous Provisions*).

3.1.4 This Agreement may be renewed after the Term for such further period and on such terms and conditions as may be mutually agreed between the Parties.

3.2. Due Diligence Letter

Within sixty (60) days of the Execution Date, Buyer shall deliver to Seller a letter that describes (a) the due diligence that has been satisfactorily completed by Buyer as of the date of such letter, and (b) any due diligence on the Project that has not been completed by Buyer as of the date of such letter.

3.3. Conditions Precedent

Subject to Clause 3.1.3 and **Error! Reference source not found.**, the:

- (a) occurrence of the Closing Date; and
- (b) the rights and obligations of the Parties under this Agreement,

are subject to the satisfaction or waiver of the conditions precedent (collectively, the **Conditions Precedent**) set out in the table that appears in Paragraph 4 of Schedule 1.

3.4. Satisfaction of Conditions Precedent – Closing Date Notice

3.4.1 The Parties shall use Reasonable Endeavours to satisfy or procure the satisfaction of the Conditions Precedent as soon as is reasonably practicable and shall satisfy or procure the satisfaction of each of the Conditions Precedent for which they are primarily responsible for satisfying (as indicated in the table that appears in Paragraph 3 of Schedule 1) by the Target Closing Date.

3.4.2 Each Party, upon request of the other Party and at such other Party's expense, shall use Reasonable Endeavours to assist the other Party in satisfying each Condition Precedent for which such other Party is primarily responsible for satisfying (as indicated in the table that appears in Paragraph 3 of Schedule 1).

3.4.3 The Parties shall from time to time, once a month at the minimum, meet to discuss and coordinate their plans for the satisfaction of the Conditions Precedent and each Party shall keep the other informed on a timely basis as to progress in relation to the satisfaction of the Conditions Precedent.

3.4.4 Upon satisfaction of a Condition Precedent, the Party that is primarily responsible under Paragraph 3 of Schedule 1 for the satisfaction of the Condition Precedent shall notify the other Party of its satisfaction. Such Notice shall include necessary

supporting documentation to substantiate the satisfaction of the Condition Precedent. The other Party may by notice within thirty (30) Days dispute whether such Condition Precedent has been satisfied.

- 3.4.5 Where the table that appears in Paragraph 3 of Schedule 1 indicates that the consent of a Party is required to waive a Condition Precedent, then such Condition Precedent shall only be waived with the consent of such Party. Where the table that appears in Paragraph 3 of Schedule 1 indicates that the consent of both Parties is required to waive any Condition Precedent, such Condition Precedent shall only be waived with the consent of both Parties. Either Party may condition the waiver of a Condition Precedent upon the conversion of that Condition Precedent into a condition subsequent.

3.5. Failure to Satisfy Conditions Precedent

- 3.5.1 If any Party becomes aware of the reasonable likelihood that it will not be able to satisfy a Condition Precedent for which it is primarily responsible under Paragraph 3 of Schedule 1 before the Target Closing Date, then:
- (a) the Party responsible for satisfying such Condition Precedent shall give Notice to the other Party giving reasons for the delay or failure to satisfy the Condition Precedent and the revised date by which it is reasonably expected that the Condition Precedent shall be satisfied; and
 - (b) upon such notification in Clause 3.5.1(a) the Parties shall mutually agree on an extension of the Target Closing Date for the satisfaction of such Condition Precedent; *provided that*, the Target Closing Date may not be extended beyond the Long Stop Closing Date, and the Long Stop Closing Date itself may not be extended except upon request by Seller and approval by Buyer in its sole discretion.
- 3.5.2 Either Party may terminate this Agreement with immediate effect by giving a Termination Notice to the other Party if the Conditions Precedent have not been satisfied or waived in accordance with this Agreement by the Long Stop Closing Date, subject to any agreed extension pursuant to Clause 3.5.1(b).

Clause 4 Covenants, Representations and Warranties

4.1. Seller's Representations and Warranties

Seller represents and warrants to Buyer that as of the Execution Date:

- 4.1.1 Seller is a company, duly organised and incorporated under the Applicable Law, and has all requisite corporate power and authority to own or lease and operate its properties and to carry on its business as proposed to be conducted under this Agreement.
- 4.1.2 The execution, delivery and performance of this Agreement by Seller:
- (a) has been duly authorized by all requisite corporate action on the part of Seller, and no other proceedings on the part of Seller or any other Person are necessary for such authorisation;
 - (b) will not violate (i) Applicable Law or any applicable order of the Commission or order of any Relevant Authority or (ii) any provision of the memorandum and articles of association of Seller; and
 - (c) will not violate, be in conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any indenture, agreement for borrowed money, bond, note, instrument or other agreement to which Seller is a party or by which Seller or its property is bound, excluding defaults or violations that would not, individually or in the aggregate, have a material adverse effect on the business, properties, financial condition or results of operation of Seller, or on its ability to perform its obligations hereunder.
- 4.1.3 This Agreement has been duly executed and delivered by Seller and constitutes a legal, valid and binding obligation of Seller, enforceable against it in accordance with its terms, subject to Applicable Law.
- 4.1.4 No filing or registration with, no notice to and no permit, Authorisation, consent or approval of any Person is required for the execution, delivery or performance of this Agreement by Seller.
- 4.1.5 Seller is not in default under any agreement or instrument of any nature whatsoever to which it is a party or by which it is bound in any manner that would have a material adverse effect on its ability to perform its obligations hereunder or the validity or enforceability of this Agreement.
- 4.1.6 There is no action, suit, proceeding, or investigation pending or, to Seller's knowledge, threatened (a) for the dissolution of Seller, or (b) against Seller, which, if adversely determined, would have a material adverse effect on its ability to perform its obligations hereunder or the validity or enforceability of this Agreement.
- 4.1.7 It is not in violation of any Applicable Law or judgment entered by any Relevant Authority, which violations, individually or in the aggregate, would materially affect the performance of any of its obligations under this Agreement. There are no legal or arbitration proceedings or any proceeding by or before any Relevant Authority, now pending or (to the best knowledge of Seller) threatened against

Seller that, if adversely determined, could reasonably be expected to have a materially adverse effect on the financial condition, operations, prospects or business, as a whole, of Seller, or its ability to perform under this Agreement.

4.1.8 It has:

- (a) carefully examined this Agreement, including the Schedules, thoroughly and become familiar with all their respective terms and provisions;
- (b) investigated to its satisfaction the Applicable Law and it is satisfied it can perform its obligations under this Agreement in accordance with Applicable Law;
- (c) the experience, qualifications, and capabilities to perform its obligations hereunder; and
- (d) made all investigations and inspections that it deems necessary to perform its obligations hereunder, including without limitation investigations and inspections of the Site.

4.2. Seller's Covenants

Seller hereby covenants and agrees with Buyer to:

- 4.2.1 enter into a Gas Supply Agreement for sufficient gas to perform its obligations under this Agreement;
- 4.2.2 operate, and maintain the Plant in such manner as to maintain the useful life of the Plant to be at least equal to the Term;
- 4.2.3 procure and maintain in effect at all times an Operation and Maintenance Agreement with a Technically Qualified Operator;
- 4.2.4 operate and maintain the Plant in all material respects, in accordance with this Agreement, Good Industry Practices and Applicable Law;
- 4.2.5 procure and maintain the Authorisations necessary for its performance under this Agreement;
- 4.2.6 work and cooperate in good faith with Buyer with respect to all of Buyer's obligations and rights hereunder;

4.3. Buyer's Representations and Warranties

Buyer represents and warrants to Seller that as of the Execution Date:

- 4.3.1 Buyer is a company, duly organised and incorporated under Applicable Law, and has all requisite corporate power and authority to carry on its business as proposed to be conducted under this Agreement.

- 4.3.2 Buyer has full corporate power and authority to execute and deliver this Agreement and to perform its obligations hereunder.
- 4.3.3 The execution, delivery, and performance of this Agreement by Buyer:
- (a) has been duly authorized by all requisite corporate action on the part of Buyer, and no other proceedings on the part of Buyer or any other Person are necessary for such authorisation;
 - (b) will not violate (i) Applicable Law or (ii) any applicable order of the Commission or order of any Relevant Authority or (iii) any provision of the memorandum and articles of association of Buyer; and
 - (c) will not violate, be in conflict with, result in a breach of, nor constitute (with due notice or lapse of time or both) a default under any indenture, agreement for borrowed money, bond, note, or other agreement to which Buyer is a party or by which Buyer or its property is bound, excluding defaults or violations that would not, individually or in the aggregate, have a material adverse effect on the business, properties, financial condition, or results of operation of Buyer, nor on its ability to perform its obligations hereunder.
- 4.3.4 This Agreement has been duly executed and delivered by Buyer and constitutes a legal, valid, and binding obligation of Buyer, enforceable against it in accordance with its terms, subject to Applicable Law.
- 4.3.5 No filing or registration with, no notice to, and no permit, Authorisation, consent, or approval of any Person is required for the execution, delivery, or performance of this Agreement by Buyer.
- 4.3.6 Buyer is not in default under any agreement or instrument of any nature whatsoever to which it is a party or by which it is bound in any manner that would have a material adverse effect on its ability to perform its obligations hereunder or the validity or enforceability of this Agreement.
- 4.3.7 There is no action, suit, proceeding or investigation pending or, to Buyer's knowledge, threatened (i) for the dissolution of Buyer, or (ii) against Buyer, which, if adversely determined, would have a material adverse effect on its ability to perform its obligations hereunder or the validity or enforceability of this Agreement.
- 4.3.8 It is not in violation of any Applicable Law or judgment entered by any Relevant Authority, which violation, individually or in the aggregate, would affect its performance of any obligation under this Agreement. There are no legal or arbitration proceedings or any proceeding by or before any Relevant Authority, now pending or (to the best knowledge of Buyer) threatened against Buyer that, if adversely determined, could reasonably be expected to have an adverse effect on the financial condition, operations, prospects, or business, as a whole, of Buyer, or its ability to perform under this Agreement.

4.3.9 It has:

- (a) carefully examined this Agreement, together with all Schedules attached hereto, thoroughly and become familiar with all their respective terms and provisions;
- (b) investigated to its satisfaction the Applicable Law and determined that it can perform its obligations hereunder in accordance therewith; and
- (c) the experience, qualifications, and capabilities to perform its obligations hereunder.

4.4. Buyer's Covenant

Buyer further hereby covenants and agrees with Seller to work with and cooperate in good faith with Seller with respect to all of Seller's obligations and rights hereunder.

4.5. Conduct of the Parties

4.5.1 Each Party represents that it and the shareholders, officers, directors, employees, and agents of it and its Affiliates have not made, offered, or authorized, and covenants that it will not (and it shall procure that the shareholders, officers, directors, employees and agents of it and its Affiliates will not) make, offer or authorize, with respect to the matters which are the subject of this Agreement, any payment, gift, promise or anything of value or advantage, whether directly or through any other person or entity, to or for the use or benefit of any public official (i.e. any person holding a legislative, administrative or judicial office, including any person employed by or acting on behalf of a public agency, a public enterprise or a public international organisation) or any political party or political party official or candidate for office, where such payment, gift, promise or advantage would violate (a) Applicable Law ; and (b) the principles described in the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, signed in Paris on 17 December 1997, which entered into force on 15 February 1999, and the Convention Commentaries.

4.5.2 Each Party covenants and represents that it does not desire and will not request any services, action or inaction by any person or entity which would constitute a violation under Clause 4.5.1. Each Party shall promptly (a) respond in reasonable detail to any notice from any other Party reasonably connected with the above warranty; and (b) furnish applicable documentary support for such response upon request from and at the expense of such other Party.

4.5.3 Neither of the Parties nor any of their Affiliates, nor any of their officers, employees, representatives or agents (in relation to the Project or in relation to the execution of this Agreement) have, whether acting as principal or agent, received, agreed or attempted to receive the proceeds of or profits from a crime or agreed to assist any person to retain the benefits of a crime.

4.6. Effect and Duration of Representations and Warranties

Each representation and warranty given by a Party as of the Execution Date shall be true and accurate in all material respects when made.

4.7. Disclaimer of Other Representations and Warranties

To the full extent permitted by the Applicable Law, except as expressly stated in this Agreement, the Parties negate any other representation or warranty written or oral, express, or implied, including any representation or warranty of merchantability, conformity to samples, or fitness for any particular purpose.

Clause 5 Additional Commitments of the Parties

5.1. Market Rules and Grid Code

- 5.1.1 The Parties agree that they shall each be bound by the Market Rules and Grid Code where applicable to the extent that the Market Rules and Grid Code (or the relevant parts of them) are mandatory in their application and no derogation from their application is permitted by the Relevant Authority.
- 5.1.2 The provisions of the Market Rules shall supersede the provisions of this Agreement in the event of a conflict if the relevant provisions are mandatory in their application and no derogation from their application is permitted by the Commission.
- 5.1.3 The provisions of the Grid Code shall apply to the Parties to the extent applicable. The provisions of the Grid Code shall supersede the provisions of this Agreement in the event of a conflict if the relevant provisions are mandatory in their application and no derogation from their application is permitted by the Commission.
- 5.1.4 In the event that the duration of each Settlement Period changes from one Hour to a lesser (or longer) period of time, then the Parties will make such modifications to this Agreement as are necessary to place the Parties in substantially the same position as the position they were in prior to the change to the duration of each Settlement Period.

Clause 6

Plant and Facilities

6.1. Representations and Warranties as to Seller's Plant and Facilities

The following representations and warranties shall be deemed to be made by the Seller as of the Commencement Date by reference to the facts and circumstances then existing on the Commencement Date:

6.1.1 Seller procured the Plant in a workmanlike and professional manner in accordance with Applicable Law and Good Industry Practices to enable it to make available and deliver at the Delivery Point, the Available Capacity and Net Electrical Output of the Plant from the Commencement Date, in accordance with the terms of this Agreement.

6.1.2 The Plant has been:

- (a) designed and constructed to conform to the specifications contained in this Agreement and the other Project Documents;
- (b) designed and constructed to be capable of generating electricity in compliance with the Net Electrical Output requirements of this Agreement;
- (c) designed and constructed to be capable of providing Available Capacity in an amount consistent with the Contract Capacity specified in this Agreement when operating within the Technical Limits;
- (d) designed and constructed to be capable of operating within the Technical Limits; and
- (e) designed and constructed with protective devices and generator control systems designed and operating in accordance with Applicable Law and in accordance with Good Industry Practices.

6.1.3 The installation of any facilities required,

- a) for the connection of the Plant to the Grid for the full evacuation of its Contract Capacity pursuant to the Connection Agreement has been completed, and

for the connection of the Plant to the gas supply facilities of the Gas Supplier pursuant to the Gas Supply Agreement has been completed.

6.1.4 Seller has furnished Buyer with the subsisting Operations and Maintenance Procedure Manual for the Plant.

Clause 7

Commencement Testing

7.1. Standards

Seller shall at all times comply with the terms of this Agreement, Applicable Law, and Good Industry Practices in the testing, operation, maintenance and repair of the Plant.

7.2. Commencement Testing Period

7.2.1 Seller shall, acting in accordance with Applicable Law and Good Industry Practices, perform all necessary tests and ensure the conduct of the Commencement Tests of the Plant.

7.2.2 Seller shall give Buyer not less than forty-five (45) Days prior notice of its estimate of the date the Plant is expected to commence the Commencement Tests and shall give five (5) Days notice to Buyer of any change in such estimate. The notice shall also estimate the length of the Commencement Testing Period for the Plant.

7.2.3 In the event that the Commencement Tests are not successfully completed by the expiration of the Commencement Testing Period, then the Commencement Testing Period shall be extended until completion of the Commencement Tests and Seller shall ensure that the Commencement Tests are carried out and successfully completed as soon as practicable.

7.3. Commencement Testing Procedures

Seller shall determine and be responsible for the Commencement Tests, with associated procedures and schedules.

7.3.1 Seller shall provide draft procedures for the performance of the Commencement Tests (the "Commencement Testing Procedures") as soon as reasonably practicable following the Closing Date and in any case no later than the date falling sixty (60) Days before the date on which the Commencement Tests are anticipated to begin. The Commencement Testing Procedures shall consist of procedures and tests designed to demonstrate that each Unit and the Plant is capable of operating to standards of performance and safety consistent with Applicable Law and in accordance with Good Industry Practices.

7.3.2 Seller shall consult with Buyer in respect of the draft Commencement Testing Procedures and Buyer shall, within twenty (20) Days of receipt of the draft Commencement Testing Procedures under Clause 7.3.1, either confirm that it accepts them (in which case they shall be in agreed form) or provide any reasonable comments on them to Seller. If Seller (acting reasonably) thinks fit, it shall amend the Commencement Testing Procedures to reflect the comments made by Buyer and the Commencement Testing Procedures shall be deemed to be in agreed form.

7.4. Commencement Testing; Commencement Date

- 7.4.1 Buyer shall have the right to attend the Site to witness the Commencement Tests, and receive, within fourteen (14) Days thereafter, a written summary of all the test reports.
- 7.4.2 The Commencement Date for the Plant shall occur on the Day that:
- (a) the results of the Commencement Tests demonstrate that the Plant has attained the minimum criteria for commencement specified in **Schedule Error! Reference source not found.**; and
 - (b) the Independent Engineer has issued a certificate addressed to both Parties, certifying, without material qualification, that Seller has installed all plant and equipment consistent with the requirements of Grid Code and this Agreement, and that Commencement Tests have been satisfactorily completed (**Engineer's Certificate**). The Engineer's Certificate shall certify availability of the Plant to commence and/or continue commercial operations, and state the capacity achieved during the Capacity Test conducted as part of the Commencement Tests (the **Initial Tested Capacity**).
 - (c) The Commencement Date shall not be achieved in the absence of compliance with the Commencement Tests requirements and delivery of a satisfactory Engineer's Certificate.
- 7.4.3 Seller shall, following the issuance of the Engineer's Certificate, notify the Buyer the next Day of the occurrence of the Commencement Date.
- 7.4.4 Buyer shall be required to accept the occurrence of the Commencement Date if and only if all limbs of the definition of Commencement Date have been met. Any dispute as to whether or not the Commencement Date has been met shall be settled in accordance with Clause 22.

7.5. Output during Commencement Testing Period

- 7.5.1 Not less than thirty (30) Days prior to the Commencement Testing Period, Seller shall notify Buyer of its estimate of the Test Power that Seller reasonably expects to be able to make available during the Commencement Testing Period and its estimate of the schedule.
- 7.5.2 Buyer shall be obligated to request the System Operator to dispatch and Buyer shall accept, but not pay for the Test Power generated by Seller during the Commencement Testing Period.

7.6. Authorisations

- 7.6.1 From the Execution Date, the Parties shall, at their own cost and expense, apply for, procure, diligently pursue and, following receipt, maintain (and, where applicable, cause their Contractors to procure and maintain) all Authorisations they are required to obtain and thereafter maintain to fulfil their obligations under this Agreement.

Clause 8 Available Capacity, Capacity Testing

8.1. Calculation of Available Capacity

- 8.1.1 In respect of any Hour, Capacity Payments are calculated in accordance with Schedule 0 in reference to Available Capacity.

8.2. Capacity Testing

8.2.1 Scheduled Capacity Tests

- (a) The Tested Capacity of the Plant shall be verified at least annually by further Capacity Tests that will establish the revised Tested Capacity. Such tests will be conducted in consultation with the System Operator at Seller's expense, or if the System Operator does not participate in such tests, then Seller shall arrange for such tests in accordance with Schedule **Error! Reference source not found.** or the Grid Code as applicable. Seller shall provide Buyer a copy of the report for each Capacity Test conducted.
- (b) No later than one Month prior to the scheduled date of a Capacity Test Seller shall appoint the Independent Engineer to witness the Capacity Test and certify the Capacity Test results to Buyer. The Seller shall obtain the consent of the Buyer before appointing the Independent Engineer. In the event that Seller fails to appoint the Independent Engineer, Buyer may by notice to Seller with a copy to the System Operator call for a Capacity Demonstration.

