

# Draft for Discussion

## FORM POWER PURCHASE AGREEMENT - SOLAR

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### Power Purchase Agreement

between

**Nigerian Bulk Electricity Trading Plc**

And

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This Agreement has been or will be submitted to the Commission or any other Relevant Authority for review, and this Agreement will not be binding on the Parties in any respect until Buyer shall have received official, written: (i) approval of this Agreement or (ii) a statement of no objection to the execution of this Agreement by the Commission or any other Relevant Authority, or (iii) a statement from the Commission or any other Relevant Authority that this Agreement is not subject to review by the Commission or any other Relevant Authority. If a party does not accept any changes in this Agreement required by the Commission or any other Relevant Authority prior to the initial effectiveness of this Agreement, such Party may by notice to the other refuse to approve such changes in which case the provisions of clause (c) below shall apply.

- (b) After the receipt of the action of the Commission or any 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
  - (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 (b) 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 Initial Effectiveness Date shall occur.
- (c) Either Party may terminate this Agreement with immediate effect by giving a notice to the other Party if, by the date falling two Months after the Execution Date (or such later date as may be agreed between the Parties), any approvals required by Applicable Law for the initial effectiveness of this Agreement have not been obtained, the action of the Commission or any other Relevant Authority under clause (c) above has not been obtained in accordance with clause (c) above or the Commission or any other Relevant Authority has required changes to this Agreement and such changes have not been accepted, or either Party is unable to affirm the representations and warranties as of the Initial Effectiveness Date.

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**THIS POWER PURCHASE AGREEMENT** (this “**Agreement**”) is entered into this \_\_\_\_ day of \_\_\_\_\_ **2015**, by and between:

- (1) **NIGERIAN BULK ELECTRICITY TRADING PLC**, a company duly incorporated under the laws of the Federal Republic of Nigeria and having its registered office at 8<sup>th</sup> Floor, Bank of Industry Tower, Off Herbert Macaulay Way, Central Business District, Abuja, Nigeria (“**Buyer**,” which expression shall where the context so admits include its successors-in-title and assigns); and
- (2) [\_\_\_\_], a company duly incorporated under the laws of the Federal Republic of Nigeria and having its registered office at \_\_\_\_\_, Nigeria (“**Seller**,” which expression shall where the context so admits include its successors-in-title and assigns).

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 Privatization of FGN pursuant to the provisions of section 8 of the Act and under the laws of Nigeria to take over the functions of the Power Holding Company of Nigeria Plc relating to bulk purchase and resale of electricity.
- (C) Seller has proposed that Seller will develop, design, construct, finance, own, operate, and maintain a solar PV power 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.

**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



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- (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:

- (a) in relation to the Construction and Commissioning Period, the voluntary cessation of the construction 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, a Delayed Commissioning Event or a Force Majeure Event; and
- (b) in relation to the Delivery Term, the voluntary cessation of the operation or maintenance of the Plant for reasons other than a Buyer Default, an Availability Event or a Force Majeure Event.

**“Achieved Capacity”** means the capacity expressed in MW of the Plant at the Commercial Operations Date to deliver NEO at the Delivery Point as specified in the Engineer’s Certificate provided pursuant to Clause 0.

**“Acceptable Commercial Bank”** means the bank (or branch thereof) meeting the criteria set out in Clause 3 of Schedule 1 that will provide the Buyer Payment Security required under Clause 3 of Schedule 1.

**“Acceptable Confirming Bank”** means the bank (or branch thereof) that qualifies as an Acceptable Commercial Bank and provides payment confirmation to the Buyer Payment Security required under Clause 3 of Schedule 1 where the issuer of the Buyer Payment Security did not qualify as an Acceptable Commercial Bank at the time of its issuance or at any time thereafter.

**“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 involuntary commencement against a Party of any procedure analogous with any of the above procedures that is not stayed within one hundred 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).

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

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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 0.

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

**“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.

**“Ancillary Services”** means such services relating to operation of the Grid and electric power production by the Plant that are provided by Seller and required by System Operator pursuant to the Grid Code, other than the provision of Net Electrical Output to Buyer, including without limitation operation at a power factor outside of the normal range specified in the Grid Code to provide or absorb reactive power, voltage control, frequency regulation, operative reserves, load following and black start capability.

**“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

**“Applicable Performance Model”** means, prior to the Commercial Operations Date, the Preliminary Performance Model and, from and after the Commercial Operations Date, the then-current Performance Model prepared and corrected as provided in Attachment 2 to Schedule 6..

**“Annual Electrical Output”** means the amount of Net Electrical Output expected annually from the Plant as set forth on Attachment 1 to Schedule 6, which initially is an agreed amount based on estimates as of the Execution Date. As of the Commercial Operations Date, Annual Electrical Output is to be revised to reflect the projected Net Electrical Output for each Contract Year using the 20 year P50 projection of average of the site conditions and the Performance Model to calculate predicted NEO for each Contract Year, as certified by the Independent Engineer, and Attachment 1 to Schedule 6 will be revised accordingly. Annual Electrical Output may be further revised only as stated in this Agreement.

**“Assumed Debt to Equity Ratio”** has the meaning given to that term in Schedule 0.

**“Authorization”** means any applicable approval, consent, exemption (including waiver), license, order or permit of or duly issued by or from any Relevant Authority required for the due

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performance by either Party of any covenant or obligation hereunder and includes the Initial Authorizations.

“**Availability Event**” has the meaning given to that term in Clause 0.

“**Availability Event Energy Payment**” means the amount payable for the Availability Event Energy Volume calculated in accordance with Schedule 0. Availability Event Energy Payments are not payable and do not accrue until the Commercial Operations Date.

“**Availability Event Energy Volume**” means the Net Electrical Output that Seller could have delivered but for an Availability Event, as calculated in accordance with Schedule 0.

“**Back-up Meter(s)**” has the meaning given to that term in Clause 0.

“**Billing Period**” means a Month for which Seller has issued an invoice to Buyer pursuant to Clause 0.

“**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 0.

“**Buyer Payment Security**” means a standby letter of credit governed by ISP98 or UCP 600 or a demand guarantee governed by the Uniform Rules for Demand Guarantees that is delivered to Seller by Buyer as security for Buyer’s obligation to pay Delayed Commissioning Payments, Energy Payments, Availability Event Energy Payments or Supplemental Payments in accordance with the terms of this Agreement and has the terms set forth in 0 of 0.

“**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.

“**Change in Law**” means at any time after the Execution Date:

- (a) the adoption, promulgation, bringing into effect, repeal, amendment, reinterpretation, change in application, or modification of any Applicable Law, by any Relevant Authority, *except* any changes in the Grid Code that impose obligations on Seller consistent with Seller’s obligations under the Connection Agreement;
- (b) the imposition of any material condition not required as of the Execution Date in connection with the issuance, renewal or modification of any Authorization by any Relevant Authority;
- (c) the change or modification of any Authorization by a Relevant Authority or the imposition of other obligations imposing a cost on Seller; or

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- (d) the change or modification of the Energy Charge Rate, any components of the Supplemental Payment or related terms and conditions after the initial approval by the Commission of the Energy Charge Rate, any components of the Supplemental Payment and related terms and conditions other than (i) a change or modification resulting from an application for a change or modification by the Party seeking relief for the resulting Change in Law, (ii) where the Party seeking relief for the Change in Law has consented to or approved the change or modification to the Energy Charge Rate or the applicable component of the Supplemental Payment, or (iii) a change required to be made to reflect changes in the Energy Charge Rate or any components of the Supplemental Payment or related terms and conditions by the terms of this Agreement, which, in case of any of the above, causes an increase or reduction in costs or an increase or reduction in revenue, or a delay in, or shortening of, schedule as a consequence of a change in a requirement for the design, construction, financing, operation or maintenance of the Plant to one that is more or less restrictive than the most restrictive requirements (a) in effect as of the Execution Date, (b) specified in any approved applications, or other documents filed in connection with such applications, for any Authorization, or (c) agreed to by Seller or Buyer, but in all cases, excluding a Change in Tax; or
- (e) makes unenforceable, invalid or void any material obligation of Buyer or Seller; or makes it unlawful for Buyer or Seller to make or receive any payment, to perform any material obligation or to enjoy or enforce any material right under this Agreement.

**“Change in Tax”** means the adoption, promulgation, bringing into effect, repeal, amendment, reinterpretation, change or failure in application of the provisions of the relevant legislation after the Execution Date, or modification after the Execution Date of any Applicable Law by any Relevant Authority, relating to any Tax, including any application of any Tax (including withholding Taxes on distributions to shareholders to the extent such withholding taxes are final Tax liabilities of the shareholders and are not subject to any credit or adjustment, including any credit or adjustment against any other Tax liability), which is imposed on Seller or the Project and:

- (a) causes Seller to incur any Tax in excess of those Seller would have incurred under any Applicable Law in effect as of the Execution Date; or
- (b) results in a reduction in the amount of any Tax that Seller would have incurred under any Applicable Law in effect as of the Execution Date.

**“Closing Date”** means the date on which all Conditions Precedent have been satisfied or waived accordingly under this Agreement.

**“Commercial Operations Date”** means the date on which the entire Plant achieves commercial operations after successfully completing its Commercial Operations Tests in accordance with Clause 0.

**“Commercial Operations Test(s)”** means test(s) run in accordance with Schedule 0.

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

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**“Commissioning”** means the undertaking of the Commissioning Procedures on the Plant.

**“Commissioning Period”** means the duration of the Commissioning.

**“Commissioning Procedures”** has the meaning given to that term in Clause 0.

**“Conditions Precedent”** means the conditions precedent specified in Clause 0.

**“Confidential Information”** has the meaning given to that term in Clause 0.

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

**“Construction and Commissioning Period”** means the period from the Closing Date to the Commercial Operations Date.

**“Construction Contract”** means the construction contract or contracts for the construction of the Plant between Seller and its Contractor.

**“Contract Capacity”** has the meaning given to that term in 0.

**“Contract Year”** means each period of twelve (12) consecutive months commencing on the Commercial Operations Date if the Commercial Operations Date occurs on the first Day of a Month, or the first Day of the Month following the Commercial Operations Date if the Commercial Operations Date does not occur on the first Day of a Month, 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 any contractor under the Construction Contract, any subcontractor under the Construction Contract 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 0.

**“Daily Notices”** has the meaning given to that term in Clause 0.

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

**“Debt Event”** means a Change in Law, Change in Tax, Force Majeure Event, Buyer Default, Expropriation or the implementation of a Restoration that has the effect stated in Clause 0.

**“Debt Outstanding”** means the amount in US Dollars required to pay the principal interest, fees, breakage costs and early termination costs under the Finance Documents (including any prepayment premium and any amounts owed under any hedging documentation) and all other amounts outstanding to the Finance Parties under the Finance Documents.

**“Default”** means a Seller Default or Buyer Default.

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**“Defective Metering Event”** means, in relation to any Metering System that (a) such Metering System is not in service, (b) any seal on a metering device constituting part of that Metering System is found to be broken, or (c) a metering device constituting part of that Metering System fails to register or, upon testing, is found to vary by more than the Metering Tolerance.

**“Degradation”** means the reduction in ability of a PVGU or the Plant to deliver Net Electrical Output as a result of age, environmental exposure and normal operation in accordance with Good Industry Practices.

**“Degradation Factor”** means the factor applicable to the relevant Contract Year as set out in the Degradation Factor Table in Schedule 6.

**“Delayed Commissioning Event”** is defined in Clause 0.

**“Delayed Commissioning Payments”** means the payments due to Seller on account of a Delayed Commissioning Event as set forth in Clause 0.

**“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 0.

**“Delivery Term”** means the period commencing on the date on which Seller certifies that the first PVGU is ready for commercial operation in accordance with Clause 7.5 and expiring upon the expiration of the Term either by passage of time or by early termination.

**“Development Security”** means security for Seller’s obligation to achieve the Closing Date by the Target Closing Date (as the Target Closing Date may be extended) and having the terms set forth in Schedule 0.

**“Diffuse Horizontal Irradiance”** (“DHI”) means the amount of radiation received per unit area by a surface that does not arrive on a direct path from the sun, but has been scattered by molecules and particles in the atmosphere. Diffuse Horizontal Irradiance is an engineering term of art and shall be construed accordingly.

**“Direct Agreement”** means the direct agreement signed by Buyer and certain of the Finance Parties under which Buyer will consent to the grant by Seller of a security interest in this Agreement to such Finance Parties and Buyer will agree to usual and customary step-in rights for the benefit of such Finance Parties.

**“Direct Normal Irradiance”** (DNI) means the amount of solar radiation received per unit area by a surface from the direction of the Sun. Direct Normal Irradiance is an engineering term of art and shall be construed accordingly.

**“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,



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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 0, 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.

**“Early Net Electrical Output”** means the Net Electrical Output delivered from a PVGU after a certification in accordance with Clause 0 and prior to the Commercial Operations Date.

**“Emission Reduction Losses”** means with respect to the period commencing on the Execution Date and expiring on the day prior to the Commercial Operations Date, and with respect to each Contract Year, any net losses suffered by the Seller in connection with the development, marketing and sale of Emission Reduction Rights, which net losses shall be calculated as the difference between:

- (a) any reasonable, necessary and prudently incurred out-of-pocket costs incurred by Seller during such period in connection with the development, marketing and sale of Emission Reduction Rights during such period, and
- (b) any revenues earned by Seller during such period from the sale of Emission Reduction Rights.

**“Emission Reduction Profits”** means with respect to the period commencing on the Execution Date and expiring on the day prior to the Commercial Operations Date, and with respect to each Contract Year, the net profits earned by Seller from the sale of Emission Reduction Rights, which net profits shall be calculated as the difference between:

- (a) all revenues earned by Seller during such period from the sale of Emission Reduction Rights, and
- (b) all reasonable, necessary and prudently incurred out-of-pocket costs incurred by Seller during such period in connection with the development, marketing and sale of Emission Reduction Rights during such period, plus any Emission Reduction Losses incurred by Seller during a prior period that have not previously been recovered by Seller by applying such Emission Reduction Losses against revenues earned by Seller from the sale of Emission Reduction Rights.

**“Emission Reduction Rights”** means any credit, reduction right, offset, allocated pollution right, emission reduction allowance, or other proprietary or contractual right whether or not tradable:

- (a) resulting from or otherwise related to the generation, purchase, or sale of electricity under this Agreement;

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- (b) resulting from the actual or assumed displacement of emissions from generating facilities from which the Buyer purchases or would purchase electricity, wherever located, as a result of the purchase by Buyer of electricity during the Term of this Agreement; or
- (c) otherwise resulting or arising in any manner whatsoever from the purchase of electricity by Buyer during the Term of this Agreement.

**“Energy Charge Rate”** has the meaning given to that term in Schedule 0.

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

**“Engineer’s Certificate”** has the meaning given to that term in Clause 0.

**“Exchange Rate”** means (i) the applicable sell rate for the conversion of US Dollars to Naira published by the Central Bank of Nigeria on or prior to the Business Day immediately prior to the date of conversion or the most recent Business Day on which such rate is published if such rate remains applicable, or, if such rate is not published by the Central Bank of Nigeria, (ii) the interbank rate published by the Central Bank of Nigeria on the Business Day immediately prior to the date of conversion.

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

**“Expected Annual Electrical Output”** has the meaning given such term in Schedule 1.

**“Expert”** means the individual appointed under Clause 0 for the purposes specified therein.

**“Expert Determination”** has the meaning given to that term in Clause 0.

**“Expropriation”** means the act(s) of expropriation, requisition or nationalization of the Plant or any material portion of the Plant by a Relevant Authority; *provided that*, the following shall in no event constitute an Expropriation:

- (a) any measure that constitutes a bona fide, non-discriminatory measure of general application that governments normally take for the purpose of regulating economic activity, ensuring public safety, raising revenues or protecting the environment, unless the measure is designed by the Relevant Authority to have a confiscatory effect; and
- (b) any loss due to a breach by a Relevant Authority of its obligations under any Project Document, where the Relevant Authority is acting solely in a commercial capacity, unless the breach is designed to have, or has, a confiscatory effect; and
- (c) any Change in Law or Change in Tax unless the breach is designed to have, or has, a confiscatory effect.

**“Extraordinary L/C Event”** means the suspension or termination of the Buyer Payment Security as a result of any action or inaction of Seller or its Affiliates, *provided, however*, that no such



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action or inaction shall constitute an Extraordinary L/C Event if it results from (i) a breach by Buyer of this Agreement, (ii) a Buyer Default, or (iii) or a Local Political Force Majeure Event.

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

“**Finance Documents**” means the loan agreements, notes, indentures, security agreements, guarantees and other agreements, documents and instruments relating to the financing (including any refinancing) of the Project, as the same may be amended from time to time.

“**Finance Parties**” means any finance parties granting credit, guarantee, hedging or other debt facilities to Seller for the construction, commissioning and operation of the Project.

