

FORM POWER PURCHASE AGREEMENT - HYDRO

Power Purchase Agreement

between

Nigerian Bulk Electricity Trading Plc

and

XXXXXXXX

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THIS POWER PURCHASE AGREEMENT (this "Agreement") is entered into this ____ day of _____ 2018, 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 registered office at 2nd & 3rd Floors, Nigerian Electricity Regulatory Commission (NERC) Building, Plot No. 1387 Cadastral Zone, A00, Central Business District, Abuja, Nigeria ("Buyer," which expression shall where the context so admits include its successors-in-title and assigns) of the first part; and
- (2) **XXXXXX** with RC No-----: , a company duly incorporated under the laws of the Federal Republic of Nigeria and having its principal place of business at 46 Gana Street, Maitama, Abuja, Nigeria ("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, transmission, and distribution of electricity in Nigeria.
- (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 licensed 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 hydroelectric generation facility (as hereinafter defined, the "Plant") to be located on the Site (as hereinafter defined).
- (D) Seller wishes to sell and Buyer wishes to purchase all of the Net Electrical Output on and pursuant to the terms and conditions contained herein.
- (E) The Parties negotiated the terms and conditions of power purchase from the proposed Plant, initialled a Power Purchase Agreement ("PPA") on 24th November 2017 and have subsequently amended it to reflect changes required by the Commission and other agreed changes; and the Commission has considered and approved the Tariff.
- (F) 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.

Abandonment means the voluntary cessation of the operation or maintenance of the Plant, or the withdrawal of all, or substantially all, personnel by Seller (or Seller's Contractors) from the Plant for reasons other than a Buyer Default, an Availability Event or a Force Majeure Event.

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. A circumstance, event or act will not be considered an Act of Insolvency of a Party if it involves a limited recourse obligation of the Party to a third party other than an obligation under a Finance Document, unless it causes any of the circumstances, events or acts listed in (i)-(iii) or (v)-(vi).

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, **öcontrolö** (including, with correlative meanings, the terms **öcontrolling,ö öunder common control with,ö and öcontrolled byö**), 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.

Agreed Interest Rate (Foreign) means LIBOR plus the margin set forth in Schedule 1.

“**Agreed Interest Rate (Local)**” means NIBOR plus the margin set forth in Schedule 1.

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

“**Applicable Law**” 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.

“**Authorisation**” 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 and includes the Initial Authorisations.

“**Back Up Meter**” has the meaning given to that term in Clause 10.2.

“**Billing Period**” means a Month for which Seller has issued an invoice to Buyer pursuant to Clause 12.

“**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 17.3.

“**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.

“**Calculation Date**” means the date that occurs ninety (90) Days after the date of the relevant Termination Notice.

“**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.

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

“**Commencement Date**” means a date that is nine (9) months from the Closing Date.

“**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 23.10.1.

“**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 1.

“**Contract Year**” means each period of twelve (12) consecutive months commencing on the Commencement 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 17.4.1.

“**Daily Notices**” has the meaning given to that term in Clause 9.2.1(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.

“**Delivery Point**” means the Metering Point at the Plant located at the high voltage side of the step-up transformer at 132 kv or higher, and is identified in the diagram in Schedule 11.

“**Delivery Term**” means the period commencing on the Commencement 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 8, as may be amended.

“**Documents of Title**” means the Certificate of Occupancy and the Registered Deed of Assignment, or any other registered document evidencing the right to occupy the Site that is satisfactory to Buyer.

“**Energy Charge Rate**” has the meaning given to that term in Schedule 6.

“**Energy Payments**” means the amounts payable for Net Electrical Output as calculated in accordance with Schedule 6.

“**Exchange Rate**” means the applicable official rate for the conversion of US Dollars to Naira published by the Central Bank of Nigeria on its website.

“**Execution Date**” means the date of this Agreement.

“**Expert**” means the individual appointed under Clause 21.5 for the purposes specified therein.

“**Expert Determination**” has the meaning given to that term in Clause 21.5.

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

“**Force Majeure Event**” has the meaning given to that term in Clause 20.1.

“**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; or
- (c) a Natural Force Majeure Event or Foreign Political Force Majeure Event.

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

“**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.

Initial Authorisations means the Authorisations set out in Schedule 9.

Initial Financing means the financial indebtedness incurred by Seller or its Affiliates pursuant to the Finance Documents entered into at Financial Close.

Installed Capacity means the installed nameplate generating capacity of the Plant expressed in MW.

Key Defined Milestones means all of the Notification Date, Commencement Date and Required Interconnection 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 any Project Documents or Finance Documents is materially and adversely affected; or
- (c) that is made subject, subsequent to its grant, upon renewal or otherwise, to any terms or conditions that materially and adversely affect Seller’s ability to perform its obligations under an Authorisation, any Project Document or Finance Document; or
- (d) that, in the case of a customs clearance or similar Authorisation is required solely in order to import any item required for the design, construction, installation, operation and maintenance of the Project and is not issued within ninety (90) Days of application by Seller or a Contractor,

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.

“Long Stop Closing Date” means the date beyond which the Target Closing Date may not be extended, which date is specified in Schedule 1.

“Loss Factor” or “LF” is defined in Clause 2.4.

“Main Meters” has the meaning given to that term in Clause 10.2.

“Market Operator” means the unit of the Transmission Company of Nigeria or any other independent entity evolving therefrom being authorized to perform energy and financial settlement functions within the Nigerian electricity industry.

“Market Operator Settlement Statement” means the settlement statement provided to Seller and Buyer by the Market Operator reflecting the information provided to the Market Operator by the System 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.

Metering System 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. **Meters** shall be construed accordingly.

Metering Tolerance 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.

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

Monthly Report means the report to be prepared by Seller in accordance with Clause 7.5.

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

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

Naira or **N** means the currency of the Federal Republic of Nigeria.

Natural Force Majeure Event has the meaning given to that term in Clause 20.1.4.

Net Electrical Output or **NEO** means the useful hydroelectric 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, hydroelectric 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.

Nigeria Inter-Bank Offer Rate or **NIBOR** 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://fmda.com.ng/>,

or as may be obtained from the Executive Secretary of the Money Market Association of Nigeria at their registered office.

“**Notification Date**” is the date in which the Seller informs the Buyer in writing of its ability or inability to commence sale of Net Electrical Output to the Buyer. The Notification Date is expected to occur at least sixty (60) days prior to the Commencement Date.

“**Nominated Quantity**” means in respect of an Hour, the quantity of Net Electrical Output which has been nominated by Buyer in accordance with Clause 9.2 for delivery by Seller at the Delivery Point. Nominated Quantities shall be based on the projected Actual Minimum Capacity of the Plant. A Nominated Quantity shall include any Nominated Quantity which has been validly varied in accordance with Clause 9.2.

“**Notice of Dispute**” has the meaning given to that term in Clause 21.2.1.

“**Notices**” has the meaning given to that term in Clause 22.1.

“**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.

“**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 hydro 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, 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.

“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/debar);
- (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 design, development, engineering, procurement, construction, permitting, commissioning, testing, operation and maintenance of the Plant and all activities incidental thereto.

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

“Prolonged Force Majeure Events” has the meaning given to that term in Clause 20.8.

“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.

“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.

“**Registered Deed of Assignment**” means the deed of assignment evidencing the transfer of occupancy and use or other title in respect of the Site.

“**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.

“**Required Interconnection Date**” means the date by which the Transmission Company of Nigeria is required, under the Connection Agreement, to have completed the necessary transmission and associated interconnection facilities, and any other necessary enhancement of the Grid, needed to safely and reliably evacuate power generated by the Plant, which date is specified in Schedule 1, as such date may be extended under the Connection 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 8; 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 17.2.

“**Seller Settlement Statement**” has the meaning given to that term in 12.3.1.

“**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.

“**Site**” has the meaning given to that term in Schedule 1.

“**Sponsors**” has the meaning given to that term in Schedule 1.

“**System Operator**” means the entity that holds a system operation licence issued under the Act to provide system operation services to the portion of the Grid to which the Plant is connected.

“**Target Closing Date**” means the date by which Seller must achieve the Closing Date in order to avoid paying liquidated damages under Clause 3.5.2, which date is specified in Schedule 1.

“**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.

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•**Technical Limits**• means the operating limits of the Plant specified in Schedule 5

•**Term**• has the meaning given to that term in Schedule 1.

•**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.

•**Transfer**• means a transfer or event requiring consent of the other Party in accordance with Clause 19.

•**Transmission Company of Nigeria**• or •**TCN**• means the company and any successors or assigns holding an electricity transmission licence issued under the Act to provide transmission services for the portion of the Grid to which the Plant is connected.

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

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

•**Wholesale Electricity Market**• means the wholesale electricity market for Nigeria.

•**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 16.6.

1.2. Approvals

- (a) 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.

- (b) After the receipt of the action of the Commission and each other Relevant Authority in clause (a) in form and substance acceptable to both Parties,
- (x) Buyer will provide a notice to Seller (i) that the conditions to effectiveness of clause (a) 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
- (a) (y) Seller shall as soon as reasonably practicable following receipt of the notice from Buyer provide a notice to Buyer (x) that the conditions to effectiveness of clause (a) have been met and are accepted by Seller, and (y) affirming if possible that the representations and warranties of Seller herein are correct as of the date of such notice, and 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 Net Electrical Output

2.1. Sale and Purchase of Energy

On and after the Commencement Date until the expiry of the Term or earlier termination in accordance with this Agreement, (a) Seller shall deliver to Buyer, all the Net Electrical Output corresponding to the Contract Capacity and (b) Buyer shall, on the basis of actual meter reading data, pay the Seller for all such Net Electrical Output corresponding to the Contract Capacity.

2.2. Ancillary Services

In accordance with the Market Rules and Grid Code, Seller will supply Ancillary Services to the Transmission Company of Nigeria as directed by the System Operator during the Delivery Term. For the avoidance of doubt, the provision of Ancillary Services by Seller as directed by the Transmission Company of Nigeria or its designee that reduces Net Electrical Output will result in reductions in Energy Payments. In such an event, Seller is expected to engage with Transmission Company of Nigeria to obtain direct payment for provision of such Ancillary Services.