8.2.2 Buyer Requested Capacity Test or Capacity Demonstration

- (a) If at any time Buyer believes there has been an Outage that Seller has not reported or that there is inaccuracy in the Available Capacity of the Plant, Buyer may by Notice to Seller with a copy to the System Operator call for a Capacity Demonstration or Capacity Test.
- (b) Buyer may also require that a Capacity Demonstration be conducted on a regular or unscheduled basis without any indication of an Outage, *provided that* Capacity Demonstrations required without an indication of an Outage

will be limited to twelve (12) per Contract Year. The request by the Buyer may be a request for synchronous testing of all units operated by the Seller.

- (c) A Capacity Demonstration will not involve any additional compensation or reimbursement of costs to Seller.

8.2.3 Seller Requested Capacity Demonstration or Capacity Test

Seller may, upon request to the System Operator with a copy to Buyer, call for a Capacity Demonstration or Capacity Test at any time at its expense. If a Capacity Test or Capacity Demonstration demonstrates that the Available Capacity is greater or lesser than the then-effective Tested Capacity, then the Available Capacity demonstrated in the Capacity Test or Capacity Demonstration shall be the new Tested Capacity until the next Capacity Test or Capacity Demonstration

8.2.4 Net Electrical Output during Capacity Demonstrations and Capacity Tests

Buyer shall pay for all Net Electrical Output delivered to the Delivery Point during any Capacity Demonstration or Capacity Test.

8.2.5 Disputes as to Tested Capacity

Any Dispute as to the result of a Capacity Demonstration will be resolved by a Capacity Test. Disputes as a result of a Capacity Test shall be resolved in accordance with Clause 22. Pending resolution of the dispute, the Tested Capacity as determined by the test in question shall be deemed to be correct and binding. Resolution of the dispute by arbitration may include awards adjusting payment retrospective to a time prior to the arbitral decision, but in any event no further back than twelve (12) Months.

8.2.6 Availability Event during Tests

In the event that an Availability Event prevents the satisfactory execution or completion of any Capacity Test or Capacity Demonstration, the Capacity Test or Capacity Demonstration shall be repeated and Buyer shall pay any reasonable additional costs incurred in connection with the repetition of such Capacity Test.

8.3. Maintenance of Operating Records

- 8.3.1 Each Party shall keep complete and accurate records and all other data required by each of them pursuant to this Agreement, Applicable Law, the Grid Code, the Market Rules, and Good Industry Practices for the purposes of proper administration of this Agreement. The records and data which the Seller is required to keep under this Agreement include, but are not limited to, an accurate and up-to-date operating log at the Plant in which Seller shall record:

- (a) operations and maintenance manuals and other technical documentation (including electronic files) for all items of equipment incorporated into the Plant and set forth in Schedule 9;
 - (b) test results (including electronic files) for tests performed on the Plant in accordance with Schedule 3;
 - (c) a continuous record of Actual Capacity, Net Electrical Output and bus voltage for each Hour and each Settlement Period. Net Electrical Output and bus voltage records shall be based on a Main Meter unless Seller and the System Operator cannot agree to share data from the Main Meter, in which case Seller shall maintain such records based on data from a Back Up Meter;
 - (d) changes in operating status, Scheduled Maintenance Outages, Unscheduled Outages, Forced Outages or Partial Forced Outages, Ancillary Services provided, Dispatch Instructions and other orders of the System Operator;
 - (e) circuit breaker trip operations requiring a manual reset, partial deratings of equipment; and
 - (f) any other significant event related to the operation of the Plant, and unusual conditions found during inspections.
- 8.3.2 Records required by this Clause 8.3 shall be available for inspection by Buyer upon reasonable advance request by Buyer. Seller shall also grant the Buyer, electronic monitoring access to the real-time operation of the Plant and make meter data available on a real-time basis by remote access to Buyer.
- 8.3.3 All records required under Clause 8.3 shall be maintained for a minimum of sixty (60) Months after the creation of such record or data, or such longer period as may be required by the Market Rules or other requirement. Either Party shall have the right, upon reasonable prior Notice to the other Party, and at reasonable times during normal office Hours, to examine the records and data of the other Party relating to this Agreement or the operation and dispatch of the Plant.

8.4. Monthly Reports

During the Delivery Term, Seller shall provide to Buyer Monthly reports that include the information in Clause 8.3 no later than ten (10) Days after the end of each Month, with such information and in such form as Buyer shall reasonably request, by electronic mail and hard copy, covering operations of the Plant for the previous Month. Each Monthly report shall include all information maintained in the operations record. The Monthly report shall also include non-binding estimates of capacity availability and non-binding requirements for Scheduled Maintenance Outages for each of the following twelve (12) Months and such other information related to the operation and maintenance of the Plant that Buyer reasonably requests.

8.5. Annual Report

From the Commencement Date for the Plant, Seller shall deliver to Buyer an annual operating and maintenance report for each Contract Year, within two (2) Months following the expiration of each Contract Year. Each annual report shall include a complete operation and maintenance report for the previous Contract Year and Seller's preliminary operations and maintenance plans for the then-current and next following Contract Years.

8.6. Rebate on Overpayment

In the event that:

- (a) an Availability Event occurs; and
- (b) the Availability Event is cured or otherwise ceases to remain in effect; and
- (c) no new Availability Event occurs; and
- (d) Seller fails during any of the six Hours that follow the cessation of the Availability Event to deliver Net Electrical Output equal to the lower of (i) the amount dispatched by the System Operator, or (ii) the amount calculated by reference to the Actual Capacity that corresponds to the Available Capacity on which Capacity Payments were calculated for the duration of the Availability Event,

then a retrospective rebate of Capacity Payments shall be made in proportion to such overstatement of Available Capacity. The period of such overstatement shall be deemed to be the period since the later of:

- (i) the date that occurred one month prior to the commencement of the Availability Event;
- (ii) the last Capacity Test or uncontested Capacity Demonstration used to establish or confirm Available Capacity; or
- (iii) the end of the last Hour of the last twenty-four (24) consecutive Hours during which the Plant delivered Net Electrical Output of not less than the lower of (a) the Net Electrical Output that corresponds to the Actual Capacity declared for the Hour in question, or (b) the Net Electrical Output dispatched by the System Operator.

Clause 9 Operation and Maintenance

9.1. Operation and Maintenance

Seller shall at all times during the Term, either directly or through a contractor, operate and maintain the Plant in accordance with this Agreement, Good Industry Practices, and

Applicable Law, and the requirements set forth in **Error! Reference source not found.** The appointment of an operations and maintenance contractor by Seller shall not relieve Seller of any of its obligations or excuse Seller from any obligations under this Agreement, Good Industry Practices, and Applicable Law regarding the design, construction, insurance, operation, and/or maintenance of the Plant, or any liability whatsoever resulting from a breach of any term or condition of this Agreement

9.2. Scheduled Maintenance Outages

Seller shall be entitled in each Contract Year to Scheduled Maintenance Outages in accordance with this Clause 9 at its own cost. For the avoidance of doubt, Buyer has no obligation to pay for capacity which is not available due to Scheduled Maintenance Outages.

9.3. Scheduling of Scheduled Maintenance Outages

The schedule for Scheduled Maintenance Outages for each Contract Year shall be established as follows:

- 9.3.1 Seller shall use Reasonable Endeavours to coordinate with Gas Supplier to align its Scheduled Maintenance Outages with the scheduled maintenance outages proposed by the Gas Supplier.
- 9.3.2 Not later than ninety (90) Days before the Commencement Date, Seller shall submit to System Operator and Buyer proposed dates for Scheduled Maintenance Outages during the following Contract Year.
- 9.3.3 Following the Commencement Date, Seller shall submit no later than one hundred twenty (120) Days before each Contract Year to System Operator and Buyer proposed dates for Scheduled Maintenance Outages during the following Contract Year.
- 9.3.4 If within twenty (20) Days after receiving Seller's proposed dates, System Operator or Buyer notifies Seller of alternative dates for Scheduled Maintenance Outages which System Operator or Buyer prefers, the Parties shall consult and Seller shall use its Reasonable Endeavours to accommodate System Operator's or Buyer's proposal provided such request would not defer maintenance required at a particular time by Good Industry Practices.
- 9.3.5 Not less than thirty (30) Days before the start of the relevant Contract Year, Seller shall issue a final schedule for Scheduled Maintenance Outages after consultation under this Clause 9.3; *provided that*, where no agreement was reached, the last notified alternative dates provided by Buyer and the System Operator shall prevail.

9.4. Rescheduling of Scheduled Maintenance Outages

The Parties shall cooperate and use their Reasonable Endeavours to accommodate any reasonable request by either Party to reschedule any Scheduled Maintenance Outage

provided (i) such request would not defer maintenance required at a particular time by Good Industry Practices, and (ii) the Party requesting a schedule change agrees to compensate the other Party for any reasonable additional costs and expenses. For the avoidance of doubt either Party shall be entitled to reschedule a Scheduled Maintenance Outage(s) without compensating the other Party if and to the extent that such rescheduling is required for health or safety reasons, to avoid damage (or the threat of imminent damage) to the Plant or equipment, or if such rescheduling is required by Good Industry Practices.

9.5. Unscheduled Outages

Seller shall advise Buyer and System Operator of the need for any Unscheduled Outage, together with the proposed commencement date and estimated duration of the work to be undertaken. Buyer and System Operator shall advise Seller of the periods during which such Unscheduled Outage may be undertaken, such periods to be reasonable in light of Buyer's requirements for Net Electrical Output and System Operator's requirements for Ancillary Services and the necessity for the Unscheduled Outage. For the avoidance of doubt, Buyer has no obligation to pay for capacity which is not available due to an Unscheduled Outage.

9.6. Notification of Forced Outages or Partial Forced Outages

- 9.6.1 Seller shall advise Buyer of any Forced Outage or Partial Forced Outage and shall, as such information becomes available and is updated from time to time, keep Buyer informed as to the estimated duration of the work to be undertaken and the estimated conclusion of the Forced Outage or Partial Forced Outage.
- 9.6.2 Seller shall be responsible for providing notice to System Operator of any Forced Outages or Partial Forced Outages, as required under the Grid Code.
- 9.6.3 For the avoidance of doubt, Buyer has no obligation to pay for capacity which is not available due to a Forced Outage or Partial Forced Outage.

Clause 10 Scheduling Notices

10.1. Declarations

- 10.1.1 During the Delivery Term, not later than 12:00 Hours on the Day prior to each Operating Day, Seller shall notify Buyer of the Available Capacity of the Plant and the projected Actual Capacity of the Plant for each Settlement Period of such Operating Day. If Seller fails to give such notice on or before 12:00 Hours, the Available Capacity for each Settlement Period of such Operating Day shall be deemed to be equal to the Available Capacity for each Settlement Period declared by Seller for the immediately previous Operating Day or for the last Operating Day

on which Seller notified Buyer of the Available Capacity and the projected Actual Capacity in accordance with this Clause 10.1.

10.1.2 In the event that an Availability Event makes it impossible for Seller to provide some or all of the Available Capacity that Seller would have been able to provide in the absence of the Availability Event, Seller shall notify Buyer (or revise any such information previously given) as soon as is practicable. In the event that Seller encounters continued Availability Events, Buyer shall issue Daily Notices to Seller stating the Available Capacity of the Plant (which would be available but for the Availability Event).

10.1.3 Subject to the Market Rules and Grid Code, Buyer shall issue to Seller and the System Operator not later than six (6) Hours before the start of each Operating Day non-binding requirements for Net Electrical Output for each Settlement Period of the Operating Day.

10.1.4 Seller shall be responsible for notifying the System Operator of the Available Capacity and the projected Actual Capacity of the Plant in accordance with the Grid Code.

10.2. Dispatch Projection by Buyer

10.2.1 Buyer may request the dispatch of all available Net Electrical Output from the Plant for a Contract Year. If Buyer anticipates exercising its right to accept less than all of the Net Electrical Output that could be delivered from the Plant during the Delivery Term, Buyer shall provide Seller with the following non-binding estimated requirements of Net Electrical Output:

- (a) Annual estimated requirements of Net Electrical Output on a month-to-month basis no later than forty-five (45) Days prior to the start of each Contract Year;
- (b) Monthly estimated requirements of Net Electrical Output on a day-by-day basis no later than twenty (20) Days prior to the beginning of each Month and provisionally for the following two months; and
- (c) Weekly estimated requirements of Net Electrical Output on a Hour-by-Hour basis no later than forty-eight (48) Hours prior to the beginning of each week, and provisionally, for the following week.

10.2.2 Seller shall provide Buyer with the following non-binding forecasts of Available Capacity following the Commencement Date:

- (a) Annual forecasts of Available Capacity on a month-to-month basis no later than forty-five (45) Days prior to the start of each Contract Year;
- (b) Monthly forecasts of Available Capacity on a day-by-day basis no later than twenty-two (22) Days prior to the start of each Month; and

- (c) Weekly forecasts of Available Capacity and projected Actual Capacity per Settlement Period no later than forty-eight (48) Hours prior to the start of each week.

10.3. Buyer Nominations

10.3.1 Daily Notices

- (a) During the Delivery Term, the entire Actual Capacity of the Plant may be made available by Seller for dispatch by System Operator pursuant to the Grid Code. Buyer is entitled to take the entire Net Electrical Output associated with the Actual Capacity if dispatched by the System Operator or a lesser amount. If Buyer does not want to take the entire Net Electrical Output that could be dispatched by the System Operator, Buyer will provide notice to Seller and the System Operator of a lesser Nominated Quantity required to be made available by Seller at the Delivery Point in respect of each Hour for the next Day (**“Daily Notices”**), but no notice will prejudice any authority of System Operator to fully dispatch the Plant.
- (b) The Nominated Quantity which is specified by Buyer in a Daily Notice shall not, with respect to any Hour, exceed the maximum Net Electrical Output corresponding to the projected Actual Capacity declared by Seller for such Hour in accordance with Clause 10.1.
- (c) Other restrictions on Nominated Quantity will be governed by the Grid Code.
- (d) If a Daily Notice is not given by Buyer in accordance with the requirements of this Clause 10.2.2(c), then Buyer shall be deemed to have elected to take the entire Net Electrical Output associated with the Actual Capacity of the Plant; *provided that*, subject to the Grid Code and Market Rules, if Buyer has previously notified Seller and System Operator of a Nominated Quantity for a multi-day period, the Nominated Quantity for such period shall equal the Nominated Quantity specified in such Daily Notice
- (e) At any time Seller issues a Reallocation Notice pursuant to Clause 2.1.3, the Actual Capacity of the Plant shall not be deemed to include the Reallocated Capacity with respect to the Parties' obligations under this Clause 10.3.1.

10.3.2 Variation Notice

- (a) Buyer may at any time give a notice (a **“Variation Notice”**) to Seller and the System Operator of its requirement to vary a Nominated Quantity consistent with Applicable Law, the Grid Code, Market Rules and Good Industry Practices.

10.3.3 Upon receipt of Buyer's nominations, Seller shall procure the operation of the Plant pursuant to the nominations given in accordance with this Clause 10. Seller may

however refuse to comply with nominations where such operations would violate Good Industry Practices, the Grid Code or Market Rules, would conflict with a Scheduled Maintenance Outage, or would not be in accordance with Applicable Law or the Technical Limits.

10.3.4 Seller Responsible for Deviations, Exceptions

- (a) Seller shall have sole responsibility for all notices or declarations required to be provided by Seller to the System Operator under the Grid Code or Market Operator under the Market Rules.
- (b) Seller shall have sole responsibility for any charges, penalties or similar amounts resulting from deviations between the Net Electrical Output during any Settlement Period and any notices or declarations provided by Seller to the System Operator under the Grid Code or Market Operator under the Market Rules.

Clause 11 Metering

11.1. Metering

11.1.1 Metering of Net Electrical Output, reactive power, voltage, and power quality by the Parties for the purposes of this Agreement shall be done in accordance with the Metering Code. Seller may maintain additional meters which are not for trading purposes that do not conform to the Metering Code.

11.1.2 The provisions of the Metering Code shall supersede the provisions of this Agreement in the event of a conflict if the relevant provisions are mandatory in their application and no derogation from their application is permitted by the Commission.

11.2. Main Meters and Back Up Meters

In addition to the official meter installed by the Transmission Company of Nigeria (the **Main Meter**), Seller shall at its cost and expense supply, install and maintain one or more revenue-quality meters, recording equipment, telemetry, and related equipment (each a **Back Up Meter**) to be used for measurement of Net Electrical Output delivered at the Delivery Point, reactive power, voltage and power quality. At least one Back Up Meter shall be installed and maintained in a manner qualifying it to be designated by the Market Operator as a back-up meter for purposes of the Market Rules. The Metering System will be jointly sealed by Buyer and Seller and the metering equipment measurement accuracy and specifications shall be in conformity with Applicable Law, the Metering Code, and Good Industry Practices. The operation of all such meters supplied, installed, and maintained by Seller will conform to the standards and specifications set out in the Metering Code and Seller shall provide the Market Operator with reasonable access to the metering equipment for inspection.

11.3. Metering Code

Buyer and Seller shall abide by the Metering Code issued by the Market Operator and the Market Rules.

11.4. Delivery of Meter Data

Seller will ensure that data from any meter controlled by Seller is sent (i) to the System Operator or to the Market Operator on a real time basis and in the proper format as specified in the Metering Code and (ii) to Buyer, and to do so on a real time basis at such time as Buyer is prepared to receive such data stream. Seller will request the System Operator or the Market Operator as applicable to send data from any meter controlled by System Operator or the Transmission Company of Nigeria to Buyer, and to do so on a real time basis at such time as Buyer is prepared to receive such data stream.

11.5. Meter Failure or Inaccuracy

11.5.1 In the event that a failure, inaccuracy or defect in a metering device used to report data to the Market Operator, or any meter designated as a back-up meter by the Market Operator, whether or not used to report data to the Market Operator, becomes known to Seller, Seller shall inform the Market Operator in accordance with the Metering Code, and in any case as soon as reasonably practicable. Subject to the Metering Code, Seller shall repair, replace, and/or recalibrate any Back Up Meter owned by it at its own expense and in accordance with the Metering Code.

11.5.2 Subject to Market Rules, if there is a Defective Metering Event in relation to an official meter, then the official measurement of Net Electrical Output shall be determined in accordance with this Clause 11.5.2.

11.5.2.1 If the Parties and the Market Operator are able to agree on the amount of any error due to a Defective Metering Event, then the erroneous measurements of Net Electrical Output shall be corrected by such amount.

11.5.2.2 If the Parties and the Market Operator are unable to agree on the amount of any error caused by a Defective Metering Event, then the percentage error by which the official meter is to be corrected, for the period determined in accordance with this Clause 11, shall be determined (i) by reference to the back-up meter designated by the Market Operator or the Back Up Meter, in such order, or by calibration, tests or mathematical calculation, or (ii) if the percentage of error is not ascertainable in either manner, by estimating on the basis Net Electrical Output under similar conditions during the period before the last test.

11.5.2.3 If a correction is to be made pursuant to Clause 11.5.2, then such correction shall be made to readings given by the official meter for the period commencing on (a) the Day of the Defective Metering Event, if such Day can be established to the reasonable mutual satisfaction of the Parties, or (b) if the Day of the Defective Metering Event cannot be established to the

reasonable mutual satisfaction of the Parties, the Day which is halfway between the Day of the immediately preceding test of such metering device and the Day the Defective Metering Event was discovered.

11.5.2.4 Any corrections pursuant to this Clause 11.5.2 will be reflected in the next invoice following determination of the amount, and the appropriate Party shall pay the other Party the difference between the amount previously paid and the amount finally determined to be due.

11.6. Assurances Regarding Meter Tampering

The Parties undertake not to tamper with or otherwise interfere with any part of the Main Meters or Back Up Meters in any way, and shall use reasonable precautions in accordance with Applicable Law, Good Industry Practices, the Market Rules and the Metering Code to ensure that the Main Meters and Back Up Meters are secure and are not tampered with by any other person.