“**Financial Close**” means the execution and delivery of the Finance Documents and the satisfaction or waiver by the Finance Parties of the conditions precedent for the initial availability of funds under the Finance Documents (other than the satisfaction of the Conditions Precedent under this Agreement).

“**Force Majeure Event**” has the meaning given to that term in Clause 0.

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

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

“**Foreign Political Force Majeure Event**” has the meaning given to that term in Clause 0.

“**Full Restoration Report**” has the meaning given to that term in Clause 0.

“**Global Horizontal Irradiance**” means the total amount of Direct Normal Irradiance (DNI), Diffuse Horizontal Irradiance (DHI), and ground-reflected radiation. Global Horizontal Irradiance is an engineering term of art and shall be construed accordingly.

“**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

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

**“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

**“Indemnified Party”** means the Party that receives the benefit of an indemnity pursuant to Clauses 0, or 0, together with such Party’s directors, officers, and employees and such Party’s Affiliates, their directors, officers and employees.

**“Indemnifying Party”** means the Party that gives an indemnity pursuant to Clauses 0, or 0.

**“Independent Engineer”** means one of the suitably qualified Persons with requisite skills and experience listed in Schedule 0, selected from the list and appointed by Seller at its own cost and expense, and the identity of which is notified in writing to Buyer within forty-five (45) Days of the Closing Date, to conduct inspections of the Plant and installations thereat, to issue independent certifications in respect thereof.

**“Initial Authorizations”** means the Authorizations set out in Schedule 0.

**“Initial Effectiveness Date”** has the meaning given to that term in Clause 0.

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

**“Key Defined Milestones”** means all of the Target Closing Date, Long Stop Closing Date, Target Commercial Operations Date, Required Commercial Operations Date, Required Interconnection Date, and Long Stop Commercial Operations 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 Authorization”** means any Authorization:

- (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 Authorization 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 Authorization, any Project Documents or Finance Documents; or
- (d) that, in the case of a customs clearance or similar Authorization 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 Authorization 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 first Day of the period in respect of which interest is to be calculated.

**“Liquidated Damages Limit”** has the meaning given to that term in Schedule 0.

**“Local Political Force Majeure Event”** has the meaning given to that term in Clause 0.

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**“Long Stop Closing Date”** means the date beyond which the Target Closing Date may not be extended, which date is specified in Schedule 0.

**“Long Stop Commercial Operations Date”** means the date beyond which the failure by Seller to achieve the Commercial Operations Date constitutes a Seller Default, which date is specified in Schedule 0.

**“Loss Factor”** or **“LF”** is defined in Clause 0.

**“Main Meter”** has the meaning given to that term in Clause 0.

**“Mandatory Ancillary Service”** means any Ancillary Service that Seller that is designated as “mandatory” in the Connection Agreement or the Grid Code or that Seller is otherwise required to provide to the Transmission Company of Nigeria under the Connection Agreement or the Grid Code.

**“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 market rules for the Nigerian Electric Power Sector as approved by the Commission from time to time, and shall include Market Procedures when the context so requires.

**“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.

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**“Minimum Achieved Capacity”** has the meaning given such term in Schedule 0.

**“Minimum Annual Electrical Output”** has the meaning given that term in Schedule 0.

**“Minimum Indemnification Amount”** means the amount listed as such in Schedule 0.

**“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 0 and 0.

**“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 **“₦”** means the currency of the Federal Republic of Nigeria.

**“Natural Force Majeure Event”** has the meaning given to that term in Clause 0.

**“Net Electrical Output”** or **“NEO”** means the useful solar electric energy, expressed in MWh, generated by the Plant, and delivered to the Delivery Point for sale to Buyer, as measured by the Metering System. For the avoidance of doubt, electric energy is deemed useful if it conforms to the standards of the System Operator or the Transmission Company of Nigeria or would have so conformed, according to Schedule 0, 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”** (**“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.

**“Notice of Dispute”** has the meaning given to that term in Clause 0.

**“Notice of Expert Determination”** has the meaning given to that term in Clause 0.

**“Notices”** has the meaning given to that term in Clause 0.

**“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)

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key personnel list; (iii) clearances and switching practices; (iv) outage scheduling; (v) capacity and energy reporting; and (vi) operating log, which shall be consistent with this Agreement, Applicable Law, the designs of the Plant, Technical Limits and Good Industry Practices.

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

**“Outage”** means any condition or event that reduces the Net Electrical Output or Availability Event Energy Volume of the Plant during a Settlement Period to less than the amount indicated by the applicable Performance Model.

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

**“Performance Guarantee”** means security for Seller’s obligation to achieve the Commercial Operations Date (i) by the Required Commercial Operations Date and (ii) with an Achieved Capacity of at least the Contract Capacity, denominated in US Dollars and having the terms set forth in Schedule 0.

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

**“Performance Model Data”** has the meaning given to that term in Schedule 0.

**“Performance Model Data Collection Systems”** has the meaning given to that term in Schedule 0.

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

**“Plant”** means the solar 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 PVGUs and auxiliary equipment, 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, 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.

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**“Preliminary Restoration Estimate”** has the meaning given to that term in Clause 0.

**“Preliminary Conference”** has the meaning given to that term in Clause 0.

**“Preliminary Performance Model”** has the meaning given to that term in 0.

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

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

**“Project”** means the design, development, engineering, procurement, construction, permitting, commissioning, testing, operation and maintenance of the Plant and all activities incidental thereto.

**“Projected NEO”** means the quantity of NEO the Plant would be expected to deliver during any Settlement Period in the absence of an Availability Event, calculated using the Performance Model Data in effect for that Settlement Period. When Projected NEO is used to determine Availability Event Energy Volumes, actual Performance Model Data for the Settlement Period are used, as measured at the site in the manner specified in this Agreement and agreed protocols. When Projected NEO is calculated for a future period, an appropriate projection of Performance Model Data is used in accordance with agreed protocols (e.g., for day ahead projections forecast conditions will be used, while for long periods long term average conditions will be used).

**“Project Documents”** has the meaning given to that term in Clause 0.

**“Prolonged Force Majeure Events”** has the meaning given to that term in Clause 0.

**“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.

**“Put/Call Option Agreement”** means any put/call option agreement between FGN, Buyer and Seller.

**“PVGU (Photovoltaic Generating Unit)”** means electrically connected photovoltaic modules and related equipment (including inverters and transformers) installed at the Plant for conversion of solar energy into NEO and capable of being independently operated for delivery of NEO to the



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Grid in accordance with Good Industry Practice, and includes all other Plant equipment necessary for such operation (whether or not such equipment is common to or shared with other PVGUs).

**“Reasonable Endeavors”** means, for any action required to be made, attempted or taken by a Party under this Agreement, the endeavors 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.

**“Refinancing”** has the meaning given to that term in Clause 0.

**“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 Authorization is to be obtained from time to time and any authority, body or other person within the Federal Republic of Nigeria having jurisdiction under Applicable Law with respect to Seller, Buyer, or the Project.

**“Relevant Change”** has the meaning given to that term in Clause 0.

**“Relevant Event”** has the meaning given to that term in Clause 0.

**“Related Agreement(s)”** has the meaning given to that term in Clause 0.

**“Required Commercial Operations Date”** means the date specified in Schedule 0 by which Seller must achieve the Commercial Operations Date in order to avoid paying liquidated damages under Clause 7.9.

**“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 0, as such date may be extended under the Connection Agreement.

**“Restoration”** has the meaning given to that term in Clause 0.

**“Restoration-Related Tariff Modifications”** has the meaning given to that term in Clause 0.

**“Restoration Cost Estimate”** has the meaning given to that term in Clause 0.

**“Restoration Expert”** has the meaning given to that term in Clause 0.

**“Restoration Period”** has the meaning given to that term in Clause 0.



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

**“Restoration Threshold Amount”** has the meaning given to that term in Schedule 0.

**“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 0; 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 0.

**“Seller Outage”** means an Outage that is not the result of an Availability Event.

**“Seller Daily Statement”** has the meaning given to that term in 0.

**“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.

**“Shares”** means the shares and any other Ownership Interests in Seller.

**“Shareholder Loan”** means any indebtedness owed by Seller to any shareholder in Seller.

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

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

**“Standard Test Conditions”** or **“STC”** means an industry-wide standard to indicate the performance of PV modules specifying a cell temperature of 25°C and an irradiance of 1000 W/m<sup>2</sup>.

**“Supplemental Payment”** means the monthly payment by Buyer to Seller determined in accordance with Clause 4 of Schedule 0.

**“System Operator”** means the entity that holds a system operating license 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 0, which date is specified in Schedule 0.

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**“Target Commercial Operations Date”** means the date specified in 0.

**“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, license, 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.

**“Tax & Law Threshold Amount”** has the meaning given to that term in Schedule 0.

**“Technical Limits”** means the operating limits of the Plant specified in Schedule 0.

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

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

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

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

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

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

**“Test Power”** means the Net Electrical Output delivered by Seller from a PVGU prior to Commercial Operations Date unless such Net Electrical Output qualifies as Early Net Electrical Output pursuant to Clause 0.

**“Transfer”** means a transfer or event requiring consent of the other Party in accordance with Clause 0.

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

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**“Unscheduled Outage”** means an interruption or reduction of the generation of Net Electrical Output that:

- (a) is not a Scheduled Maintenance Outage or a Forced Outage or Partial Forced Outage;
- (b) is necessary in accordance with Clause 0; and
- (c) is for the purpose of performing work on specific components, which, considering Good Industry Practices, should not, in the reasonable opinion of Seller, be postponed until the next Scheduled Maintenance Outage.

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

**“Variation Notice”** has the meaning given to that term in Clause 0.

**“Voluntary Restoration”** has the meaning given to that term in Clause 21.11.

**“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.

**“Willful 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 according to the Gregorian calendar.

**“Year End”** has the meaning given to that term in Clause 0.

## 1.2. Interpretation

In this Agreement, including the recitals and schedules except where expressly provided to the contrary:

- 1.2.1 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;
- 1.2.2 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;
- 1.2.3 reference to “include” and “including” is deemed to be qualified by the additional term without limitation;
- 1.2.4 reference to any publication, statute, rule, regulation, instrument or standard means the same as amended, supplemented or re-enacted from time to time;
- 1.2.5 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

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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;

- 1.2.6 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;
- 1.2.7 any reference to time shall be to the time in Abuja, Nigeria;
- 1.2.8 reference to any amount of money means that amount in Naira, except where indicated otherwise;
- 1.2.9 reference to Clauses and Schedules means reference to Clauses hereof, and Schedules to this Agreement;
- 1.2.10 headings are inserted for ease of reference only and shall not form part of this Agreement, affect its interpretation or construction or have any legal effect;
- 1.2.11 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;
- 1.2.12 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;
- 1.2.13 reference to any notice or notification means a notice or notification made in writing or as otherwise expressly provided in this Agreement;
- 1.2.14 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;
- 1.2.15 in the event of any ambiguity or discrepancy in this Agreement, the following shall apply:

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- 1.2.15.1 in the case of any ambiguity or discrepancy between the written description of any drawing and the specifications and standards, the latter shall prevail;
- 1.2.15.2 in the case any ambiguity or discrepancy between the dimension scaled from the drawing and its specific written dimension, the latter shall prevail; and
- 1.2.15.3 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 and Availability Event Energy Volumes; Emission Reduction Rights**

#### **2.1. Sale of Energy Before Commercial Operations Date**

- 2.1.1 Buyer shall accept but shall not be required to pay for Test Power generated by Seller.
- 2.1.2 During the period commencing on the date Seller declares a PVGU to be ready under Clause 0 to begin commercial operation until the Commercial Operations Date, Seller may make available and deliver to Buyer and Buyer shall accept from Seller Early Net Electrical Output delivered by Seller and pay Seller for such Early Net Electrical Output at the rate set forth in Clause 2.4 of Schedule 0. Sales of Early Net Electrical Output shall not commence until Seller has given Buyer fourteen (14) Days' advance notice of its intention to make Early Net Electrical Output available to Buyer.
- 2.1.3 Buyer shall have no obligation to make Availability Event Energy Payments prior to the Commercial Operations Date.

#### **2.2. Obligation to Buy and Sell Energy After Commercial Operations Date**

On and after the Commercial Operations Date until the expiry of the Term or earlier termination in accordance with this Agreement and subject at all times to the terms and conditions of this Agreement, Seller shall deliver to Buyer and Buyer shall accept and purchase from Seller all Net Electrical Output, except as set forth in **Error! Reference source not found.** of 0.

#### **2.3. Calculation of Availability Event Energy Payments**

- 2.3.1 If, after the Commercial Operations Date, Seller is unable to deliver the Net Electrical Output as a result of an Availability Event, Buyer will pay to Seller an Availability Event Energy Payment calculated in accordance with Schedule 0, except as set forth in **Error! Reference source not found.** of 0.

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2.3.2 Buyer shall have no obligation to pay Availability Event Energy Payments unless and until the Independent Engineer has certified and delivered the Preliminary Performance Model in accordance with Attachment 2 to Schedule 0.

## 2.4. Ancillary Services

This Agreement does not impose any obligation on Seller to provide Ancillary Services, provided that, if the Market Rules, the Grid Code or an agreement with the System Operator require Seller to provide Ancillary Services, Seller shall supply such Ancillary Services to the Transmission Company of Nigeria as directed by the System Operator during the Delivery Term. The provision of Ancillary Services, other than Mandatory Ancillary Services, by Seller as directed by the Transmission Company of Nigeria or its designee which reduces Net Electrical Output will constitute an Availability Event under Clause 0 and result in the payment of Availability Event Energy Payments in accordance with Schedule 0 to this Agreement. Seller shall not otherwise contract for the provision of Ancillary Services or any other services that may adversely impact Seller's ability to deliver Net Electrical Output to the Delivery Point under this Agreement.

## 2.5. Transmission Services, Loss Factor

2.5.1 Seller does not undertake in this Agreement to provide any transmission services to Buyer. This Agreement is premised on the assumption that the Transmission Company of Nigeria will accept delivery of Net Electrical Output at the Delivery Point without charge to Seller for transmission services, although other charges may be imposed under the Connection Agreement such as charges related to metering. If charges are imposed on Seller for transmission services, the Energy Payments will be adjusted so that Seller will not bear such costs.

2.5.2 Seller will not be subject to any electric transmission loss factor ("**Loss Factor**") imposed on Seller as a generator connected to the Grid.

## 2.6. Purchase for Resale

Buyer will purchase Early Net Electrical Output and Net Electrical Output for resale and may resell such energy in a manner allowed by Applicable Law.

## 2.7. Emission Reduction Rights

Seller may undertake the process described in Schedule 15 at any time, at its discretion.

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## Clause 3 Term and Conditions Precedent

### 3.1. Term of Agreement

3.1.1 This Agreement shall only become fully effective on the Closing Date and continue in force and effect, valid and binding from the Closing Date until the expiry of the Term.

3.1.2 The following Clauses shall become effective upon execution (the “**Initial Effectiveness Date**”):

- (a) Clause 0 (*Definitions*);
- (b) Clause 0 (*Term and Conditions Precedent*);
- (c) Clause 0 (*Seller’s Representations and Warranties*);
- (d) Clauses 0, 0, 0 (*Seller’s Covenants*);
- (e) Clause 0 (*Buyer’s Representations and Warranties*);
- (f) Clause 0 (*Buyer’s Covenant*),
- (g) Clause 0 (*Conduct of the Parties*),
- (h) Clause 0 (*Effect and Duration of Representations and Warranties*);
- (i) Clause 0 (*Disclaimer of Other Representations and Warranties*).
- (j) Clause 0 (*Liability and Indemnification*)
- (k) Clause 0 (*Transfer of the Agreement*);
- (l) Clause 0 (*Choice of Law and Dispute Resolution*);
- (m) Clause 0 (*Notices*); and
- (n) Clause 0 (*Miscellaneous Provisions*).

3.1.3 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.

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## 3.3. Conditions Precedent

The following Conditions Precedent must be satisfied or waived in writing by the Parties on or before the Target Closing Date:

### 3.3.1 Seller's Conditions Precedent

Seller's obligations (other than those obligations of Seller that are listed in Clause 0) hereunder are conditioned upon:

- (a) Seller having obtained all of the Seller Initial Authorizations.
- (b) Seller and its counterparts having executed each of the following documents (collectively, the "**Project Documents**") and having made the originals available for review by and provided a certified copy thereof to Buyer:
  - (i) the Construction Contract;
  - (ii) the Operation and Maintenance Agreement;
  - (iii) the Connection Agreement;
  - (iv) the Documents of Title;
  - (v) the policies of insurance required to be obtained and maintained by Seller under Clauses 0 and 0; and
  - (vi) any other document which the Parties agree shall be designated as a Project Document.
- (c) The Transmission Company of Nigeria having presented evidence acceptable to Seller 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.
- (d) All necessary debt financing for the Project has been secured by Seller.
- (e) Financial Close has been achieved.
- (f) Buyer, Seller and the Finance Parties having entered into the Direct Agreement.
- (g) Buyer having provided to Seller a copy of all relevant resolutions of the board of directors and shareholders of Buyer authorizing 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



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which Buyer is a party, together with (x) a legal opinion reasonably acceptable to Seller in form and substance from counsel to Buyer as to the due authorization, 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 (y) an officer's certificate of Buyer confirming that Buyer's representations and warranties made as of the Initial Effectiveness Date pursuant to Clause 4.3. are true and correct on the Closing Date.