2.3. Sales to Third Parties

The obligations of Buyer and Seller with respect to the Net Electrical Energy Output under this Agreement shall not limit the freedom to enter into other similar agreements with third parties, provided that entering into such third-party agreements shall not impair the ability of Buyer or Seller, as applicable, to perform its obligations under this Agreement. For the avoidance of doubt, if Seller wishes to sell part of the Contract Capacity to third parties, Buyer must be duly notified in writing before the commencement of any such third-party transactions and the Buyer and Seller shall agree in writing on the applicable terms for capacity release for such third-party transactions.

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 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 8.05 per cent as specified by the Commission. The Parties' expectation is that the energy deliveries reported by the Market Operator in settlement statements will be reduced by a Loss Factor of 8.05% 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 by the Market Operator in settlement statements, or if the Loss Factor so used is changed from 8.05%, 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 Clause 7 of 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 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, Energy Payments will be adjusted so that Buyer obtains such benefit.

2.5. Purchase for Resale

Buyer will purchase Net Electrical Output for resale, and may resell such energy 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 Closing Date and shall continue in full force and effect, valid and binding from the Closing Date until the expiry of the Term subject to Clause 3.1.4, or the earlier termination by either Party in accordance with Clause 17

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

- (a) Clause 1 (*Definitions*);
- (b) Clauses 4.2.4, 4.2.5, (*Seller's Covenants*);
- (c) Clause 3 (**Commencement**, *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 16 (*Liability and Indemnification*)
- (k) **Clause 19 (*Transfers and Prohibited Shareholders*)**;
- (l) Clause 20 (*Transfers and Prohibited Shareholders*);
- (m) Clause 21 (*Choice of Law and Dispute Resolution*);
- (n) Clause 22 (*Notices*); and
- (o) Clause 23 (*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

On 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 5 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 5 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 5 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 5 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 5 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 5 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.
- 3.4.6 On the Closing Date, each of the Parties shall provide notice to the other acknowledging that all Conditions Precedent have been met or waived, at which point all of the provisions of this Agreement shall become effective.

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 5 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, 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).

- 3.5.3 Upon any termination of this Agreement under Clause 3.5.2 due to a failure of Seller to satisfy any Condition Precedent for which Seller is primarily responsible, Buyer shall be entitled to claim liquidated damages in the amount available under the Development Security and draw on or make a demand under the Development Security, provided that, without derogation of the right of Buyer to immediately draw on or make a demand under the Development Security, Seller may dispute its obligation to pay liquidated damages under this Clause 3.5.3 if Seller's failure to satisfy a condition precedent for which it is primarily responsible is directly attributable to a breach by Buyer under this Agreement (which breach is not caused by an inaccuracy of Seller's representations or warranties included in Clause 4.1 or any breach of the Agreement by Seller) by issuing a Notice of Dispute to such effect no later than the termination date set forth in the Termination Notice issued by Buyer. If Seller issues a timely Notice of Dispute disputing its obligation to pay liquidated damages pursuant to the preceding sentence, Buyer shall deposit the liquidated damages amount into an escrow account pending resolution of the Dispute.

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, except for the Initial Authorisations.
- 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 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;
- 4.2.2 procure and maintain in effect at all times an Operation and Maintenance Agreement with a Technically Qualified Operator;
- 4.2.3 operate and maintain the Plant in all material respects, in accordance with this Agreement, Good Industry Practices and Applicable Law;
- 4.2.4 procure and maintain the Authorisations necessary for its performance under this Agreement;
- 4.2.5 work and cooperate in good faith with Buyer with respect to all of Buyer's obligations and rights hereunder;
- 4.2.6 supply, install, maintain, and replace all auxiliary facilities necessary to interconnect the Plant:
 - (a) to the Grid; and

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(c) Corrupt Practices and Other Related Offences Act.

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. Seller's Plant and Facilities

- 6.1.1 Seller shall operate (or cause to be operated for Seller's benefit) the Plant described in Schedule 2 to enable Seller to make available and deliver at the Delivery Point, from the Commencement Date, Net Electrical Output in accordance with the terms of this Agreement.

6.2. Seller's Project Implementation

- 6.2.1 Seller represents and warrants that the Plant has been:
 - (a) designed and constructed to conform to the specifications contained in this Agreement;
 - (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 generating Net Electrical Output 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.
- 6.2.2 Seller represents and warrants that the installation of any facilities required 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.
- 6.2.3 As soon as reasonably practicable, Seller shall furnish Buyer the Operation and Maintenance Procedure Manual prepared for the Plant;

Clause 7

Records Retention and Audit

7.1. Maintenance of Operating Records

- 7.1.1 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. Among, but not limited to, the records and data required to be kept under this Agreement, Seller shall maintain 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 13;
 - (b) a continuous record of 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;
 - (c) 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;
 - (d) circuit breaker trip operations requiring a manual reset, partial deratings of equipment; and

- (e) any other significant event related to the operation of the Plant, and unusual conditions found during inspections.

7.1.2 Records required by this Clause 7.1 shall be available for inspection by Buyer upon reasonable advance request by Buyer, and Seller shall make meter data available on a real-time basis by remote access to Buyer.

7.2. Records Retention

The Parties shall keep complete and accurate records, and shall maintain such records and other data as may be necessary for the purpose of ascertaining the accuracy of all relevant bills, data, estimates, or statements of charges submitted hereunder. Such records shall be maintained for a period of three (3) years after final payment under this Agreement. Within three years from final payment under this Agreement, a Party may at its cost request in writing copies of the records of the other party to the extent reasonably necessary to verify the accuracy of any statement or charge. The party from which documents or data has been requested shall cooperate in providing the documents and data within a reasonable time period.

7.3. Audit

Seller agrees that Buyer, or its designated representative, shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement, at the Buyer's Cost. Seller agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Seller agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records.

7.4. Authorisations

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.

7.5. Monthly Reports

During the Delivery Term, Seller shall provide to Buyer Monthly reports that include the information in Clause 7.1 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 projections of the Net Electrical Output corresponding to the Contract Capacity 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.

7.6. Annual Report

From the Commercial Operations 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.

Clause 8 Operation and Maintenance

8.1. 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 Schedule 14. 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.

8.2. Scheduled Maintenance Outages

Seller shall be entitled in each Contract Year to Scheduled Maintenance Outages in accordance with this Clause 8 at its own cost.

8.3. Scheduling of Scheduled Maintenance Outages

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

8.3.1 Not later than sixty (60) Days before the Commencement Date, Seller shall submit to System Operator and Buyer proposed dates for Scheduled Maintenance Outages during the following Contract Year.

8.3.2 Following the Commencement Date, Seller shall submit no later than ninety (90) Days before each Contract Year to System Operator and Buyer proposed dates for Scheduled Maintenance Outages during the following Contract Year.

8.3.3 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.

- 8.3.4 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 8.3; *provided that*, where no agreement was reached, the last notified alternative dates provided by Buyer and the System Operator shall prevail.

8.4. 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.

8.5. 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.

8.6. Notification of Forced Outages

- 8.6.1 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.

- 8.6.2 Seller shall be responsible for providing notice to System Operator of any Forced Outages or Partial Forced Outages, as required under the Grid Code.

Clause 9 Scheduling Notices

9.1. Declarations

- 9.1.1 During the Delivery Term, not later than 12:00 Hours on the Day prior to each Day, Seller shall notify Buyer of the projected Actual Minimum Capacity of the Plant

for each Settlement Period of such Day strictly for purposes of nominations of Net Electrical Output by the Buyer in accordance with Clause 7.2.1

- 9.1.2 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.
- 9.1.3 Seller shall be responsible for notifying System Operator of the projected Actual Minimum Capacity of the Plant in accordance with the Grid Code.

9.2. Buyer Nominations

9.2.1 Daily Notices

- (a) During the Delivery Term, the entire Actual Minimum Capacity of the Plant will 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 corresponding to the Actual Minimum Capacity if dispatched by the System Operator or a lesser amount.
- (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 Minimum Capacity declared by Seller for such Hour in accordance with Clause 9.1.
- (c) Other restrictions on Nominated Quantity will be governed by the Grid Code.

9.2.2 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 10 Metering

10.1. Metering

10.1.1 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 for operational purposes that do not conform to the Metering Code.

10.1.2 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.

10.2. Main Meters and Back Up Meters

In addition to the official meter installed by the Transmission Company of Nigeria (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.

10.3. Metering Code

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

10.4. Delivery of Meter Data

Seller will ensure that data from any meter controlled by Seller is sent (i) to the System 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 Transmission Company of Nigeria 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.

10.5. Meter Failure or Inaccuracy

10.5.1 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.

10.5.2 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 10.5.2.

10.5.2.1 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.

10.5.2.2 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 10, 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.

10.5.2.3 If a correction is to be made pursuant to Clause 10.5.2, 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.

10.5.2.4 Any corrections pursuant to this Clause 10.5.2 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.

10.6. 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.

10.7. 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.

10.8. 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.

10.9. 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.

10.10. 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 direction, 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 11 Delivery

11.1. Delivery Point

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

11.2. Title and Risk

Prior to delivery at the Delivery Point, 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 remain with Seller, and shall pass to Buyer at the Delivery Point.

Clause 12 Billing and Payment

12.1. Settlement Statement Quantities used for Invoicing

The Parties agree to use the quantities in the Market Operator Settlement Statements issued by the Market Operator as the basis for the calculation and invoicing of Energy 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 issued by the Market Operator at the conclusion of such procedures.

12.2. Invoice

Every invoice to Buyer shall specify:

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

and shall include such supporting information and calculations as may be reasonably necessary to substantiate the amounts claimed in the invoice.

12.3. Daily Settlement Statements from Seller

12.3.1 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;

12.3.2 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.

- 12.3.3 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.

12.4. Billing and Payment

- 12.4.1 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.
- 12.4.2 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.
- 12.4.3 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.
- 12.4.4 Where Buyer disputes an invoice or any portion thereof, it shall declare a Dispute and refer the same for determination in accordance with Clause 21 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 21 of this Agreement.
- 12.4.5 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.
- 12.4.6 Buyer shall pay interest at the Agreed Interest Rate (Local) on any unpaid amounts invoiced in Naira and due and payable under this Clause 12.4 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).

12.4.7 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 12.4 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.

12.4.8 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.

12.5. First and Last Billing Period

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 Energy Payments, 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 Energy Payments, if any, shall be invoiced on a pro-rata basis.

Clause 13 Prices

13.1. Energy Payments and Supplemental Payments

During the Delivery Term, Buyer shall pay Seller each Month in arrears the Energy Payment, the Supplemental Payment and any other amounts calculated pursuant to 0 for the previous Billing Period.