11.7. Notice of Meter Tampering

If, at any time, either Party discovers that any part of the Main Meter used by the Market Operator or a Back Up Meter has been tampered with, or as a result of any other action or inaction such device may be unfit for the purpose of such device, that Party shall report such event to Market Operator for necessary actions.

11.8. Meter Design; Commissioning and Sealing

The Market Operator shall be responsible for approving initial designs and for the testing, commissioning and sealing of the Main Meters and Back Up Meters in accordance with the Metering Code.

11.9. Daily Meter Reading

Unless continuous telemetered data is made available to Buyer by the System Operator, Seller shall have the Main Meters read daily and report such data to Buyer as part of the Daily Notice delivered to Buyer. Such data will include all of the available details as to Net Electrical Output, reactive power, voltage and other Grid conditions as may be available and shall be provided in a form readily usable by Buyer.

11.10. Metering Inspection and Testing

Seller shall have the Back Up Meters inspected and tested in accordance with the Metering Code but in any event at least annually, and may have such inspection and testing performed at any time at its discretion, all at its own expense. Buyer shall have the right to be present at any meter test. Upon request by Buyer on reasonable notice and not more frequently than once a month, Buyer may request an additional inspection or test of a Back Up Meter. The actual expense of any additional inspection or testing will be borne by Buyer, unless upon such inspection or testing, the metering device is found to register inaccurately by more than the Metering Tolerance, in which event the expense of the

requested additional inspection or testing will be borne by Seller. If requested by Buyer, Seller will, without charge, provide copies of any inspection or testing reports to Buyer.

Clause 12 Delivery

12.1. Delivery Point

Delivery of Net Electrical Output shall be at the Delivery Point.

12.2. Title and Risk

Title to control of, and risk of loss of or damage to, custody, and liability for injury or damage caused by Net Electrical Output delivered under this Agreement shall pass from Seller to Buyer at the Delivery Point, provided however that the Buyer assumes no liability for the provision of transmission services under this Agreement.

Clause 13 Billing and Payment

13.1. Settlement Statement Quantities used for Invoicing

The Parties agree to use the quantities in the Market Operator Settlement Statements as the basis for the calculation and invoicing of Energy Payments, Capacity Payments, and any other payments that are payable under this Agreement; *provided that*, if there is a conflict between the information contained in a Market Operator Settlement Statement and Seller's record of the data that are the source of that information, Seller shall follow the procedures for correction of the data established in the Market Rules or the Market Procedures and may submit an invoice based on the revised Market Operator Settlement Statement at the conclusion of such procedures.

13.2. Invoice

Every invoice to Buyer shall specify:

- (a) the actual Net Electrical Output delivered to Buyer in each Hour occurring during the previous Billing Period;
- (b) the actual Capacity in each Hour occurring during the previous Billing Period; and
- (c) a detailed computation of any payment amounts calculated pursuant to Schedule 6 for the previous Billing Period,

and shall include such supporting information, calculations and documentary evidence as may be reasonably necessary to substantiate the amounts claimed in the invoice, including, but not limited to the Actual Capacity of the Plant

13.3. Daily Settlement Statements from Seller

- 13.3.1 Seller shall provide to the System Operator, the Market Operator, and Buyer a daily settlement statement (a "Seller Settlement Statement") evidencing:
- (a) the Net Electrical Output delivered to Buyer in each Hour occurring during the previous Day;
 - (b) the Actual Capacity in each Hour occurring during the previous Day;
 - (c) the occurrence of any Availability Event in each Hour occurring during the previous Day.
- 13.3.2 The Seller Settlement Statement shall be provided not later than 12:00 Hours on the Day following the Day it covers, or so soon thereafter as is practicably possible.
- 13.3.3 Seller shall use its Reasonable Endeavours to assure that the information provided in the Seller Settlement Statement is correct and accurate. Seller undertakes to use its Reasonable Endeavours to correct any errors discovered in the Seller Settlement Statement as soon as possible.

13.4. Billing and Payment

- 13.4.1 For each Billing Period during the Delivery Term, Seller shall submit to Buyer an invoice for any amounts due from Buyer to Seller pursuant to this Agreement, with any amounts denominated in US Dollars under this Agreement stated in US Dollars, and with any amounts denominated in Naira under this Agreement stated in Naira.
- 13.4.2 Any undisputed portion of the payments shown in such invoice as due to Seller shall be paid by Buyer in Naira on or before the fifteenth (15th) Business Day following the Day the invoice is delivered to Buyer, with any amount denominated in US Dollars in the invoice converted from US Dollars to Naira at the Exchange Rate on the date of payment.
- 13.4.3 Buyer shall have the right to review an invoice or statement prepared by Seller, and if it disagrees with the determination of the amount payable under such invoice or statement, may request clarification and substantiation of such invoice or statement. Buyer shall use its Reasonable Endeavours to review invoices promptly and notify Seller of an error it believes to exist in such invoice within ten (10) Business Days of becoming aware of such error.
- 13.4.4 Where Buyer disputes an invoice or any portion thereof, it shall declare a Dispute and refer the same for determination in accordance with Clause 22 of this Agreement. If any invoice or any portion thereof is disputed by Buyer, Buyer shall pay the portion of the invoice that is not disputed and withhold the disputed portion until any Dispute in relation thereto is determined in accordance with dispute resolution provisions in Clause 22 of this Agreement.

- 13.4.5 Each Party shall have the right to set off against any amounts payable by it to the other Party hereunder any and all amounts then due and payable to it by the other Party hereunder. Such rights of setoff shall relate only to amounts payable by the Parties under this Agreement and only to amounts that are then due and payable to and by a Party and not to any amounts which have been disputed by the Party against whom such amounts are claimed in accordance with the terms of this Agreement.
- 13.4.6 Buyer shall pay interest at the Agreed Interest Rate (Local) on any unpaid amounts invoiced in Naira and due and payable under this Clause 13.4 from the date payment was due, up to and including the date on which payment is made, except in circumstances where Buyer disputes an invoice or any portion thereof, and any Dispute referred in relation thereto is resolved in its favour (in which case interest shall not apply in respect of the amount that was resolved in Buyer's favour).
- 13.4.7 Buyer shall pay interest at the Agreed Interest Rate (Foreign) on any unpaid amounts invoiced in US Dollars and due and payable under this Clause 13.4 from the date payment was due, up to and including the date on which payment is made, except in circumstances where Buyer disputes an invoice or any portion thereof, and any Dispute referred in relation thereto is resolved in its favour.
- 13.4.8 Where Buyer disputes an invoice or any portion thereof and the Dispute referred in relation thereto is resolved in favour of Seller, Buyer shall promptly pay the disputed portion that has been resolved in Seller's favour with interest thereon at the Agreed Interest Rate (Foreign) or Agreed Interest Rate (Local), as applicable.

13.5. First and Last Billing Period

Without prejudice to Clause 2.1.1., if, due to any reason, a Billing Period begins in the middle of a Month, for that Month the Billing Period shall commence on the relevant start date and continue until the end of the Month, and the Capacity Payment, if any, shall be invoiced on a pro-rata basis. If the Term expires or is otherwise terminated prior to the end of a Month, the last Billing Period shall cover the period from the beginning of the Month through and including the date of expiration or termination, and the Capacity Payment, if any, shall be invoiced on a pro-rata basis.

Clause 14 Prices

14.1. Capacity Payments

- 14.1.1 During the Delivery Term, Buyer shall pay to Seller Monthly in arrears the Capacity Payment calculated in accordance with Schedule 0 for the relevant Billing Period.

14.2. Energy Payments

During the Delivery Term, Buyer shall pay Seller each Month in arrears the Energy Payment for each MWh of Net Electrical Output calculated in accordance with 0 for the previous Billing Period.

14.3. Change in Electricity Market Fundamentals

14.3.1 Upon the occurrence of a material change in any of the key fundamentals underpinning the functioning of the electricity market, including, but not limited to:

- (a) Change in the weighted average cost of electric power procured by the Buyer;
 - (b) Successful conduct of competitive procurement of electric power by the Buyer;
 - (c) Further evolution of the electricity market as provided for in the Market Rules,
- the Buyer is entitled to request for a meeting with the Seller to discuss possible modifications to the Agreement including any adjustment to the terms of the contract or the tariff, to ensure continued alignment with the public interest.

14.3.2 Upon a request for a meeting pursuant to Clause 14.3.2, the Parties shall meet within thirty (30) days of the request to discuss the issues raised by the Buyer.

14.3.3 Any agreement reached by the Parties relating to the Agreement shall be documented in writing as an amendment to the Agreement, and shall take effect subject to the approval of the Commission.

14.4 Refinancing of the Plant

14.4.1 If at any time, Seller seeks to have the financial indebtedness of Seller in connection with the Project refinanced or restructured (a **Refinancing**) Seller shall notify Buyer in writing.

14.4.2 Seller and Buyer agree to meet within thirty (30) days of the receipt of a notice referred to in Clause 14.4.1 to discuss and agree the basis on which Seller may attempt to procure the Refinancing. Seller and Buyer agree that to the extent that a Refinancing is put into effect, the benefit of such Refinancing to Seller will be equally shared between Seller and Buyer. The determination of the benefit of a refinancing or otherwise, shall be done by an international financial advisor acceptable to both parties (or failing agreement, the international financial advisor shall be appointed by the International Centre for Expertise in accordance with the provisions for the appointment of experts under the Rules for Expertise of the International Chamber of Commerce within fifteen (15) Days of such referral). The

Seller shall bear the cost of the international financial advisor. The determination of the international financial advisor shall be final and binding on the Parties.

14.4.3 The Buyer shall be entitled to, and shall elect to receive either a lump sum payment or an adjustment to the Charge Rates in order to claim the benefit of the Refinancing.

Clause 15 Insurance

15.1. Required Insurance Coverage

Seller shall, at its own cost and expense, obtain and maintain insurance coverage as may be prescribed in its licence issued by the Commission. The insurer must be an insurance company licensed to offer insurance services in Nigeria by the National Insurance Commission.

Clause 16 Taxes

16.1. Liability for Taxes

Each Party shall be responsible for and shall pay or cause to be paid all Taxes arising in respect of its facilities, taxes based on its income, profits, and capital gains, and all other taxes arising from the generation, sale, and delivery or receipt of capacity and/or energy at the Delivery Point as contemplated in this Agreement in accordance with Applicable Law. If a Party has a legal responsibility to collect any Tax directly from the other Party for payment to the appropriate taxing authorities, such as value added tax (VAT), the portion of any payment representing such Tax shall be separately stated in the invoice.

16.2. Proof of Payment

Parties shall fulfil any withholding and tax retention obligations imposed by Applicable Law. If a Party is required to withhold Tax from payments to the other Party as required by Applicable Law, the Party withholding such Tax shall, upon request from the other Party, provide a withholding tax receipt or other evidence of withholding and payment as required by the applicable tax jurisdiction.

16.3. Tax Indemnity

16.3.1 Each Party agrees to defend, indemnify in full and hold the other Party harmless from liability to any Relevant Authority resulting from failure of the Indemnifying Party or Indemnifying Party's employees' failure to make timely payment of, or

timely filings with respect to, any obligations to pay Taxes incurred in respect of any payments under this Agreement. Such indemnities shall include all penalties and interest imposed in addition to the Taxes due as a result of Indemnifying Party's or Indemnifying Party's employees' failure to comply with reporting, filing, payment or procedural requirements to discharge its tax obligations.

Clause 17

Liability and Indemnification

17.1. Limitation of Liability

17.1.1 With respect to any and all matters arising out of, or in connection with this Agreement, except as expressly provided in this Agreement, neither Party shall be liable to the other Party in contract, tort, warranty, strict liability or any other legal theory for any indirect, consequential, incidental, punitive or exemplary damages, loss of use, loss of contract, loss of opportunity or loss of profit. In respect of a breach of the provisions of this Agreement, neither Party shall have any liability to the other Party save as expressly stated in this Agreement; *provided, however*, that this provision is not intended to constitute a waiver of any rights of one Party against the other with regard to matters unrelated to this Agreement.

17.1.2 Notwithstanding Clause 17.1.1 or Clause 17.6, each Party shall be liable to the other Party for any loss or damage arising by virtue of Gross Negligence or Wilful Misconduct.

17.2. Mitigation of Damages

Each Party shall use Reasonable Endeavours to mitigate or avoid any loss or damage caused by the failure of the other Party to meet its obligations under this Agreement, whether or not such failure is the result of a Force Majeure Event.

17.3. Mutual Indemnifications

17.3.1 Subject to Clause 17.6, Buyer shall indemnify Seller against, and hold Seller harmless from, at all times after the date hereof, any and all losses, and any and all actions, claims and demands in respect of such losses, incurred, suffered, sustained, or required to be paid, directly or indirectly, by, or sought to be imposed upon, Seller for personal injury or death to persons or damage to property arising out of the negligent or intentional acts or omissions of Buyer in connection with this Agreement or relating to electrical energy at and after delivery at the Delivery Point.

17.3.2 Subject to Clause 17.6, Seller shall indemnify Buyer against, and hold Buyer harmless from, at all times after the date hereof, any and all losses, and any and all actions, claims and demands in respect of such losses, incurred, suffered, sustained, or required to be paid, directly or indirectly, by, or sought to be imposed upon, Buyer for personal injury or death to persons or damage to property arising out of

the negligent or intentional acts or omissions of Seller or breach of representations and warranties by Seller in connection with this Agreement or relating to electrical energy on Seller's side of the Delivery Point.

17.4. Notice of Claims

Each Party shall promptly notify the other Party of any loss, claim, action, demand or proceeding in respect of which it is or may be entitled to indemnification under Clause 17.3. Such notice shall be given as soon as reasonably practicable after the relevant Party becomes aware of the loss, claim, action, demand or proceeding. Failure to give such notice in a timely fashion shall not affect the Indemnified Party's rights to indemnification hereunder except to the extent that the Indemnifying Party is materially prejudiced thereby.

17.5. Defence of Claims

17.5.1 The Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding at its expense with legal advisers of its selection reasonably satisfactory to the Indemnified Party, provided it gives prompt Notice of its intention to do so to the Indemnified Party.

17.5.2 Unless and until the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party and assumes control of the defence of a claim, suit, action or proceeding in accordance with Clause 17.6, the Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate, with legal advisers of its own selection, any claim, action, suit or proceeding by any third party alleged or asserted against the Indemnified Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and the reasonable costs thereof shall be subject to the indemnification obligations of the indemnifying party hereunder.

17.5.3 Upon assumption by the Indemnifying Party of the control of the defence of a claim, suit, action or proceeding, the Indemnifying Party shall reimburse the Indemnified Party for the reasonable costs and expenses of the Indemnified Party in the defence of the claim, suit, action or proceeding prior to the Indemnifying Party's acknowledgement of the indemnification and assumption of the defence.

17.5.4 Following the acknowledgement of the indemnification and the assumption of the defence by the Indemnifying Party, the Indemnified Party shall have the right to employ its own legal advisers and such legal advisers may participate in such claim, suit, action or proceeding, but the fees and expenses of such legal advisers shall be at the expense of such Indemnified Party, when and as incurred, unless (i) the employment of legal advisers by such Indemnified Party has been authorized in writing by the Indemnifying Party, (ii) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defence of such action, (iii) the Indemnifying Party shall not in fact have employed independent legal advisers reasonably satisfactory to the Indemnified Party to assume the defence of such

action and shall have been so notified by the Indemnified Party, or (iv) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either that there may be specific defences available to it that are different from or additional to those available to the Indemnifying Party. If clauses (ii), (iii) or (iv) of the preceding sentence shall be applicable, then legal advisers for the Indemnified Party shall have the right to direct the defence of such claim, action, suit or proceeding on behalf of the Indemnified Party and the reasonable fees and disbursements of such legal advisers shall constitute legal or other expenses, subject to the indemnification obligations of the Indemnifying Party.

17.6. Limitation on Indemnification

Each Party shall be solely liable, and shall not be entitled to assert any claim for indemnification under this Agreement for any loss that would otherwise be the subject of indemnification under this Agreement until all losses of such Party arising during the current Contract Year exceed the Minimum Indemnification Amount. For purposes of this Clause 17, a loss (or claim for indemnification) shall be deemed to arise in the Year during which the event giving rise to the loss (or claim for indemnification) occurred or, in the case where the event is continuing in more than one Year, in the Contract Year during which the event ends, *provided that* a Party shall not be obliged to refrain from making a claim under this Clause 17.6 (where it is otherwise entitled to do so) at the end of a given year (**Year End**) by reason of the fact that the event in question (**Relevant Event**) is still continuing, and provided further that in the event that such Party does make such a claim at the Year End it shall continue to be able to claim in relation to all remaining losses arising from the Relevant Event regardless of when they occur.

17.7. Fines and Penalties

Any fines or other penalties incurred by either Party for non-compliance with Applicable Law or Authorisations shall not be reimbursed by the other Party but shall be the sole responsibility of the fined or penalized Party except where the non-compliance is caused by the negligence or intentional act or omission of, or breach of this Agreement by, the other Party.

17.8. No Fine or Penalty

For the avoidance of doubt, Buyer acknowledges and agrees that the payment of amounts to Seller following a termination of this Agreement or any amount payable under or pursuant to Clause 17.3 shall not in any way consist or be deemed to be the payment by Buyer of a fine or a penalty that has been incurred by Seller or which Seller is responsible for.

17.9. Allocation of Liability

In the event that any loss for which indemnification can ordinarily be claimed under this Agreement, results from the joint or concurrent negligent or intentional acts or omissions of the Parties, each Party shall be liable under this indemnification in proportion to its relative degree of fault.

Clause 18 Default & Early Termination

18.1. Early Termination

18.1.1 Subject to any applicable cure period and notice requirements, each Party shall have the right to terminate this Agreement prior to the expiration of its Term upon the occurrence of any of the following events:

- (a) The mutual agreement of the Parties;
- (b) The delivery of a Termination Notice by Buyer pursuant to Clause 18.2 following a Seller Default;
- (c) The delivery of a Termination Notice by Seller pursuant to Clause 18.3 following a Buyer Default;
- (d) The delivery of a Termination Notice by either Party pursuant to Clause 21.8 following the occurrence of a Prolonged Force Majeure Event;
- (e) The delivery of a Termination Notice by either Party pursuant to Clause 21.9.

18.1.2 The expiration or earlier termination of this Agreement (as provided in Clause 18.1.1) shall be without prejudice to any rights, obligations, and remedies arising out of or in connection with this Agreement, which have vested, matured or accrued to either Party before the date of the expiration or termination.