- (h) Buyer, Seller and the FGN having entered into the Put/Call Option Agreement.
- (i) Buyer having delivered the initial Buyer Payment Security.

## 3.3.2 Buyer's Conditions Precedent

Buyer's obligations hereunder (other than those obligations of Buyer that are listed in Clause 0) are conditioned upon:

- (a) Seller having entered into a Connection Agreement with the Transmission Company of Nigeria.
- (b) The Transmission Company of Nigeria having presented evidence acceptable to Buyer 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.
- (c) Seller having posted the Performance Guarantee in favor of Buyer.
- (d) Buyer having reviewed all of the Project Documents, and having approved any Project Document to which any Affiliate of Seller is a party.
- (e) Buyer having performed due diligence on all aspects of the Project with satisfactory results, including verification of any amounts included in tariff calculations unless the Agreement is the result of an open, competitive procurement.
- (f) Seller having obtained, or having exercised Reasonable Endeavors to obtain, 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.
- (g) Seller having entered into an Operations and Maintenance Agreement on terms reasonably acceptable to Buyer with a Technically Qualified Operator reasonably acceptable to Buyer.

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- (h) Seller having provided to Buyer a copy of all relevant resolutions of the board of directors and shareholders of Seller authorizing the execution, delivery, and performance by Seller of this Agreement, the other Project Documents, and the Finance Documents, together with (x) a legal opinion reasonably acceptable to Buyer in form and substance from counsel to Seller as to the due authorization, execution, and delivery of this Agreement, the other Project Documents, and the Finance Documents, and the enforceability thereof against Seller and (y) an officer's certificate of Seller confirming that Seller's representations and warranties made as of the Initial Effectiveness Date pursuant to Clause 4.1. are true and correct on the Closing Date.

## **3.4. Primary Responsibility for Satisfying Each Condition Precedent**

3.4.1 Seller shall be primarily responsible for satisfying the Conditions Precedent in the following Clauses:

- (a) 0;
- (b) 0;
- (c) 0;
- (d) 0;
- (e) 0;
- (f) 0;
- (g) 0;
- (h) 0; and
- (i) 0.

3.4.2 Buyer shall be primarily responsible for satisfying the Conditions Precedent in the following Clauses:

- (a) 0;
- (b) 0;
- (c) 0; and
- (d) 0.

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## 3.5. Satisfaction of Conditions Precedent – Closing Date Notice

- 3.5.1 Each Party, upon request of the other Party and at such other Party's expense, shall use Reasonable Endeavors to assist the other Party in satisfying each Condition Precedent for which such other Party is primarily responsible under Clause 0, but shall have no obligation to execute any agreement referenced therein or related thereto.
- 3.5.2 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.
- 3.5.3 Upon satisfaction of a Condition Precedent, the Party that is primarily responsible under Clause 0 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; *provided that* where satisfaction of any Condition Precedent is waived, such waiver shall be confirmed in writing by the Parties.
- 3.5.4 Seller may waive compliance of one or more of the Conditions Precedent set forth in Clause 0 in its sole discretion, or, with the permission of Buyer, convert such Condition Precedent into a contractual obligation to be performed after effectiveness of this Agreement, in which case Buyer shall not have an obligation to satisfy such Condition Precedent except as may be agreed by the Parties.
- 3.5.5 Buyer may waive compliance of one or more of the Conditions Precedent set forth in Clause 0 in its sole discretion, or, with the permission of Seller, convert such Condition Precedent into a contractual obligation to be performed after effectiveness of this Agreement, in which case Seller shall not have an obligation to satisfy such Condition Precedent except as may be agreed by the Parties.
- 3.5.6 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.

## 3.6. Failure to Satisfy Conditions Precedent

- 3.6.1 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 Clause 0 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

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- (b) upon such notification in Clause 0 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.

3.6.2 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 Target Closing Date as extended pursuant to Clause 0.

3.6.3 Upon any termination of this Agreement under Clause 0 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 0 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 0 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 pursuant to the preceding sentence, Buyer shall deposit the liquidated damages amount into an escrow account pending resolution of the Dispute.

## **3.7. Review of Documents by Buyer**

A draft of the Direct Agreement shall be provided to Buyer as soon as available in draft form, but in no event shall the draft Direct Agreement be provided later than two (2) months prior to the then-scheduled Closing Date. Seller shall provide and make available the remainder of all the Finance Documents and the Project Documents for review by Buyer as soon as they are available in draft form, but in no event shall draft Finance Documents be provided later than forty-five (45) Days prior to the then-scheduled Closing Date. Buyer shall have forty-five (45) Days to review and comment on the Finance Documents and Buyer reviewed Project Documents. Seller may request that Buyer be allowed a shorter period for review of the Direct Agreement or other Finance Documents for good cause, and Buyer will use Reasonable Endeavors to accommodate such request where possible.

## **Clause 4 Covenants, Representations and Warranties**

### **4.1. Seller's Representations and Warranties**

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

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- 4.1.1 Seller is a company, duly organized 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 authorization;
  - (b) will not violate (i) Applicable Law or any applicable 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, authorization, consent or approval of any Person is required for the execution, delivery or performance of this Agreement by Seller, except for the Initial Authorizations.
- 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

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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 construct, 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 in the form approved by Buyer prior to the Closing Date or in such other form or with such other Technically Qualified Operator approved by Buyer thereafter in its reasonable discretion;
- 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 to procure and maintain the Authorizations 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 to the Grid;
- 4.2.7 on or before the Execution Date, deliver the Development Security to Buyer having the terms set forth in Schedule 0 and thereafter continuously maintain the Development Security (or a replacement thereof) until the Closing Date; and

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- 4.2.8 on or before the Closing Date, deliver the Performance Guarantee to Buyer having the terms set forth in Schedule 0 and thereafter continuously maintain the Performance Guarantee (or a replacement thereof) until the Commercial Operations Date.

## 4.3. Buyer's Representations and Warranties

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

- 4.3.1 Buyer is a company, duly organized 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 authorization;
  - (b) will not violate (i) Applicable Law or (ii) any applicable 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, authorization, 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.



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- 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 organization) or any political party or political party official or candidate for office, where such payment, gift, promise or advantage would violate (a) Applicable Law; (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



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15 February 1999, and the Convention Commentaries; (c) the UK Bribery Act 2010, or (d) the US Foreign Corrupt Practices 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 0. 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 Initial Effectiveness 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.

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- 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 construct, install, test, commission, and operate (or cause to be so constructed, installed, tested, commissioned, and operated for Seller's benefit) the Plant described in Schedule 0 necessary to enable Seller to make available and deliver at the Delivery Point, from the Commercial Operations Date, Net Electrical Output in accordance with the terms of this Agreement.

#### **6.1.2 Design and Standards**

In terms of designs and standards, Seller shall comply with this Agreement, Applicable Law, and Good Industry Practices in the design, engineering, construction, installation, testing and Commissioning of its facilities, including the Plant.

#### **6.1.3 Interconnection Facilities**

Seller shall coordinate the design and construction of the Seller Connection Works to complete the construction thereof by the Required Interconnection Date.

### **6.2. Seller's Project Implementation**

- 6.2.1 Seller shall, acting in accordance with Applicable Law and in accordance with Good Industry Practices, procure the construction of the Plant in a workmanlike and professional manner.

#### **6.2.2 The Plant shall be:**

- (a) designed and constructed to conform to the specifications contained in this Agreement and the other Project Documents;
- (b) designed and constructed to be capable of generating electricity in compliance with the Net Electrical Output requirements of this Agreement;
- (c) designed and constructed to be capable of generating Net Electrical Output in an amount consistent with the Contract Capacity specified in this Agreement when operating within the Technical Limits;

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- (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.

6.2.3 Commencing on the Closing Date and continuing until the Commercial Operations Date, Seller shall provide Buyer monthly written reports (“Monthly Reports”) reasonably informing Buyer of the progress on the construction of Seller’s Plant. Such Monthly Reports shall include:

- (a) a summary of the progress made since the prior report;
- (b) the anticipated date that the Plant will be sufficiently completed and available to generate and deliver energy at the Delivery Point;
- (c) the anticipated Commercial Operations Date; and
- (d) the nature and extent of any circumstances reasonably likely to cause a delay in the construction of the Plant including a delay in obtaining any Authorization.

6.2.4 As soon as reasonably practicable, Seller shall furnish Buyer the following:

- (a) the Operation and Maintenance Procedure Manual to be prepared for the Plant;
- (b) high level engineering design and drawings for the Plant; and
- (c) a summary of the project execution plan submitted by the Contractor pursuant to the Construction Contract with respect to the Plant.

6.2.5 Buyer may reasonably exercise a right at reasonable times, upon giving reasonable notice, and at Buyer’s risk and cost to visit by itself or its nominees, the Site guided by Seller’s representative, to inspect the progress of the construction works. In performing any such inspection, Buyer shall comply with Seller’s safety rules and procedures.

6.2.6 The Parties shall cooperate with each other in accordance with the terms of this Agreement in the construction of the Plant, the Seller Connection Works, any new transmission facilities and associated works that may be required in order to connect the Plant to the Grid.

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## **Clause 7** **Commissioning and Commercial Operations**

### **7.1. Standards**

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

### **7.2. Commissioning Period**

- 7.2.1 Seller shall, acting in accordance with Applicable Law and Good Industry Practices, perform the Commissioning of the Plant.
- 7.2.2 Subject to agreement to the contrary by the Parties on the Commissioning Procedures pursuant to Clause 0, Seller will give Buyer not less than forty-five (45) Days' prior notice of the date the Plant is expected to commence Commissioning and the expected duration of the Commissioning Period and shall give five Days' notice to Buyer of any change in the Commissioning Period that will affect any test Buyer is entitled to witness or accelerate or delay the Commercial Operations Date.
- 7.2.3 In the event that the Commissioning of the Plant is not successfully completed by the expiration of the Commissioning Period, the Commissioning Period shall be extended until completion of the Commissioning Procedures and Seller shall ensure that the Commissioning is carried out and successfully completed as soon as practicable.

### **7.3. Commissioning Procedures**

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

- 7.3.1 Seller shall provide draft procedures for the Commissioning of the Plant (the “**Commissioning Procedures**”) as soon as reasonably practicable after the Closing Date (but in any event no later than one hundred twenty (120) Days after the Closing Date). The Commissioning Procedures shall consist of procedures and tests designed to demonstrate that the Plant is capable of operating to standards of performance and safety consistent with Applicable Law, and with Good Industry Practices.
- 7.3.2 Seller shall consult with Buyer in respect of the draft Commissioning Procedures and Buyer shall, within twenty (20) Days of receipt of the draft Commissioning Procedures under Clause 0, either confirm that it accepts them (in which case they shall be in agreed form) or provide any reasonable comments 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.

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## **7.3.3 Seller shall:**

- (a) substantially complete the installation of the facilities required for the connection of the Plant to the Grid in accordance with the terms of the Connection Agreement and the Grid Code; and
- (b) enable the System Operator to complete the testing and commissioning of Grid connection facilities before the Required Interconnection Date.

## **7.4. Cooperation during Commissioning Period**

- 7.4.1 The Parties shall cooperate with each other during the Commissioning of the Plant.
- 7.4.2 Where any test is not satisfactorily completed, Seller shall arrange a further test.
- 7.4.3 Upon the satisfactory completion of Commissioning, Seller shall procure that the Independent Engineer issues a certificate addressed to both Parties, certifying that the Plant is available for the Commercial Operations Tests.

## **7.5. Early Operation**

- 7.5.1 If Seller is ready to commence commercial operation of a PVGU prior to Commissioning of the Plant, Seller may sell Early Net Electrical Output generated by such PVGU to Buyer, provided that (i) Seller has represented to Buyer in writing that such PVGU is capable of safe, reliable and independent operation in accordance with Good Industry Practice, the Grid Code and Market Rules, (ii) the Transmission Company of Nigeria has confirmed in writing to Buyer that it will accept any Early Net Electrical Output generated by such PVGU under the Connection Agreement and (iii) Seller will operate and maintain such PVGU in accordance with the standards set forth in Clause 0. Seller will provide Buyer with at least fourteen (14) Days' prior written notice of its intention to sell Net Electrical Output generated by a PVGU and the amount of Early Net Electrical Output Seller expects to deliver with respect to such PVGU.

## **7.6. Commercial Operations Tests and Date**

- 7.6.1 Buyer shall have the right to attend the Site to witness the Commercial Operations Tests, and receive, within fourteen (14) Days thereafter, a written summary of all of the test reports.
- 7.6.2 The Commercial Operations Date for the Plant shall occur on the date immediately following the date on which:
  - (a) Seller notifies Buyer that it has successfully completed the Commercial Operations Tests;

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- (b) Seller has delivered a certificate to Buyer certifying that the Contractor has achieved substantial completion pursuant to the Construction Contract; and
- (c) the Independent Engineer has issued a certificate (“**Engineer’s Certificate**”) addressed to both Parties, certifying, without material qualification, that (i) Seller has installed all Plant and equipment consistent with the requirements of Grid Code and this Agreement, (ii) Commissioning of the Plant has been completed, (iii) Seller has successfully completed the Commercial Operations Tests and is ready to commence commercial operations and (iv) the Achieved Capacity of the Plant equals or exceeds the Minimum Achieved Capacity, in each case in accordance with the applicable specifications set forth in Schedule 4 and 0,

*provided that* the Commercial Operations Date may not occur prior to the Target Commercial Operations Date.

- 7.6.3 The Commercial Operations Date shall not be achieved in the absence of compliance by Seller with the Commissioning and Commercial Operations Tests requirements and receipt by Buyer of a satisfactory Engineer’s Certificate.
- 7.6.4 Seller shall, upon satisfaction of the conditions included in Clause 7.6.2, notify Buyer of the Commercial Operations Date (which may not occur prior to the Target Commercial Operations Date).
- 7.6.5 Buyer shall be required to accept the Plant only if Seller has met the requirements for Commissioning and the Commercial Operations Date has occurred.

## **7.7. Output during Commissioning Period**

- 7.7.1 Seller shall notify Buyer of its estimate of the Early Net Electrical Output that Seller reasonably expects to be able to make available during the Commissioning Period and its estimate of the schedule.
- 7.7.2 Buyer shall be obligated to request the System Operator to dispatch and Buyer shall purchase all Early Net Electrical Output delivered by Seller during the Commissioning Period.
- 7.7.3 With respect to each Settlement Period during which Seller delivered Early Net Electrical Output, Seller shall invoice Buyer and Buyer shall pay all amounts payable for Early Net Electrical Output in accordance with Schedule 0.

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## 7.8. Commercial Operations

### 7.8.1 Obligation to Achieve Commercial Operations Date

Seller shall achieve the Commercial Operations Date on or before the Required Commercial Operations Date, *provided that* Seller may not achieve the Commercial Operations Date prior to the Target Commercial Operations Date.

### 7.8.2 Delayed Commissioning Events

**“Delayed Commissioning Event”** means a delay or interruption of the construction or Commissioning of the Plant caused by any of the following, except to the extent caused by an action or inaction of Seller in breach of this Agreement or the Connection Agreement:

- (a) Buyer’s actions or inactions in breach of this Agreement;
- (b) Buyer’s Gross Negligence or Buyer’s Willful Misconduct;
- (c) the Transmission Company of Nigeria’s actions or inaction in breach of the Connection Agreement, or a failure of the Transmission Company of Nigeria to use Reasonable Endeavors to cooperate with the construction or Commissioning of the Plant, except in any case as a result of a default or breach by Seller under the Connection Agreement;
- (d) actions or inactions of the System Operator contrary to the Grid Code, including a failure to provide permission to connect to the Grid in due course after submission of a proper and complete application;
- (e) lack of availability, or constraint in the availability of the Grid;
- (f) any event disturbing or preventing the normal operation or start-up of the Plant resulting from a Grid condition outside those stipulated in the Technical Limits, including voltage and frequency excursions and spikes, short circuit events, harmonic disturbance and activation of protective equipment on the Grid or at the Plant owing to such events; or
- (g) a Local Political Force Majeure Event.