13.2. Change in Electricity Market Fundamentals

13.2.1 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 may 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.

13.2.2 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.

- 13.2.3 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.

13.3 Refinancing of the Plant

- 13.3.1 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.
- 13.3.2 Seller and Buyer agree to meet within thirty (30) days of the receipt of a notice referred to in Clause 14.6.1 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.
- 13.3.3 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 14 Insurance

14.1. Required Insurance Coverage

Seller shall, at its own cost and expense, obtain and maintain insurance coverage of the nature and in the minimum amounts set forth in Schedule 7 of this Agreement; *provided, however,* that such minimum amounts may be changed from time to time with the written consent of Buyer, which consent shall not be unreasonably withheld. Seller shall name Buyer as an additional insured under each such policy. The insurer must be an insurance company licensed to offer insurance services in Nigeria by the National Insurance Commission. Seller shall not be in breach of its obligations hereunder if and to the extent that any particular risk is or becomes uninsurable or the cost of such insurance becomes commercially unreasonable for reasons other than any negligence or default by, or the financial condition of, Seller.

14.2. Additional Insurance

- 14.2.1 In addition to the coverages set forth in Schedule 7, each Party shall obtain any additional coverages required by Applicable Law and/or as the Party deems necessary for the effective fulfilment of its obligations herein at its own expense.

14.2.2 Each Party shall be free to obtain any additional insurance coverages beyond the forgoing at its own expense.

14.3. Use of Insurance Proceeds

Seller shall apply the proceeds of any insurance claim in respect of physical loss or damage to the Plant made against the insurers pursuant to the construction and erection all risks, all risks, and machinery breakdown policies maintained pursuant to Clause 14.1 and 14.2.1 towards repair of the Plant or recovery of the loss or damage as soon as is reasonably possible.

14.4. Certificates of Insurance

At the time of initial inception, and thereafter not less than seven (7) Days prior at the time of any renewal, amendment or replacement thereof, Seller shall cause its insurers or agents to provide Buyer with certificates of insurance evidencing the insurance policies and endorsements required under Clauses 14.1 and 14.2.1. In addition, Seller shall provide to Buyer evidence of the payment of premiums then due and payable thereunder, and Buyer shall acknowledge receipt in writing.

14.5. Waiver of Subrogation

Each Party shall require its insurers to waive the insurers' rights of subrogation in favour of the other Party and the Finance Parties.

14.6. Finance Parties' Interests

The Parties recognise and agree that the insurances in respect of the Project will be secured in favour of the Finance Parties and that the interests of the Finance Parties will be noted on the insurance policies.

Clause 15 Taxes

15.1. 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.

15.2. 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.

15.3. Tax Indemnity

15.3.1 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 16 Liability and Indemnification

16.1. Limitation of Liability

16.1.1 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.

16.1.2 Notwithstanding Clause 16.1.1 or Clause 16.6, each Party shall be liable to the other Party for any loss or damage arising by virtue of Gross Negligence or Wilful Misconduct.

16.2. Mitigation of Damages

Each Party shall use Reasonable Endeavours (with or without incurring expense reasonable in the circumstances arising) 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.

16.3. Mutual Indemnifications

16.3.1 Subject to Clause 16.6, 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.

16.4. 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 16.3. 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.

16.5. Defence of Claims

16.5.1 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.

16.5.2 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 16.6, 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.

16.5.3 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.

16.5.4 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.

16.6. 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 16, 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 16.6 (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.

16.7. 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.

16.8. 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 16.3 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.

16.9. Allocation of Liability

In the event that any loss 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 17 Default & Early Termination

17.1. Early Termination

17.1.1 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 17.2 following a Seller Default;
- (c) the delivery of a Termination Notice by Seller pursuant to Clause 17.3 following a Buyer Default;
- (d) the delivery of a Termination Notice by either Party pursuant to Clause 17.5;
- (e) the delivery of a Termination Notice by either Party pursuant to Clause 20.8 following the occurrence of a Prolonged Force Majeure Event; or

17.1.2 The expiration or earlier termination of this Agreement (as provided in Clause 17.1.1) 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.

17.2. 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 17.1, *provided, however*, that no such event shall become a Seller Default if it results from (i) a Buyer Default or (ii) the occurrence of a Force Majeure Event:

- (a) (I) a breach by Seller of its obligations other than those referred to elsewhere in this Clause 17.2 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 17.2 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 19 (*Transfer*) occurs;
- (d) a breach by Seller of its obligation to obtain and maintain the insurances required under Clause 14.1 and 14.2.1 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) Abandonment for a continuous period of thirty (30) Days or more which has not been cured during a cure period of thirty (30) Days from receipt of a Cure Notice;
- (h) termination of the Connection Agreement as a result of breach or default by Seller;
- (i) 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);
- (j) 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 drawing on the Development Security or by other means stipulated in this Agreement;

17.3. 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 17.1, *provided, however*, that no such event shall become a Buyer Default if it results from (i) a Seller Default or (ii) the occurrence of a Force Majeure Event, subject to Clause 20.2 (*Effect of Force Majeure*):

- (a) (I) a breach by Buyer of any of its obligations other than those referred to elsewhere in this Clause 17.3 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) 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 17.3 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 19.2; and
- (g) failure to maintain the Buyer Payment Security, or a replacement thereof, in accordance with Paragraph 3 of Schedule 1 for a continuous period of thirty (30) Days or more following the delivery of notice of such failure from Seller to Buyer.

17.4. Cure Period

17.4.1 Upon the occurrence of a Seller Default or Buyer Default that provides for a cure period in Clause 17.2 or 17.3, 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.

17.4.2 The Cure Notice must specify:

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

17.4.3 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.

17.4.4 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.

17.5. 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.

17.6. Termination for a Local Political Force Majeure Event

In the event that either Party elects to terminate this Agreement pursuant to Clause 20.9, then either Party shall have the right to issue a Termination Notice to the other Party in accordance with the terms set out in Clause 20.9.1.

Clause 18 Sole Remedies Upon Termination

18.1. Sole Remedy

18.1.1 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 amounts accrued and owing under this Agreement; and

18.1.2 Upon payment in full of the amounts referred to in Clause 18.1.1, 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

- 18.1.3 not to 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 19

Transfers and Prohibited Shareholders

19.1. Transfer of Ownership Interests

19.1.1 Prior to the Commercial Operations Date, Seller shall ensure that the Sponsors (or any permitted transferee of any Ownership Interest previously held by the Sponsors) shall not transfer any legal or beneficial interest in any Ownership Interest in Seller subscribed to or held by them unless such transfer is approved by Buyer, with the prior consent and approval of the Commission or:

- (a) such transfer is being made to a Sponsor, or an Affiliate of a Sponsor that is, directly or indirectly, wholly-owned by such Sponsor or owns one hundred per cent (100%) of the Ownership Interests in the Sponsor or between such Affiliates, and
- (b) such transfer will not result in less than forty per cent. (40%) of the outstanding Ownership Interests in Seller being owned, directly or indirectly, by a Technically Qualified Shareholder; or

19.1.2 During the period commencing on the Commercial Operations Date and expiring on the second anniversary of the Commercial Operations Date, Seller shall ensure that the Sponsors (or any permitted transferee of any Ownership Interest previously held by the Sponsors) shall not transfer any legal or beneficial interest in any Ownership Interest in Seller subscribed to or held by them unless such transfer is approved by Buyer, with the prior consent and approval of the Commission or:

- (a) such transfer will not cause the Sponsors or their wholly-owned Affiliates to own, directly or indirectly, in the aggregate, less than fifty-one per cent (51%) of the Ownership Interests in Seller; and
- (b) such transfer will not result in less than twenty per cent (20%) of the outstanding Ownership Interests in Seller being owned, directly or indirectly, by a Technically Qualified Shareholder.

19.1.3 During the period commencing on the second anniversary of the Commercial Operations Date and for the remainder of the Term, Seller shall ensure that the Sponsors (or any permitted transferee of any Ownership Interest previously held by the Sponsors) 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.

19.1.4 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 to hold, 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.

19.1.5 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.

19.1.6 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 resulting from the creation or enforcement of a security interest in or over any Ownership Interest in accordance with the Finance Documents;
- (c) any transfer allowed or required by a separate agreement binding on the Parties;
- (d) any transfer to which Buyer has given its prior written approval; or
- (e) 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.

19.2. Transfer of the Agreement

19.2.1 Seller shall not transfer this Agreement or any of the rights or obligations hereunder except as provided in Clause 23.1 of this Agreement.

19.2.2 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 19 shall prohibit Buyer from novating this Agreement, with the written consent of Seller and pursuant to Section 26(1)(d) of the Act, to a distribution company or eligible customer upon the declaration by the Minister for Power that a more competitive market be initiated in accordance with Section 26(1)(a) of the Act.

19.2.3 Nothing in this Clause 19 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.

19.3. 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 20 Force Majeure

20.1. Definition of Force Majeure Event

20.1.1 "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:

20.1.2 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 20.1.2(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) any 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) the occurrence of an event that is analogous with a Local Political Force Majeure Event under any Project Document entered into by either Party;
- (g) lack of or constraint in the availability of the Grid (for the avoidance of doubt excluding lack of availability of, or constraint in the availability of the Grid forming part of the Project Transmission Works, prior to the transfer of ownership of the Project Transmission Works to the Transmission Company of Nigeria); or
- (h) Lapse of Authorisation.

20.1.3 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) radioactive contamination or ionizing radiation originating from a source outside Nigeria to the extent it exceeds applicable standards;
- (c) 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
- (d) the occurrence of a Foreign Political Force Majeure Event under any Project Document entered into by either Party.

20.1.4 the following natural events (each a **Natural Force Majeure Event**):

- (a) lightning, fire, earthquake, flood, storm, cyclone, typhoon, tornado or other natural calamity;
- (b) explosion or chemical contamination (other than resulting from an act of war or the act or negligence of the affected Party);
- (c) epidemic or plague; or
- (d) the occurrence of an event analogous to a Natural Force Majeure Event under any Project Document entered into by either Party.

20.1.5 **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) 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;
- (c) unavailability of (i) 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.

20.1.6 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.

20.2. Effect of Force Majeure

Subject to Clause 20.3, 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.