18.2. Seller Default

Each of the following shall be a **Seller Default** which, if not cured within the time permitted (if any) under this Agreement, shall give rise to the right on the part of Buyer to terminate this Agreement pursuant to Clause 18.1, *provided, however*, that no such event shall become a Seller Default if it results from (i) a Buyer Default, or (ii) the Gross Negligence or Wilful Misconduct of Buyer, or (iii) the occurrence of a Force Majeure Event, or (iv) the occurrence of an Availability Event:

- (a) (I) A breach by Seller of its obligations other than those referred to elsewhere in this Clause 18.2 which adversely affects the performance of its material obligations under this Agreement which continues for thirty (30) Days which has not been cured during a cure period of a further thirty (30) Days from receipt of a Cure Notice, or if such failure cannot be remedied within such thirty day (30) cure period but is susceptible of remedy within a longer period, such thirty (30) day period shall be extended for up to an additional sixty (60) days so long as (x) Seller has commenced action reasonably planned to remedy such default and continues diligently to pursue such action and (y) such default could not reasonably be expected to

have a material adverse effect on Buyer during such extended cure period), or (II) A series of breaches by Seller of any of its obligations other than those referred to elsewhere in this Clause 18.2 which adversely affects the performance of its material obligations under this Agreement which continues for an aggregate of ninety (90) Days in any year, for which there shall be no further cure period;

- (b) Any Acts of Insolvency in respect of Seller;
- (c) A breach by Seller of the provisions of Clause 20 (*Transfer*) occurs;
- (d) A breach by Seller of its obligation to obtain and maintain the insurances required under Clause 15 of this Agreement which has not been cured during a Cure Period of thirty (30) Days from receipt of a Cure Notice;
- (e) Any statement, representation, or warranty made by Seller herein or in any certificate or other contract delivered or made under or pursuant to this Agreement proving to have been incorrect in any material respect, when made or when deemed to have been made, which inaccuracy has a material adverse effect on the ability of either Party to perform its obligations under this Agreement which has not been cured during a cure period of thirty (30) Days from receipt of a Cure Notice (or if such inaccuracy cannot be remedied within such thirty day (30) cure period but is susceptible of remedy within a longer period, such thirty (30) day period shall be extended for up to an additional sixty (60) days so long as (x) Seller has commenced action reasonably planned to remedy such default and continues diligently to pursue such action and (y) such default could not reasonably be expected to have a material adverse effect on Seller during such extended cure period);
- (f) Revocation, cancellation, or withdrawal of this Agreement by Seller or of any Authorisation applicable to Seller as a result of breach of any terms and/or conditions imposed by any Authorisation that, in the case of such Authorisation, has a material adverse effect on the ability of either Party to perform its obligations under this Agreement and such failure is (i) not a Lapse of Authorisation and (ii) continues for a period of sixty (60) Days (or such longer period permitted by Applicable Law);
- (g) Termination of the Connection Agreement as a result of breach or default by Seller;
- (h) Failure by Seller to obtain or maintain any Authorisation required under Applicable Law or by a Relevant Authority in order for it to perform its material obligations pursuant to this Agreement and such failure is (i) not a Lapse of Authorisation and (ii) continues for a period of sixty (60) Days (or such longer period permitted by Applicable Law);

- (i) any failure by Seller to pay to Buyer any undisputed sum of money due and owing within thirty (30) Days from the date when such sum was first due and demanded *provided, however*, that no such failure to pay shall constitute a Seller Default in the event that Buyer receives the sum of money due and owing by exercise of right of set off pursuant to Clause 13.4.5.

18.3. Buyer Default

Each of the following shall be a **Buyer Default**, which, if not cured within the time permitted (if any) under this Agreement, shall give rise to the right on the part of Seller to terminate this Agreement pursuant to Clause 18.1, *provided, however*, that no such event shall become a Buyer Default if it results from (i) a Seller Default or an action or inaction of Seller in breach of any Project Document; or (ii) the Gross Negligence or Wilful Misconduct of Seller; or (iii) the occurrence of a Force Majeure Event, subject to Clause 21.2 (*Effect of Force Majeure*) and Clause 21.3 (*Payment During Force Majeure Event*):

- (a) (I) A breach by Buyer of any of its obligations other than those referred to elsewhere in this Clause 18.3 which adversely affects the performance of its material obligations under this Agreement which continues for thirty (30) Days which has not been cured during a cure period of a further thirty (30) Days from receipt of a Cure Notice, or if such failure cannot be remedied within such thirty day (30) cure period but is susceptible of remedy within a longer period, such thirty (30) day period shall be extended for up to an additional sixty (60) days so long as (x) Buyer has commenced action reasonably planned to remedy such default and continues diligently to pursue such action and (y) such default could not reasonably be expected to have a material adverse effect on Seller during such extended cure period), or (II) A series of breaches by Buyer of any of its obligations other than those referred to elsewhere in this Clause **Error! Reference source not found.** which adversely affects the performance of its material obligations under this Agreement which continues for an aggregate of ninety (90) Days in any year, for which there shall be no further cure period;
- (b) Any failure by Buyer to pay to Seller any undisputed sum of money due and owing within thirty (30) Days from the date when such sum was first due and demanded; *provided, however*, that no such failure to pay shall constitute a Buyer Default in the event that Seller receives the sum of money due and owing by drawing on the Buyer Payment Security;
- (c) Any statement, representation or warranty made by Buyer herein or in any certificate or contract delivered or made under or pursuant to this Agreement proving to have been incorrect in any material respect, when made or when deemed to have been made, which inaccuracy has significant effect on the ability of either Party to perform its obligations under this Agreement which has not been cured during a cure period of thirty (30) Days from receipt of a Cure Notice (or if such inaccuracy cannot be remedied within such thirty day (30) cure period but is susceptible of remedy within a longer period, such thirty (30) day period shall be extended for up to an additional sixty (60) days so long as (x) Seller has commenced

action reasonably planned to remedy such default and continues diligently to pursue such action and (y) such default could not reasonably be expected to have a material adverse effect on Seller during such extended cure period);

- (d) Revocation, cancellation or withdrawal of this Agreement by Buyer or of any Authorisation applicable to Buyer as a result of breach of any terms and/or conditions imposed by any such Authorisation that, in the case of such Authorisation, has a material adverse effect on the ability of either Party to perform its obligations under this Agreement;
- (e) Any Acts of Insolvency in respect of Buyer;
- (f) The transfer by Buyer of this Agreement, or of any of the rights or obligations of Buyer under this Agreement, except as permitted by Clause 20.2; and
- (g) Failure to maintain any Buyer Payment Security, or a replacement thereof for a continuous period of one hundred and eighty (180) Days or more following the delivery of notice of such failure from Seller to Buyer;

18.4. Cure Period

18.4.1 Upon the occurrence of a Seller Default or Buyer Default that provides for a cure period in Clause 18.2 or 18.3, the non-defaulting Party may serve a notice (a **Cure Notice**) on the defaulting Party in accordance with Clause 18.4.2. A Buyer Default or Seller Default for which there is a cure period in Clause 18.2 or 18.3 shall not be a basis for Termination until a Cure Notice has been served on the defaulting Party and the cure period has lapsed.

18.4.2 The Cure Notice must specify:

- (a) the type and nature of Default that has occurred, giving reasonable details; and
- (b) confirm the cure period (if any) provided in Clause 18.2 or 18.3, as the case may be.

18.4.3 If the defaulting Party either rectifies the Default within the cure period specified in the Cure Notice, or proposes a rectification programme that the non-defaulting party consents to and implements the programme, in accordance with its terms, the Cure Notice shall be deemed to be revoked and this Agreement will continue.

18.4.4 The non-defaulting Party may extend the cure period referred to in the Cure Notice or agree changes to the rectification programme at any time by notice in writing to the defaulting Party.

18.5. Termination for Seller Default or Buyer Default

If a defaulting Party fails to implement any rectification programme in accordance with its terms or to cure the Default within the time period specified in the Cure Notice, the non-defaulting Party may terminate this Agreement by delivering a Termination Notice to the defaulting Party.

Clause 19 Sole Remedies Upon Termination

19.1. Sole Remedy

19.1.1 Each Party agrees that the sole remedies of Buyer or Seller upon termination of this Agreement upon expiration of its term or pursuant to Clause 18 shall be:

- (a) the right to payment of all amounts accrued and owing under this Agreement; and

19.1.2 Upon payment in full of the amounts referred to in Clause 19.1.1, each Party shall

- (a) be deemed to have released and forever discharged, all and/or any actions, claims, rights, demands and set-offs, whether or not then known to the Parties or to the law, and whether in law or equity, that it had, may have or thereafter can, shall or may have against the other Party arising out of or connection with this Agreement; and
- (b) not sue, commence, voluntarily aid in any way, prosecute or cause to be commenced or prosecuted against the other Party, any action, suit or other proceeding concerning this Agreement.

Clause 20 Transfers and Prohibited Shareholders

20.1. Transfer of Ownership Interests

20.1.1 During the period commencing on the Commencement Date and for the remainder of the Term, Seller shall ensure that the Sponsors (or the holder of any Ownership Interest previously held by a Sponsor) shall not transfer any legal or beneficial interest in any Ownership Interest in Seller subscribed to or held by them unless such transfer will not result in less than five per cent (5%) of the outstanding Ownership Interests in Seller being owned, directly or indirectly, by a Technically Qualified Shareholder.

20.1.2 Seller shall procure that in the event a Sponsor (or the holder of any Ownership Interest previously held by a Sponsor) desires to transfer Ownership Interest in Seller that would result in shareholders in Seller that have previously been recognized as Technically Qualified Shareholders holding, directly or indirectly, less than five per cent (5%) of the outstanding Ownership Interests in Seller, it shall provide Buyer with the following information about the proposed purchaser:

- (a) Its name, nationality, the names and nationalities of all natural Persons who directly or indirectly hold five percent (5%) or more of, or exercise influence or control over, the proposed purchaser;
- (b) Audited financial statements for the preceding five fiscal years, together with any more recent unaudited quarterly financial statements;
- (c) A description of its business, specifically relating to its experience in managing the operations of power plants similar to the Plant; and
- (d) Such additional information as Buyer may reasonably request in order to determine whether such transferee is a Technically Qualified Shareholder.

20.1.3 Buyer shall use such information to evaluate whether to recognize the proposed purchaser as a Technically Qualified Shareholder. Buyer shall notify the proposed transferor as to whether Buyer recognizes the proposed transferee as a Technically Qualified Shareholder within ninety (90) days following its receipt of all the information requested pursuant to the foregoing paragraphs.

20.1.4 The foregoing restrictions shall not apply to:

- (a) any transfer required by any Applicable Law or by the operation of Applicable Law or by order of a court, tribunal, or government authority or agency with appropriate jurisdiction;
- (b) any transfer allowed or required by a separate agreement binding on the Parties;
- (c) any transfer to which Buyer has given its prior written approval; or
- (d) any transfer between a Sponsor and any Affiliate of such Sponsor that is, directly or indirectly, wholly-owned by the Sponsor or owns one hundred per cent (100%) of the Ownership Interests in the Sponsor or between such Affiliates.

20.2. Transfer of the Agreement

20.2.1 Seller shall not transfer this Agreement or any of the rights or obligations hereunder except as provided in Clause 20.2.3 and Clause 24.1 of this Agreement.

20.2.2 Save as may be otherwise agreed by the Parties, Buyer shall not transfer or novate this Agreement or any of the rights or obligations hereunder unless and until the following requirements are satisfied:

- (a) The transferee expressly undertakes in an instrument reasonably satisfactory to Seller to perform the obligation of Buyer under this Agreement and obtains any necessary Authorisations for the Transfer;
- (b) Buyer has obtained Seller's written consent (such consent not to be unreasonably withheld);
- (c) The transferee is a single entity that has the financial, technical and legal capacity to enter into and perform Buyer's obligations under this Agreement in form and substance satisfactory to Seller; and

provided that nothing in this Clause 20 shall prohibit Buyer from novating this Agreement pursuant to Section 26 of the Act for which the Seller's written consent shall not be required.

20.2.3 Nothing in this Clause 20 shall prohibit either Party from assigning or transferring its rights under this Agreement as part of a security package in a bona fide financing transaction with any lender or other institution providing financing for Seller's Plant or Buyer's bulk trading activities, respectively.

20.3. Prohibited Shareholder

No Prohibited Shareholder may own any Ownership Interest in Seller. No Transfer of any Ownership Interest in Seller may be made to a Prohibited Shareholder. If an owner of an Ownership Interest is or becomes a Prohibited Shareholder, Buyer may require the Ownership Interests of such Prohibited Shareholder be transferred within such minimum period as may be required to do so in a commercially reasonable manner and until such Transfer the Prohibited Shareholder may not have any involvement in Seller.

Clause 21 Force Majeure

21.1. Definition of Force Majeure Event

Force Majeure Event shall mean any event or circumstance or combination of events or circumstances including their effects that is beyond the reasonable control of a Party and that materially and adversely affects the ability of that Party to perform any of its obligations under this Agreement; but only to the extent that:

- (a) such circumstance, event or condition, despite the exercise of diligence, cannot be prevented, avoided or overcome by the affected party;

- (b) the affected Party has taken all reasonable precautions, due care and measures to prevent, avoid or overcome the effect of such circumstance, event or condition on its ability to perform its obligations under this Agreement and to mitigate its consequences; and
- (c) such circumstance, event or condition is not the direct result of a breach or failure by the affected Party to perform any of its obligations under Applicable Law, this Agreement, or any other Project Document.

Force Majeure Event shall include Local Political Force Majeure Events, Foreign Political Force Majeure Events, and Natural Force Majeure Events, as each is defined below, but only to the extent that an event satisfies the requirements above:

21.1.2 The following events that occur inside or directly involve Nigeria (each a **Local Political Force Majeure Event**):

- (a) Any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, civil commotion, or act of terrorism;
- (b) Any act of sabotage against the Plant that (i) is not carried out by an employee, Contractor, or agent of Seller or an employee, Contractor, or agent of any of Seller's Contractors, Affiliates or the Sponsors (unless the act constitutes a Political Force Majeure Event under Clause 21.1.2(a), and (ii) could not have been prevented through the use of reasonable security measures by Seller or the Contractors or agents of Seller;
- (c) Strikes, go-slows or works to rule which are widespread or nationwide, of a political nature but excluding any such matters involving only the workforce of the claiming Party, its contractors, its sub-contractors or suppliers;
- (d) The issuance or making of either any:
 - (i) order, injunction, direction or instruction having the force of law issued by the Commission or any Relevant Authority, or
 - (ii) declaration pursuant to a statutory instrument,
 in either case in respect of archaeological or paleontological remains discovered on or under the Site;
- (e) radioactive contamination or ionizing radiation originating from a source inside Nigeria to the extent it exceeds applicable standards;
- (f) Lapse of Authorisation;

- (g) the occurrence of an event analogous to a Local Political Force Majeure Event under any Project Document entered into by either Party.

21.1.3 The following events that occur outside Nigeria and do not directly involve Nigeria (each a **Foreign Political Force Majeure Event**):

- (a) Any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, civil commotion, or act of terrorism;
- (b) Strikes, go-slows or works to rule but excluding any such matters involving only the workforce of the claiming Party, its contractors, its sub-contractors or suppliers; or
- (c) The occurrence of a Foreign Political Force Majeure Event under any Project Document entered into by either Party.

21.1.4 The following natural events (each a **Natural Force Majeure Event**):

- (a) Radioactive contamination or ionizing radiation originating from a source inside Nigeria to the extent it exceeds applicable standards;
- (b) Lightning, fire, earthquake, flood, storm, cyclone, typhoon, tornado or other natural calamity;
- (c) Explosion or chemical contamination (other than resulting from an act of war or the act or negligence of the affected Party);
- (d) Epidemic or plague; or
- (e) The occurrence of an event analogous to a Natural Force Majeure Event under any Project Document entered into by either Party.

21.1.5 **Force Majeure Event** shall expressly not include the following conditions:

- (a) Normal wear and tear or inherent flaws in materials and equipment or breakdowns of equipment;
- (b) the economic hardship of an affected Party;
- (c) Any event caused by, or connected with, the affected Party's (i) negligent or intentional acts, errors or omissions, (ii) failure to comply with any laws or (iii) breach of, or default under, this Agreement;
- (d) Unavailability of (i) gas supply, or, (ii) water supply, except to the extent such unavailability is itself due to Force Majeure Event; and failure to make

a payment of money in accordance with the Party's obligations under this Agreement.

21.1.6 For the avoidance of doubt, Force Majeure Event also includes non-performance of contract by reason of force majeure under that contract by a third party with whom Buyer or Seller has contracted for the purposes of performing any of its obligations under this Agreement, *provided that* the non-performance by the third party contractor was caused by an event that would constitute a Force Majeure Event under this Agreement.

21.2. Effect of Force Majeure

Subject to Clause 21.3, a claiming Party shall be relieved from the duty to perform its obligations under this Agreement (other than an obligation to make a payment when due and payable) and any liability for failure to perform such obligations, in whole or in part, under this Agreement to the extent such non-performance is caused by the occurrence of a Force Majeure Event *provided however*, that the Delivery Term shall not be extended by reason of a Force Majeure Event.

21.3. Payment During Force Majeure Event

21.3.1 Buyer shall not be obliged to pay Capacity Payments and Energy Payments during a Force Majeure Event other than as set out in this Clause 21.3.

21.3.2 If a Local Political Force Majeure Event affects the ability of Seller to make available the Contract Capacity of the Plant, Buyer shall continue to make:

- (a) The portion of the Capacity Payments associated with any Net Electrical Output metred and delivered to Buyer during the Force Majeure Event; and
- (b) Energy Payments, in respect of any Net Electrical Output delivered to Buyer.

21.3.3 If a Force Majeure Event does not affect the ability of Seller to make available Contract Capacity, but affects the ability of Buyer to accept Net Electrical Output at the Delivery Point, Buyer shall continue to make:

- (a) The portion of the Capacity Payments associated with any Net Electrical Output metred and delivered to Buyer during the Force Majeure Event; and
- (b) Energy Payments in respect of any Net Electrical Output delivered to Buyer.

21.3.4 If a Foreign Political Force Majeure Event or Natural Force Majeure Event affects the ability of Seller to make available the Contract Capacity, Buyer shall continue to make:

- (a) The portion of the Capacity Payments associated with any Net Electrical Output metred and delivered to Buyer during the Force Majeure Event; and

- (b) Energy Payments in respect of any Net Electrical Output delivered to Buyer during the Force Majeure Event.

21.4. Notification Obligations

- 21.4.1 The Party affected by a Force Majeure Event shall give Notice to the other Party of any event constituting a Force Majeure Event as soon as reasonably practicable after the Party first learns of the Force Majeure Event. Any Notice shall include particulars of the event constituting a Force Majeure Event, of its effects on the Party claiming relief and the remedial measures proposed, including estimated time to restore the situation, if appropriate, and any relevant documentary evidence should be enclosed with the Notice. The Party affected by a Force Majeure Event shall give the other Party regular reports on the progress of those remedial measures and such other information as the other Party may reasonably request.
- 21.4.2 The Party affected by a Force Majeure Event shall give Notice to the other Party of (i) the cessation of the relevant event constituting a Force Majeure Event, and (ii) the cessation of the effects of such event constituting a Force Majeure Event, and (iii) any requested extension of time as soon as reasonably practicable after becoming aware of each of (i), (ii), and (iii) above.

21.5. Responsibilities of the Parties

The claiming Party shall, as soon as practicable after the commencement of the Force Majeure Event, use Reasonable Endeavours to expeditiously remedy and mitigate the Force Majeure Event causing the failure and to minimize the interruption of performance of its affected obligations, *provided that* (i) a claiming Party shall not be required to settle any labour dispute or industrial or public disturbance, except in such manner as it shall in its own judgment consider acceptable; and (ii) a claiming Party shall not be required to incur any extraordinary costs or to act other than as a Reasonable and Prudent Operator. If a claiming Party's facilities have been damaged or destroyed, then such claiming Party shall apply any proceeds of insurance coverages required under Clause 15.1 in respect of such loss or damage in accordance with the provisions of Clause 15.

21.6. Delay Caused by Force Majeure Event

Neither Party shall be responsible or liable for or deemed in breach hereof because of any failure or delay in complying with its obligations (other than an obligation to make a payment when due) due solely to one or more Force Majeure Events or its or their effects or by any combination thereof, and, upon the request of the affected Party, the periods allowed or dates required for the performance by Parties of such obligations, including each Key Defined Milestone, as applicable, shall be extended on a day-for-day basis; *provided that*, no relief shall be granted to the Party claiming Force Majeure Event pursuant to this Clause 21.6 to the extent that such failure or delay would have nevertheless been experienced by that Party had such Force Majeure Event not occurred. Other than for breaches of this Agreement by the Party not claiming Force Majeure Event, and without prejudice to the rights of the Party claiming Force Majeure Event to indemnification under

this Agreement, the Party not claiming Force Majeure Event shall not bear any liability for any loss or expense suffered by the Party claiming Force Majeure Event as a result of a Force Majeure Event.