### 7.8.3 Delayed Commissioning Payments

In the event that the Commercial Operations Date is delayed as a result of a Delayed Commissioning Event, then, *provided that* Seller shall have made all Reasonable Endeavors to prevent and/or mitigate the effect of such Delayed Commissioning Event, on and from the later of (i) the date on which Seller would have been able to achieve the Commercial Operations Date but for such Delayed Commissioning Event (provided such date is on or after the Target Commercial Operations Date),

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and (ii) the Required Commercial Operations Date, until the date that the Commercial Operations Date is actually achieved:

- (a) Buyer shall pay to Seller Delayed Commissioning Payments equal to the Availability Event Energy Payment that would be payable under Clause 0 and Schedule 0 (using the Preliminary Performance Model) if the Commercial Operations Date had occurred on the Required Commercial Operations Date for a period equal to the period of delay caused by the Delayed Commissioning Event;
- (b) the Required Commercial Operations Date shall be extended for a period equal to the period of delay caused by the Delayed Commissioning Event including a reasonable period mutually agreed by the parties to complete the Commercial Operations Test;
- (c) the Term shall be shortened day for day for each day with respect to which Buyer makes Delayed Commissioning Payments hereunder; and
- (d) for the avoidance of doubt, Buyer shall have no obligation to pay Delayed Commissioning Payments (i) as a result of a Delayed Commissioning Event occurring and continuing prior to the Required Commercial Operations Date, or (ii) if the Independent Engineer has not delivered the Preliminary Performance Model in accordance with Attachment 2 to Schedule 0.

7.8.4 Seller shall proceed with the Commissioning Procedures for any part of the Plant that is not affected by the Delayed Commissioning Event and of the entire Plant as soon as practicable after the end of the cause of the Delayed Commissioning Event, including a reasonable period of time for the completion of the Commissioning Procedures following the end of the cause of the Delayed Commissioning Event.

7.8.5 If Delayed Commissioning Payments are paid, and either:

- (i) Seller fails, following the cessation of the relevant Delayed Commissioning Event, to achieve the Commercial Operations Date with Achieved Capacity equal to or greater than the Achieved Capacity that would have been required to achieve the Net Electrical Output corresponding to the Delayed Commissioning Payments that have been paid; or
- (ii) Seller fails to achieve the Commercial Operations Date; or
- (iii) it is determined that the cause of the delay was not a Delayed Commissioning Event,

then:

- (x) in the case of Clause 00 immediately above, the Delayed Commissioning Payments that were paid shall be reconciled with the Delayed



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Commissioning Payments that should have been paid to take into account (A) the Achieved Capacity actually achieved, or (B) the period (if any) during which the delay was actually caused by a Delayed Commissioning Event, and a credit shall be applied to the next payments due to Seller from Buyer with an allowance for interest at the Agreed Interest Rate (Foreign) and the Agreed Interest Rate (Local), as applicable; or

- (y) in the case of clauses (ii) or (iii) immediately above, the entire Delayed Commissioning Payments shall be repaid or refunded with an allowance for interest at the Agreed Interest Rate (Foreign) and the Agreed Interest Rate (Local), as applicable.

## 7.9. Liquidated Damages for Failure to Achieve Commercial Operations Date; Reduction in Contract Capacity

7.9.1 Seller acknowledges that Buyer will suffer actual damage if Seller fails to achieve the Commercial Operations Date by the Long Stop Commercial Operations Date. In the event of such failure and termination of this Agreement by Buyer pursuant to Clause 18.2 (i), Seller shall, in addition to Seller's rights under Clause 18, pay liquidated damages to Buyer for each Day (or any part thereof) of delay at the rate set forth in Schedule 0 based on the number of Days from the Required Commercial Operations Date to the Long Stop Commercial Operations Date, *provided that* the aggregate amount of liquidated damages payable by Seller under this Clause 0 and Clause 0 shall not exceed the Liquidated Damages Limit. Seller agrees that the liquidated damages set forth in Schedule 0 represent a genuine pre-estimate of the damage Buyer would suffer as a result of Seller's failure to achieve the Commercial Operations Date by the Long Stop Commercial Operations Date and are payable in lieu of actual damages. Seller hereby waives, to the extent permitted by Applicable Law, any defence to the validity of liquidated damages payable hereunder on the grounds that such liquidated damages are void as penalties or otherwise. Buyer shall be entitled to claim such liquidated damages under the Performance Guarantees on the date Buyer terminates this Agreement pursuant to Clause 18.1 .

7.9.2 Seller acknowledges that Buyer will suffer actual damage if the Plant as constructed and installed does not have an Achieved Capacity of at least the Contract Capacity. In the event that the Commercial Operations Test demonstrates that the Plant does not have an Achieved Capacity of at least the Contract Capacity, *then*, subject to Clause 0, Seller shall pay liquidated damages ("**Achieved Capacity Damages**") to Buyer in the amounts set forth in Schedule 0, *provided that* the aggregate amount of liquidated damages payable by Seller under Clause 0 and this Clause 0 shall not exceed the Liquidated Damages Limit. Seller agrees that the liquidated damages set forth in Schedule 0 represent a genuine pre-estimate of the damage Buyer would suffer as a result of the Plant's failure to have the Achieved Capacity and are payable in lieu of actual damages. Seller hereby waives, to the extent permitted by Applicable Law, any defence to the validity of liquidated damages payable hereunder on the grounds that such liquidated damages are void as penalties or otherwise. Buyer shall be entitled to claim such liquidated damages under the

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Performance Guarantees if Seller fails to pay such liquidated damages within thirty (30) days of Buyer's invoice. If the Plant does not have an Achieved Capacity at least equal to the Contract Capacity on the Commercial Operations Date, the Annual Electrical Output amounts listed in Schedule 0, the Expected Annual Electrical Output and the Minimum Annual Electrical Output will be reduced to the amounts certified by the Independent Engineer and the Performance Model will be revised to reflect the actual Achieved Capacity.

- (a) If Seller pays Achieved Capacity Damages, Seller will have an opportunity to correct the deficiency during a period equal to the shorter of (i) a twelve (12) month period after the Commercial Operations Date or (ii) six months after the Long Stop Commercial Operations Date (the "Achieved Capacity Cure Period") if it has given notice of its intention to do so to Buyer on or before payment of Achieved Capacity Damages directly by Seller or by a draw on the Performance Guarantees. If notice of intention to correct the deficiency has been given on a timely basis, Buyer will place the Achieved Capacity Damages in an escrow account until Seller has either corrected the deficiency or failed to do so within the Achieved Capacity Cure Period. If Seller has corrected the deficiency and delivered a new Independent Engineer's certification of an Achieved Capacity at least equal to the Contract Capacity together with the Performance Model certified by the Independent Engineer, in each case, within the Achieved Capacity Cure Period, Seller shall be entitled to:
  - (i) a pro-rated refund of the Achieved Capacity Damages based on the ratio of the remainder of the Term to the full Term specified in Schedule 0, payable solely out of the escrow account,
  - (ii) restate the Annual Electrical Output to reflect the new Achieved Capacity subject to the limitations in this Agreement on the level of Achieved Capacity used in the Applicable Performance Model, and the Expected Annual Electrical Output and the Minimum Annual Electrical Output shall be adjusted accordingly, and
  - (iii) substitute the applicable Performance Model with a corrected Performance Model.

Amounts in the escrow account which are not payable to Seller will be released to Buyer at the end of the one Year period.

- (b) To the extent the amount of liquidated damages due to Buyer exceeds the amount of the Performance Guarantees, Buyer may, subject to the Liquidated Damages Limit, deduct the excess amount from future Energy Payments until the liquidated damages amount is paid in full.

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## 7.10. Authorizations

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

## Clause 8 Availability Events

### 8.1. Availability Events

8.1.1 “**Availability Event**” means an event listed below or combination of events listed below that is beyond the reasonable control of Seller and that reduces the Net Electrical Output of the Plant to less than the Projected NEO for any Settlement Period:

- (a) Buyer’s actions or inactions in breach of this Agreement;
- (b) Buyer’s Gross Negligence or Buyer’s Willful Misconduct;
- (c) Buyer Default;
- (d) a Local Political Force Majeure Event that has occurred and is continuing;
- (e) lack of, or constraint in the availability of the Grid;
- (f) any event disturbing or preventing the normal operation or start-up of the Plant owing to Grid conditions outside those stipulated in the Technical Limits including voltage and frequency excursions and spikes, short circuit events, harmonic disturbance and activation of protections on the grid or in the Plant owing to such events;
- (g) a Dispatch Instruction or other direction of the System Operator;
- (h) the provision of Ancillary Services as instructed by the System Operator, other than Mandatory Ancillary Services; or
- (i) an election by Buyer to take less than the entire Projected NEO for a Settlement Period,

*provided, that the Availability Event is not a result of a Seller Default, the Gross Negligence or Willful Misconduct of Seller, or Seller’s failure to comply with any other obligations under this Agreement or any Project Document.*

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## 8.2. Expected Annual Electrical Output

### 8.2.1 Liquidated Damages for Failure to Achieve Expected Annual Electrical Output.

Seller acknowledges that Buyer will suffer actual damages if Seller fails to achieve the Expected Annual Electrical Output over the course of a Contract Year (such Contract Year a “**Shortfall Year**”) other than as a result of a Force Majeure Event or an Availability Event. In the event of such failure, Seller may elect to (i) correct the reason for such failure and pay to Buyer liquidated damages for such Shortfall Year in the amount provided in Schedule 1 or (ii) request a permanent reduction of the Annual Electrical Output for each Contract Year succeeding a Shortfall Year in an amount equal to the Permanent Output Reduction Amount, in which case no liquidated damages are payable hereunder. In the event Seller elects to reduce the Annual Electrical Output pursuant to clause (ii) of the immediately preceding sentence, the Expected Annual Electrical Output for each Contract Year succeeding a Shortfall Year will be adjusted downwards in proportion to the ratio of the Expected Annual Electrical Output to the Annual Electrical Output immediately prior to such permanent reduction, provided that the Expected Annual Electrical Output shall under no circumstances be less than the Minimum Annual Electrical Output. If Seller fails to make an election pursuant to this Clause 8.2 within forty-five (45) days after the end of any Shortfall Year, it shall be deemed to have elected a permanent reduction of the Annual Electrical Output in accordance with clause (ii) immediately above.

For purposes of this Clause 8.2, “**Permanent Reduction Amount**” means an amount expressed in MWh equal to the difference between (i) the Expected Annual Electrical Output for such Shortfall Year and (ii) sum of (x) the Net Electrical Output actually delivered by Seller during such Shortfall Year, (y) any Availability Event Energy Volume for which Buyer was required to pay during such Shortfall Year and (z) any Net Electrical Output that would have been delivered to the Delivery Point during such Shortfall Year but for a Force Majeure Event which is not an Availability Event, adjusted for each Contract Year to take into account changes in the Degradation Factor each succeeding Contract Year.

## 8.3. Maintenance of Operating Records

8.3.1 Each Party shall keep complete and accurate records and all other data required by each of them pursuant to this Agreement, Applicable Law, the Grid Code, the Market Rules, and Good Industry Practices for the purposes of proper administration of this Agreement. 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 2;
- (b) test results (including electronic files) for tests performed on the Plant in accordance with Schedule 0;

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- (c) a continuous record of Net Electrical Output and bus voltage for each Settlement Period. Net Electrical Output and bus voltage records shall be based on a Main Meter unless Seller and the System Operator cannot agree to share data from the Main Meter, in which case Seller shall maintain such records based on data from a Back Up Meter;
- (d) a record of Performance Model Data collected by the Performance Model Data Collection Systems in accordance with the standards set forth in Attachment 2 to Schedule 6;
- (e) 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;
- (f) circuit breaker trip operations requiring a manual reset, partial deratings of equipment; and
- (g) any other significant event related to the operation of the Plant, and unusual conditions found during inspections.

8.3.2 Records required by this Clause 0 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.

8.3.3 All records required under Clause 0 shall be maintained for a minimum of sixty (60) Months after the creation of such record or data, or such longer period as may be required by the Market Rules or other requirement. Either Party shall have the right, upon reasonable prior Notice to the other Party, and at reasonable times during normal office Hours, to examine the records and data of the other Party relating to this Agreement or the operation and dispatch of the Plant.

## 8.4. Monthly Reports

During the Delivery Term, Seller shall provide to Buyer Monthly reports that include the information in Clause 0 no later than ten (10) Days after the end of each Month, with such information and in such form as Buyer shall reasonably request, by electronic mail and hard copy, covering operations of the Plant for the previous Month. Each Monthly report shall include all information maintained in the operations record. The Monthly report shall also include non-binding estimates of capacity availability and non-binding requirements for Scheduled Maintenance Outages for each of the following twelve (12) Months and such other information related to the operation and maintenance of the Plant that Buyer reasonably requests.

## 8.5. Annual Report

From the 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

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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 maintenances plans for the then-current and next following Contract Years.

## **Clause 9** **Operation and Maintenance**

### **9.1. Operation and Maintenance**

Seller shall at all times during the Term, either directly or through a contractor, operate and maintain the Plant in accordance with this Agreement, Good Industry Practices, and Applicable Law, and the requirements set forth in 0. The appointment of an operations and maintenance contractor by Seller shall not relieve Seller of any of its obligations or excuse Seller from any obligations under this Agreement, Good Industry Practices, and Applicable Law regarding the design, construction, insurance, operation, and/or maintenance of the Plant, or any liability whatsoever resulting from a breach of any term or condition of this Agreement

### **9.2. Scheduled Maintenance Outages**

Seller shall be entitled in each Contract Year to Scheduled Maintenance Outages in accordance with this Clause 0 at its own cost. For the avoidance of doubt, Buyer has no obligation to pay for NEO which is not available due to Scheduled Maintenance Outages.

### **9.3. Scheduling of Scheduled Maintenance Outages**

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

9.3.1 Not later than ninety (90) Days before the Commercial Operations Date, Seller shall submit to System Operator and Buyer proposed dates for Scheduled Maintenance Outages during the following Contract Year.

9.3.2 Following the Commercial Operations Date, Seller shall submit no later than one hundred twenty (120) Days before each Contract Year to System Operator and Buyer proposed dates for Scheduled Maintenance Outages during the following Contract Year.

9.3.3 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 Endeavors to accommodate System Operator's or Buyer's proposal provided such request would not defer maintenance required at a particular time by Good Industry Practices.

9.3.4 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

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under this Clause 0; *provided that*, where no agreement was reached, the last notified alternative dates provided by Buyer and the System Operator shall prevail.

## **9.4. Rescheduling of Scheduled Maintenance Outages**

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

## **9.5. Unscheduled Outages**

9.5.1 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.

## **9.6. Notification of Forced Outages**

9.6.1 Seller shall advise Buyer of any Forced Outage or Partial Forced Outage and shall, as such information becomes available and is updated from time to time, keep Buyer informed as to the estimated duration of the work to be undertaken and the estimated conclusion of the Forced Outage or Partial Forced Outage.

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

## **Clause 10 Scheduling Notices**

### **10.1. Seller's Notices to Buyer**

Seller will have the right to self-dispatch the Plant subject to the requirement to make available to Buyer the entire Net Electric Output available for delivery subject to Availability Events, the Grid Code and Market Rules, and Clause 0. In addition to notices to the System Operator and Market Operator, Seller shall provide daily notice of its forecast of Net Electrical Output to Buyer by 09:00 hours on the preceding day. In the event Seller is unable to provide some or all of the forecast of Net Electrical Output set forth in Seller's daily notice to Buyer, in addition to any notice required by the Grid Code and Market



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Rules, Seller shall notify Buyer (or revise any such information previously given) as soon as is practicable.

## 10.2. Dispatch Projection by Buyer

10.2.1 Since Buyer has agreed that Seller may self-dispatch the Pant, Buyer shall be deemed to have requested the dispatch of all Net Electrical Output Seller makes available from the Plant for the Contract Year unless Seller is otherwise notified. Nevertheless, Buyer shall have the right to take less than all of the Net Electrical Output that could be delivered from the Plant during any Settlement Period. If Buyer anticipates exercising its right to take less than all of the Net Electrical Output that could be delivered from the Plant over the course of a Contract Year, Buyer shall provide Seller with the following non-binding estimated requirements of Net Electrical Output:

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

10.2.2 Seller shall provide Buyer with the following non-binding forecasts of Projected NEO following the Commercial Operations Date:

- (a) annual forecasts of Projected NEO on a month-to-month basis no later than forty-five (45) Days prior to the start of each Contract Year;
- (b) monthly forecasts of Projected NEO on a day-by-day basis no later than twenty-two (22) Days prior to the start of each Month; and
- (c) weekly forecasts of Projected NEO per Settlement Period no later than forty-eight (48) Hours prior to the start of each week.

## 10.3. Buyer Nominations

### 10.3.1 Daily Notices

- (a) Since Buyer has agreed to take or pay for the entire Annual Electrical Output of the Plant, Buyer shall be deemed to have requested the entire Net Electrical Output of the Plant set forth in the notice to Buyer except as follows. If Buyer does not want to take the entire Net Electrical Output



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that could be dispatched by the System Operator for a Settlement Period, Buyer will provide notice to Seller and the System Operator of a lesser quantity Buyer chooses to take in respect of each Settlement Period for the next Day (“**Daily Notices**”), but notice from Buyer will not prejudice any authority of System Operator to fully dispatch the Plant. Any reduction in Net Electrical Output resulting from Buyer’s exercise of the right to take less than the entire Net Electrical Output will be an Availability Event.