20.3. Payment during Force Majeure Event

Buyer shall not be obliged to pay Energy Payments during a Force Majeure Event other than as set out in this Clause 20.3. Parties shall bear their respective costs and neither Party shall be required to pay to the other Party any cost arising out of such Force Majeure Event

20.3.1 If during a Force Majeure Event, the Seller is able to make available Net Electrical Output that corresponds to or is less than the Contract Capacity, Buyer shall, on the basis of actual meter reading data, pay the Seller for such Net Electrical Output.

20.4. Notification Obligations

20.4.1 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. 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.

20.4.2 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.

20.5. 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 14.1 in respect of such loss or damage in accordance with the provisions of Clause 14.

20.6. 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 Milestones, 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 20.6 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.

20.7. 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.

20.8. 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 one hundred eighty (180) Days 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 one year 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 one hundred eighty (180) Days 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 one year 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 Restoration in accordance with Clause 20.10 or a Voluntary Restoration agreed to by the Parties or after completion of the Restoration or Voluntary Restoration. Whether a Restoration or 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 21

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

20.9.1 In the event that a Local Political Force Majeure Event occurs and the nature of the Local Political Force Majeure Event renders it illegal, unlawful or impractical for a Party to continue to perform material obligations or enjoy material rights under this Agreement; 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.

20.10. Other Restoration of the Plant

In the event of damage to the Plant, Seller shall have the right to 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 20.8 (*Prolonged Force Majeure Events*). Seller will not be entitled to a change in the tariff rates as a result of a Voluntary Restoration.

Clause 21

Choice of Law and Dispute Resolution

21.1. Governing Law

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

21.2. Informal Dispute Resolution

21.2.1 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**).

21.2.2 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 21.3. 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.

21.3. Arbitration of Disputes

21.3.1 In the event that the parties to a Dispute are unable to resolve any Dispute pursuant to Clause 21.2, 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.

21.3.2 Any arbitral tribunal to be appointed for the resolution of Disputes under this Agreement shall consist of three (3) arbitrators. The three arbitrators shall 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.

21.3.3 The conduct of the arbitration (including any resort to a court for provisional remedy) and any other question of arbitration law shall be governed by the laws of the Federal Republic of Nigeria.

- 21.3.4 The seat of the arbitration proceedings shall be at a venue mutually agreed upon by the parties.
- 21.3.5 Any arbitral award issued under this Clause 21.3 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 21.3. 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 21.3 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.
- 21.3.6 Notwithstanding any Dispute between the Parties, each Party shall continue to perform all of its obligations under this Agreement.
- 21.3.7 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.

21.4. Interim Relief & Enforcement of Arbitral Awards

Notwithstanding Clause 21.3, this Clause 21 is without prejudice to any right of a Party granted by law to apply to the courts of the Federal Republic of Nigeria of competent jurisdiction to:

- 21.4.1 seek interim or conservatory relief against another Party in support of arbitration proceedings; or
- 21.4.2 seek relief against another Party to enforce the agreement to submit any Dispute to arbitration pursuant to this Agreement; or
- 21.4.3 enforce an arbitral award made in arbitration proceedings brought pursuant to this Agreement or, in the case of proceedings to which Clause 21.5 below applies, any Related Agreement (as defined in Clause 21.5 below).

21.5. Expert Determination

- 21.5.1 Without prejudice to clause 21.3.1, in the event that the Parties are unable to resolve any Dispute pursuant to Clause 21.2, 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 shall be settled by an expert determination in accordance with the provisions of this Clause 21.5 (**Expert Determination**).
- 21.5.2 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.
- 21.5.3 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.
- 21.5.4 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 21.5.6, which the Parties shall attend.
- 21.5.5 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.
- 21.5.6 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.
- 21.5.7 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.
- 21.5.8 The Parties shall continue to perform their contractual obligations notwithstanding the existence of the determination process.

21.5.9 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 21.5

21.5.10 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 21.3.1.

21.5.11 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 22

Notices

22.1. 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 (öNoticesö) 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 1.

22.2. 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 1 (or such other address as such Party may have specified by written Notice).

Clause 23

Miscellaneous Provisions

23.1. 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 prior consent and approval of the Commission provided that each Party may update its notice information in Clause 2 of Schedule 1 by written notice to the other Party.

23.2. 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.

23.3. 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.

23.4. 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.

23.5. 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 23.5 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.

23.6. 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 12.4 (*Billing and Payment*);
- (c) Clause 15.3 (*Tax Indemnity*);
- (d) Clause 16 (*Liability and Indemnification*);
- (e) Clause 17 (*Default and Early Termination*);
- (f) Clause 18 (*Sole Remedies Upon Termination*);
- (g) Clause 20.8 (*Prolonged Force Majeure Events*);
- (h) Clause 21 (*Choice of Law and Dispute Resolution*); and
- (i) Clause 23.9 (*Waiver of Sovereign Immunity*); and
- (j) Clause 23.10 (*Confidentiality*)

23.7. 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.

23.8. 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 are hereby abrogated and withdrawn.

- b) In the event of any inconsistency between this Agreement and any other agreement, including any Project Document or any Finance Document, 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 agreement to the extent of the inconsistency.

23.9. Waiver of Sovereign Immunity

23.9.1 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.

23.9.2 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.

23.9.3 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.

23.10. Confidentiality

23.10.1 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.

23.10.2 Exclusions to Confidential Information

For the purposes of this Clause 23.10, 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 23.10;
- (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 23.10;
- (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.

23.10.3 Except as provided in Clause 23.10.2, 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.

23.10.4 Exceptions to Confidentiality

Notwithstanding the provisions of Clause 23.10.3, 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 23.10 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 23.10 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 21.5 *provided that* such expert agrees to be bound to confidentiality provisions substantially the same as those contained in this Clause 23.10.

23.11. 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.

23.12. 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.

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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:

XXXXXXXX LIMITED

Signature:

Name:

Title:

In the presence of:

Signature:

Name:

Title:

Terms Specific to This Agreement

Paragraph 1 Plant Specific Provisions

Seller	XXXX
Sponsors	XXXXXXXX
Name of project	Xxxxx Hydroelectric Plant
Site	xxxxxx
Contract Capacity	-----MW
Term	The period commencing on the Commencement Date and expiring on the 25 th anniversary of the Commencement Date
Minimum Indemnification Amount	US\$100,000 (or Naira equivalent) per calendar year
Project Documents	(a) the Long Term Service Agreement; (b) the Operation and Maintenance Agreement; (c) the Connection Agreement; (d) the Documents of Title; (e) the policies of insurance required to be obtained and maintained by Seller under Clauses 15.1 and 15.2.1; and (f) any other document which the Parties agree to designate as a Project Document.
Target Closing Date	The date that is 6 (Six) months after the Execution Date, as may be extended in accordance with the terms of this Agreement
Long Stop Closing Date	The date that is 12 (Twelve) months after the Execution Date, as may be extended in accordance with the terms of this Agreement
Project Monitoring and Training Fee	US\$1500/MW payable no later than 90 days after the Closing Date
Notification Date	The date that is at least 60 (sixty) days before the Commencement Date

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Commencement Date	The date that is 9 (nine) months after the Closing Date, as may be extended in accordance with the terms of this Agreement
Required Interconnection Date	The date that is 2 (two) months after the Long Stop Closing Date
Agreed Interest Rate (Local)	The margin over NIBOR is -% per annum.
Agreed Interest Rate (Foreign)	The margin over LIBOR is -% per annum.
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Paragraph 2
Addresses for Delivery of Notices

24.13 Addresses

The addresses for the delivery of notices pursuant to Clause 22 are set forth below.

If to Seller:

xxxx Limited

Nigeria

Attention: Chief Executive Officer

Email:

With a copy to:

Email:

If to Buyer:

Nigerian Bulk Electricity Trading Plc
2nd & 3rd Floors, NERC Building,
Plot No. 1387, Cadastral Zone,
Off Herbert Macaulay Way,
Central Business District,
Abuja,
Nigeria

Attention: Managing Director/Chief Executive Officer

Email: contractnotices@nbet.com.ng

With a copy to:

Email:

**Paragraph 4
Not Used**

**Paragraph 5
Conditions Precedent**

No.	Condition Precedent	Responsible Party	Consent Required to Waive
1.	Seller shall have obtained all of the Seller Initial Authorisations.	Seller	Both Parties
2.	Seller and the counterparty to each Project Document shall have entered into each of the Project Documents and Seller shall have made the originals available for review by, and provided a certified copy thereof to, Buyer.	Seller	Both Parties
3.	The Transmission Company of Nigeria shall have presented evidence acceptable to both Parties that the necessary transmission and associated interconnection facilities, and any other necessary enhancement of the Grid will be ready to safely and reliably evacuate power generated by Plant by the Required Interconnection Date.	Seller	Not to be waived
4.	Seller shall have secured all debt financing required for the Project and Financial Close shall have occurred, and Finance Documents executed.	Seller	Both Parties
5.	Seller shall have entered into a Connection Agreement with the Transmission Company of Nigeria.	Seller	Not to be waived
6.	Seller shall have entered into an Operations and Maintenance Agreement on terms reasonably acceptable to Buyer with a Technically Qualified Operator reasonably acceptable to Buyer.	Seller	Buyer
7.	Buyer shall have delivered the initial Buyer Payment Security to Seller.	Buyer	Seller

8.	<p>Seller shall have provided Buyer with a reasonable opportunity to review all of the Project Documents, and Buyer shall have reviewed and approved:</p> <p>(a) any Project Document to which an Affiliate of Seller is a party.</p>	Both Parties	Buyer
9.	<p>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 is the result of an open, competitive procurement.</p>	Both Parties	Buyer
10.	<p>Seller shall have obtained from the Finance Parties and from any party engaged to provide reports that address technical, financial, or economic matters related to the Project, an agreement permitting the final versions of such reports to be provided to Buyer on a no-reliance basis following receipt and approval of those reports by Seller, following which Seller shall provide all such reports to the Buyer.</p>	Seller	Buyer
11.	<p>Buyer shall have provided to Seller a copy of all relevant resolutions of the board of directors of Buyer authorising the execution, delivery, and performance by Buyer of this Agreement, the other Project Documents to which Buyer is a party, and the Finance Documents to which Buyer is a party, 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, the other Project Documents to which Buyer is a party, and the Finance Documents to which Buyer is a party, and the enforceability thereof against Buyer, and</p> <p>(b) an officer's certificate of Buyer confirming that Buyer's representations and warranties made as of the Execution Date pursuant to Clause 4.3 are true and correct on the Closing Date.</p>	Buyer	Seller
12.	<p>Seller shall have provided to Buyer a copy of all relevant resolutions of the board of directors and shareholders of Seller authorising the execution, delivery, and performance by Seller of this Agreement, the other Project Documents, and the Finance Documents, together with:</p>	Seller	Buyer

	<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 Agreement, the other Project Documents, and the Finance Documents, and the enforceability thereof against Seller; and</p> <p>(b) an officer's certificate of Seller confirming that Seller's representations and warranties made as of the Execution Date pursuant to Clause 4.1 are true and correct on the Closing Date.</p>		
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DRAFT FOR DISCUSSION

Schedule 2

Description of Plant and Facilities

Site/Plant Descriptions

Site Description: The site is located at LGA, State, Nigeria, as more specifically set-out in the Site map provided as Attachment 1 to Schedule 2.