21.7. Access

At the request of the other Party, the claiming Party shall provide, or use its Reasonable Endeavours to procure, access to the areas and facilities affected by the Force Majeure Event, and to its records relating to that Force Majeure Event, for a reasonable number of representatives of the other Party, at that other Party's sole risk and expense, in order that those representatives may verify the impact of that Force Majeure Event on the claiming Party's performance and the likely duration of its effects. In performing any such inspection, the other Party shall comply, and shall cause its nominee to comply, with all of the claiming Party's reasonable safety rules, policies, instructions and procedures.

21.8. Prolonged Force Majeure Events

Upon the occurrence of:

- (a) a Force Majeure Event (including a Local Political Force Majeure Event) affecting Buyer and the continuation of such Force Majeure Event for a period of six (6) months or more from the date of the occurrence of such Force Majeure Event;
- (b) any Force Majeure Event other than a Force Majeure Event referred to in paragraph (a) above and the continuation of such Force Majeure Event for a period of six (6) months or more from the date of the occurrence of such Force Majeure Event; or
- (c) a series of related Force Majeure Events (including Local Political Force Majeure Events) affecting Buyer and the continuation in the aggregate of such Force Majeure Events for a period of six (6) months or more during any Contract Year;
- (d) a series of related Force Majeure Events other than those referred to in paragraph (c) above and the continuation in the aggregate of such Force Majeure Events for a period of six (6) months or more,

(each such occurrence, a "Prolonged Force Majeure Event"), then either Party shall have the right, but not the obligation, to terminate this Agreement by delivering a Termination Notice to the other Party; *provided, that*, such right of termination shall not apply during the implementation of a Voluntary Restoration agreed to by the Parties or after completion of a Voluntary Restoration. Whether a Voluntary Restoration is being implemented and whether it has been completed will be initially determined in the reasonable discretion of the Party giving the Termination Notice and any dispute will be governed by Clause 22.

21.9. Option to Terminate Following a Local Political Force Majeure Event

Notwithstanding Clause 21.8, in the event that a Local Political Force Majeure Event occurs and the nature of the Local Political Force Majeure Event has the effect stated in Clause 21.1.2(e); then either Party shall have the right to terminate this Agreement by delivering a Termination Notice within thirty (30) Days of the Parties becoming aware of the occurrence of the Local Political Force Majeure Event.

21.10. Voluntary Restoration of the Plant

In the event of damage to the Plant, Seller may restore the Plant in accordance with Good Industry Practices (**Voluntary Restoration**). Unless Buyer has agreed to a plan of Voluntary Restoration providing for relief from the requirements of this Agreement, Seller will not be entitled to relief from the requirements of this Agreement as a result of a Voluntary Restoration beyond any relief afforded in Clause 21.8 (*Prolonged Force Majeure Events*). Seller will not be entitled to a change in the tariff rates as a result of a Voluntary Restoration.

Clause 22 Choice of Law and Dispute Resolution

22.1. Governing Law

This Agreement and the rights and obligations hereunder shall be interpreted, construed and governed by the Applicable Law.

22.2. Informal Dispute Resolution

22.2.1 In the event that there arises between the Parties any Dispute, the Party wishing to declare a Dispute to the other Party shall do so by a written notice stating the issues(s) in dispute (**Notice of Dispute**).

22.2.2 For a period of not less than thirty (30) Days from delivery of a Notice of a Dispute, the Parties shall attempt in good faith to settle the Dispute by negotiations among the designated or authorized representatives of each Party. In the event that the Parties are unable to reach an agreement within thirty (30) Days, or such longer period as they may agree, then either Party may refer the Dispute to arbitration which Dispute shall be determined and settled in accordance with Clause 22.3. Upon agreement of the Parties, the Parties may appoint an impartial expert to review and give the Parties an advisory opinion on any technical, commercial, accounting, metering, or other issue (or combination of issues) in dispute, in such time and at the sole or agreed joint cost of either or both Parties.

22.3. Arbitration of Disputes

- 22.3.1 In the event that the parties to a Dispute are unable to resolve any Dispute pursuant to Clause 22.2, and the amount to be claimed by either Party is more than three million US Dollars (US\$3,000,000), then the Dispute shall be referred to and finally settled by arbitration conducted in accordance with the Arbitration and Conciliation Act of the Federal Republic of Nigeria. The arbitration proceedings shall be conducted, and the award shall be rendered, in the English language.
- 22.3.2 Any arbitral tribunal to be appointed for the resolution of Disputes under this Agreement shall consist of three (3) arbitrators. The three arbitrators will be appointed by the Nigerian Institute of Chartered Arbitrators and at least two of them shall have industry knowledge and expertise regarding the subject matter of the Dispute. No arbitrator may (i) be a present or former employee or agent of, or consultant or counsel to either Party or any Affiliate of either Party or (ii) be in any way closely connected with the Project or (iii) have any interest in the outcome of the proceeding.
- 22.3.3 Notwithstanding the provisions of Clause 22.1, the conduct of the arbitration in this Clause 22 and any other question of arbitration law shall be governed by the laws of Federal Republic of Nigeria.
- 22.3.4 The seat of the arbitration proceedings shall be at a venue in Nigeria to be mutually agreed upon by the parties.
- 22.3.5 Any arbitral award issued under this Clause 22.3 shall be final and binding upon the Parties and shall be the sole and exclusive remedy between the Parties regarding all Disputes, and each Party undertakes to comply with and to carry out any such arbitral award, fully and without delay. The Parties expressly waive to the fullest extent permitted by law or under equity any rights of appeal to the courts of any jurisdiction with respect to any award of arbitration pursuant to this Clause 22.3. The Parties expressly agree that any rights of appeal that may not be waived by a Party shall be exercisable by a Party only (i) after the award has been fully implemented under this Clause 22.3 or (ii) if such Party must pay an amount under such award, after such Party has either paid such amount to the other Party or deposited the amount of the award with the tribunal or a court of competent jurisdiction.
- 22.3.6 Notwithstanding any Dispute between the Parties, each Party shall continue to perform all of its obligations under this Agreement.
- 22.3.7 Each Party will bear all of its own costs and expenses (including legal fees) incurred by it (or by any agent or trustee on its behalf) in connection with the enforcement of, or the preservation of any rights under this Agreement. If a Dispute is determined by arbitration pursuant to this Agreement, the arbitrators shall have the power to direct any party to the proceeding to pay any part or all of (i) the costs and expenses (including legal fees) reasonably incurred by another party in connection

with the enforcement of, or the preservation of any rights under this Agreement, and (ii) the arbitrators' fees.

22.4. Interim Relief & Enforcement of Arbitral Awards

Notwithstanding Clause 22.1, this Clause 22 is without prejudice to any right of a Party granted by law to apply to the courts of Federal Republic of Nigeria of competent jurisdiction to:

- 22.4.1 seek interim or conservatory relief against another Party in support of arbitration proceedings; or
- 22.4.2 seek relief against another Party to enforce the agreement to submit any Dispute to arbitration pursuant to this Agreement; or
- 22.4.3 enforce an arbitral award made in arbitration proceedings brought pursuant to this Agreement or, in the case of proceedings to which Clause 22.5 below applies, any Related Agreement (as defined in Clause 22.5 below).

22.5. Disputes under Related Agreements

22.5.1 In circumstances in which (i) proceedings have already been commenced under this Agreement, any Project Document or any Vesting Contract (for the purpose of this Clause 22, the "Related Agreements") (in each case, an "Existing Dispute"), (ii) either Party contends that two or more arbitrations commenced under this Agreement and a Related Agreement are substantially related and involve substantially related issues and that the issues should be heard in one proceeding, then the first tribunal to be constituted under the terms of this Agreement or under a Related Agreement providing for:

- (a) arbitration under the Arbitration and Conciliation Act of the Federal Republic of Nigeria;
- (b) before an arbitral tribunal composed of three (3) arbitrators who are to be appointed by the Nigerian Institute of Chartered Arbitrators; and
- (c) the arbitral tribunal constituted thereunder to be seated at a venue mutually agreed upon by the parties,

shall determine whether, in the interests of justice and efficiency, the whole or part of the matters at issue should be consolidated before that tribunal upon such terms or conditions as the tribunal thinks fit.

22.5.2 The Parties expressly accept that in the event of consolidation in accordance with this Clause 22.5 any Dispute that may be referred to arbitration under this Agreement may be disposed of in the same arbitration proceedings as any other dispute arising under a Related Agreement, even in the presence of parties other than the Parties to this Agreement.

22.6. Expert Determination

- 22.6.1 Without prejudice to Clause 22.3.1, in the event that the Parties are unable to resolve any Dispute pursuant to Clause 22.2, and the amount to be claimed by either Party is equal to or less than three million US Dollars (US\$3,000,000), then, subject to the agreement of the parties, the Dispute can be settled by an expert determination in accordance with the provisions of this Clause 22.6 (**Expert Determination**).
- 22.6.2 Any Party may, by notice in writing (**Notice of Expert Determination**), give notice that it requires a Dispute to be referred to expert determination, and call on the other Party to agree on the identity of the person to be appointed as Expert. The Expert shall be appointed on the mutual agreement of the Parties.
- 22.6.3 If within ten (10) Days of the Notice of Expert Determination, the Parties are unable to agree on the identity of the person to be appointed as an Expert, the Expert shall be appointed by the Nigerian Institute of Chartered Arbitrators after consultation with the Nigerian Society of Engineers within fifteen (15) Days of such referral.
- 22.6.4 The Expert shall, within seven (7) Days of such appointment, give written notice to the Parties of the time and place of a preliminary conference (**Preliminary Conference**) to be held in accordance with Clause 22.6.6, which the Parties shall attend.
- 22.6.5 Prior to that Preliminary Conference, the Expert may advise any conditions he or she wishes to impose (including provision of security for the fees and expenses of the Expert) and request the agreement of the Parties to such conditions.
- 22.6.6 At the Preliminary Conference, the Parties and the Expert shall discuss and agree on the issues in Dispute, or formulate a procedure by which those issues can be clarified and agreed; plan and agree on the determination process including a timetable for provision of submissions, documents and any other evidentiary material; make arrangements for confidentiality agreements to be signed by all persons taking part in the determination process, make such other planning and administrative arrangements as may be required in relation to the determination process, including in respect of the terms of appointment of the Expert.
- 22.6.7 The Expert shall adopt procedures suitable to the circumstances of the particular case, avoiding unnecessary delay and expense, so as to provide an expeditious cost-effective and fair means of determining the Dispute. The Expert shall be independent of, and act fairly and impartially as between the Parties, giving each party a reasonable opportunity of putting its case and dealing with that of the other Party, and a reasonable opportunity to make submissions on the conduct of the determination process.
- 22.6.8 The Parties shall continue to perform their contractual obligations notwithstanding the existence of the determination process.

22.6.9 As soon as reasonably practicable after receiving the submissions and evidentiary material from the Parties, the Expert shall determine the Dispute between the Parties and notify such determination in writing to the Parties and the Expert's determination shall contain a statement of reasons in such form as the Expert considers reasonably appropriate, having regard to the amount and complexity of the Dispute. The Expert's determination may include for the payment of interest on any monetary sum determined, in such amount as the Expert considers reasonable, in view of the cap in Clause 22.6.1.

22.6.10 Unless otherwise agreed in writing by the Parties or in the face of manifest error or fraud, the determination of the Dispute by the Expert shall be final and binding on the Parties, *provided that* where, in the reasonable opinion of a Party, the determination of the Expert has not been implemented by the other Party within any time period set for such implementation, including the payment of any sum of money arising from the determination, such Party can commence arbitration proceedings under Clause 22.3.1.

22.6.11 All costs of the Expert Determination and all fees payable to the Expert shall be borne by the Party who is adjudged by the Expert to have defaulted and whose acts of default gave rise to the Expert Determination.

Clause 23 **Notices**

23.1. Method of Providing Notices

Except as otherwise expressly provided in this Agreement, all notices, communications, or other contacts that are required or permitted to be given or made under this Agreement (Notices) shall be in English, in writing, and addressed for the attention of the person indicated below (or such other person as a Party shall nominate in a Notice given in accordance with this clause from time to time). Any such notice shall be delivered personally, as evidenced by the corresponding seal or receipt or acknowledgement signed by the recipient Party, or sent by reputable courier company licensed under Section 43 of the Nigerian Postal Service Act or its successor legislations or by fax or email (provided the sender has evidence of successful transmission) and shall be addressed to the addresses indicated in Schedule 0.

23.2. Time of Receipt

All notices shall be deemed delivered:

- (a) when presented personally,
- (b) when transmitted by facsimile or email to the receiving Party's facsimile number and receipt of confirmation of a successful transmission, or to an email address specified above upon confirmation of receipt electronically or telephonically, or

- (c) five (5) Day(s) after being delivered to the courier for express delivery, addressed to the receiving Party, at the address indicated in Schedule 0 (or such other address as such Party may have specified by written Notice).

Clause 24

Miscellaneous Provisions

24.1. Amendment

The Parties shall not vary, add to, supplement, cancel, replace, transfer or novate this Agreement except by mutual consent evidenced by an instrument in writing signed by the authorized representatives of the Parties and with the approval of the Commission *provided that* each Party may update its notice information in Clause 2 of Schedule 1 from time to time by written notice to the other Party.

24.2. Third Parties

This Agreement is intended for the benefit of the Parties hereto. Nothing in this Agreement shall be construed to create any duty or any liability to or any right of suit or action, to any person not a Party to this Agreement.

24.3. No Implied Waiver

The failure or delay of either Party to enforce at any time any of the provisions of this Agreement, or to require at any time performance by the other Party of any provision hereof, shall neither be construed to be a waiver of such provisions nor affect the validity of this Agreement or any part hereof or the right of such Party thereafter to enforce each and every such provision. Any waiver under and for the purposes of this Agreement shall be in writing.

24.4. Relationship of the Parties

The Parties enter into this Agreement as independent entities. Nothing herein shall be interpreted or construed as creating an association, joint venture, partnership or agency between the Parties or as imposing any partnership obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party. Nothing in this Agreement shall be construed as creating any relationship between the Parties other than that of independent sale and purchase of capacity and electricity generated at the Plant. Except as otherwise set forth herein, the Parties do not intend to create any rights, or grant any remedies to, any third party beneficiary of this Agreement.

24.5. Conflict of Interest

Each Party shall avoid any conflict of interest between its own interests (including the interests of Affiliates) and the interests of the other Party in dealing with suppliers,

customers and all other organisations or individuals doing or seeking to do business with the Parties in connection with activities contemplated under this Agreement. The provisions of this Clause 24.5 shall not apply to:

- (a) a Party's performance which is in accordance with the Applicable Law or policies of any Relevant Authority; or
- (b) a Party's acquisition of products or services from an Affiliate, or the sale thereof to an Affiliate, made in accordance with this Agreement.

24.6. Survival

The cancellation, expiration or termination of this Agreement or the initiation of any dispute resolution process shall not relieve the Parties of obligations that by their nature should survive such cancellation, expiration or termination or during the existence of a dispute resolution process, including:

- (a) Clause 1.1 (*Definitions*);
- (b) Clause 13.4 (*Billing and Payment*);
- (c) Clause 16.3 (*Tax Indemnity*);
- (d) Clause 17 (*Liability and Indemnification*);
- (e) Clause 18 (*Default and Early Termination*);
- (f) Clause 19 (*Sole Remedies upon Termination*);
- (g) Clause 21.8 (*Prolonged Force Majeure Events*);
- (h) Clause 22 (*Choice of Law and Dispute Resolution*); and
- (i) Clause 24.9 (*Waiver of Sovereign Immunity*); and
- (j) Clause 24.10 (*Confidentiality*)

24.7. Language

The language of this Agreement shall be English. All contracts, Notices, waivers and all other communication, written or otherwise, between the Parties in connection with this Agreement shall be in English.

24.8. Entirety and Conflict

- a) This Agreement and the Schedules attached hereto are intended as a complete and exclusive statement of the terms with respect to the subject matter of this Agreement. All prior written or oral understandings, offers or other communications of every kind pertaining to the sale or purchase of electric capacity

and energy between the Parties from the Plant or to Seller by Buyer, including the Power Purchase Agreement dated February 21, 2013 and Contract Activation Agreement dated April 1, 2016 are hereby abrogated and withdrawn.

- b) In the event of any inconsistency between this Agreement and any other agreement, including the Power Purchase Agreement dated February 21, 2013 and Contract Activation Agreement dated April 1, 2016, with respect to matters covered under this Agreement and the rights and obligations of the Parties thereto, the provisions of this Agreement shall supersede the provisions of such other agreements to the extent of the inconsistency.

24.9. Waiver of Sovereign Immunity

24.9.1 The commitments of Buyer expressed under this Agreement constitute commercial activities (rather than governmental or public activities) of it, and it shall be subject to private commercial law with respect thereto.

24.9.2 To the fullest extent that Buyer may in any jurisdiction claim for itself or its assets or revenues immunity from suit, execution, attachment (whether in aid of execution, before judgment or otherwise) or other legal process, and to the extent that in any such jurisdiction there may be attributed to Buyer or its assets or revenues such immunity (whether or not claimed), Buyer agrees not to make any such claim and irrevocably waives such immunity to the full extent permitted by the laws of such jurisdiction, other than immunity from execution of a judgment or arbitral award against Protected Assets, meaning:

- (a) Military property, including aircrafts and warships customarily used for defence purposes and under the control of a military authority, and
- (b) Diplomatic and consular property customarily used to discharge diplomatic and consular functions under the control of a diplomatic or consular authority.

24.9.3 Protected Assets shall be immune from any enforcement, attachment, execution or other legal process in any jurisdiction, and Seller hereby agrees not to commence any enforcement, attachment, execution, or other legal process in respect of any of the protected assets in any jurisdiction regardless of whether the protected assets are entitled to immunity in such jurisdiction. Assets of the Central Bank of Nigeria, assets of the Nigerian National Petroleum Cooperation and assets of the Nigeria Sovereign Investment Authority shall in all cases be exempted from any enforcement, attachment, execution, or other legal process in any jurisdiction.

24.10. Confidentiality

24.10.1 Confidential Information

The terms and conditions of this Agreement and all information disclosed pursuant to or in connection with this Agreement (including information disclosed

in contemplation of this Agreement) shall be treated as confidential until five (5) years after the expiry of this Agreement (such terms and conditions and any such information being herein called "Confidential Information") and neither Party shall use such Confidential Information for any purpose other than solely in connection with the Project.

24.10.2 Exclusions to Confidential Information

For the purposes of this Clause 24.10, the term Confidential Information shall not include information which:

- (a) at the time of disclosure or at any time thereafter is in, or becomes part of, the public domain other than through a breach of this Clause 24.10;
- (b) the Party receiving the information can prove it was already known to it, or was independently acquired or developed by it without being in breach of its obligations under this Clause 24.10;
- (c) became available to the Party receiving the information from another source in a non-confidential manner otherwise than in breach of an obligation of confidentiality; or
- (d) is published by, or the publication of which is required by, any Relevant Authority or any court.

24.10.3 Except as provided in Clause 24.10.2, such Confidential Information shall not be disclosed in whole or in part by any Party receiving the same to any third Parties without the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed.

24.10.4 Exceptions to Confidentiality

Notwithstanding the provisions of Clause 24.10.3, in the circumstances set out below no Party shall be required to obtain the prior consent of the other Party in respect of Confidential Information and each Party is hereby authorised to disclose such Confidential Information:

- (a) to directors and employees of such Party and of its Affiliates to the extent required for the proper performance of their work in connection with this Agreement *provided that* such Party shall use Reasonable Endeavours to ensure that such directors and employees keep the Confidential Information confidential on the same terms as are provided in this Clause 24.10 and disclosure or use of the Confidential Information by any such directors and employees in contravention of such terms shall be deemed to be an unauthorised disclosure or use by the Party disclosing the same to such directors and employees;

- (b) to any consultants, insurers, banks or financial institutions (and their advisers) from whom such Party is seeking or obtaining finance, insurance or consulting services in connection with the Project but only to the extent reasonably necessary, or to third parties engaged by or on behalf of such Party but only to the extent required for the proper performance of their work for the purpose or purposes incidental to or arising out of this Agreement *provided that* the proposed recipients of such information shall be required by a Party providing information to undertake to such Party to keep such information confidential on the same terms as are provided in this Clause 24.10 and provided further that the Party providing information shall use Reasonable Endeavours to secure compliance with such undertaking;
- (c) to the extent such Party is required by law to make a disclosure to any government department or any governmental or regulator agency having jurisdiction over such Party;
- (d) to the extent required by any Applicable Law, rules and regulations of any recognized stock exchange or to the extent required by any process having the force of law in connection with any judicial, arbitral or administrative proceedings; and
- (e) to an expert appointed pursuant to Clause 22.6 *provided that* such expert agrees to be bound to confidentiality provisions substantially the same as those contained in this Clause 24.10.