- (b) If a Daily Notice is not given by Buyer in accordance with the requirements of this Clause 0, then Buyer shall be deemed to have elected to take the entire Net Electrical Output; *provided that*, subject to the Grid Code and Market Rules, if Buyer has previously notified Seller and System Operator of a Nominated Quantity for a multi-day period, the Nominated Quantity for such period shall equal the Nominated Quantity specified in such Daily Notice.

## 10.3.2 Variation Notice

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

- 10.3.3 Seller will operate the Plant consistent with the nominations given in accordance with this Clause 0. Seller may however refuse to comply with nominations where such operations would violate Good Industry Practices, the Grid Code or Market Rules, would conflict with a Scheduled Maintenance Outage, or would not be in accordance with Applicable Law or the Technical Limits.

## Clause 11 Metering

### 11.1. Metering

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

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

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## 11.2. Main Meter and Back Up Meters

In addition to the official meter used to prepare the Market Operator Settlement Statements (“**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 (collectively, “**Back-Up Meters**”) to be used for measurement of Net Electrical Output delivered at the Delivery Point, reactive power, voltage and power quality. At least one Back Up Meter shall be installed and maintained in a manner qualifying it to be designated by the Market Operator as a back-up meter for purposes of the Market Rules. The Metering System will be jointly sealed by Buyer and Seller and the metering equipment measurement accuracy and specifications shall be in conformity with Applicable Law, the Metering Code, and Good Industry Practices. The operation of all such meters supplied, installed, and maintained by Seller will conform to the standards and specifications set out in the Metering Code and Seller shall provide the Market Operator with reasonable access to the metering equipment for inspection.

## 11.3. Metering Code

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

## 11.4. Delivery of Meter Data

Seller will ensure that data from any meter controlled by Seller is sent (i) to the System Operator 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.

## 11.5. Meter Failure or Inaccuracy

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

11.5.2 Subject to Market Rules, if there is a Defective Metering Event in relation to an official meter, then the official measurement of Net Electrical Output shall be determined in accordance with this Clause 0.

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

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11.5.2.2 If the Parties and the Market Operator are unable to agree on the amount of any error caused by a Defective Metering Event, then the percentage error by which the official meter is to be corrected, for the period determined in accordance with this Clause 0, shall be determined (i) by reference to the back-up meter designated by the Market Operator or the Back Up Meter, in such order, or by calibration, tests or mathematical calculation, or (ii) if the percentage of error is not ascertainable in either manner, by estimating on the basis Net Electrical Output under similar conditions during the period before the last test.

11.5.2.3 If a correction is to be made pursuant to Clause 0, then such correction shall be made to readings given by the official meter for the period commencing on (a) the Day of the Defective Metering Event, if such Day can be established to the reasonable mutual satisfaction of the Parties, or (b) if the Day of the Defective Metering Event cannot be established to the reasonable mutual satisfaction of the Parties, the Day which is halfway between the Day of the immediately preceding test of such metering device and the Day the Defective Metering Event was discovered.

11.5.2.4 Any corrections pursuant to this Clause 0 will be reflected in the next invoice following determination of the amount, and the appropriate Party shall pay the other Party the difference between the amount previously paid and the amount finally determined to be due.

## **11.6. Assurances Regarding Meter Tampering**

The Parties undertake not to tamper with or otherwise interfere with any part of the Main Meter 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 Meter and Back Up Meters are secure and are not tampered with by any other person.

## **11.7. Notice of Meter Tampering**

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

## **11.8. Meter Design; Commissioning and Sealing**

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

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## **11.9. Daily Meter Reading**

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

## **11.10. Metering Inspection and Testing**

Seller shall have the Back-Up Meters inspected and tested in accordance with the Metering Code but in any event at least annually, and may have such inspection and testing performed at any time at its 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 12 Delivery**

### **12.1. Delivery Point**

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

### **12.2. Title and Risk**

Title to, control of, and risk of loss of or damage to, custody, and liability for injury or damage caused by Net Electrical Output delivered under this Agreement shall pass from Seller to Buyer at the Delivery Point.

## **Clause 13 Billing and Payment**

### **13.1. Settlement Statement Quantities Used for Invoicing**

The Parties agree to use the quantities in the Market Operator Settlement Statements 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 submit an invoice based on the Market Operator Settlement Statement and follow the procedures for correction of the data established in the Market Rules or the Market Procedures. In the

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event the Market Operator corrects a previous Market Operator Settlement Statement in response to Seller's request, Seller shall have the right to invoice any additional quantities in the Billing Period immediately following the Billing Period in which such correction was made by the Market Operator and reflected in the subsequent Market Operator Settlement Statement.

## 13.2. Invoice

Every invoice to Buyer shall specify:

- (a) the Net Electrical Output delivered to Buyer in each Settlement Period occurring during the previous Billing Period;
- (b) the Availability Event Energy Volume calculated for each Settlement Period occurring during the previous Billing Period in which an Availability Event occurred or continued;
- (c) a detailed computation calculated in accordance with Schedule 0 of the Energy Payments, Availability Event Energy Payments, Supplemental Payments, and any other payments for the previous Billing Period, as well as any Exchange Rate Losses or Exchange Rate Gains for the Billing Period immediately prior to the previous Billing Period; and
- (d) the Delayed Commissioning Payments, if any, that are due and payable in accordance with Clause 0.

and shall include such supporting information and calculations as may be reasonably necessary to substantiate the amounts claimed in the invoice, including the occurrence of an Availability Event claimed by Seller as a basis for the establishment of an Availability Event Energy Payment, in each case specifying the specific Availability Event and the date Seller delivered notice to Buyer of the occurrence of such event.

## 13.3. Daily Settlement Statements from Seller

13.3.1 In addition to the requirements of the Grid Code and Market Rules, Seller shall provide to Buyer a daily statement (a "**Seller Daily Statement**") evidencing:

- (a) the Net Electrical Output delivered to Buyer in each Settlement Period occurring during the previous Day;
- (b) the Availability Event Energy Volume in each Settlement Period occurring during the previous Day, including the calculations that were used to derive this number;
- (c) the occurrence of any Availability Event in each Hour occurring during the previous Day.

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13.3.2 The Seller Daily Statement shall be provided not later than 12:00 Hours on the Day following the Day it covers, or as soon thereafter as is practicably possible.

13.3.3 Seller shall use its Reasonable Endeavors to assure that the information provided in the Seller Daily Statement is correct and accurate. Seller undertakes to use its Reasonable Endeavors to correct any errors discovered in the Seller Daily Statement as soon as possible.

## **13.4. Billing and Payment**

13.4.1 For each Billing Period during the Delivery Term and, if Clause 0 applies, at any time that Delayed Commissioning Payments are due and payable, Seller shall submit to Buyer an invoice for any amounts due from Buyer to Seller pursuant to this Agreement, with any amounts denominated in US Dollars under this Agreement stated in US Dollars, and with any amounts denominated in Naira under this Agreement stated in Naira.

13.4.2 Any undisputed portion of the payments shown in such invoice as due to Seller shall be paid by Buyer in Naira on or before the fifteenth (15<sup>th</sup>) 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 in accordance with Clause 5 of 0.

13.4.3 Buyer shall have the right to review an invoice or statement prepared by Seller, and if it disagrees with the determination of the amount payable under such invoice or statement, may request clarification and substantiation of such invoice or statement. Buyer shall use its Reasonable Endeavors to review invoices promptly and notify Seller of an error it believes to exist in such invoice within ten (10) Business Days of becoming aware of such error.

13.4.4 Where Buyer disputes an invoice or any portion thereof, it shall declare a Dispute and refer the same for determination in accordance with Clause 0 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 0 of this Agreement.

13.4.5 Each Party shall have the right to set off against any amounts payable by it to the other Party hereunder any and all amounts then due and payable to it by the other Party hereunder. Such rights of setoff shall relate only to amounts payable by the Parties under this Agreement and only to amounts that are then due and payable to and by a Party and not to any amounts which have been disputed by the Party against whom such amounts are claimed in accordance with the terms of this Agreement.

13.4.6 Buyer shall pay interest at the Agreed Interest Rate (Local) on any unpaid amounts invoiced in Naira and due and payable under this Clause 0 from the date payment was due, up to and including the date on which payment is made, except in

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circumstances where Buyer disputes an invoice or any portion thereof, and any Dispute referred in relation thereto is resolved in its favor (in which case interest shall not apply in respect of the amount that was resolved in Buyer's favor).

13.4.7 Buyer shall pay interest at the Agreed Interest Rate (Foreign) on any unpaid amounts invoiced in US Dollars and due and payable under this Clause 0 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 favor.

13.4.8 Where Buyer disputes an invoice or any portion thereof and the Dispute referred in relation thereto is resolved in favor of Seller, Buyer shall promptly pay the disputed portion that has been resolved in Seller's favor with interest thereon at the Agreed Interest Rate (Foreign) or Agreed Interest Rate (Local), as applicable.

## **13.5. 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. 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.

## **13.6. Payment Security**

13.6.1 Buyer shall provide security for payments accruing under this Agreement in the manner specified in Schedule 0.

13.6.2 Seller will provide security for performance its obligations in the manner specified in this Agreement and Schedule 0.

## **Clause 14 Prices**

### **14.1. Payments**

14.1.1 *Energy Payments.* During the Delivery Term, Buyer shall pay Seller each Month in arrears the Energy Payment for each MWh of Net Electrical Output, in accordance with Schedule 0 for the relevant Billing Period.

14.1.2 *Availability Event Energy Payments.* During the Delivery Term, Buyer shall pay Seller for each Month during which an Availability Event occurs or continues, in arrears, the Availability Energy Payment, if any, calculated in accordance with Schedule 0 for the relevant Billing Period.



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14.1.3 *Supplemental Payments.* During the Delivery Term, Buyer shall pay Seller each Month, in arrears, for the Supplemental Payment for such Month, calculated in accordance with Schedule 0 for the relevant Billing Period.

## 14.2. [Reserved]

## 14.3. Consequences of Change in Law or Change in Tax

14.3.1 If any Change in Law or Change in Tax either alone or taken together with any other Change in Law or Change in Tax,

- (a) increases or will increase the cost to, or decreases or will decrease the cost to, or on behalf of, Seller of carrying out the Project, including the cost of constructing, modifying, repairing, operating and maintaining and financing the Plant (including any increase or decrease in the cost of any Contractor and any capital expenditure), in an amount that is, in the aggregate, in excess of the Tax & Law Threshold Amount; or
- (b) increases or will increase, or decreases or will decrease the gross revenue earned by, or on behalf of, Seller in respect of the Project, in an amount that is, in the aggregate, in excess of the Tax & Law Threshold Amount,

(together a “**Relevant Change**”), then Seller shall be entitled to receive compensation from Buyer, or Buyer shall be entitled to a reduction in the Energy Payments or Availability Event Energy Payments in such amounts as are necessary to place Seller in the same economic position as it would have been in but for the occurrence of such Change(s) in Law or Change(s) in Tax.

14.3.2 In order to claim compensation, or a reduction in the Energy Payments or Availability Event Energy Payments in relation to a Relevant Change the Party seeking compensation or a reduction shall send a notice to the other Party regarding such event and its estimate of the compensation or reduction necessary to ensure that Seller is in no worse or better financial position as a consequence of the Relevant Change as it would have been in if the Relevant Change had not occurred and taking into account:

- (a) the financial obligations of Seller and its Affiliates under the Finance Documents and, in particular, the need to ensure that financial covenants and ratios thereunder are appropriately maintained;
- (b) the increase or decrease in any costs or expenses (including any operational, administrative or compliance costs) to be incurred by Seller as a result of the Relevant Change;
- (c) the cost or savings (including on-going financing costs (if any)) of any capital items installed or upgraded or made unnecessary or of any modifications to the Plant or otherwise made as a result of the Relevant Change;



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- (d) the change (if any) in the risk profile of the Project or of the risks being accepted by Seller;
- (e) the useful life of any capital items installed or upgraded as a result of the Relevant Change; and
- (f) the effect of the Relevant Change on the future revenues and returns of the Project.

14.3.3 The Parties shall attempt to agree the amount payable to Seller and whether it is to be paid by way of a lump sum, a change to the Energy Payment or otherwise (in the event of an increase in costs) or the reduction to the Energy Payments (in the event of a reduction in costs); and if within thirty (30) Days of submission of such notice pursuant to Clause 0, the Parties are unable to reach agreement on the amount of compensation payable or the manner in which it is payable, the matter (including any dispute as to whether a Relevant Change has occurred) shall be referred to an Expert for determination in accordance with Clause 0.

14.3.4 Any adjustment to the Energy Payment or other changes or payments under this Agreement pursuant to this Clause 0 shall be effective as of the effective date of the Relevant Change.

## **14.4. Refinancing of the Plant, Change in Debt Outstanding**

14.4.1 If at any time, Seller seeks to have the financial indebtedness of Seller made available under the Finance Documents refinanced or restructured (a “**Refinancing**”) Seller shall notify Buyer in writing.

14.4.2 Seller and Buyer agree that to the extent that a Refinancing is put into effect, the benefit of such Refinancing to Seller will be shared between Seller and Buyer in the proportions set forth in Schedule 1. The determination of the benefit of a refinancing and the means of providing such benefit to Buyer, whether through a reduction in the Energy Charge Rate, invoices or otherwise, shall be determined by an international financial advisor acceptable to both parties.

14.4.3 Seller and Buyer further agree to meet within thirty (30) days of the receipt of a notice referred to in Clause 14.4.1 to discuss and agree the basis on which Seller may attempt to procure the Refinancing and to agree the basis on which the sharing mechanism referred to in Clause 14.4.2 shall be put into effect. A Refinancing pursuant to this Clause 14.4 shall not change any obligations under any put call option agreement or other agreement unless each of the parties thereto have agreed to a change in its sole discretion.

## **14.5. Change in Debt Outstanding**

14.5.1 Seller will not engage in a Refinancing except as permitted by Clause 0 or as a result of a Debt Event. Buyer and Seller agree that following a Debt Event that:

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- (a) delays the achievement of the Commercial Operations Date;
- (b) that increases or decreases the cost of any Contractor or the amount of any capital expenditure or requires the incurrence of an additional capital expenditure with respect to the Plant; or
- (c) that results in the increase or non-payment of any principal outstanding to the Finance Parties under the Finance Documents, or the rescheduling of the payments of principal to the Finance Parties under the Finance Documents.

Seller may engage in a Refinancing and the total Debt Outstanding amount may increase or decrease, as appropriate, from the Debt Outstanding amounts in the Finance Documents notified by Seller to Buyer prior to the Closing Date to reflect any required modifications to the principal owed to the Finance Parties under the Finance Documents and the schedule for repayment of the debt obligations owing thereunder; *provided that*, Seller shall use Reasonable Endeavors to minimize any resulting delays under the Project Documents and/or any capital expenditure increases and Seller shall provide Buyer with details of (i) the required modifications to the principal owed to the Finance Parties under the Finance Documents, and (ii) any required revisions to the schedule for debt repayment, together with supporting evidence and calculations, Buyer will have ten (10) Days to review and respond that it either approves or does not approve these elements of the proposed Refinancing. If requested by Seller at the time Buyer is provided with the details listed above, Buyer shall use Reasonable Endeavors to provide such response at soon as practical and less than ten (10) days prior to then scheduled execution, by Seller and the Finance Parties of the amendment agreement(s) required to implement such modifications to the Finance Documents. If Buyer does not approve such changes, Buyer and Seller will agree on such other changes as may be reasonably required.

## **Clause 15 Insurance**

### **15.1. 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. 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.

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## **15.2. Additional Insurance**

15.2.1 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.

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

## **15.3. 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 0 and 0 towards repair of the Plant or recovery of the loss or damage as soon as is reasonably possible.

## **15.4. Certificates of Insurance**

Prior to the Target Closing Date, and thereafter prior to any renewal, amendment or replacement thereof, Seller shall cause its insurers or agents to provide Buyer with certificates of insurance evidencing the insurers' commitments to issue (or renew or amend, as applicable) the policies and endorsements required under Clauses 0 and 0. In addition, at least once annually, not less than ninety (90) prior to the expiration of any then outstanding insurance policies, Seller shall provide to Buyer evidence of the continuing maintenance of the insurance policies required under Clauses 0 and 0, including (as applicable) certificates of insurance, binders evidencing commitments to issue or renew insurance policies and evidence of the payment of premiums then due and payable thereunder), together with a certificate of Seller certifying that such insurance policies are (or will be when required) in full force and effect and are in compliance with the requirements of this Agreement and that all premiums then due and payable with respect to such policies have been paid.