Project Site name: xxxxxxxx, MW Hydro Electricity Power Project,

Technology Type:

Physical Interconnection Point of Project:

Description of Applicable Generating Facilities

The information set-out below is provided for indicative purposes only and may be amended at the discretion of the Seller.

Project Nameplate Data:

[Additional required information to be provided by technical advisors]

Attachment 1: Site Map

DRAFT FOR DISCUSSION

Schedule 3

COMMISSIONING

COMMISSIONING AND COMMERCIAL OPERATION

1.1.Commissioning Period

Following Commencement, Seller shall, acting in accordance with Good Industry Practices, perform all necessary tests and conduct the Commissioning of the Plant on a Unit-by Unit basis.

- 1.1.1 Seller shall give Buyer not less than 45 Days prior notice of its estimate of the date each Unit and the Plant is expected to commence Commissioning and shall as soon as reasonably possible give notice to Buyer of any change in such estimate. The notice shall also estimate the length of the Commissioning Period for the relevant Unit or the Plant (as the case may be).
- 1.1.2 In the event that the Commissioning of a Unit or the Plant is not successfully completed by the expiration of the Commissioning Period, then the Commissioning Period shall be extended until completion of the Commissioning Procedures for the relevant Unit or Plant (as the case may be), and Seller shall use Best Endeavours to ensure that the Commissioning is carried out and successfully completed as soon as practicable.

1.2.Commissioning Procedures

Seller shall determine and be responsible for the Commissioning with associated procedures and schedules.

- 1.2.1 Seller shall provide draft procedures for the commissioning of each Unit and the Plant (the "Commissioning Procedures") as soon as reasonably practicable following the execution of the PPA and in any case no later than the date falling 60 Days before the anticipated date that Commissioning of the first Unit shall commence. The Commissioning 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 Good Industry Practice.
- 1.2.2 Seller shall consult with Buyer in respect of the draft Commissioning Procedures and Buyer shall, within 20 Days of receipt of the draft Commissioning Procedures under Schedule 1.2 .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 Commissioning Procedures to reflect the comments made by Buyer and the Commissioning Procedures shall be deemed to be in agreed form.
- 1.2.3 Seller shall carry out or arrange for its contractor to carry out the tests specified in this Schedule

1.3.Cooperation during Commissioning Period

During the Commissioning Period, the Parties shall cooperate with each other during the commissioning and testing of Seller's Plant and other facilities.

1.1 Where any test is not satisfactorily completed, Seller shall arrange a further test.

1.2 Upon the satisfactory completion of Commissioning of each Unit, Seller shall procure the Independent Engineer to issue a certificate addressed to both Parties, certifying that Commissioning of that Unit has been completed.

1.3 Upon the satisfactory completion of Commissioning of the Plant, Seller shall procure the Independent Engineer to issue a certificate addressed to both Parties, certifying that the Plant is available for the Commercial Operations Tests.

1.4 Plant Commercial Operations Tests and Date

1.4.1 Following satisfactory completion of Commissioning, Seller shall conduct the Plant Commercial Operations Tests. Upon satisfactory completion of the Plant Commercial Operations Tests, Seller shall procure the Independent Engineer to issue a certificate addressed to both Parties, certifying, without any qualification, that Seller has installed all plant and equipment consistent with the requirements of Grid Code and this Agreement, and that commissioning of the Plant has been completed. The Independent Engineer shall also certify availability of the Plant to commence commercial operation and state the capacity achieved during the Capacity Test conducted as part of the Plant Commercial Operations Test (the initial "Tested Capacity"), which average over the duration of the test shall not be less than ninety-five per cent (95%) of the Contract Capacity.

1.4.2 Seller shall, upon issuance of the certificate, notify Buyer of the Plant Commercial Operations Date, which shall be the day following the day the Plant successfully completes the reliability test pursuant to this Schedule

1.4.3 Buyer shall have the right to attend the Site on each occasion during the Commissioning Period, on which a Plant Commercial Operations Test is being conducted, and to witness the test, and receive, within 14 days thereafter, a written summary of the test reports.

1.5 Output during Commissioning Period

1.5 Not less than 30 days prior to the Commissioning Period, Seller shall notify Buyer of its estimate of the energy output that Seller reasonably expects to be able to make available during the Commissioning Period and its estimate of the schedule.

1.5.2 Buyer shall be obligated to purchase all energy output generated by Seller during the Commissioning Period in accordance to the contract capacity.

- 1.5.3 In the Monthly Reports prepared by Seller during the Commissioning Period, Seller shall invoice and Buyer shall pay the energy charge for output delivered by Seller, as long as such output conform to the specifications described in the Grid Code

1.6 Reduction in Contracted Capacity

If the Tested Capacity on the Commercial Operations Date is less than the Contract Capacity, then, on and from the Commercial Operations Date, the Contracted Capacity shall be reduced to the Tested Capacity of the Facility as at the Commercial Operations Date, and the PPA shall be amended to reflect the Tested Capacity as the new Contract Capacity.

1.7 MATERIALS, CONSUMABLES, SUPPLIES AND TEST EQUIPMENT

Except as provided in this Agreement, Seller shall provide all necessary materials, consumables, supplies accommodation, logistic support, security, refreshments/meals and test equipment, at no cost to Buyer, required for carrying out the commissioning of the plant required under this agreement

RIGHTS OF BUYER AND THE INDEPENDENT ENGINEER

1.9.1 The Independent Engineer

During commissioning, the Parties agree that the Independent Engineer shall have the right to review and comment on the test procedures and documents developed under this Schedule (Commissioning and Testing) to the extent necessary to enable the Independent Engineer to confirm the results of commissioning and otherwise to carry out the obligations and duties of the Independent Engineer.

1.9 Buyer

During commissioning, Seller shall provide Buyer with such information as is necessary and reasonable to enable Buyer to be reasonably satisfied that the requirements of this Schedule (Commissioning and Testing) have been met. Buyer shall promptly review and comment on the commissioning procedures. Buyer shall have the right to be involved in tests that deal with equipment performance that has a material effect on the overall capacity of the plant.

1.10 Approvals not to be unreasonably Withheld

Buyer shall not unreasonably withhold or delay any approval required hereunder, provided that the notification and submission requirements of this Agreement have been respected by Seller.

1.11 Witnessing and Observation

The Independent Engineer and Buyer shall have the right to witness and observe the commissioning of the plant and their equipment and systems. Seller shall notify the Independent Engineer and Buyer in writing prior to the commencement of tests during commissioning in accordance with the Notice Periods as set out in this Schedule.

1.12 CALIBRATION CERTIFICATES

All testing and recording apparatus used for the Performance Tests shall have calibration certificates ("Calibration Certificates") from a reputable international laboratory or independent calibration authority verifying the suitability and accuracy of the apparatus for its intended application in the testing and commissioning program. The calibration certificates for such instrumentation as is to be used in the Performance Tests shall be less than six (6) months old at the date of the commencement of the relevant Performance Test. No apparatus shall be used if its Calibration Certificate will have expired on the day on which the proposed test is scheduled to be completed.

1.13 HIERARCHY OF COMMISSIONING TESTS

Seller will use a suitable hierarchy in the commissioning documents and records, so as to facilitate good management and traceability. While Seller reserves the right to use an alternative hierarchy based on the EPC Contract, for purposes of this Schedule the following hierarchy applies:

Components

Components are the most basic constituent elements for purposes of developing Commissioning procedures.

Equipment

Equipment can consist of components.

Plant

Plant can consist of equipment and/or components.

Systems

Systems can consist of any of plant, equipment and/or components.

Auxiliaries

Auxiliaries can consist of any of systems, plant, equipment and/or components.

Hydro Turbine Generator

Consist of hydro turbine, and associated auxiliaries, systems, plant, equipment and components.

1.14 DOCUMENTATION REQUIREMENTS AND MANAGEMENT

1.14.1 Commissioning Documents

The commissioning documents shall set out any safety, precautionary or environmental constraints required to commission Capacity of the plant. The documents shall specify the test, measurement and recording equipment. Prior to the commencement of the commissioning test that is the subject of such documents, Seller shall provide to Buyer and/or the Independent Engineer, as the case may be, copies of all documents reasonably required and reasonably necessary to enable Buyer and/or the Independent Engineer to fulfil their respective duties and functions required hereunder in respect of such test. The commissioning documents reasonably required either by the Independent Engineer (to the extent required in order for the Independent Engineer to fulfil its duties and functions) or by Buyer (to the extent required in order to enable Buyer to reasonably exercise any of its approval

rights in respect of Commissioning), shall be agreed and implemented by Seller prior to the commencement of any test that is the subject of those test documents. Where possible, the commissioning documents shall specifically predict the expected results of the test, so as to facilitate comparisons of the test results with this prediction.

1.14.1 Log of Completed Commissioning Tests Documents

Seller shall keep a log of all completed Commissioning Tests documentation to facilitate easy cross-referencing and retrieval. The Commissioning Tests results shall be safely and correctly stored. The storage of any such results and/or records requiring special storage shall be agreed between Seller and the Independent Engineer and buyer.

2.0 INTEGRATED TESTS

2.1 Purpose and Definition

Seller shall carry out the tests set out in this Schedule (Commissioning and Testing) (the "Integrated Tests") on constituent systems and auxiliaries of each Generating UnitUnitUnitbeing commissioned.