24.11. Severability

If one or more provisions contained in this Agreement are held or found to be invalid, illegal, or unenforceable in any respect, the provision(s) shall be given effect to the extent permitted by law and the invalidity, illegality, or unenforceability of any provisions shall not affect the validity of the remaining provisions of this Agreement.

24.12. Counterparts

This Agreement may be executed in counterparts, all of which shall be considered one and the same Agreement and each of which will be deemed an original.

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the Day and year first written above.

NIGERIAN BULK ELECTRICITY TRADING PLC

Signature:

Name:

Title:

In the presence of:

Signature:

Name:

Title:

XXXXXXXXXXXXXXXXXXXX

Signature:

Name:

Title:

In the presence of:

Signature:

Name:

Title:

Schedule 1 Terms Specific to This Agreement
Plant Specific Provisions

| | |
|--------------------------------|--|
| Seller | |
| Name of Project | |
| Site | The land occupied by the Plant, in the ----- -- Nigeria as shown in the map attached as Appendix 1 to this Schedule 1. |
| Contract Capacity | [-----] (measured at the Metering Point, net of auxiliary loads, at Reference Site Conditions) |
| Term | 20 Years from the Execution Date. |
| Reference Site Conditions | |
| Remedial Plan Notice Period | [60] calendar days |
| Minimum Indemnification Amount | US\$[50,000] (or Naira equivalent) per calendar year |
| Agreed Interest Rate (Local) | NIBOR plus 4% per annum. |
| Agreed Interest Rate (Foreign) | LIBOR plus 4% per annum. |

Paragraph 2
Addresses for Delivery of Notices

24.13 Addresses

The addresses for the delivery of notices pursuant to Clause 24 are set forth below.

If to Seller:

XXXXXXXXXX _____

Attention: Managing Director/Chief Executive Officer

Email:

Telephone:

With a copy to:

Email:

If to Buyer:

Nigerian Bulk Electricity Trading Plc
2nd & 3rd Floors, NERC Building,
Plot No. 1387, Cadastral Zone,
Opposite Reiz Continental Hotel,
Central Business District,
Abuja FCT

Attention: Managing Director/Chief Executive Officer

Email: [_____]

Telephone: [+ _____]

Fax: [•]

Paragraph 3
Conditions Precedent

| No. | Condition Precedent | Responsible Party | Consent Required to Waive |
|-----|---|-------------------|---------------------------|
| 1. | Satisfactory evidence that the necessary transmission/distribution and associated interconnection facilities, and any other necessary enhancement of the Grid and the distribution network, is available to safely and reliably evacuate the Contract Capacity specified in Schedule 1, Paragraph 1. | Seller | Buyer |
| 2. | Buyer shall have provided the Buyer Payment Security to Seller. | Buyer | Seller |
| 3. | Buyer having performed due diligence on all aspects of the Project with satisfactory results, including verification of any amounts included in tariff calculations unless this Agreement resulted from an open, competitive procurement. | Both Parties | Buyer |
| 4. | <p>Buyer shall have provided to Seller a copy of the Buyer's Board resolution authorising the execution, delivery, and performance by Buyer of this Agreement, together with:</p> <p>(a) a legal opinion reasonably acceptable to Seller in form and substance from counsel to Buyer as to the due authorisation, execution, and delivery of this Agreement and its enforceability thereof against Buyer, and</p> <p>(b) written confirmation that Buyer's representations and warranties made as of the Execution Date in Clause 4 are true and correct on the Closing Date.</p> | Buyer | Seller |
| 5. | <p>Seller shall have provided to Buyer a copy of the Seller's Board resolution authorising the execution, delivery, and performance by Seller of the obligations in this Agreement and the Project Documents, together with:</p> <p>(a) a legal opinion reasonably acceptable to Buyer in form and substance from counsel to Seller as to the due authorisation, execution, and delivery of this</p> | Seller | Buyer |

| | | | |
|----|---|--------------|------------------|
| | Agreement and the Project Documents, and their enforceability thereof against Seller; and (b) written confirmation that Seller's representations and warranties made as of the Execution Date in Clause 4 are true and correct on the Commencement Date. | | |
| 6. | NBET Board approval of a report from NBET Management confirming the status of the Conditions Precedent to the effectiveness of the PPA, where applicable. | Buyer | Not to be waived |
| 7. | Buyer and Seller having executed an agreement confirming that the entire PPA has become legally binding and effective, in accordance with the terms of the PPA, where applicable. | Both Parties | Not to be waived |

Conditions Subsequent

| No. | Condition Subsequent | Responsible Party | Consent Required to Waive |
|-----|---|-------------------|---------------------------|
| | <p>Seller and the counterparty to each Project Document listed below, shall have executed the Project Documents:</p> <ul style="list-style-type: none"> a. Gas Supply Agreement. b. Gas Transportation Agreement. c. Operation and Maintenance Agreement. d. Grid Connection Agreement. e. Ancillary Services Agreement; | Seller | Buyer |

Appendix 1
[Add Site map]

Schedule 2
Description of Plant and Facilities

The XXXXXXXX (õ Power Stationö) is a gas-fired thermal plant, located in ----- Local Government Area of ----- State. The power plant has ----- open cycle gas turbines and a combined installed capacity of -----MW.

Schedule 3 Plant Commencement Testing Procedures

1. General

- 1.1. This **Error! Reference source not found.** specifies the Commencement Tests for the Plant, which comprise the Tests prior to synchronisation, the Tests after synchronisation, the Reliability Test and the Capacity Test.
- 1.2. In this Schedule, references to Seller shall include Seller's Contractor.

2. Tests Prior to Synchronisation

- 2.1. Seller shall carry out or shall cause the Contractor to carry out the following tests which shall be conducted once for each of the gas turbine Units, but shall be repeated if Seller is not satisfied with the results of the tests. The tests may be carried out in any order.
 - (a) Automatic voltage regulator (AVR) setting and adjusting in stand-still condition and with the generator running at no load. The purpose of the test is to evaluate the small signal dynamic response of the Unit's generator excitation system on no load. The test shall be carried out with the Unit's generator operating at rated terminal voltage and speed. The test shall be conducted by injecting a 2% step change into the AVR reference input and measuring the dynamic response parameters; overshoot and settling time. The demonstrated voltage regulation capability of the AVR shall meet the manufacturer's expected performance.
 - (b) Turbine governor control checks to evaluate the small signal dynamic response of the Unit's turbine governor system on no load. The test shall be carried out with the Unit's turbine generator operated at rated terminal voltage and speed. The test shall be conducted by injecting a 2% step into the turbine governor reference input and measuring the dynamic response parameters; overshoot and settling time. The demonstrated speed control capability of the governor shall meet the manufacturer's expected performance.
 - (c) Open and short circuit tests on the generator to measure the Unit's generator field current characteristics. The Unit's generator field shall be excited with the field current progressively increased in not less than ten steps and the stator terminal voltage measured, up to a voltage of 110% of nominal. The resultant curve of the generator field current and stator terminal voltage shall approximate to expected levels.
 - (d) Functional testing and timing of high voltage switchgear in the sub-station of the Plant. Seller shall, using secondary injection methods, prove and test all inter-tripping circuits between the Plant and the System Operator's equipment. Seller and Buyer shall verify the protection level settings for the following:
 - (i) stator earth fault;

- (ii) negative phase sequence;
 - (iii) generator transformer over current and earth fault;
 - (iv) high voltage bus bar protection;
 - (v) reverse power;
 - (vi) over and under frequency; and
 - (vii) phase discordance/imbalance.
- (e) Voltage phasing checks shall be carried out between the sub-station of the Plant and the Grid System.
 - (f) All inter-tripping circuits between the Plant and System Operator's equipment shall be proved.
 - (g) Seller shall provide Buyer with test reports on ground resistance readings close to the Unit and inside the substation.

3. Tests After Synchronisation

- 3.1. After first synchronising of any Unit, initial operational testing of such Unit shall be conducted by Seller or its Contractor. Once Seller is satisfied that the Unit is capable of continued reliable operation, Seller shall so notify Buyer and carry out or cause its Contractor to carry out further tests as listed below, where such tests shall be conducted once for each of the gas turbine Units but shall be repeated if Seller is not satisfied with the results of the tests. The tests may be carried out in any order.
- (a) Automatic voltage regulator droop to demonstrate that the Unit's AVR can control the generator voltage to within an accuracy of +/- zero point five per cent (0.5%) over the range specified by the manufacturer. The test shall comprise progressively stepping the voltage over the operating voltage range of the generator, including no less than five increasing and five decreasing steps. These tests shall be carried out at base load conditions, however if the Grid experiences voltage level excursions outside those specified in the Reference Site Conditions the test may be carried out at appropriately reduced load levels.
 - (b) Turbine governor operation to verify the ability of the Unit to contribute to system frequency control, confirm key characteristics of the turbine governor such as incremental droop, demonstrate stable operation of the turbine governor under steady state and dynamic operation. This test shall be carried out at not less than three load points of the Unit's generator in the range 75% to 100% of rated load, and shall consist of a series of sub-tests. At each load point a simulated frequency deviation signal of varying amplitude shall be injected into the turbine control system and the response of the power output of the Unit monitored. The results shall be within +/- 20% of the value stated in the manufacturer's specifications. Only positive frequency steps shall be applied at 100% load. Following each step change,

the speed measurements shall be noted after a delay of 30 seconds, and continued every 30 seconds, over a period of at least 2 minutes.

- (c) Reactive capability to prove unit can operate at the power factor stated in **Error! Reference source not found.** The generator of the Unit shall be operated at full load at a power factor as stated in **Error! Reference source not found.** for a period of not less than 15 minutes. In the event that during the test the Grid voltage conditions are not at Reference Site Conditions the tests shall be performed at an appropriately modified power factor such that the voltage limits are not exceeded.
- (d) Minimum load capability to demonstrate the Unit can operate at minimum load. During this test the minimum operating load shall be demonstrated. The Unit shall be operated at, or below, 60% load for a period of not less than one hour. The Unit shall operate continuously and in a stable manner with appropriate stack emissions.
- (e) Full load rejection.
- (f) Time for a cold and hot start-up through to synchronisation complete.
- (g) Recording of operational values during steady state operation at 33%, 66%, 100% rated load.

4. **Timing of Capacity Test and Reliability Test**

- 4.1. The Capacity Test shall be conducted for each gas turbine Unit after completion of the tests for such Unit in accordance with Clauses **Error! Reference source not found.** and **Error! Reference source not found.** of this Schedule 3.
- 4.2. After Seller is satisfied with the completion of the tests as specified in Clause **Error! Reference source not found.** of this Schedule 3 for each gas turbine Unit and such additional base load and part load running as Seller shall determine is necessary to stabilise the operational parameters of the Unit, Seller shall declare to Buyer the concurrent commencement of the Capacity Test for such Unit.
- 4.3. The Capacity Test for the Plant shall be performed in accordance with ASME PTC-46 for phased construction of simple cycle Plant in new and clean conditions, properly corrected for combined cycle operation, and the thermal cycle performances evaluated after Plant completion.
- 4.4. One Reliability Test shall be performed for the complete simple cycle Plant as a whole.

5. **Reliability Test Description**

- 5.1. The Reliability Test shall last for a period of fourteen (14) Days. The Reliability Test shall be used to demonstrate the ability of the Plant to operate in the operating states required under **Error! Reference source not found.**
- 5.2. During the Reliability Test, the equipment and systems shall be placed in a normal mode of operation.

- 5.3. The Reliability Test shall commence from cold, shutdown conditions. The time to complete a Start Up shall be established.
- 5.4. Gas shall be used as required and permitted.
- 5.5. During the Reliability Test, the Facility shall be subject to (i) Automatic Governor Control, or (ii) an appropriate means of control as permitted by the System Operator.
- 5.6. The Net Electrical Output data may be adjusted: (i) to account for trips and suspensions for which Seller is not responsible; and (ii) for corrections based on ambient site, and any other relevant conditions, such as grid frequency and power factor, that differ from the Reference Site Conditions.

6. Reliability Test Minimum Criteria

- 6.1. The Reliability Test shall have been satisfactorily completed only if all of the following conditions are met:
 - (a) Times to complete each Start Up shall be no longer than specified in **Error! Reference source not found..**
 - (b) The ramp rate shall be no less than specified in **Error! Reference source not found..**
 - (c) The minimum generation shall be as specified in **Error! Reference source not found..**
 - (d) For all other periods during the Reliability Test only three interruptions shall be allowed. Each interruption shall not be greater than the maximum duration as stated in Table 1 below. In circumstances where the interruption is greater than the maximum duration stated in Table 1, Seller shall recommence the Reliability Test at the first Day of the applicable portion. For example, if a failure occurs on Day 8 for greater than 6 hours, Seller shall recommence the test at Day 6. Should more than one interruption to the Reliability Test be as a result of the same mechanism of failure, the Reliability Test shall be restarted from Day 1.
 - (e) In the event that interruptions are caused by events beyond the reasonable control of Seller then the test shall resume after the interruption as if it had not occurred. In any case, any loss of hours due to interruption(s) shall be added to the end of the Reliability Test.

Table 1 Reliability Test Interruptions

| Portion of Reliability Test | Maximum Duration of Interruption Allowed |
|-----------------------------|--|
| Day 1 to Day 5 | Eight hours |
| Day 6 to Day 10 | Six hours |

| | |
|------------------|------------|
| Day 11 to Day 14 | Four hours |
|------------------|------------|

- 6.2. For purposes of the Reliability Test, an interruption is any loss of, or reduction in, generating capacity attributable to the behaviour of the Plant or Seller's actions. For the avoidance of doubt, any loss of load not attributable to the behaviour of the Plant, or Seller's actions, shall not be treated as an interruption.

7. Objective of Capacity Test

- 7.1. The objective of the Capacity Test under this **Error! Reference source not found.** is to determine the Initial Unit Tested Capacity (for each gas turbine Unit) and the Initial Tested Capacity (for the Plant).
- 7.2. This **Error! Reference source not found.** details the test set-up, the test instrumentation and measurements, the test preparations, and the operational conditions to be used. It also presents the evaluation methodology by which results are to be determined.
- 7.3. Changes to the Capacity Test procedures in this **Error! Reference source not found.** may be made only with the written consent of the Test Representatives of both Seller and Buyer, or if requested by either Party, the Independent Engineer.

8. Test Code Reference

- 8.1. The performance tests shall be generally in compliance with the following test code:
- ANSI/ASME PTC 22-1997 Performance Test Code on Gas Turbines or ISO 2314-Gas turbines ó Acceptance tests.
- 8.2. The performance test shall be in compliance with the following performance test codes where referenced and to the extent stated in this procedure and the above performance test code:
- (a) ANSI/ASME PTC 1-1991 ó General Instructions;
 - (b) ANSI/ASME PTC 2-1980 ó Definitions and Values;
 - (c) ANSI/ASME PTC 3.1-1992 ó Gaseous Fuels;
 - (d) ANSI/ASME PTC 19.1-1985 ó Measurement Uncertainty;
 - (e) ANSI/ASME PTC 19.2-1987 ó Pressure Measurement;
 - (f) ANSI/ASME PTC 19.3-1974 ó Temperature Measurement;
 - (g) ANSI/ASME PTC 19.3-1955 ó Electric Measurements in Power Circuits;
 - (h) ANSI/ASME PTC 19.10-1981 ó Flue and Exhaust Gas Analysis.

9. Division of Responsibilities for Testing

- 9.1. Seller and Buyer shall each assign a test representative (each a "Test Representative") and ensure that the designated Test Representatives are present

to witness the Capacity Test and Reliability Test. The Test Representatives shall have the authority to approve, by their prior written approval, reasonable changes to the Commercial Operations Tests provided herein due to unforeseen circumstances.

- 9.2. The Test Representative of Seller shall ensure that the Independent Engineer shall have complete access to information applicable to the conduct of the Capacity Test and the Reliability Test. This information includes, but is not limited to, the instrument calibration records for such tests, observation of unit operation, data acquisition, and the Test Log.
- 9.3. The Test Representative of Seller shall ensure that the Independent Engineer shall have the full and unrestricted opportunity to visually examine all Units and machinery prior to, during, and after each test run.

10. Seller's Responsibilities

- 10.1. Seller shall be responsible for directing operation of the Plant during the Capacity Test and Reliability Test, including supervision of operating and maintenance personnel in the operation of all equipment associated with the Plant.
- 10.2. Seller shall issue a formal 30-day and 7-day test notification to the Test Representative of Buyer and to the Independent Engineer respectively and shall keep the Test Representative of Buyer and the Independent Engineer informed of test activities and progress.
- 10.3. Seller shall provide all calibrated test class instrumentation and certification as required for the Capacity Test.
- 10.4. Immediately after each test run, Seller shall collect all performance test data, obtain all required signatures and make copies for each Test Representative and the Independent Engineer.
- 10.5. Seller shall submit to Buyer and the Independent Engineer preliminary and final Capacity Test reports per Clause 19 of this Schedule.
- 10.6. Seller shall prepare and submit to Buyer and the Independent Engineer a detailed Commercial Operations Test report providing final test results per Clause **Error! Reference source not found.** of this Schedule, which shall be countersigned and certified by the Independent Engineer if the Independent Engineer has concluded that the Commercial Operations Tests have been carried out in accordance with this Agreement, including this **Error! Reference source not found.** and agrees with the Commercial Operations Test report and concurs with its conclusions.
- 10.7. Seller shall provide to Buyer and the Independent Engineer calibration sheets for the test instruments.
- 10.8. Seller is responsible for providing the gas and water and all other consumables necessary to carry out the Capacity Test and Reliability Test. Seller shall provide at its cost and expense reasonable accommodations and meals on Site for Test Representative of Buyer and the Independent Engineer so as to permit them to remain on Site during the continuation of the Capacity Test and Reliability Test.

- 10.9. Seller is responsible for providing all manufacturers' generated correction curves to the Test Representatives of Seller and Buyer and to the Independent Engineer.

11. Buyer's Responsibilities

- 11.1. Buyer is responsible for designating and identifying to Seller a Test Representative to be present at the Site immediately before and during the execution of the Capacity Test and Reliability Test. Buyer's Test Representative shall have the authority to approve changes to the Capacity Test and Reliability Test if they become necessary.

12. Preparation General

- 12.1. All safety devices, protective relays, trip mechanisms and support systems shall be checked and confirmed to be operational before commencement of the Capacity Test and Reliability Test. All protective equipment shall be in service and operating, unless a specific protection feature must be disabled to demonstrate an operational limit. The Plant equipment shall be operated in accordance with manufacturer's operating guidelines.
- 12.2. Manufacturer's recommended operating procedures and instructions must be followed.

13. Test Log

- 13.1. The Test Representative of Seller shall keep a test log (Test Log) for recording significant events and notes. The information in the Test Log shall be available to the Test Representatives and the Independent Engineer at any time. A copy of the Test Log shall become part of the Test Report.