## **15.5. Waiver of Subrogation**

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

## **15.6. Finance Parties' Interests**

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

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## Clause 16 Taxes

### 16.1. Liability for Taxes

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

### 16.2. Proof of Payment

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

### 16.3. Tax Indemnity

16.3.1 Each Party agrees to defend, indemnify in full and hold the other Party harmless from liability to any Relevant Authority resulting from failure of the Indemnifying Party or Indemnifying Party's employees' failure to make timely payment of, or timely filings with respect to, any obligations to pay Taxes incurred in respect of any payments under this Agreement. Such indemnities shall include all penalties and interest imposed in addition to the Taxes due as a result of Indemnifying Party's or Indemnifying Party's employees' failure to comply with reporting, filing, payment or procedural requirements to discharge its tax obligations.

16.3.2 Following a Change in Tax, each Party shall be liable for and shall indemnify the other Party for any incremental withholding Tax imposed by Relevant Authority on payments in excess of amounts initially withheld under Clause 0 above, *provided that* any amount indemnified by Seller shall be included in the calculation of compensation payable as a result of the Change in Tax.

## Clause 17 Liability and Indemnification

### 17.1. Limitation of Liability

17.1.1 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

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provisions of this Agreement, neither Party shall have any liability to the other Party save as expressly stated in this Agreement; *provided, however*, that this provision is not intended to constitute a waiver of any rights of one Party against the other with regard to matters unrelated to this Agreement.

17.1.2 Notwithstanding Clause 0 or Clause 0, each Party shall be liable to the other Party for any loss or damage arising by virtue of Gross Negligence or Willful Misconduct.

17.1.3 Clause 0, Clause 0, and Clause 0 shall not apply in respect of the payment of any amounts payable as a result of a Change in Law or Change in Tax. Amounts that may be due under this Agreement as a result of or following termination of this Agreement shall be included in Clause 0, Clause 0 and Clause 0 unless otherwise stated herein or in any separate agreement between the Parties.

## **17.2. Mitigation of Damages**

Each Party shall use Reasonable Endeavors (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.

## **17.3. Mutual Indemnifications**

17.3.1 Subject to Clause 0, Buyer shall indemnify Seller against, and hold Seller harmless from, at all times after the date hereof, any and all losses, and any and all actions, claims and demands in respect of such losses, incurred, suffered, sustained, or required to be paid, directly or indirectly, by, or sought to be imposed upon, Seller for personal injury or death to persons or damage to property arising out of the negligent or intentional acts or omissions of Buyer in connection with this Agreement or relating to electrical energy at and after delivery at the Delivery Point.

17.3.2 Subject to Clause 0, Seller shall indemnify Buyer against, and hold Buyer harmless from, at all times after the date hereof, any and all losses, and any and all actions, claims and demands in respect of such losses, incurred, suffered, sustained, or required to be paid, directly or indirectly, by, or sought to be imposed upon, Buyer for personal injury or death to persons or damage to property arising out of the negligent or intentional acts or omissions of Seller or breach of representations and warranties by Seller in connection with this Agreement or relating to electrical energy on Seller's side of the Delivery Point.

## **17.4. Notice of Claims**

Each Party shall promptly notify the other Party of any loss, claim, action, demand or proceeding in respect of which it is or may be entitled to indemnification under Clause 0. 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

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notice in a timely fashion shall not affect the Indemnified Party's rights to indemnification hereunder except to the extent that the Indemnifying Party is materially prejudiced thereby.

## **17.5. Defense of Claims**

- 17.5.1 The Indemnifying Party shall be entitled, at its option, to assume and control the defense of such claim, action, suit or proceeding at its expense with legal advisers of its selection reasonably satisfactory to the Indemnified Party, provided it gives prompt Notice of its intention to do so to the Indemnified Party.
- 17.5.2 Unless and until the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party and assumes control of the defense of a claim, suit, action or proceeding in accordance with Clause 0, the Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate, with legal advisers of its own selection, any claim, action, suit or proceeding by any third party alleged or asserted against the Indemnified Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and the reasonable costs thereof shall be subject to the indemnification obligations of the indemnifying party hereunder.
- 17.5.3 Upon assumption by the Indemnifying Party of the control of the defense 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 defense of the claim, suit, action or proceeding prior to the Indemnifying Party's acknowledgement of the indemnification and assumption of the defense.
- 17.5.4 Following the acknowledgement of the indemnification and the assumption of the defense 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 defense 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 defense 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 defenses 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 defense 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.

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## 17.6. Limitation on Indemnification

Each Party shall be solely liable, and shall not be entitled to assert any claim for indemnification under this Agreement for any loss that would otherwise be the subject of indemnification under this Agreement until all losses of such Party arising during the current Contract Year exceed the Minimum Indemnification Amount. For purposes of this Clause 0, 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 Contract 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 0 (where it is otherwise entitled to do so) at the end of a given Contract Year (“**Year End**”) by reason of the fact that the event in question (“**Relevant Event**”) is still continuing, and provided further that in the event that such Party does make such a claim at the Year End it shall continue to be able to claim in relation to all remaining losses arising from the Relevant Event regardless of when they occur.

## 17.7. Fines and Penalties

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

## 17.8. No Fine or Penalty

For the avoidance of doubt, Buyer acknowledges and agrees that the payment of amounts to Seller following a termination of this Agreement or any amount payable under or pursuant to Clause 0 shall not in any way consist or be deemed to be the payment by Buyer of a fine or a penalty that has been incurred by Seller or which Seller is responsible for.

## 17.9. Allocation of Liability

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

## Clause 18 Default & Early Termination

### 18.1. Early Termination

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

- (a) the mutual agreement of the Parties;



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- (b) the delivery of a Termination Notice by Buyer pursuant to Clause 0 following a Seller Default;
- (c) the delivery of a Termination Notice by Seller pursuant to Clause 0 following a Buyer Default;
- (d) the delivery of a Termination Notice by Seller pursuant to Clause 0 following an Expropriation;
- (e) the delivery of a Termination Notice by Buyer pursuant to Clause 0 following the delivery by Seller of a Full Restoration Report and an election by Buyer not to authorize Seller to proceed with the implementation of the Restoration;
- (f) the delivery of a Termination Notice by either Party pursuant to Clause 0 following the occurrence of a Prolonged Force Majeure Event;
- (g) the delivery of a Termination Notice by either Party pursuant to Clause 0 following the occurrence of a Local Political Force Majeure Event or a Change in Law; or
- (h) the delivery of a Termination Notice by Buyer pursuant to Clause 0 following the delivery of a Full Restoration Report.

18.1.2 The expiration or earlier termination of this Agreement (as provided in Clause 0) shall be without prejudice to any rights, obligations, and remedies arising out of or in connection with this Agreement, which have vested, matured or accrued to either Party before the date of the expiration or termination.

## 18.2. Seller Default

Each of the following shall be a “**Seller Default**” which, if not cured within the time permitted (if any) under this Agreement, shall give rise to the right on the part of Buyer to terminate this Agreement pursuant to Clause 0, *provided, however*, that no such event shall become a Seller Default if it results from (i) a breach by Buyer of this Agreement, (ii) a Buyer Default, (iii) the occurrence of a Force Majeure Event, (iv) the occurrence of an Availability Event or (v) the occurrence of a Delayed Commissioning Event:

- (a) a breach by Seller of any of its obligations other than those referred to elsewhere in this Clause 0 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 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



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to have a material adverse effect on Buyer during such extended cure period), or a series of breaches by Seller of any of its obligations other than those referred to elsewhere in this Clause 0 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 Cure Period;

- (b) any Acts of Insolvency in respect of Seller;
- (c) a breach by Seller of the provisions of Clause 0 (*Transfer*) occurs;
- (d) failure to pay liquidated damages in accordance with Clauses 0, 0 or 0;
- (e) a breach by Seller of its obligation to obtain and maintain the insurances required under Clause 0 and 0 of this Agreement which has not been cured during a Cure Period of thirty (30) Days from receipt of a Cure Notice;
- (f) 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);
- (g) revocation, cancellation, or withdrawal of this Agreement by Seller as a result of breach of any terms and/or conditions imposed by any Authorization that has a material adverse effect on the ability of either Party to perform its obligations under this Agreement; or
- (h) 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;
- (i) failure by Seller to achieve Commercial Operations Date before or on the Long Stop Commercial Operations Date;
- (j) termination of the Connection Agreement as a result of breach or default by Seller;

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- (k) failure by Seller to obtain or maintain any Authorization required under Applicable Law or by a Relevant Authority in order for it to perform its material obligations pursuant to this Agreement if such failure is (i) not a Lapse of Authorization and (ii) has not been cured during a cure period of sixty (60) Days from receipt of a Cure Notice (or such longer period for reinstatement permitted by Applicable Law);
- (l) Seller's default in paying any undisputed sum of money due and owing within thirty (30) Days from the date when such sum was first due and demanded;
- (m) Seller's failure to maintain any required Development Security or Performance Guarantee which has not been cured during a Cure Period of thirty (30) Days from receipt of a Cure Notice;
- (n) The Plant does not have an Achieved Capacity at least equal to the Minimum Achieved Capacity; and
- (o) Net Electrical Output for any Contract Year is less than the Minimum Annual Electrical Output (as it may be adjusted pursuant to Clause 0) for three consecutive Contract Years.

## 18.3. Buyer Default

Each of the following shall be a “**Buyer Default**”, which, if not cured within the time permitted (if any) under this Agreement, shall give rise to the right on the part of Seller to terminate this Agreement pursuant to Clause 0, *provided, however*, that no such event shall become a Buyer Default if it results from (i) a breach by Seller of this Agreement, (ii) a Seller Default or (iii) the occurrence of a Force Majeure Event:

- (a) a breach by Buyer of any of its obligations other than those referred to elsewhere in this Clause 0 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 thirty (30) Days from receipt of a Cure Notice (or if such failure cannot be remedied within such thirty day (30) cure period but is susceptible of remedy within a longer period, such thirty (30) day period shall be extended for up to an additional sixty (60) days so long as (x) Buyer has commenced action reasonably planned to remedy such default and continues diligently to pursue such action and (y) such default could not reasonably be expected to have a material adverse effect on Seller during such extended cure period), or a series of breaches by Buyer of any of its obligations other than those referred to elsewhere in this Clause 0 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 Cure Period;

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- (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) Buyer has commenced action reasonably planned to remedy such default and continues diligently to pursue such action and (y) such default could not reasonably be expected to have a material adverse effect on Seller during such extended cure period);
- (d) revocation, cancellation or withdrawal of this Agreement by Buyer or of any Authorization applicable to Buyer that, in the case of such Authorization, has a material adverse effect on the ability of either Party to perform its obligations under this Agreement if such failure is not been cured during a cure period of sixty (60) Days from receipt of a Cure Notice (or such longer period for reinstatement permitted by Applicable Law);
- (e) delay in the Commercial Operations Date occurring beyond the Long Stop Commercial Operations Date due to breach of Buyer's obligations;
- (f) any Acts of Insolvency in respect of Buyer;
- (g) 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 0; and
- (h) failure to maintain the Buyer Payment Security (other than as a result of an Extraordinary L/C Event), or a replacement thereof, in accordance with Clause 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; provided, that such thirty (30) day period shall be extended to ninety (90) days in the event that:
  - (i) the issuer of such Buyer Payment Security fails to continue to meet the criteria for an Acceptable Commercial Bank, and the Buyer

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Payment Security from such issuer continues to be available to be drawn during such ninety (90) day period; or

- (ii) the Acceptable Confirming Bank fails to continue to meet the criteria for an Acceptable Commercial Bank, and the Buyer Payment Security from such confirming bank continues to be available to be drawn during such ninety (90) day period.

## 18.4. Cure Period

18.4.1 Upon the occurrence of a Seller Default or Buyer Default that provides for a cure period in Clause 0 or 0, the non-defaulting Party may serve a notice (a “**Cure Notice**”) on the defaulting Party in accordance with Clause 0. A Buyer Default of Seller Default for which there is a cure period in Clause 0 or 0 shall not be a basis for Termination until a Cure Notice has been served on the defaulting Party and the cure period has expired.

18.4.2 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 0 or 0, as the case may be.

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

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

## 18.5. Termination for Seller Default or Buyer Default

If a defaulting Party fails to implement any rectification program 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.

## 18.6. Termination for Expropriation

In the event of an Expropriation, Seller shall have the right to terminate this Agreement by delivering a Termination Notice to Buyer.

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## **18.7. Termination for Local Political Force Majeure Event or Change in Law Necessitating a Restoration**

In the event Seller is required to deliver a Full Restoration Report pursuant to Clause 0, and Buyer determines not to authorize Seller to proceed with the implementation of the Restoration pursuant to Clause 0, then Buyer shall deliver a Termination Notice to Seller at the time Buyer determines not to authorize Seller to proceed with the implementation of the Restoration.

## **Clause 19 Sole Remedies Upon Termination**

### **19.1. Sole Remedy**

19.1.1 Each Party agrees that the sole remedies of Buyer or Seller upon termination of this Agreement upon expiration of its term or pursuant to Clause 0 shall be:

- (a) the right to payment of amounts accrued and owing under this Agreement; and
- (b) any termination rights as may be set forth in Schedule 0.

19.1.2 Upon payment in full of the amounts referred to in Clause 0, each Party shall

- (a) be deemed to have released and forever discharged, all and/or any actions, claims, rights, demands and set-offs, whether or not then known to the Parties or to the law, and whether in law or equity, that it had, may have or thereafter can, shall or may have against the other Party arising out of or connection with this Agreement; and
- (b) not 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 20 Transfers and Prohibited Shareholders**

### **20.1. Transfer of Ownership Interests**

20.1.1 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 or:

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- (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, 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

20.1.2 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 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 percent (20%) of the outstanding Ownership Interests in Seller being owned, directly or indirectly by a Technically Qualified Shareholder.

20.1.3 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 percent (5%) of the outstanding Ownership Interests in Seller being owned, directly or indirectly, by a Technically Qualified Shareholder.

20.1.4 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 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

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- (d) such additional information as Buyer may reasonably request in order to determine whether such transferee is a Technically Qualified Shareholder.

20.1.5 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.

20.1.6 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.

## 20.2. Transfer of the Agreement

20.2.1 Seller shall not transfer this Agreement or any of the rights or obligations hereunder.

20.2.2 Buyer shall not transfer 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 Authorizations 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,



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*provided that* nothing in this 0 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.

20.2.3 Nothing in this 0 shall prohibit either Party from assigning or transferring its rights under this Agreement as part of a security package in a bona fide financing transaction with any lender or other institution providing financing for Seller's Plant or Buyer's bulk trading activities, respectively.

## 20.3. Prohibited Shareholder

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

## Clause 21 Force Majeure

### 21.1. Definition of Force Majeure Event

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

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

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

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

- (a) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, civil commotion, or act of terrorism;<sup>1</sup>
- (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 0), 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 any Relevant Authority, or
  - (ii) any declaration pursuant to a statutory instrument,
- (iii) in either case in respect of archaeological or paleontological remains discovered on or under the Site;
- (e) any Change in Law or Change in Tax that has not been fully compensated for under Clause 0 and:
  - (i) makes unenforceable, invalid or void any material obligation of Buyer; or
  - (ii) makes it unlawful for Seller to make or receive any payment, to perform any obligation or to enjoy or enforce any material right under this Agreement; or
  - (iii) places material restrictions or limitations on the ability of Seller to meet its debt service obligations under Finance Documents or to repatriate any dividends (or distributions of capital) to its shareholders which restrictions or limitations remain in place more

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<sup>1</sup> Projects proposed for areas which at the time of execution present enhanced security risks are required to anticipate and plan for reasonably foreseeable risks. This includes events listed as Local Political Force Majeure Events.

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than one hundred eighty (180) Days without an arrangement being provided to exempt Seller from all such restrictions or limitations,

*provided that* in each case Seller has provided Buyer with at least sixty (60) Days' notice of the occurrence of such Change in Law or Change in Tax and its intention to invoke the termination provisions and the Parties have not been able to reach agreement within such period;

- (f) radioactive contamination or ionizing radiation originating from a source inside Nigeria to the extent it exceeds applicable standards;
- (g) the occurrence of an event that is analogous with a Local Political Force Majeure Event under any Project Document entered into by either Party;
- (h) lack of or constraint in the availability of the Grid; or
- (i) Lapse of Authorization.

21.1.3 the following events that occur outside Nigeria and do not directly involve Nigeria (each a **“Foreign Political Force Majeure Events”**):

- (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.

21.1.4 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.

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

- (a) normal wear and tear or inherent flaws in materials and equipment or breakdowns of equipment;
- (b) unless caused by a Change in Law or Change in Tax that is a Local Political Force Majeure Event, the economic hardship of an affected Party or changes in market conditions;
- (c) any event caused by, or connected with, the affected Party’s (i) negligent or intentional acts, errors or omissions, (ii) failure to comply with any laws or (iii) breach of, or default under, this Agreement;
- (d) unavailability of water supply, except to the extent such unavailability is itself due to Force Majeure Event; and
- (e) failure to make a payment of money in accordance with the Party’s obligations under this Agreement.