The purpose of the Integrated Tests is to test constituent systems and auxiliaries of the unitsUnitto ensure their safe and predictable interaction under normal, transient and fault conditions, and to confirm that the responses of the systems are consistent with their design intention.

2.2 Conditions

Seller shall not proceed with the Integrated Tests if any of the components, equipment, plant or systems within any of the relevant systems have not yet satisfactorily completed any Energizing Test applicable to them. The Unit Seller shall ensure that the commissioning procedures are based upon the design intention of the supplier, the EPC Contractor or Seller, as the case may be.

2.3 Test Program and Procedure

During the Integrated Tests, Buyer shall arrange dispatch, and Seller shall, as appropriate, synchronize and steadily synchronise, load and operate the Capacity as required by this Agreement and Grid Code, and in accordance with the agreed program and within the constraints of the technical limits, until full load is reached. Seller shall then run the Unit at full load or as required by Seller. If not already achieved in earlier testing, all the systems and auxiliaries will be brought into their normally energized or pressurized state by the end of these tests. The Integrated Tests shall comprise the following:

Fire protection system, all start-up tests;

Electrical systems;

Heating, ventilation and air-conditioning systems;

Control and instrumentation systems, including remote terminal units, microprocessors and functional groups forming part of the DCS;

Lubrication systems;

Service air systems;

Instrument air systems;

Cooling systems;
Final protection settings, in accordance with agreed design, including those for load shedding protection schemes;
Software function and stability tests;
Turbine generator protection and tripping settings;
Emergency power systems;
Motor roll of the hydro turbine;
Ignition checks;
Excitation checks;
Over speed tests;
Manual synchronizing;
Ramp up and ramp down tests (specifically, during the Integrated Tests, Seller shall confirm the ramp up and ramp down behaviour of the applicable Unit, and any other requirements as prescribed in the Grid Code;
Partial and full load rejection tests to demonstrate the ability to run through to full speed no-load, provided that Buyer, System Operator and Seller agree that such test will not jeopardise the safe operation of the grid system at that time;
Standby equipment changeover tests;
Automatic governor control tests including verification of the droop characteristics of the G's and Block's, and confirmation that the Unit operation is safe and stable within the technical limits;
Automatic voltage regulation tests;
Confirmation of the methods and equations/Correction Curves to be used for adjusting the recorded data and/or test results to the design conditions and/or Guaranteed Conditions; and other tests mutually agreed prior to the commencement of the Integrated Tests.

2.4 Test Result

The test results of the Integrated Tests shall be recorded and analyzed by Seller. Seller shall examine any deviations from expected results, and may confer with the EPC Contractor as to the action that must be taken to resolve any deviation from the required results. Seller shall take appropriate measures to remedy any material deviations or non-compliance with the required results, properly documenting any necessary revisions to the system design, and operations and maintenance manuals.

3.0 PERFORMANCE TESTS

4.1 Purpose and Definition

During commissioning, Seller shall have the right to perform Unit all testing and commissioning as is necessary, or deemed by Seller to be desirable, to demonstrate compliance with Grid Code and This Agreement, and/or to demonstrate compliance by the EPC Contractor with all performance guarantees specified in the EPC Contract Unit especially power capacity and heat rate tests Unit (the "Performance Tests").

The purpose of the Performance Tests is (a) as between Seller and the EPC Contractor only, to determine such unit's compliance with all performance guarantees specified in the EPC Contract,

including such capacity and heat rate tests, and (b) as between Seller and Buyer only, to determine the initial Tested Capacity and Net Thermal Efficiency

4.2 Conditions

Seller shall prepare each Unit for the Performance Tests and the necessary high accuracy calibrated instrumentation for the measurement of guaranteed performance under the EPC Contract shall be installed. the Calibration Certificates for such instrumentation shall be less than six (6) months old at the date of the commencement of the Performance Tests.

The Performance Tests shall be carried out in accordance with the following codes:

ISO 2314; or

ASME Power Test Code 22; and

ASME PTC 46, Performance Test Code and

any other standards as agreed between the Parties prior to the commencement of the Performance Tests During the Performance Tests, the stack exhaust emissions shall also be monitored for compliance with the applicable laws and Grid Code.

In the case of chemical sampling, testing and analysis to agreed standards, three (3) equal samples shall be taken, and the arithmetic mean of the individual results shall be used to determine the final result.

At the request of Seller, Buyer shall allow Seller (or the EPC Contractor) to carry out the Performance Tests, and shall arrange the necessary electrical load, consistent with safe operation of the grid system.

4.3 Test Program and Procedures

The testing program and procedures for the Performance Tests shall be submitted by Seller to the Independent Engineer, System Operator and Buyer in writing at least ninety (90) days prior to the commencement of the relevant Performance Test.

The measurements of the Performance Tests shall be made using high accuracy calibrated instruments, recording systems and record keeping. Readings shall include all readings required to apply the Correction Curves, and to accurately and comprehensively relate ambient to Guaranteed Conditions.

Buyer shall Dispatch, and Seller shall, as appropriate, synchronize and steadily load the units, , , and in accordance with the agreed program and within the constraints of the technical limits, until full load is reached. The Unit shall then be run at full load or as required by Seller in order for it to demonstrate compliance with the performance guarantees under the EPC Contract and/or with the relevant Commissioning Tests.

During the Performance Tests Buyer shall permit Seller to operate such Units at various loads so Seller may, for its own use and purposes, measure the actual heat rate at that load, including for the purpose of either confirming or mapping the actual heat rate and thermal efficiency of Units at these various plant load factors.

4.4 Test Results

Seller shall keep a specific base line record of the readings of the high accuracy calibrated instruments so as to provide a bench mark for the conduct of future Capacity Tests.

Seller and Buyer shall, and shall use all reasonable endeavours to enable the Independent Engineer to, attest the Performance Tests results and records.

All margins and tolerances assigned to instruments, test apparatus and the high accuracy calibrated instrumentation shall be subject to tolerances specified in the test codes. All margins and tolerances assigned to instruments, test apparatus and the high accuracy calibrated instrumentation shall be deemed to be included in the performance guarantee figures which are the subject of the EPC Contract.

The test results of the Performance Tests shall be recorded and analyzed by Seller. Seller shall examine any deviations from expected results, and may confer with the EPC Contractor as to the action that must be taken to resolve any deviation from required results. If the deviation is material to the performance Unit, then Buyer shall be informed.

The reports shall include, where possible, data as recorded and the connection calculations for adjusting the recorded data and/or test results to the design conditions and/or Guaranteed Conditions.

4.0 RELIABILITY TEST

4.1 Purpose and Definition

The purpose of the test set out in this Clause 14 (the "Reliability Test") in respect of each Unit is to demonstrate and confirm that the Unit is operating and performing reliably, consistently and in accordance with its design intention, and to demonstrate final compliance, if not already demonstrated in earlier tests, with the Grid Code.

4.2 Conditions

When Seller has declared the Performance Tests in respect of a Unit to be completed to its satisfaction, then Seller shall prepare such Unit for the Reliability Test. Seller shall notify the Independent Engineer and Buyer when the Unit in question is ready for the Reliability Test. Within two (2) Days thereafter, the Reliability Test shall commence.

4.3 Test Program and Procedure

The duration of the Reliability Test for each unit is fifteen (15) consecutive Days during which time such Unit (as the case may be) and its auxiliaries shall, except as permitted hereunder, be operated continuously according to the test and load program agreed between Buyer and Seller. Buyer shall arrange dispatch and System Operator shall dispatch the Unit in accordance with this program and the requirements of this Agreement. The Unit may be subjected to varying load as may be required to conduct or complete other tests.

In the event of interruption (zero load and/or effective disconnection at the Delivery Point), beyond the tolerance permitted in this Clause 14) c) (ii), in generation of the demanded load, due to failure within Seller's responsibilities, the Reliability Test shall be restarted from the beginning. Two (2) such episodes of interruption, not exceeding twenty-four (24) hours in aggregate, shall be permitted. If, for reasons beyond Seller's responsibilities (including any Force Majeure Event), a fault develops during the Unit Reliability Test that necessitates the interruption of the Unit Reliability Test or limits it, then the Unit Reliability Test shall be suspended for the duration of the fault. If the Unit Reliability Test is so suspended, then the Unit Reliability Test shall not be prolonged by the amount of time so lost, and shall be deemed not to have been so interrupted. If the Unit Reliability Test is

so suspended for more than three (3) consecutive Days, then Seller and Buyer shall seek to agree as to when and how the Reliability Test shall be demonstrated.

The Unit Reliability Test shall also include the following specific tests:

at least one (1) cold start;

at least one (1) hot start of each Unit;

weekly change over of standby equipment; and

other tests mutually agreed prior to the commencement of the units Reliability Test;

provided that, if, in any previously successful Reliability Test, unit has demonstrated such capability as is the object of such tests (i) though (iv), then Seller may, but shall not be obliged to, waive such test.

4.4 Test Results

If and only if the units has operated for fifty (15) consecutive Days, without exceeding the level of interruption allowed under Clause 14) c) (ii) of this Schedule 2 (Commissioning and Testing), and after taking account of any suspension in accordance with Clause 14. c) (iii) of this Schedule 2, then the units shall have passed its Reliability Test, and the Parties shall verify the same in writing by forthwith issuing a certificate to such effect, countersigned by both Parties.

If, during the Unit Reliability Test, Clause 14) c) (iii) has had to be applied, then Seller and Buyer shall agree the criteria to be used so that the Unit may actually, or be deemed to, have passed the Unit Reliability Test.

Within five (5) days of the successful completion of the Unit Reliability Test, Seller shall send the test results and records to the Independent Engineer and to Buyer for their information and records.

5.0 ACTUAL COMMERCIAL OPERATION DATE

Once the Unit has successfully completed the Reliability Test, then the next following Day shall be the actual commercial operation date. The Capacity Payment in respect of such Unit shall become due from actual commercial operation date.

6.0 REQUIRED NOTIFICATIONS

This section defines, as required by the context, the notice periods to be given between the Parties for the activities and tests (the "**Notice Periods**") provided for in this Schedule (Commissioning and Testing). In the event that these Notice Periods are shorter than the notice periods of the Grid Code, then the notice periods of the Grid Code shall prevail. Seller shall give Buyer and System Operator all such notifications as set out below.