14. Test Set-Up, Measurements and Instrumentation

- 14.1. The test set-up consists of the gas turbine generators, selected station instruments, and an ensemble of special temporary instrumentation.
- 14.2. The purpose of the special temporary instrumentation is to provide precise determination of test parameters that are not monitored by the gas turbine control system, or station instrumentation, and/or to improve upon the accuracy of the data collected.
- 14.3. The parameters to be measured with special test instrumentation include, but are not limited to:
- (a) Air temperature;
 - (b) Relative humidity;
 - (c) Barometric pressure;
- 14.4. The parameters to be measured with the Plant instrumentation include, but are not limited to:
- (a) Gas turbine speed;
 - (b) Gross output power from the generators;

- (c) Auxiliary power consumption;
 - (d) Excitation power for each generator; and generator voltage and power factor;
 - (e) Plant net power output;
 - (f) Fuel consumption.
- 14.5. The special instruments used in the Capacity Test shall be calibrated prior to the test. Copies of the calibration records shall be provided to all Test Representatives.
- 14.6. The air temperature shall be measured near the compressor bell mouth.
- 14.7. The relative humidity shall be measured with a precision psychrometer placed in the immediate vicinity of the entrance to the compressor inlet air system. Measurements of dry and wet bulb temperatures shall be recorded.
- 14.8. The barometric pressure shall be measured by a precision barometer located near the compressor inlet air system and at an elevation equal to the gas turbine centreline.
- 14.9. Temporary test instrumentation shall have accuracy at least equal to that recommended by the gas turbine manufacturer for use during performance tests.

15. Test Preparation

- 15.1. The Test Representative of Seller shall confirm the calibration and proper operation of all unit instruments and recording systems to be used for the Capacity Test.
- 15.2. The gas turbine compressor shall be cleaned as described in the gas turbine generator manual. The compressor inlet and inlet plenum will be inspected before and after the wash. If the compressor is judged to be dirty after the initial wash, additional compressor washing may be required.
- 15.3. The Test Representative of Seller shall give notice of test readiness to all Test Representatives and the Independent Engineer.
- 15.4. The Test Representative of Seller shall compile and make available test instrument calibration record to all Test Representatives and the Independent Engineer.
- 15.5. The Test Representative of Seller shall meet with data takers and delegate assignments and distribute blank data sheets.

16. Conduct of the Capacity Test

16.1. Capacity Test

- (a) The Capacity Test shall be performed for each gas turbine Unit with the Unit operating on gas, its generator fully loaded, and after it has achieved the thermal stability criteria specified under Clause 17 of this Schedule 3.
- (b) After an initial period of stable operation has been achieved, Seller may declare to Buyer and the Independent Engineer the commencement of the Capacity Test which shall consist of three (3) test runs, each lasting 30 minutes, for a total duration of 1 hour 30 minutes.

- (c) Seller shall record the new readings of the Metering System before and after each test run. The Net Electrical Output (expressed in MWh) during each 30-minute test run period (as derived from the Metering System readings) shall be (i) divided by one half (0.5) and (ii) corrected to Reference Site Conditions from ambient and other pertinent operating conditions to result in the net capacity (expressed in MW) for such test run (**Unit Test Run Capacity**). The **Initial Unit Tested Capacity** for the applicable Unit shall be determined by summing the Unit Test Run Capacity for the three test runs and dividing the result by three (3).

16.2. The Reliability Test shall commence after completion of the Capacity Test.

17. Thermal Stability Requirements

- 17.1. Steady-state conditions are assumed to exist when the variation in the gas turbine unit output (kW) reaches stability for a period as defined by the manufacturer and in accordance with GE standard GEK-107551.

18. Corrections to Measured Data and Calculation of Results

- 18.1. For the Capacity Test, the input-output test method shall be used whereby energies entering and exiting through a control boundary around the Unit shall be accounted for to determine the measured performance values in accordance with the codes and standards specified under Clause **Error! Reference source not found.** of this **Error! Reference source not found.** Corrections to the measured Net Electrical Output produced during testing shall be made for ambient conditions and other boundary conditions during the test that are different from the Reference Site Conditions, including grid frequency and power factor, to determine the corrected performance values. Manufacturer's correction curves shall be used in determining all pertinent correction factors.

19. Test Report

- 19.1. Seller shall issue a preliminary test report for the Initial Unit Tested Capacity within 24 hours after the conclusion of the Capacity Test. Such preliminary reports shall be based on test data and shall include preliminary results and a short discussion.
- 19.2. Seller shall issue a final report for the Initial Unit Tested Capacity within ten (10) Business Days of the completion of the Capacity Test, which shall include an analysis of the test fuel samples. The Initial Unit Tested Capacity contained in the preliminary report shall be applicable for purposes of this Agreement until the earlier of ten (10) Business Days from its issue to the Independent Engineer and the issuance of the final report of the Initial Tested Capacity as approved and certified by the Independent Engineer. The date of certification by the Independent Engineer shall be the Unit Test Date of the applicable Unit.
- 19.3. The final report for the Initial Unit Tested Capacity (or Initial Tested Capacity, as applicable) shall include, as a minimum, the following sections:
- (a) Description of the test, arrangements, equipment, instruments and their location and operating conditions;

- (b) Summary of relevant measurements and observations;
- (c) Calculation methodology;
- (d) Calibration curves of instruments and apparatus used in the test;
- (e) Correction factors to be applied because of deviations, if any, from Reference Site Conditions;
- (f) Results;
- (g) Raw Data;
- (h) Summary of Calculations;
- (i) Correction Curves;
- (j) Instrument Calibration and Data Sheets;
- (k) Copy of Final Test Procedure;
- (l) Deviations from Test Procedure, only where approved in writing by the authorised Test Representatives.

19.4. Seller shall issue a final Commencement Test report to the Independent Engineer which shall include the final Capacity Test report as described in Clause **Error! Reference source not found.** of this Schedule 3 and results of the Reliability Test.

Schedule 4

Test Procedures

Plant Scheduled Capacity Test and Capacity Demonstration Procedures

1. Overview of Capacity Test and Capacity Demonstration

- a) This Schedule 4 outlines Parties' responsibilities for test set-up, test instrumentation and measurements, test preparations, operation conditions and the reporting of results in respect of any Capacity Test or Capacity Demonstration to be conducted under this Agreement after the Commencement Date.
- b) In respect of any scheduled Capacity Test pursuant to Clause 8.2.1 of the main body of this Agreement, Seller shall finalise the date for such Capacity Test in consultation with the System Operator and provide Buyer with no less than seven (7) Days' notice of the date of such scheduled Capacity Test.
- c) In respect of any Capacity Test or Capacity Demonstration that is requested by a Party in accordance with Clause 8.2.2 or 8.2.3 of the main body of this Agreement, the Parties shall determine the date of testing in consultation with the System Operator within seven (7) Days after a Party provides Notice of its request for such Capacity Test or Capacity Demonstration (as applicable).
- d) During a Capacity Test or a Capacity Demonstration the Plant shall be operated within its Technical Limits in accordance with Good Industry Practices, the Grid Code, and in compliance with Applicable Law.
- e) The objective of any Capacity Test or Capacity Demonstration is to determine the Tested Capacity of the Plant corrected to the Reference Site Conditions.

2. Capacity Test

2.1. Test Procedure

- a) Any Capacity Test shall be conducted for a period of six Hours, during which time Buyer and Seller shall make reasonable efforts, in consultation with the System Operator, to maintain frequency, electric load, power factor and voltage steady.
- b) The Tested Capacity shall be calculated by (i) taking readings of the Net Electrical Output from the Metering System for each Hour of the Capacity Test, (ii) correcting such readings to Reference Site Conditions using correction curves (including correction for power factor

and grid frequency) as provided in Schedule 5, and (iii) dividing the total Net Electrical Output during the six (6) continuous hours.

- c) If any of the Units of the Plant fail to operate continuously for the period specified, and that is not the result of an Availability Event, or if the Seller is not satisfied with the results of the Capacity Test, the Seller can request up to two (2) retests, each with at least two (2) Days notice. Notwithstanding the foregoing, if any of the Units of the Plant fail to operate continuously for the period specified as a result of an Availability Event, Seller shall not be limited in the number of retests it requests.
- d) Seller shall collect all relevant test data, obtain all required signatures and make copies for the Independent Engineer.

2.2. Seller's Responsibilities

- a) Seller shall designate a test representative (Test Representative) to be present at the Site immediately before and during the execution of each Capacity Test. Seller is responsible for directing the operation of the Plant during the Capacity Test, including supervision of operating and maintenance personnel.
- b) The Test Representative and the Independent Engineer shall have the opportunity to conduct preliminary testing to determine the need for re-calibration, cleaning, or other adjustments.
- c) The Test Representative shall ensure that the Independent Engineer:
 - i. has access to information relevant to the Capacity Test, including instrument calibration records, observation of unit operation, data acquisition and test log; and
 - ii. has the opportunity to examine the Plant prior to, during, and after the Capacity Test.
- d) Seller shall provide the relevant test instrumentation calibration sheets and capacity correction curves to the Independent Engineer.
- e) Except as otherwise set out in Clauses 8.2.2(c) or 8.2.6 of the main body of the Agreement, Seller, at its own cost and expense, shall provide:
 - i. fuel gas, water and other consumables necessary to carry out the Capacity Test; and
 - ii. reasonable accommodations and meals for Buyer's Representative (as defined below) and the Independent Engineer for the duration of the Capacity Test.
- f) The Test Representative shall give notice of test readiness to the appropriate parties and the Independent Engineer. The Test Representative shall confirm that the System Operator is scheduled to accept power generated during the Capacity Test.

- g) The Test Representative shall keep a test log for recording significant events and notes and the information in the test log shall be made available to the Independent Engineer.

2.3. Buyer's Responsibilities

Buyer shall have the right to attend the Site to witness the Capacity Test. If Buyer elects to witness the Capacity Test, Buyer shall give seven (7) Days prior notice to Seller of its representative (Buyer's Representative).

2.4. Test Preparation

- a) All safety devices, protective relays, trip mechanisms and support systems shall be checked and confirmed to be operational before each Capacity Test. All protective equipment shall be in service and operating.
- b) The gas turbine compressors shall be cleaned in accordance with manufacturer's recommendations and guidelines. The compressor inlet and inlet plenum shall be inspected before and after the cleaning. If the compressor is judged to be dirty after the initial wash, additional compressor washing may be required.

2.5. Test Measurements and Instrumentation

- a) The parameters to be measured with test instrumentation may include:
- i. ambient air temperature;
 - ii. ambient air relative humidity;
 - iii. ambient air pressure;
 - iv. gross output power from the generators;
 - v. auxiliary power consumption;
 - vi. excitation power for each generator, and generator voltage and power factor; and
 - vii. Net Electricity Output.
- b) All test measurements shall be taken under steady-state conditions.

2.6. Test Report

- a) Seller shall prepare and submit to Buyer and the Independent Engineer a detailed Capacity Test report, countersigned by the Independent Engineer, providing final test results.
- b) Seller shall issue a preliminary Capacity Test report to Buyer and the Independent Engineer within three (3) Business Days after completing the Capacity Test.

- c) The preliminary Capacity Test report shall be based on test data and shall include preliminary results and a short discussion.
- d) Seller shall issue a final Capacity Test report with the Independent Engineer's signature (**Capacity Test Final Report**) within ten (10) Business Days of the completion of the relevant Capacity Test.
- e) The Capacity Test Final Report shall include, as a minimum, the following:
 - i. description of the test, arrangements, equipment, instruments and their location and plant operating conditions;
 - ii. summary of measurements and observations;
 - iii. calculation methodology;
 - iv. calibration data of instruments and apparatus used in the test;
 - v. correction factors and/or curves applied due to deviations from Reference Site Conditions;
 - vi. a copy of the test log; and
 - vii. Capacity Test results, including raw data, summary of calculations, instrument calibration and data sheets.
- f) The new Tested Capacity shall be in effect the Day following the date of issue of the Capacity Test Final Report.

3. Capacity Demonstration

3.1. Capacity Demonstration Procedure

- a) Any Capacity Demonstration shall be conducted for a period of six Hours, during which time Buyer and Seller shall make reasonable efforts, in consultation with the System Operator, to maintain frequency, electric load, power factor and voltage steady, in line with the System Operator Operating Procedure on capacity testing.
- b) The Tested Capacity shall be calculated by (i) taking readings of the Net Electrical Output from the Metering System for each Hour of the Capacity Demonstration period, (ii) correcting such readings to Reference Site Conditions (including correction for power factor and grid frequency) using correction curves and (iii) dividing the total Net Electrical Output during the two Hours (after correction to Site Reference Conditions) by four (4).
- c) If any of the Units of the Plant fail to operate continuously for such period that is not the result of an Availability Event, or if the Seller is not satisfied with the results of the Capacity Demonstration, the Seller may conduct up to two (2) retests, each with at least two (2) Hours' notice.

3.2. Capacity Demonstration Report

- a) Seller shall issue a report containing the results of the Capacity Demonstration (**Capacity Demonstration Report**) on the Business Day following completion of the Capacity Demonstration.
- b) The Capacity Demonstration Report shall include, as a minimum, the following:
 - i. correction factors and/or curves applied due to deviations from Reference Site Conditions; and
 - ii. Capacity Demonstration results, including raw data, summary of calculations, instrument calibration and data sheets.
- c) The new Tested Capacity shall be in effect the Day following the date of issue of the Capacity Demonstration Report.

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| Total | | | |

In respect of any Additional Capacity, the Seller shall provide detailed specifications and operating parameters which shall be appended to this Schedule 3.

[illegible]

Start -up of the Units and Gas Turbines

| | START | NORMAL (min) | FAST AND LIMIT (min) |
|--|-------|--------------|----------------------|
|--|-------|--------------|----------------------|

5. Limitation of Power Factor, Frequency and Voltage

6. Output of the Units:

The Power Plant consists of 2 GTGs and NIL STGs.

MCR means Maximum Continuous Rating. LCR means Lower Continuous Rating,

| Conditions | Unit | Summer (MCR) | Winter (MCR) | Peak | Lowest (LCR) |
|------------|------|--------------|--------------|------|--------------|
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7. Attach the Droop Characteristics of the GTG and STG's:

8. Correction Curves:

"Correction Curves" means those curves, graphs, and correction factors. As supplied by the original equipment manufacturers for their Standard equipment, required to convert any given parameter from the prevailing ambient conditions such as, but not limited to, air temperature, cooling water temperature, voltage, frequency, power factor and the like:

See Attachments (Figure 1).

Figure 1.9: Correction Curve for Temperature Controller.

9. Generator Reactive Capability Curve:

BLACK START FACILITY:

Describe the black Start Facility.

Generator Capability Diagram

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Schedule 6 (Tariff Schedule)

Clause 1 Defined Terms

Unless defined in this Schedule, capitalised terms used in this Schedule shall have the meanings given in Clause of the main body of this Agreement.

“**Available Capacity**” or “**AC_i**” means the Net Generating Capacity of the Plant expressed in MW that Seller makes available to Buyer at the Delivery Point; provided, however, that Available Capacity may not exceed the lower of Tested Capacity and Initial Tested Capacity.

“**Net Generating Capacity**” means the amount of gross electricity a generator produces minus the electricity used to operate the plant to this schedule.

“**Base Charge Rate**” refers to one of the Foreign Non-Escalatable Capacity Charge Rate, the Local Escalatable Capacity Charge Rate, the Local Variable Payments Charge Rate which have each been approved by the Commission, and “**Charge Rates**” refers to all of them.

“**Base Exchange Rate**” means an Exchange Rate of XXX Naira per Dollar.

“**Base Foreign Non-Escalatable Capacity Charge Rate**” has the value set forth in Table 1 to this Schedule 0

“**Base Gas Price**”

“**Base Local Escalatable Capacity Charge Rate**” has the value set forth in Table 1 to this Schedule 0

“**Base Local Variable Charge Rate**” has the value set forth in Table 1 to this Schedule 0

“**Base Variable Fuel Charge Rate**” or “**VFCR_m**” has the meaning given to that term in Table 1 to this Schedule 6

“**Capacity Payments**” or “**CP_m**” has the meaning given to that term in Clause **Error! Reference source not found.** of this Schedule 6.

“**Foreign Currency**” means currency other than Naira.

“**Energy Payments**” or “**EP_m**” has the meaning given to that term in Clause **Error! Reference source not found.** of this Schedule 6.

“**Foreign Non-Escalatable Capacity Charge Rate**” or “**NECP_FC**” has the meaning given to that term in Clause **Error! Reference source not found.** of this Schedule 6.

“**Foreign Non-Escalatable Capacity Payment**” or “**CPNE_FC_m**” has the meaning given to that term in Clause 3.1 of this Schedule 6.

“Gas Price” or “Gpm” means during any Billing Period during which Settlement Period occurs, either:

- i. the price, expressed in US Dollars/MMBtu (HHV), that is paid by Seller for natural gas, calculated as the sum of the amount paid to the Gas Supplier under the Gas Supply Agreement; or
- ii. in the event that Gas Supplier is unable or unwilling to supply gas in accordance with the Gas Supply Agreement, the price, expressed in US Dollars/MMBtu (HHV), that is paid by Seller for natural gas to any entity other than Gas Supplier, .

“Gas Transportation Price” or “GTPm” means the sum of the following, imposed in direct proportion to the Net Electrical Output purchased by Buyer: (a) the capacity charges payable by Seller under the Gas Transportation Agreement for that Billing Period; and (b) the commodity charges payable by Seller under the Gas Transportation Agreement for that Billing Period.

Import Capacity means the portion of the Available Capacity in MW associated with the electric energy which the Plant consumed from the Grid.

Import Energy means the useful electric energy, expressed in MWh, which the Plant consumed from the Grid, as measured by the Metering System.

Local Escalatable Capacity Charge Rate or **ECP_LC** has the meaning given to that term in Clause **Error! Reference source not found.** of this Schedule 6.

Local Escalatable Capacity Payment or **CPE_LC_m** has the meaning given to that term in Clause **Error! Reference source not found.**2 of this Schedule 6.

Local Inflation Index means Nigerian Consumer Price Index or **“NCPI”** as published by the National Bureau of Statistics from time to time. It shall be the average January to December numbers released by the National Bureau of Statistics for the previous year and applied annually in the preceding January to be used throughout the year; provided, however, that if the values for any such months are not available, then the values that are available for the most recent preceding twelve-month period shall be used.

Local Inflation Index Adjustment Factor or **LIIF** means for any Billing Period, the ratio of (i) the most recently published Local Inflation Index to (ii) the Reference Local Inflation Index.

Local Variable Payments Charge Rate or **VOMP_LC** has the meaning given to that term in Clause **Error! Reference source not found.** of this Schedule 6.

MMBtu means one million Btu.

Monthly Available Capacity or **AC_m** means, for any Billing Period, the sum of the Available Capacity during each Settlement Period of such Billing Period (AC_i), calculated as follows:

$$AC_m = \sum_{i=1}^N \left(\frac{AC_i}{N_{SP}} \right)$$

where N is the number of Settlement Periods occurring during such Billing Period and N_{SP} is the number of Settlement Periods in each Hour during such Billing Period.

“**NEO**” means the Net Electrical Output for any Billing Period.

“**Open Book Cost**” means in relation to the Plant, the total project cost of the Plant as contained in the Agreed Financial Model.

“**Reference Local Inflation Index**” or **RLII** means the value of the Local Inflation Index for the Month in which the Execution Date occurs; which is XXXXX

“**Variable Fuel Charge Rate**” or **VFCR** has the meaning given to that term in Clause **Error! Reference source not found.** of this Schedule 6

Clause 2 Payment Components

The various payment components are defined below, and the specific values applicable are specified in Attachment A.

2.1 Capacity Payments Components:

Seller shall invoice to Buyer and Buyer will pay for Available Capacity on and after the Execution Date the “**Capacity Payments**”, being the sum of amounts calculated in accordance with the following:

- (a) “**Foreign Non-Escalatable Capacity Charge Rate**” or **NECP_FC** expressed in US Dollars per MW per Hour to cover investment-related costs for the Plant denominated in Foreign Currency;
- (b) “**Local Escalatable Capacity Charge Rate**” or **ECP_LC**, expressed in Naira per MW per Hour, to cover fixed costs of operation and maintenance of the Plant denominated in Naira.