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

## 21.2. Effect of Force Majeure

Subject to Clause 0, 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.

## 21.3. Payment During Force Majeure Event

21.3.1 Buyer shall not be obliged to pay Energy Payments and Availability Event Energy Payments during a Force Majeure Event other than as set out in this Clause 0.

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

- (a) any Availability Event Energy Payments; and
- (b) Energy Payments in respect of any Net Electrical Output delivered to Buyer.

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

- (a) any Availability Event Energy Payments; and
- (b) Energy Payments in respect of any Net Electrical Output delivered to Buyer.

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

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

## 21.4. Notification Obligations

21.4.1 The Party affected by a Force Majeure Event shall give Notice to the other Party of any event constituting a Force Majeure Event as soon as reasonably practicable after the Party first learns of the Force Majeure Event. Any Notice shall include particulars of the event constituting a Force Majeure Event, of its effects on the Party claiming relief and the remedial measures proposed, including estimated time to restore the situation, if appropriate. The Party affected by a Force Majeure Event shall give the other Party regular reports on the progress of those remedial measures and such other information as the other Party may reasonably request.

21.4.2 The Party affected by a Force Majeure Event shall give Notice to the other Party of (i) the cessation of the relevant event constituting a Force Majeure Event, and (ii) the cessation of the effects of such event constituting a Force Majeure Event, and (iii) any requested extension of time as soon as reasonably practicable after becoming aware of each of (i), (ii), and (iii) above.

## 21.5. Responsibilities of the Parties

The claiming Party shall, as soon as practicable after the commencement of the Force Majeure Event, use Reasonable Endeavors 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 labor 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 0 in respect of such loss or damage in accordance with the provisions of Clause 0.

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## 21.6. Delay Caused by Force Majeure Event

Neither Party shall be responsible or liable for or deemed in breach hereof because of any failure or delay in complying with its obligations (other than an obligation to make a payment when due) due solely to one or more Force Majeure Events or its or their effects or by any combination thereof, and, upon the request of the affected Party, the periods allowed or dates required for the performance by Parties of such obligations, including each Key Defined 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 0 to the extent that such failure or delay would have nevertheless been experienced by that Party had such Force Majeure Event not occurred. Other than for breaches of this Agreement by the Party not claiming Force Majeure Event, and without prejudice to the rights of the Party claiming Force Majeure Event to indemnification under this Agreement, the Party not claiming Force Majeure Event shall not bear any liability for any loss or expense suffered by the Party claiming Force Majeure Event as a result of a Force Majeure Event.

## 21.7. Access

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

## 21.8. Prolonged Force Majeure Events

Upon the occurrence of:

- (a) a Force Majeure Event (including a Local Political Force Majeure Event) 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) a series of related Force Majeure Events (including Local Political Force Majeure Events) 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,

(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 0 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 0.

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## **21.9. Option to Terminate Following a Local Political Force Majeure Event or Change in Law**

21.9.1 In the event that a Local Political Force Majeure Event or Change in Law occurs and:

- (a) the nature of the Local Political Force Majeure Event or Change in Law renders it illegal, unlawful or impractical:
  - (i) for a Party to continue to perform material obligations or enjoy material rights under this Agreement; or
  - (ii) for a Restoration to be implemented; or
- (b) the Parties agree that
  - (i) the cost of the Restoration will exceed the Restoration Threshold Amount; and
  - (ii) the Restoration is not economically or commercially viable (taking into account, among other things, (x) the total cost of the Restoration, (y) the likelihood, following completion of the Restoration, of the Plant achieving performance levels that would allow Seller to meet its debt service obligations under the Finance Documents and the Sponsors to achieve a reasonable return on equity),

then either Party shall have the right to terminate this Agreement by delivering a Termination Notice within thirty (30) Days of:

- (A) in the case of (a) above, the Parties becoming aware of the occurrence of the Local Political Force Majeure Event or Change in Law; or
- (B) in the case of (b) above, the agreement by the Parties that the cost of the Restoration will exceed the Restoration Threshold Amount and that the Restoration is not economically or commercially viable.

21.9.2 In the event that the Parties do not terminate this Agreement pursuant to this Clause 0, then Clause 0 shall continue to apply.

## **21.10. Restoration of the Plant Following a Local Political Force Majeure Event or Change in Law**

21.10.1 Preparation of Preliminary Restoration Estimate Following Local Political Force Majeure Event or Change in Law

- (a) In the event that a Local Political Force Majeure Event results in uninsured material damage to the Plant or that compliance by Seller with



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a Change in Law requires a material modification or a material capital addition to the Plant (unless Seller has been compensated by Buyer for the cost of such material modification or repair pursuant to Clause 0 (in which case, Clause 0 shall apply to such modification or repair)) (each such repair, material modification or capital addition referred to herein as a “**Restoration**”), Seller shall, at Buyer’s cost, engage an internationally recognized independent engineering consultancy firm reasonably acceptable to Buyer (the “**Restoration Expert**”) to develop and deliver to Seller and Buyer a preliminary written estimate (the “**Preliminary Restoration Estimate**”) of:

- (i) the projected Restoration costs (the “**Restoration Cost Estimate**”); and
  - (ii) a preliminary schedule (such schedule and each such schedule contained in the Full Restoration Report, a “**Restoration Schedule**,” which Restoration Schedule shall include the period of time reasonably estimated to complete the Restoration, which period shall be referred to herein as the “**Restoration Period**”) for the activities required to complete Restoration, including, if the Restoration Cost Estimate is greater than the Restoration Threshold Amount, a reasonable period to arrange the financing.
- (b) Seller shall use its Reasonable Endeavors to procure that the Restoration Expert’s Preliminary Restoration Estimate is as comprehensive and as complete as possible under the circumstances.
  - (c) Seller shall use its Reasonable Endeavors to procure the delivery of the Preliminary Restoration Estimate within thirty (30) Days after the date by which it was first required to provide notice to Buyer under Clause 0; *provided, however*, if the Local Political Force Majeure Event has not ended by the time of such notice, Seller shall deliver the Preliminary Restoration Estimate within thirty (30) Days of the notice required by Clause 0.

## 21.10.2 Determination as to Preparation of Full Restoration Report

Buyer and Seller shall meet within fifteen (15) Days of the delivery of the Preliminary Restoration Estimate to discuss the conclusions set forth therein. If Seller concludes that the Restoration Cost Estimate shall be less than the Restoration Threshold Amount and Buyer agrees with the Restoration Cost Estimate and with the Restoration Schedule, then Seller shall proceed with the Restoration in accordance with Clause 0. Otherwise, Seller shall proceed with the preparation of a Full Restoration Report and the provisions of Clause 0 shall apply.

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## 21.10.3 Preparation of Full Restoration Report

21.10.3.1 When required under Clause 0, Seller shall engage the Restoration Expert to prepare an appraisal report (a “**Full Restoration Report**”) and use its Reasonable Endeavors to procure the delivery of a copy of such Full Restoration Report to Buyer as soon as practicable, but in any event not later than sixty (60) Days after the date it was determined that a Full Restoration Report would be necessary. The Full Restoration Report shall address in good faith and in such detail as is practicable under the circumstances the following matters (to the extent applicable):

- (i) a description of the Change in Law or Force Majeure Event and the modification, capital addition required, or damage to the Plant, and/or the other effects or impacts on, the Plant;
- (ii) an estimation of the time it will take to restore the Plant (as much as it may be possible to do so) to its condition immediately prior to the Force Majeure Event or to bring the Plant into compliance with the Change in Law;
- (iii) a Restoration Schedule;
- (iv) a statement and explanation regarding whether Restoration or modification of the Plant or necessary capital additions are technically feasible economically and commercially viable including whether, following completion of the Restoration, the Plant will be able to achieve performance levels for the remainder of the Term;
- (v) the cost necessary to restore the Plant to its condition immediately prior to the Force Majeure Event or the costs to come into compliance with the Change in Law;
- (vi) a revised cash flow forecast for the Plant;
- (vii) the insurance proceeds, if any, that may be recovered, the date or dates on which such proceeds may be received, and the particular purposes for which such proceeds are required to be applied;
- (viii) the plan to fund the costs of the Restoration; and
- (ix) a proposal as to the appropriate Restoration-Related Tariff Modifications.

21.10.3.2 Seller shall request the Restoration Expert to provide reasonable supporting data for the information included in the Full Restoration Report and shall provide copies of all certificates and reports of Seller’s financial

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and technical advisers, as appropriate or as reasonably requested by Buyer, in support of the applicable matters referred to in this Clause 0.

## 21.10.4 Full Restoration Report Disputes

Within fifteen (15) Days of the delivery of a Full Restoration Report to a Party, the Parties shall meet to discuss the Full Restoration Report and any action(s) to be taken. In connection with the review by Buyer of a Full Restoration Report prepared by the Restoration Expert, Seller shall request the Restoration Expert to provide promptly to Buyer and Seller such additional information pertaining to the Full Restoration Report and the matters described therein as Buyer may reasonably request.

## 21.10.5 Determination Following Full Restoration Report

- (a) Following the delivery of a Full Restoration Report, if the Restoration Cost Estimate is less than the Restoration Threshold Amount, Seller shall be entitled to proceed, but if the Restoration Cost Estimate is more than the Restoration Threshold Amount, Buyer shall have the right to determine whether to proceed with Restoration (subject to the obligation to make the Restoration-Related Tariff Modifications following the completion of the Restoration) or to terminate this Agreement.
- (b) Subject to the Restoration being economically and technically feasible, Buyer shall make the determination described in Clause 0 acting reasonably and in good faith. Buyer shall make such determination primarily based on the Restoration-Related Tariff Modifications that would be required to be made to the following the completion of the Restoration.
- (c) Buyer shall, within thirty (30) Days of the issuance of the Full Restoration Report, either:
  - (i) deliver a Termination Notice to Seller exercising Buyer's right to terminate this Agreement pursuant to Clause 0; or
  - (ii) authorize Seller to proceed with the Restoration.

## 21.10.6 Implementation of Restoration

- (a) The following provisions shall apply:
  - (i) in the event the Restoration Cost Estimate is less than the Restoration Threshold Amount and Buyer agrees with the Restoration Cost Estimate and with the Restoration Schedule pursuant to Clause 0; or

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- (ii) following an election by Buyer to authorize Seller to proceed with a restoration.
- (b) Seller shall proceed in good faith to try to secure financing for the cost of Restoration on terms satisfactory to Buyer and at a debt to equity ratio that is equal to or greater than the Assumed Debt to Equity Ratio. If Seller is unable to obtain binding commitments for such financing within three hundred (300) Days of receipt of Buyer's notice authorizing Seller to proceed with Restoration, then unless Buyer commits to provide financing for the Restoration within the next sixty (60) Days, and obtains such financing within an additional two hundred forty (240) Days, the failure to secure financing shall be treated as an election by Buyer to terminate this Agreement pursuant to Clause 0. Seller shall use commercially Reasonable Endeavors to maximize the debt to equity ratio associated with its investment in the Restoration so that such debt to equity ratio exceeds the Assumed Debt to Equity Ratio.
- (c) In the event that conditions in the market for debt of the type borrowed by Seller in order to finance the Plant or any other asset of Seller in relation to its participation in the Project change such that either:
  - (i) it would be possible for Seller to achieve a debt to equity ratio that is higher than the Assumed Debt to Equity Ratio; or
  - (ii) it is not possible to Seller to achieve a debt to equity ratio that at least equals the Assumed Debt to Equity Ratio,

then, in either case, either Party may propose an equitable adjustment to the Assumed Debt to Equity Ratio so that the Assumed Debt to Equity Ratio shall reflect actual conditions in the market for such debt. Such adjustment shall be made if the requesting Party demonstrates that the adjustment is necessary to make the Assumed Debt to Equity Ratio reflect actual market conditions.

- (d) Seller shall proceed with the Restoration in accordance with the Restoration Schedule once:
  - (i) financing for the Restoration has been secured by Seller on terms that are reasonably acceptable to the Parties; and
  - (ii) Buyer and Seller have agreed to such modifications to the methodology for calculating the Energy Payments and Availability Event Energy Payments as are necessary in order to enable Seller to recover its investment in the Restoration and service the additional financing secured for the Restoration (such modifications, the **"Restoration-Related Tariff Modifications"**), and the Commission shall have approved such Restoration-Related Modifications.

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- (e) Seller shall provide Buyer with a detailed accounting of all costs actually incurred in implementing the Restoration, together with copies of all invoices for such work. Buyer shall have the right to engage an independent auditor to audit the costs incurred by Seller in connection with the implementation of the Restoration.

## 21.10.7 Payments During the Implementation of a Restoration

For the avoidance of doubt, Buyer shall make the payments to Seller referred to in Clause 0 from the occurrence of the Local Political Force Majeure Event referred to in Clause 0 until re-commencement of full commercial operations of the Plant following the completion of the Restoration or termination of this Agreement.

## 21.11. Other Restoration of the Plant

In the event of damage to the Plant that does not result in a Restoration under Clause 0, 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 provisions regarding Events of Force Majeure. Seller will not be entitled to a change in the tariff rates as a result of a Voluntary Restoration.

## Clause 22

### Choice of Law and Dispute Resolution

#### 22.1. Governing Law

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

#### 22.2. Informal Dispute Resolution

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

22.2.2 For a period of not less than thirty (30) Days from delivery of a Notice of a Dispute, the Parties shall attempt in good faith to settle the Dispute by negotiations among the designated or authorized representatives of each Party. In the event that the Parties are unable to reach an agreement within thirty (30) Days, or such longer period as they may agree, then either Party may refer the Dispute to arbitration which Dispute shall be determined and settled in accordance with Clause 0. 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.

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## 22.3. Arbitration of Disputes

- 22.3.1 In the event that the parties to a Dispute are unable to resolve any Dispute pursuant to Clause 0, then the Dispute shall be referred to and finally settled by arbitration conducted in accordance with the Rules of Arbitration of the International Chamber of Commerce (“**ICC**”) as amended by this Clause 0 (the “**Rules**”), which Rules shall be deemed to be incorporated into this Clause 0. Notwithstanding the provisions of Clause 0, this Clause 0 shall be governed by, and construed in accordance with, the laws of England and Wales. The arbitration proceedings shall be conducted, and the award shall be rendered, in the English language.
- 22.3.2 Any arbitral tribunal to be appointed for the resolution of Disputes under this Agreement shall consist of three (3) arbitrators. The three arbitrators will be appointed by the International Court of Arbitration of the International Chamber of Commerce (the “**ICC Court**”). No arbitrator may (i) be a present or former employee or agent of, or consultant or counsel to either Party or any Affiliate of either Party or (ii) be in any way closely connected with the Project or (iii) have any interest in the outcome of the proceeding.
- 22.3.3 The seat of the arbitration proceedings shall be London, England.
- 22.3.4 In determining the rights of the Parties under the applicable contracts, the arbitral tribunal shall apply the law governing the applicable contracts, including Clauses 0 and 0 hereof.
- 22.3.5 Any arbitral award issued under this Clause 0 shall be final and binding upon the parties to the Dispute, and each Party undertakes to comply with and to carry out any arbitral award rendered in a Dispute to which it is a party, fully and without delay.
- 22.3.6 Without prejudice to Clause 0 of this Agreement and Article 34(6) of the Rules, 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 0 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 has deposited the amount of the award with the tribunal or a court of competent jurisdiction.
- 22.3.7 Notwithstanding any Dispute between the Parties, each Party shall continue to perform all of its obligations under this Agreement.
- 22.3.8 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 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.

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## 22.4. Interim Relief & Enforcement of Arbitral Awards

Notwithstanding Clause 0, this Clause 0 is without prejudice to any right of a Party granted by law to apply to the courts of England & Wales or any other courts of competent jurisdiction to:

- (a) seek interim or conservatory relief against another Party in support of arbitration proceedings; or
- (b) seek relief against another Party to enforce the agreement to submit any Dispute to arbitration pursuant to this Agreement; or
- (c) enforce an arbitral award made in arbitration proceedings brought pursuant to this Agreement or, in the case of proceedings to which Clause 0 below applies, any Related Agreement (as defined in Clause 0 below).

## 22.5. Disputes under Related Agreements

22.5.1 In circumstances in which (i) proceedings have already been commenced under this Agreement, any Put/Call Option Agreement, the Direct Agreement, any direct agreement related to the Put/Call Option Agreement, any Project Document or any Vesting Contract (for the purpose of this 0, the **“Related Agreements”**) (in each case, an **“Existing Dispute”**), (ii) either Party contends that two or more arbitrations commenced under this Agreement and a Related Agreement are substantially related and involve substantially related issues and that the issues should be heard in one proceeding, then the first tribunal to be constituted under the terms of this Agreement or under a Related Agreement providing for:

- (a) arbitration under the Rules of Arbitration of the International Chamber of Commerce;
- (b) before an arbitral tribunal composed of three (3) arbitrators who are to be appointed by the ICC Court; and
- (c) the arbitral tribunal constituted thereunder to be seated in London, England,

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

22.5.2 The Parties expressly accept that in the event of consolidation in accordance with this Clause 0 any Dispute that may be referred to arbitration under this Agreement may be disposed of in the same arbitration proceedings as any other dispute arising under a Related Agreement, even in the presence of parties other than the Parties to this Agreement.