Ninety (90) Days or more before the scheduled commencement of the earliest Installation Test, Seller shall provide to Buyer a preliminary test schedule for the units for all tests required by this Schedule (Commissioning and Testing); Sixty (60) Days or more before the earliest Installation Test, Seller shall provide to Buyer a final test schedule for the units, including the expected duration of the testing program and a schedule for conducting all tests as required in this Schedule (Commissioning and Testing);

Notification of the first synchronisation of each unit shall be in accordance with the grid code;
Fourteen (14) Days or more before commencement of the earliest Installation Test, Seller shall advise Buyer in writing of any changes to Seller's test schedule and activities;
Seventy-two (72) Hours or more before commencement of the Performance Test, Seller shall give notice to Buyer if the schedule of testing is adjusted or amended in any way;

Within seventy-two (72) Hours of receipt of the final schedule, Buyer shall notify Seller if the grid system is unable to accommodate any scheduled test. The Parties shall mutually agree on a date for deferral of the test or program of tests;

On each Day on which the tests being conducted in fulfilment of the obligations of this Schedule, or as part of any other tests, if any, required under this Agreement, Seller shall provide to Buyer a schedule of such tests as are to be conducted on the following Day or Days, if such tests will continue for more than one (1) Day; and Seven (7) Days or more before additional tests (if any) are to be carried out, Seller shall provide notice of such additional tests to Buyer.

DRAFT FOR DISCUSSION

Schedule 4

TEST PROCEDURES

ANNUAL CAPACITY TEST

1. Purpose

The purpose of the Capacity Test shall be to demonstrate the Tested Capacity of the Plant.

2. Test Conditions

- a) The Capacity Test shall be performed at least once in a Contract Year.
- b) Seller shall prepare the Plant and perform the Capacity Test.
- c) The Capacity Test shall be supervised and verified by the Independent Engineer. Seller shall each 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.
- d) Buyer or its representative has a right to be present during the Capacity Test.
- e) The meters installed in accordance with the Metering Market Procedures and Metering Code for commercial invoicing at the Delivery Point will be used for recording Gross Energy Output and voltage.
- f) During the Capacity Test, Gross Energy Output, water discharge and net reservoir level (head) readings are taken while the Plant is operated at base load consistent with its design and normal operation mode.
- g) Capacity Test shall be conducted in accordance with the latest issue of;
 - i) ASME PTC 18 - Hydraulic Turbine; and/or
 - ii) IEC 41 - Hydraulic Performance of Hydraulic Turbines
- h) No correction to account for the aging of the equipment will be applied to test results.
- i) Seller shall prepare detailed test procedure in accordance with this Schedule 3 and relevant codes. The test procedure will be reviewed and approved by Buyer and Engineer.
- j) Each Contract Year the Parties shall agree a period of 60 days within high water months during which the Capacity Test will be conducted. Seller shall notify Buyer that the Plant is ready for Capacity Test. Provided that Buyer has given proper notice as required under this Agreement and

the proposed date is within the agreed 60 days period, the Capacity Test shall commence within seven (7) Days of such notification by Seller. SO shall issue the relevant Dispatch Instructions.

k) Without prejudice to (j) above, the buyer can elect to call for capacity test at any time within each contract year a maximum of 12 times.

l) During the Capacity Test the hydrological conditions shall be maintained equal to the Reference Hydrological Conditions. Any deviations will only be allowed if it is not possible to achieve the Reference Hydrological Conditions for the Capacity Test. The Parties shall use best endeavours to conduct test with minimum possible deviation from the Reference Hydrological Conditions.

3. Test Program and Procedure

a) The Capacity Test for the Plant shall be performed on the basis of the operation of the Plant for six (6) continuous hours without any interruption at full load. During the Capacity Test of the Plant, SO shall dispatch the Plant as requested by Seller and required by the terms of this Agreement. The Capacity Test shall be performed and monitored by Seller and witnessed by Buyer and the Engineer.

b) Throughout the Capacity Test period in respect of the Plant, the dispatch level for the Plant shall be at maximum capability of the Plant but limited to be consistent with and not outside the technical limits for continuous operation of the Plant.

c) During the Capacity Test, both Seller and SO shall make all reasonable efforts to maintain the frequency, load, power factor and stator voltage steady.

4. Test Results and Re-testing

a) The Tested Capacity of the Plant shall be lower of the (i) the Gross Electrical Output of the Plant achieved over six (6) continuous hours divided by six (6) and (ii) Contract Capacity of the plant.

b) If the Plant fails to operate continuously for six (6) hours, or if at the time Seller is not satisfied with the results of the Capacity Test, then Seller may request an additional Capacity Test, which shall be scheduled by SO for the next Day, unless requested to the contrary by Seller. After any such additional test, if the Plant operates continuously for six (6) hours, Seller shall nominate which of the two test results is to be used as the basis of setting the Tested Capacity of the Plant.

c) If the Plant fails to operate continuously for six (6) hours in each of the two (2) tests, then the Capacity Test shall be repeated at progressively lower output levels, until the Plant first achieves six (6) hours of continuous operation, and the first such period of six (6) hours of continuous operation shall be used to determine the Tested Capacity of the Plant.

d) The Engineer shall forthwith issue the certificate of Tested Capacity to Seller and Buyer.

e) Within fifteen (15) days of the Capacity Test, Seller shall submit the Capacity Test results and records in respect of such test to the Engineer and Buyer for their information and records.

5. Dispute of Capacity Test Results

If Buyer disputes the Capacity Test results and records submitted by Seller in respect of the Capacity Test for the Plant, then such Dispute shall be resolved in accordance with the dispute resolution provisions of this Agreement, provided, however, that the Tested Capacity will be deemed at the Tested Capacity shown in the test results and records submitted by Seller, until the final decision in accordance with the dispute resolution procedures set out in this Agreement.

6. the Seller shall be responsible for the security, transportation, accommodations, meals/refreshments of the buyer during the capacity test.

DRAFT FOR DISCUSSION

Schedule 5

Functional Specifications & Operating Parameters

(TO BE INSERTED)

DRAFT FOR DISCUSSION

Schedule 6
Tariff Schedule

Clause 1
Definitions

Unless defined in this Schedule, capitalized terms used in this Schedule shall have the meanings given in the main body of this Agreement. Unless otherwise stated, reference to a clause (or an attachment) in this Schedule means reference to a clause (or an attachment) in this Schedule. The following terms shall have the meanings set forth below.

Base Exchange Rate or **BER** means the reference Exchange Rate which is used to calculate the Base Tariff and is equal to [Four Hundred and Ten Naira per Dollar (410 per USD)].

Base Energy Charge Rate means US\$0.0523 per kWh. The Base Energy Charge Rate is split into Foreign Energy Charge Rate and Local Energy Charge Rate using a 50:50 ratio.

Energy Payment has the meaning given to that term in Clause 2 of this Schedule 6.

Exchange Rate or **ER** - the exchange rate at the date of invoicing, expressed in Naira per Dollar, as published by Central Bank of Nigeria as **Selling** or any successor thereto.

Foreign Currency means currency other than Naira.

Foreign Inflation Index means the average monthly United States Department of Labor Statistics Producer Price Index for the Net Output of Total Manufacturing Industries (PPI) published by the Bureau of Labor Statistics, United States Department of Labor, Washington, DC (<http://www.bls.gov/ppi>) for the twelve month period immediately preceding date t 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.

Foreign Inflation Index Adjustment Factor or **FIIF_m** means for any Billing Period **m**, the ratio of (i) the average Foreign Inflation Index published in the Previous Contract Year to (ii) the Reference Foreign Inflation Index.

Base Foreign Energy Charge Rate or **FECCR** has the meaning given to that term in Clause 2.1 of this Schedule 6.

Foreign Energy Payment or **FEP_m** has the meaning given to that term in Clause 2.1 of this Schedule 6.

Local Energy Charge Rate or **LECR** has the meaning given to that term in Clause 2 of this Schedule 6.

Local Energy Payment or **LEP_m** has the meaning given to that term in Clause 2 of this Schedule 6.

“**Local Inflation Index**” means Nigerian Consumer Price Index as published by the Nigerian National Bureau of Statistics from time to time. It shall be the average January to December numbers released by the Nigeria 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_m**” means the applicable adjustment factor for the Billing Period *m*, determined as the ratio of (i) the average Local Inflation Index published in the previous year to (January to December) (ii) the Reference Local Inflation Index.

“**Local Energy Charge Rate**” or “**LECR**” has the meaning given to that term in Clause 2 of this Schedule 6.

“**Reference Foreign Inflation Index**” means the value of the Foreign Inflation Index for the December month period immediately preceding the month during which this Agreement is executed.

“**Reference Local Inflation Index**” means or the value of the Local Inflation Index for the December month period immediately preceding the month during which this Agreement is executed.

“**Supplemental Payment**” has the meaning given to that term in Clause 13 of this Schedule 6.

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

“**USD**” means US Dollars as defined in Clause in the main body of this Agreement.

Clause 2 Energy Payments

2.1 The “Foreign Inflation Index Adjustment Factor” shall be calculated according to the following formula:

$$FIIF_t = PPI_t / PPI_{Ref}$$

Where:

FIIF_t: means the Foreign Inflation Index Adjustment Factor applicable at date *t*;

PPI_t: means the average monthly United States Department of Labor Statistics Producer Price Index.

PPIRef means the referenced United States Department of Labor Statistics Producer Price Index. It shall be for the December month period immediately preceding the month during which this Agreement is executed

2.2 The “Local Inflation Index Adjustment Factor” shall be calculated according to the following formula:

$$LIIF_t = NCPI_t / NCPI_{Ref}$$

Where:

LIIF_t: means the Local Inflation Index Adjustment Factor applicable at date t;

NCPI_t: means the average Consumer Price Index reported in the publication of the Nigeria National Bureau of Statistics at date t

NCPI_{Ref} means the referenced Consumer Price Index reported in the publication of the Nigeria National Bureau of Statistics. It shall be for the December month period immediately preceding the month during which this Agreement is executed.

2.3 Calculation of Foreign Energy Payment (FEP_m)

The Foreign Energy Payment for any Billing Period \tilde{m} will be denominated in US Dollars and shall be calculated as follows:

$$FEP_m = FE_{CR_FC} \times [NEO_m \times (1-LF)] \times (ER) \times FIIF_m$$

Where:

FEP_m means the Foreign Energy Payment for any Billing Period \tilde{m} ;

ER means the Exchange Rate at the invoicing date;

FE_{CR} means the Foreign Energy Charge Rate set forth in Attachment A;

NEO_m means the Net Electrical Output (in MWh) delivered to the Delivery Point during Billing Period \tilde{m} ;

LF means the Loss Factor; and

FIIF_m means the Foreign Inflation Index Adjustment Factor for any Billing Period \tilde{m} , as calculated in accordance with the definition thereof.