2.2 Energy Payments Components:

Seller shall invoice to Buyer and Buyer will pay for Net Electrical Output on and after the Execution Date the “**Energy Payments**”, being equal to the sum of amounts calculated in accordance with the following:

- 2.2.1 “**Local Variable Payments Charge Rate**” or **VOMP_LC**, expressed in Naira per MWh, to cover variable costs for operating the Plant denominated in Naira;

2.2.2 "Variable Fuel Charge Rate" calculated based on the Agreed Efficiency of 24%; and the sum of "Gas Price" and "Gas Transportation Price"

Clause 3 Calculation of Total Payments

3.1 Calculation of Capacity Payments (CP_m)

The Capacity Payment (FCP_m) for each Billing Period \tilde{m} shall be calculated as follows:

$$CP_m = \sum_{\tilde{m}} CPNE_FC_m + CPE_LC_m \times AC_m$$

Where:

CP_m means the Capacity Payments for Billing Period \tilde{m} ;

$CPNE_FC_m$ means the Foreign Non-Escalatable Capacity Payment for any Billing Period \tilde{m} , as calculated in accordance with Clause 4.1 of this Schedule 6;

CPE_LC_m means the Local Escalatable Capacity Payments for any Billing Period \tilde{m} , as calculated in accordance with Clause 4.2 of this Schedule 6.

AC_m means the Monthly Available Capacity for any Billing Period \tilde{m} , as calculated in accordance with the definition thereof.

3.2 Calculation of Energy Payment (EP_m)

The Energy Payment for each Billing Period \tilde{m} shall be calculated as follows:

$$EP_m = \sum_{\tilde{m}} VFCR_m + VOMP_LC_m \times VFCR_m$$

Where:

EP_m means the Energy Payments for any Billing Period \tilde{m} ;

$VFCR_m$ means the Variable Fuel Charge Rate for any Billing Period \tilde{m} ;

$VOMP_LC_m$ means the Local Variable Operation and Maintenance Payments Charge Rate set forth in Attachment A;

Clause 4
Indexation Adjustment of Charge Rates

4.1 Foreign Non-Escalatable Capacity Charge Rate Adjustment (CPNE_FC_m)

The Foreign Non-Escalatable Capacity Charge Rate for any Billing Period *ö* shall be calculated as follows:

$$CPNE_FC_m = BCPNE_FC_m \times ER_p \div BER$$

Where:

CPNE_FC_m means the Foreign Non-Escalatable Capacity Charge for Billing Period *ö*;

BCPNE_FC_m means the Base Foreign Non-Escalatable Capacity Charge for billing Period *ö*;

ER_p = The applicable Exchange Rate for the billing period *ö*

BER = Base Exchange Rate

4.2 Local Escalatable Capacity Charge Rate Adjustment (CPE_LC_m)

The Local Escalatable Capacity Charge Rate for any Billing Period *ö* shall be calculated as follows:

$$CPE_LC_m = BCPE_LC_m \times LIIA_m$$

Where:

CPE_LC_m means the Local Escalatable Capacity Charge Rate for any Billing Period *ö*;

BCPE_LC means the Base Local Escalatable Capacity Charge Rate for any Billing Period *ö*; and

LIIA_m means the Local Inflation Index Adjustment Factor for any Billing Period *ö*. as calculated in accordance with the definition thereof.

4.3 Local Variable Operation and Maintenance Charge Rate Index Adjustment (VOMP_{LCm})

The Local Variable Operations and Maintenance Charge Rate for any Billing Period \tilde{m} shall be calculated as follows:

$$VOMP_{LC_m} = BVOMP_{LC} \times LIIF_m$$

Where:

- $VOMP_{LC_m}$ means the Local Escalatable Variable Operations and Maintenance Charge Rate for any Billing Period \tilde{m} ;
- $BVOMP_{LC}$ means the Base Local Variable Operations and Maintenance Charge Rate set forth in Attachment A;
- $LIIF_m$ means the Local Inflation Index Adjustment Factor for any Billing Period \tilde{m} , as calculated in accordance with the definition thereof.

4.4 Variable Fuel Charge Rate Index Adjustment (VFCR_m)

The Variable Fuel Charge Rate for any Billing Period \tilde{m} shall be calculated as follows:

$$VFCR_m = BVFCR \times \left(\frac{ER_p}{BER} \right) \times GP_m \div BGP_m$$

Where:

- $VFCR_m$ means the Variable Fuel Charge Rate for any Billing Period \tilde{m} ;
- $BVFCR$ means the Base Variable Fuel Charge Rate for any Billing Period \tilde{m} ;
- ER_m The applicable Exchange Rate for the billing period \tilde{m}
- BER Base Exchange Rate
- GP_m the price in USD paid by Seller for Gas delivered to the Plant during Settlement Period i in Billing Period p of Contract Year y , which price is inclusive of all commodity charges and other charges payable under the Gas Supply Agreement and all transportation and other charges payable under the Gas Transportation Agreement.
- BGP_m means \$2.98 USD per MMBtu, which price is inclusive of all commodity charges and other charges (\$2.18 USD per MMBtu)

supply + \$0.80 USD per MMBtu transport) payable under the Gas Supply Agreement and the Gas Transportation Agreement.

Clause 5 Miscellaneous

5.1 Reconciliation for Indices

- a) If the Foreign Inflation Index or the Local Inflation Index ceases to be published, the Parties shall apply an alternative index, with any Dispute regarding such determination to be resolved in accordance with the Agreement with the objective of replacing the Foreign Inflation Index or the Local Inflation Index, as the case may be, with the index most similar to Foreign Inflation Index or the Local Inflation Index, as the case may be.
- b) Calculations of the Local Inflation Index Adjustment Factor and the Foreign Inflation Index Adjustment Factor shall take into account any resetting, reweighting, or other adjustment of the applicable index.

Clause 6 Currency

- 6.1 This Tariff is denominated in both Naira and USD.
- 6.2 All payments made under this Agreement will be made in Naira except as stated in Clause 6.6 of Schedule 6.
- 6.3 Every invoice shall state both the USD denominated and the Naira denominated payment components. For the USD denominated payment components, the invoice shall state the USD amount, the Naira equivalent and the Exchange Rate used in converting the USD to Naira (the "Invoice Exchange Rate"). The Foreign Non-Escalatable Capacity Payments, Foreign Escalatable Capacity Payments, Foreign Energy Payments and any other payments denominated in USD will be paid in Naira based on the Exchange Rate on the date of invoicing stated in the invoice. Any other payment denominated in Naira shall be paid in Naira and will not be converted or adjusted.
- 6.4 An amount (the "True-Up Amount") shall be paid by Buyer to Seller or by Seller to Buyer as the case may be in accordance with this Clause 6.4. Immediately upon receipt of payment from Buyer in respect of any payment denominated in USD but paid in Naira pursuant to Clause 6.3 of Schedule 6, Seller shall convert the Naira payment into USD. If Seller obtains a conversion rate less favourable than the Invoice Exchange Rate, Seller may provide a billing adjustment on the next Invoice to Buyer for the loss (the "Exchange Rate Loss") arising from the difference between (i) the Invoice Exchange Rate and (ii) the Exchange Rate prevailing on the date of payment (the "Prevailing Exchange Rate"). If Seller obtains a conversion rate more favourable than the Invoice Exchange Rate, Seller will provide a billing adjustment on the next Invoice to Buyer for the gain (the "Exchange Rate Gain") arising from the difference between the Prevailing Exchange Rate and the

Invoice Exchange Rate. Seller shall not claim a billing adjustment for any Exchange Rate Loss resulting from not converting the Naira payment into USD within six (6) Business Days following receipt of payment from the Buyer

- 6.5 For USD denominated payments made by the Buyer to the Seller pursuant to Clause 6.3 of Schedule 6, the Seller must furnish to the Buyer satisfactory evidence of the USD transactions it undertook following receipt of payment from the Buyer. At the end of every Contract Year, the Buyer shall carry out a reconciliation to review all the evidence provided by the Seller supporting all USD related payments it made during that Contract Year. Where the Buyer does not receive or is not satisfied with the evidence provided by the Seller, the Buyer reserves the right to claw back the amounts paid for USD denominated obligations pursuant to Clause 6.3 of Schedule 6, which the Seller could not substantiate. The clawback will be applied to the payments due to the Seller on invoices submitted to the Buyer during the succeeding Contract Year.
- 6.6 Buyer may elect in its sole discretion to pay in USD, any part of any payment denominated in USD but payable in Naira pursuant to Clause 6.3 of Schedule 6. Where Buyer elects to pay in USD, the True-Up provision pursuant to Clause 6.4 of Schedule 6 of this Agreement shall not apply. For the avoidance of doubt, the Buyer's election to pay USD to the Seller automatically removes the obligation to make any True-Up payments to the Seller upon payment of the full USD amount stated on the invoice.
- 6.7 Any Dispute between the Parties under this Clause 6 regarding an Exchange Rate Gain or Exchange Rate Loss shall be settled in accordance with Clause 22 of this Agreement.

Clause 7

Import Capacity and Import Energy

Notwithstanding any other provision in this Agreement, in line with the Commission's Supplementary Order on the Commencement of the Transitional Stage Electricity Market (TEM), Order No. NERC/15/0011, the Seller shall pay the Buyer for any Import Capacity and Import Energy consumed from the Grid in any Billing Period, as reflected in the Market Operator Settlement Statement. The charge rate to be applied for Import Capacity and Import Energy will be the greater of (i) the Energy Charge Rate and (ii) the Buyer's weighted average cost of generation for the Billing Period. The payment due for any Import Capacity and Import Energy shall be netted off any Energy Payment due to the Seller from the Buyer.

Clause 8

Adjustment of the Charge Rates

At the Commencement Date and at the end of each Contract Year, the Buyer shall be entitled to request for documentary evidence confirming that the costs associated with the operation and maintenance of the Plant including costs arising from Project Documents of the Seller, remain consistent with the Open Book Cost. The benefit of any cost reduction in the operation and maintenance of the Plant including cost reduction under any Project Document, shall be fully passed to the Buyer through a lump sum payment to the Buyer or an adjustment to the Charge Rates.

Attachment A

Table 1: Base Charge Rates

| Description | Variable | Units | Value |
|--|----------------|-----------------|-------|
| Foreign Non-Escalatable Capacity Charge Rate | NECP_FC | USD/MW/hour | ----- |
| Local Escalatable Capacity Charge Rate | ECP_LC | Naira/MW/hour | ----- |
| Local Variable Payments Charge Rate | VOMP_LC | Naira/MWh | ----- |
| Variable Fuel Charge Rate | VFCR | \$/MWh | ----- |
| Natural Gas Price | PRICE | USD/MMBtu (HHV) | |

Attachment B

(Template Seller Invoice pursuant to Clause 13.2 of the Agreement)

XXXX Plc

State.

DATE: mm dd, yyyy
INVOICE # TAP 000/yy-(NGN)

FOR: Delivery of Capacity &
Energy During the month
of mm yyyy.

BILL TO:

Managing Director

Nigeria Bulk Electricity Trading Plc

2nd & 3rd Floors, Nigerian Electricity Regulatory Commission (NERC) Building,
Plot No. 1387, Cadastral Zone, AOO,
Central Business District,
Abuja FCT.

Invoice for Capacity & Energy for the Month of April 2021.

| Average Monthly Capacity Quantity (MW) | Rate (N/MW/Hr) | Monthly Hrs | Amount (Naira) |
|---|----------------|-------------|----------------|
| xxxxxxxx | xxxxxxxxxxx | hrs | xxxxxxxxxxx |

| Energy (MWh) | Rate (N/MWh) | Amount (Naira) |
|--------------|--------------|----------------|
| xxxxxxxxxxxx | xxxxxxxxxxx | xxxxxxxxxxx |

| | |
|---------------------------|---------------------|
| Amount Due (Naira) | Xxxxxxxxxxxx |
|---------------------------|---------------------|

| Description of Other Charges | Amount (Naira) |
|------------------------------|----------------|
| | |

| | |
|---------------------------------|-------------------------|
| Total Amount Due (Naira) | xxxxxxxxxxxxxxxx |
|---------------------------------|-------------------------|

If you have any question(s) concerning this invoice
please contact -----;

All payments should be made to :

Bank Name: XXXX Bank for Africa

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Schedule 7
Distribution Companies

1. Abuja Electricity Distribution PLC
2. Yola Electricity Distribution PLC
3. Benin Electricity Distribution PLC
4. Kaduna Electricity Distribution PLC
5. Jos Electricity Distribution PLC
6. Kano Electricity Distribution PLC
7. Port Harcourt Electricity Distribution PLC
8. Ibadan Electricity Distribution PLC
9. Ikeja Electricity Distribution PLC
10. Enugu Electricity Distribution PLC
11. Eko Electricity Distribution PLC

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METERING SCHEME [DELIVERING POINT] - AFAM POWER PLC



| FDR. NAME | VOLTAGE LEVEL (kV) | METER TYPE | SERIAL NUMBER | ACCURACY CLASS | DATE OF MANUFACTURE |
|----------------------|-------------------------------|-----------------------|--------------------------|---------------------------|--------------------------------|
| Alaoji line I | 330 | EDMI (Mk6E) | 212372508 | 1 | JUL'12 |
| Alaoji Line II | 330 | EDMI (Mk6E) | 212372378 | 1 | JUL'12 |
| Intercon Trf | 330/132 | EDMI (Mk6E) | 212372466 | 1 | JUL'12 |
| GT 13 Gen. | 10.5 | Enermax | 04230044 | 1 | AUG'04 |
| GT 13 Aux. | 10.5/0.415 | Enermax | 04230094 | 1 | AUG'05 |
| GT 14 Gen. | 10.5 | Enermax | 04220048 | 1 | AUG'06 |
| GT 14 Aux. | 3.3/0.415 | Enermax | 04230027 | 1 | AUG'07 |
| GT 15 Gen. | 10.5 | Enermax | 04230060 | 1 | AUG'08 |
| GT 15 Aux. | 10.5/0.415 | Enermax | 04170051 | 1 | AUG'09 |
| GT 16 Gen. | 10.5 | Enermax | 04230048 | 1 | AUG'10 |
| GT 16 Aux. | 3.3/0.415 | Enermax | 04230040 | 1 | AUG'11 |
| GT 17 Gen. | 10.5 | Enermax | 18330006 | 1 | |
| GT 17 Aux | 10.5/0.415 | Enermax | 18310021 | 1 | |
| GT 18 Gen | 10.5 | Enermax | 18310022 | 1 | |
| GT 18 Aux. | 3.3/0.415 | Enermax | 04230050 | 1 | AUG'04 |
| GT 19 Gen. | 15.75KV | Enermax | 04230021 | 1 | AUG'05 |
| GT 19 Aux. | 6.6/0.415 | Enermax | 04170023 | 1 | AUG'06 |
| GT 20 Gen. | 15.75KV | Enermax | 04230026 | 1 | AUG'07 |
| GT 20 Aux. | 6.6/0.415 | Enermax | 04230071 | 1 | AUG'08 |

Schedule 9 Operating Records

. The Seller shall keep complete and accurate records and all other data required pursuant to this Agreement, Applicable Law, the Grid Code, the Market Rules, and Good Industry Practices for the purposes of proper administration of this Agreement.

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Schedule 10
Maintenance Schedule

Maintenance

A. Maintenance Obligations

- i. The Plant shall be maintained in accordance with Good Industry Practices, Applicable Law, industry codes and standards, manufacturer's requirements for maintaining warranty coverage, and manufacturer's recommendations.
- ii. In the event more than one component of Good Industry Practices establishes an applicable maintenance requirement, the one that provides the greatest assurance of maintaining the Plant in good operating condition and capable of complying with the requirements shall apply.
- iii. Deviations from a specific element of Good Industry Practices may be required by Applicable Law, orders of the SO, or other circumstances. In such event, Good Industry Practices requires that a change be made and that appropriate action be taken to correct or mitigate any adverse impact on the Plant. If Seller determines that a change in a specific element of Good Industry Practices is required as a result of revisions to laws, codes, standards or manufacturer's recommendations, this shall be properly documented and a notice of such change shall be given to Buyer. If any change can be expected to adversely impact the operation of the Plant or shorten the useful life of the Plant, Seller shall provide an opinion of a qualified engineer regarding such impact and the appropriate action to be taken to correct or mitigate any adverse impact on the Plant.
- iv. If Seller desires to make an optional change in specific elements of Good Industry Practices, such as the details of manufacturer recommended maintenance, the details of the change shall be properly documented and may not be implemented until ninety (90) days after notice to Buyer including an opinion of a qualified engineer to the effect that such change will not adversely impact the operation of the Plant or shorten the useful life of the Plant. An optional change shall not be made if Buyer objects.

A. Maintenance Inspections

- i. Buyer shall be entitled to perform a maintenance inspection of the Plant annually on a schedule to be agreed.
- ii. Buyer shall be entitled to perform a maintenance inspection of the Plant at any time if Buyer has reasonable grounds to believe the Plant is not being maintained in accordance with Applicable Law and in accordance with

Good Industry Practices, which inspection shall be without prior notice or on such notice as the circumstances permit. Buyer initiated maintenance inspections that interfere with normal operation of the Plant will be an Availability Event unless they reveal a need for unscheduled maintenance or repair or an unreported reduction in Available Capacity.

- iii. Buyer and Seller will each pay its own costs of such inspection. If Buyer requires equipment to be taken out of service for inspection, disassembled or tested and such action is not a normal part of Good Industry Practices, Buyer will pay the cost of disassembly and testing unless the inspection indicates a need for unscheduled maintenance or repair, in which case Seller shall pay such cost.
- iv. Seller shall perform maintenance or repairs determined to be required by a maintenance inspection at its own costs and in compliance with Applicable Law and Good Industry Practices, which shall determine the schedule of such maintenance or repairs taking into account the potential impact on the Plant and the performance of the Plant as well as cost benefits.

B. Maintenance Records

- i. Seller will maintain maintenance records in accordance with Applicable Law and in accordance with Good Industry Practices. Such records will be available for inspection by Buyer during any Buyer maintenance inspections and at any other time upon seven (7) days prior notice or such shorter notice that may be reasonable under the circumstances.

Schedule 11

Plant Capacity Recovery

- 11.1 The Seller has proposed to rehabilitate the Plant in accordance with the Capacity Recovery Plan in Annex 1 of this Schedule, with a view to increasing the capacity from the Initial Tested Capacity (120MW) to the licensed and installed capacity of 726 Mw.
- 11.2 Pending the completion of the Recovery Plan and attainment of the licensed and installed capacity of the Plant, the Initial Tested Capacity shall be treated as the Contract Capacity. However, the Plant shall be periodically tested in accordance with Schedule 4 as the implementation of the Capacity Recovery Plan progresses, based on the timelines in the Capacity Recovery Plan, and the Contract Capacity shall be periodically updated to reflect the outcome of the Capacity Tests.

Annex 1

Capacity Recovery Plan

(Attached)

Adjustments on Payments due to Capacity Recovery Plan

The tariff ascertained herein shall be subject to the attainment of the Capacity Recovery Plan. Such attainment shall be determined by the capacity test to be conducted in line with the provisions of this agreement.

Following the Seller's plan to recover its investment over the stipulated period, the Buyer shall, as stated above, ascertain the recovered capacity notified by the Seller, provided however, if the Seller is unable to recover any planned capacity milestone; the formula hereinunder shall be applied to discount the approved tariff.

$$T_n = T_1 \times (UC \times 0.00709570957)$$

where:

T_n = Tariff attributable to non-recovered capacity

T_1 = Tariff approved for ----- Power Plc

UC = unrecovered Capacity

The resultant Tariff after the discount shall be the applicable Tariff to determine the invoiced amount payable by the Buyer monthly until the planned capacity recovery is attained. Notwithstanding the above, the applicable Tariff shall not be discounted and the formula shall not apply against the Seller if the Buyer is unable to purchase any planned capacity milestone recovered by the Seller.

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