2.4 Calculation of Local Energy Payment (LEP_m)

The Local Energy Payment for any Billing Period \tilde{m} will be denominated in Naira and shall be calculated as follows:

$$LEP_m = LECR \times [NEO_m \times (1-LF)] \times LIIF_m$$

Where:

- $LECR$ means the Local Energy Charge Rate set forth in Attachment A;
- NEO_m means the Net Electrical Output (in MWh) delivered to the Delivery Point during Billing Period \tilde{m} ;
- LF means the Loss Factor; and
- $LIIF_m$ means the Local Inflation Index Adjustment Factor for any Billing Period \tilde{m} as calculated in accordance with the definition thereof.

Clause 3 Supplemental Payment

3.1 Calculation of Supplemental Payment

The Supplemental Payment for any Billing Period \tilde{m} shall be denominated in Naira and shall be calculated as follows:

$$SP_m = \frac{(LF_n + CF_n + SOMAC_n + MAN)}{12}$$

Where:

- SP_m means the Supplemental Payment for Month \tilde{m} ;
- LF_n means the amount that is payable to the Commission as the licence fee under Seller's generation license during Contract Year \tilde{n} ;
- CF_n means the amount that is payable to the Transmission Company of Nigeria during Contract Year \tilde{n} as an annual connection fee under the Connection Agreement;
- $SOMAC_n$ means the System Operator and Market Administration Charge, if any, to be paid by Seller to the System Operator during Contract Year \tilde{n} ;

MA_n means the amount that is payable by Seller to the Market Operator and approved by the Commission as the Market Administrative Charge during Contract Year n ;

Clause 4 Currency

- 4.1 This Tariff is denominated in both Naira and USD.
- 4.2 All payments made under this Agreement will be made in Naira except as stated in Clause 4.6 of Schedule 6.
- 4.3 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 Energy Charge Rate 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.
- 4.4 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 favorable 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 favorable 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.
- 4.5 For USD denominated payments made by the Buyer to the Seller pursuant to Clause 4.3 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 4.3 of Schedule 6, which the Seller could not substantiate. The claw back will be applied to the payments due to the Seller on invoices submitted to the Buyer during the succeeding Contract Year.

- 4.6 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 4.3 of Schedule 6. Where Buyer elects to pay in USD, the True-Up provision pursuant to Clause 4.4 of Schedule 6 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.
- 4.7 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 21 of this Agreement.

Clause 5

Miscellaneous

5.1 Construction of Seller Connection Works

Seller's capital costs (which largely determine the Energy Charge Rate) include the cost of the Seller Connection Works. As a result, Seller will not be entitled to any compensation in respect of the Seller Connection Works that is in addition to the Energy Charge Rate provided for in this Schedule.

5.2 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.

5.3 HYPPADEC Charge

The subsisting legislation governing the HYPPADEC levy mandates the payment of 10% of the total revenue deductible from revenue generated by any company or authority from the operations of any hydroelectric dam, in any member state of the commission. The energy charge due to XXXXXX for each month shall be adjusted upwards by 10% and captured in the monthly invoice for electricity sold. This shall be the HYPPADEC charge and shall be denominated wholly in Naira. This charge will be subject to future amendments based on any future amendments to the HYPPADEC act.

5.4 Adjustment of the Charge Rates

At the Execution 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 tariff approved by the Commission for the Plant. 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: Charge Rates

Description	Variable	Units	Value
Foreign Energy Charge Rate	FECR	USD/MWh	
Local Energy Charge Rate	LECR	Naira/MWh	
Base Exchange Rate			

Attachment B

Table 2: NERC Approved Generation Tariff for xxxxxxxx hydro

Assumptions (Parameters)	Unit	Approved Parameters/Costs
Tariff Year	Year	
Economic Life	Years	
Installed Capacity	MW	
Auxiliary Requirement	%	
Average Degradation	%	
load Factor	%	
Transmission loss	%	
Capital Cost (including transmission	US\$/MW	
Fixed O&M	US\$/MW /Year	
Variable O&M { Water charge }	US\$/MW	
Exchange Rate	USD/Naira	
US CPI Index	Index	

Variable O&M	NGN/ MWh	
Fixed O&M	NGN/MWh	
Capital Recovery	NGN/MWh	
Capacity Payment	NGN/MWh	
Energy Payment	NGN/MWh	
Wholesale Price	NGN/MWh	
Wholesale Price	NGN/kWh	
Wholesale Price	US\$/kWh	

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Attachment C

Template Invoice (To be submitted by Seller to the Buyer at the end of each Billing Period)

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Schedule 7

Insurance Coverages

[Subject to Insurance Adviser Review]

The insurance policies to be obtained and maintained by the Seller pursuant to this Agreement shall provide coverage against all those risks, in the minimum amounts and with maximum deductibles and other customary terms and conditions, as are required by Applicable Law or by any Project Document to which Seller is a party or as would be obtained in accordance with Good Industry Practices. Such insurance coverages shall include, but are not limited to, the following:

- (a) **All Risks Insurance:** This insurance shall cover all building contents, machinery, stock fixtures, fittings and all other personal property forming part of the Facility against All Risks of physical loss or damage, including (but not limited to) those resulting from fire, lightning, explosion, spontaneous combustion, storm, wind, tempest, flood, hurricane, water damage, riot, strikes, malicious damage, earthquake, tsunami, and/or collapse. Coverage shall be in an amount not less than the replacement value of the Plant.
- (b) **Loss Following All Risks Incident:** This insurance shall cover against loss of revenue due to loss of Energy Payments or Availability Event Energy Payments and/or loss of output as a direct consequence of loss of or damage to the Facility caused by a peril insured under All Risks insurance. Coverage shall be in an amount not less than twelve (12) Months of estimated Energy Payments and Availability Event Energy Payments.
- (c) **Machinery Breakdown:** This insurance shall cover against all machinery, plant and ancillary equipment forming part of the Facility against sudden and unforeseen physical loss or damage resulting from mechanical and electrical breakdown, electrical short circuits, vibration, misalignment, excessive current or voltage, abnormal stresses, centrifugal forces, failure of protective or regulating devices, overheating, entry of foreign bodies, impact, collision and other similar causes. Coverage shall be in an amount not less than the full replacement value of all machinery, plant, and ancillary equipment forming part of the Plant.
- (d) **Loss Following Machinery Breakdown:** This insurance shall insure against loss of revenue due to loss of Net Electrical Output and/or loss of output as a direct consequence of loss of, or damage to the Facility caused by a peril insured under Machinery Breakdown insurance. Coverage shall be in amount not less than twelve (12) Months of estimated Energy Payments and Availability Event Energy Payments.
- (e) **Commercial/General Liability:** This insurance shall cover against legal liability to third parties for bodily injury or damage to property arising out of the construction, testing, Commissioning, ownership, operation and maintenance of the Facility. Coverage shall be a minimum of [1.8 Million] US\$ per claim and [21.3 Million] US\$ in the aggregate.
- (f) **Workers Compensation and Employers Liability:** This insurance will include workers compensation, temporary disability and other similar insurance required by the Applicable Law. Additionally, coverage under this subsection shall include a voluntary compensation

and employers' liability endorsement for employees not subject to the workers compensation laws.

- (g) **Construction and Erection All Risk Insurance:** Coverage shall be a minimum of **[1.8 Million]** US\$ per claim and **[21.3 Million]** US\$ in the aggregate.
- (h) **Cargo Insurance:** Coverage shall be a minimum of **[110% of cost of the cargo]** US\$ per claim and **[23.1 Million]** US\$ in the aggregate.

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Schedule 8

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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Schedule 9

Initial Authorizations

Seller Initial Authorizations

- (a) **Generation License:** License to generate and supply electrical power issued by the Commission pursuant to Section 64(1) of the Act.
- (b) **Environmental Impact Assessment (EIA):** Performed by the Federal Ministry of Environment and the relevant State agency.
- (c) **Development Permit:** Issued by the relevant State building control agency.
- (d) **Building Permit:** Obtained from the relevant State physical planning authority.
- (e) **ECO-GUARD Certificate:** Issued by NESREA.
- (f) **Water License:** Issued by the Federal Ministry of Water Resources
- (g) **Business Permit (where Seller has foreign participation):** Issued by the Federal Ministry of Interior.
- (h) **NIPC Registration:** Obtained from the Nigerian Investment Promotion Commission (NIPC).
- (i) **Pioneer Status Certificate:** Issued by NIPC.

Buyer Initial Authorizations

Trading License: License to trade in electrical power issued by the Commission pursuant to Section 68 (1) of the Act.

Schedule 10

Terms of Development Security and Performance Guarantees

[Not Used]

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Schedule 11

Delivery Point Diagram

In preparing this schedule note the following definition

Delivery Point means:

- (a) for the purpose of determining Available Capacity and Net Electrical Output, the Metering Point at the Plant; and
- (b) for all other purposes the low voltage side of the transformer that steps up the voltage to the local Grid voltage (which is owned by the Transmission Company of Nigeria),

as identified in the diagram in Schedule 11.

The Delivery Point is the Transmission Company of Nigeria/System Operator meter point to make sure it is on the high side of the step-up transformer, net of transformer losses, since these are part of auxiliary load. This despite the fact TCN will assume ownership of the transformer and HV switchyard.

Schedule	12	Implementation	Schedule
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[NOT USED]

Schedule 13 Operating Records

Prior to the Commencement Date, the Seller shall provide a list of the provisional operating and maintenance manuals. The list of final operating and maintenance manuals shall be provided within 180 days following this Date.

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Schedule 14 Maintenance Schedule

[Subject to Technical Review]

14.1. Maintenance Obligations

- 14.1.1. 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.
- 14.1.2. 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.
- 14.1.3. 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 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.
- 14.1.4. 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.

14.2. Maintenance Inspections

- 14.2.1. Buyer shall be entitled to perform a maintenance inspection of the Plant annually on a schedule to be agreed.
- 14.2.2. 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.
- 14.2.3. 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

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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.

- 14.2.4. 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.

14.3. Maintenance Records

- 14.3.1. 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.

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