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## 22.6. Expert Determination

- 22.6.1 In the event that the Parties are unable to resolve any Dispute pursuant to Clause 0, and the amount to be claimed by either Party is equal to or less than three million US Dollars (US\$3,000,000), then the Dispute shall be settled by an expert determination in accordance with the provisions of this Clause 0 (“**Expert Determination**”).
- 22.6.2 Any Party may, by notice in writing (“**Notice of Expert Determination**”), give notice that it requires a Dispute to be referred to expert determination, and call on the other Party to agree on the identity of the person to be appointed as Expert. The Expert shall be appointed on the mutual agreement of the Parties.
- 22.6.3 If within ten (10) Days of the Notice of Expert Determination, the Parties are unable to agree on the identity of the person to be appointed as an Expert, the Expert shall be appointed by the International Centre for Expertise and be made 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.
- 22.6.4 The Expert shall, within seven (7) Days of such appointment, give written notice to the Parties of the time and place of a preliminary conference (“**Preliminary Conference**”) to be held in accordance with Clause 0, which the Parties shall attend.
- 22.6.5 Prior to that Preliminary Conference, the Expert may advise any conditions he or she wishes to impose (including provision of security for the fees and expenses of the Expert) and request the agreement of the Parties to such conditions.
- 22.6.6 At the Preliminary Conference, the Parties and the Expert shall discuss and agree on the issues in Dispute, or formulate a procedure by which those issues can be clarified and agreed; plan and agree on the determination process including a timetable for provision of submissions, documents and any other evidentiary material; make arrangements for confidentiality agreements to be signed by all persons taking part in the determination process, make such other planning and administrative arrangements as may be required in relation to the determination process, including in respect of the terms of appointment of the Expert.
- 22.6.7 The Expert shall adopt procedures suitable to the circumstances of the particular case, avoiding unnecessary delay and expense, so as to provide an expeditious cost-effective and fair means of determining the Dispute. The Expert shall be independent of, and act fairly and impartially as between the Parties, giving each party a reasonable opportunity of putting its case and dealing with that of the other Party, and a reasonable opportunity to make submissions on the conduct of the determination process.
- 22.6.8 The Parties shall continue to perform their contractual obligations notwithstanding the existence of the determination process.

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22.6.9 As soon as reasonably practicable after receiving the submissions and evidentiary material from the Parties, the Expert shall determine the Dispute between the Parties and notify such determination in writing to the Parties and the Expert's determination shall contain a statement of reasons in such form as the Expert considers reasonably appropriate, having regard to the amount and complexity of the Dispute. The Expert's determination may include for the payment of interest on any monetary sum determined, in such amount as the Expert considers reasonable, in view of the cap in Clause 0.

22.6.10 Unless otherwise agreed in writing by the Parties or in the face of manifest error or fraud, the determination of the Dispute by the Expert shall be final and binding on the Parties.

22.6.11 All costs of the Expert Determination and all fees payable to the Expert shall be borne by the Party who refers the Dispute to Expert Determination where the Dispute is determined in favor of the other Party. Both Parties shall bear the cost of the Expert Determination where the Dispute is determined in favor of the Party that referred it to Expert Determination.

## **Clause 23** **Notices**

### **23.1. Method of Providing Notices**

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

### **23.2. Time of Receipt**

All notices shall be deemed delivered:

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

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

## **Clause 24 Miscellaneous Provisions**

### **24.1. Amendment**

The Parties shall not vary, add to, supplement, cancel, replace, 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.

### **24.2. Third Parties**

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

### **24.3. No Implied Waiver**

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

### **24.4. Relationship of the Parties**

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

### **24.5. Conflict of Interest**

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

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customers and all other organizations or individuals doing or seeking to do business with the Parties in connection with activities contemplated under this Agreement. The provisions of this Clause 0 shall not apply to:

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

## 24.6. Survival

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

- (a) Clause 0 (*Definitions*);
- (b) Clause 0 (*Billing and Payment*);
- (c) Clause 0 (*Consequences of Change in Law or Change in Tax*);
- (d) Clause 0 (*Tax Indemnity*);
- (e) Clause 0 (*Liability and Indemnification*);
- (f) Clause 0 (*Default and Early Termination*);
- (g) 0 (*Sole Remedies Upon Termination*);
- (h) Clause 0 (*Prolonged Force Majeure Events*);
- (i) 0 (*Choice of Law and Dispute Resolution*); and
- (j) Clause 0 (*Waiver of Sovereign Immunity*); and
- (k) Clause 0 (*Confidentiality*)

## 24.7. Language

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

## 24.8. Entirety

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

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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.

## 24.9. Waiver of Sovereign Immunity

Each Party recognizes and acknowledges that this Agreement constitutes a commercial transaction, and that its rights and obligations under this Agreement are of a commercial and not a governmental nature. To the fullest extent not prohibited by any Applicable Law, each Party hereby irrevocably waives on behalf of itself and its assets, any and all sovereign or other immunities from jurisdiction, from enforcement and for any other purpose whatsoever; *provided, however*, that this waiver is qualified by the carving out of certain military and diplomatic assets of the Federal Government, referred to as the Protected Assets, including:

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

## 24.10. Confidentiality

### 24.10.1 Confidential Information

The terms and conditions of this Agreement and all information disclosed pursuant to or in connection with this Agreement (including information disclosed in contemplation of this Agreement) shall be treated as confidential until five (5) years after the expiry of this Agreement (such terms and conditions and any such information being herein called “**Confidential Information**”) and neither Party shall use such Confidential Information for any purpose other than solely in connection with the Project.

### 24.10.2 Exclusions to Confidential Information

For the purposes of this Clause 0, 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 0;
- (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 0;

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- (c) became available to the Party receiving the information from another source in a non-confidential manner otherwise than in breach of an obligation of confidentiality; or
- (d) is published by, or the publication of which is required by, any Relevant Authority or any court.

24.10.3 Except as provided in Clause 0, such Confidential Information shall not be disclosed in whole or in part by any Party receiving the same to any third Parties without the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed.

## 24.10.4 Exceptions to Confidentiality

Notwithstanding the provisions of Clause 0, 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 authorized 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 Endeavors to ensure that such directors and employees keep the Confidential Information confidential on the same terms as are provided in this Clause 0 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 unauthorized 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 0 and provided further that the Party providing information shall use Reasonable Endeavors 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

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the force of law in connection with any judicial, arbitral or administrative proceedings; and

- (e) to an expert appointed pursuant to Clause 0 *provided that* such expert agrees to be bound to confidentiality provisions substantially the same as those contained in this Clause 0.

## 24.11. Severability

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

## 24.12. Counterparts

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



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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**

Name:

Title

In the presence of:

Name:

Title:

## **AFRINERGIA POWER LTD**

Name:

Title

In the presence of:

Name:

Title:

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## **Schedule 1** **Terms Specific to This Agreement**

### **Clause 1** **Plant Specific Provisions**

Seller	
Sponsors	
Name of project	
Site	
Contract Capacity	
Expected Annual Electrical Output	___ of Annual Electrical Output for each Contract Year corrected for differences between actual Performance Model Data from the Performance Model Data used to calculate Annual Electrical Output
Maximum Achieved Capacity	___ of Contract Capacity
Minimum Achieved Capacity	___ of Contract Capacity
Minimum Annual Electrical Output	___ of the Annual Electrical Output for each Contract Year corrected for differences between actual Performance Model Data and the Performance Model Data used to calculate Annual Electrical Output
Term	The period commencing on the Closing Date and expiring on the last day of the twentieth (20 <sup>th</sup> ) Contract Year unless earlier terminated pursuant hereto or shortened pursuant to Clause 0.
Minimum Indemnification Amount	US\$ ___ (or Naira equivalent) per calendar year
Target Closing Date	The date that is ___ months after the Execution Date, as may be extended in accordance with the terms of this Agreement. The Parties agree that the Development Security, shall be due and payable from the date that is ___ 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 ___ months after the Execution Date, as may be extended in accordance with the terms of this Agreement

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Target Commercial Operations Date	The date that is __ months after the Closing Date.
Required Commercial Operations Date	The date that is __ months after the Closing Date
Long Stop Commercial Operations Date	The date that is __ months after the Closing Date, as may be extended in accordance with the terms of this Agreement
Required Interconnection Date	The date to be agreed by the Parties prior to the Closing Date and stated as a number of months after the Closing Date
Agreed Interest Rate (Local)	The margin over NIBOR is __ per annum.
Agreed Interest Rate (Foreign)	The margin over LIBOR is __ per annum.
Restoration Threshold Amount	US\$__ (or Naira equivalent)during any calendar year
Tax & Law Threshold Amount	US\$__ (or Naira equivalent) during any calendar year
Liquidated damages payable if Achieved Capacity is less than Contract Capacity	US\$__ (or Naira equivalent) per MW
Liquidated damages payable if Seller fails to achieve Commercial Operations Date on or prior to the Long Stop Commercial Operations Date.	US\$__ (or Naira equivalent) per day.
Liquidated Damages Limit	US\$__ in the aggregate for liquidated damages for failure to achieve Commercial Operations Date by Long Stop Commercial Operations Date and for Achieved Capacity less than Contract Capacity.
Liquidated Damages for Failure to Achieve Expected Annual Electrical Output	An amount per MWh of shortfall equal to __ of the Energy Charge Rate, if Seller makes an election to pay liquidated damages pursuant to Clause 8.2(ii)
Amount of Required Development Security	US\$__ (or Naira equivalent) per MW of Contract Capacity
Assumed Debt to Equity Ratio	70% debt to 30% equity
Sharing of Refinancing benefit	

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Daily Percentage Rate Reduction if the Commercial Operations Date after the Required Commercial Operations Date	
The Maximum Delayed COD Rate Reduction if the Commercial Operations Date on the Long Stop Commercial Operations Date	
Contract Price	

## **Clause 2** **Addresses for Delivery of Notices**

### **2.1. Addresses**

The addresses for the delivery of notices pursuant to Clause 0 are set forth below.

#### **If to Seller:**

#### **With a copy to:**

#### **If to Buyer:**

Nigerian Bulk Electricity Trading Plc  
8<sup>th</sup> Floor, Bank of Industry Tower,  
Off Herbert Macaulay Way,  
Central Business District,  
Abuja,  
Nigeria

Attention:

Email:

Telephone:

Fax: [•]

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## Clause 3 Buyer Payment Security

### 3.1. Buyer Payment Security

3.1.1 Buyer shall deliver the initial Buyer Payment Security to Seller as a Condition Precedent to Seller's obligations in accordance with Clause 0 of this Schedule. Buyer shall thereafter continuously maintain the Buyer Payment Security, or a replacement thereof meeting the terms and conditions of this Clause 3, in full force and effect in the required amount for the remainder of the Term. Seller shall pay all commitment and other fees that are payable to the issuer of the Buyer Payment Security in respect of the issuance or maintenance thereof.

3.1.2 In the event Buyer fails to pay any Delayed Commissioning Payment, Energy Payment, Availability Event Energy Payment or Supplemental Payment within two (2) Business Days of the date such payment becomes due, Seller may draw on the Buyer Payment Security for the undisputed amount that is due in respect thereof from Buyer.

3.1.3 In the event that Seller draws on the Buyer Payment Security, Seller shall provide notice to Buyer of such event within three (3) Days.

3.1.4 In the event Buyer fails to renew any Buyer Payment Security at least 30 Days prior to the expiry of such Buyer Payment Security, then a drawing event (a "**Replacement Failure Drawing Event**") shall have occurred and Seller may draw on the full amount of the then effective Buyer Payment Security. The following shall apply following the occurrence of a Replacement Failure Drawing Event and a drawing on the then-effective Buyer Payment Security as a result of such Replacement Failure Drawing Event.

3.1.4.1. Seller shall hold the proceeds of such drawing in trust for the benefit of Seller and Buyer, and shall deposit the proceeds of the drawing into a separate account that contains only the proceeds of such drawing.

3.1.4.2. Provided that Seller has not applied the proceeds of such drawing in accordance with Clause 0 below, Seller shall return the proceeds of the drawing to Buyer upon the delivery to Seller of a replacement for the expired Buyer Payment Security.

3.1.4.3. In the event that an event which would have given Seller the right to draw on the Buyer Payment Security occurs during any period when Seller is holding the proceeds of such a drawing, then Seller may withdraw such portion of the proceeds as it would have been entitled to draw from the separate account and apply them in the manner it would have applied a drawing had it been made under a Buyer Payment Security.

3.1.5 The Buyer Payment Security shall:

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- (a) name Seller as the beneficiary thereof;
- (b) have the term set forth in the Buyer Payment Security Letter Agreement;
- (c) have a maximum amount set forth in the Buyer Payment Security Letter Agreement;
- (d) become drawable on first demand solely against delivery of a demand certificate to the issuer notifying the issuer that:
  - (i) Buyer has failed to pay an Delayed Commissioning Payment, Energy Payment, Availability Payment or Supplemental Payment within two (2) Business Days of the due date therefor and notifying issuer of the amount due, or
  - (ii) Buyer has failed to deliver a replacement or extension of the Buyer Payment Security at least thirty (30) days prior to the expiration thereof;
- (e) include feasible and practical drawing procedures in the reasonable view of Seller; *provided, however*, that it shall not contain any condition to drawing other than the confirmation by the issuer that any drawing certificate required to be delivered in connection with a drawing appears to comply on its face with the requirements of such Buyer Payment Security;
- (f) be issued by an Acceptable Commercial Bank (or branch thereof) as confirmed by an Acceptable Confirming Bank;
- (g) not prohibit either Party from assigning or transferring its rights under the Buyer Payment Security 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;
- (h) provide that the beneficiary thereof may make multiple drawings upon it; and
  - (i) in the case of a letter of credit, expressly state that it shall be subject to International Standby Practices 1998 or UCP 600 and the laws of the location of the issuing bank; or
  - (j) in the case of a demand guarantee, expressly state that it shall be subject to the Uniform Rules for Demand Guarantees and the laws of the location of the issuing bank.

3.1.6 The Buyer and Seller have agreed upon certain terms relating to the Buyer Payment Security, which terms are set forth in a letter agreement signed by both Parties (the “**Buyer Payment Security Letter Agreement**”). The Buyer Payment Security Letter Agreement includes:

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- (a) the definitions of Acceptable Commercial Bank and Acceptable Confirming Bank;
- (b) the term of the Buyer Payment Security; and
- (c) the maximum amount of the Buyer Payment Security.

3.1.7 Following the occurrence of an Extraordinary L/C Event, the Parties shall use their Reasonable Endeavors to negotiate a new Buyer Payment Security as may be agreed between Buyer and Seller, and post as soon as is reasonably practicable thereafter a Buyer Payment Security that meets the criteria specified in Paragraph 0 which apply prior to the occurrence of such Extraordinary L/C Event.

## **Clause 4** **Put Call Option Agreements**

- 4.1. In connection with this Agreement, Seller, Buyer and FGN have or will enter into a Put Call Option Agreement.
- 4.2. The failure of the PCOA to remain in full force and effect during the Term of this Agreement will give rise to Early Termination of this Agreement pursuant to Clause 18.1 as follows:
  - (a) In the event of termination of the PCOA, the Parties will use Reasonable Endeavors to have the PCOA reinstated or enter into and bring into effect a substitute for the PCOA acceptable to both Parties.
  - (b) If the PCOA or a substitute is not in effect within thirty (30) Days of the date of the failure of the PCOA to remain in full force and effect (or such longer period as may be agreed by Buyer and Seller), Seller may terminate this Agreement by delivery of a Termination Notice to Buyer.
- 4.3. The provisions of this Agreement and the PCOA are not integrated.
  - (a) This Agreement contains the entire agreement of the parties with regard to the subject of this Agreement.
  - (b) The PCOA sets forth the entire agreement of the parties with regard to the subject of the PCOA.



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## **Schedule 2** **Description of Plant and Facilities**

Schedule 3

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## Schedule 3 Plant Commercial Operations Testing Procedures

### Part One: General Requirements

The Commissioning Procedures shall consist of procedures and tests designed to demonstrate that the Plant is capable of operating to standards of performance and safety consistent with Applicable Law, the Grid Code, Market Rules, metering codes and with Good Industry Practices. The Seller shall develop and implement the Commissioning Procedures consistent with this Schedule 3 (Plant Commercial Operations Testing Procedures) and according to the minimum requirements hereby established. Precondition for the test of the Plant is the complete documentation, which shall be provided for the design, manufacturing, testing, commissioning, start-up, operation, maintenance and repair of the system and components.

#### 1. Codes and Standards

All individual components, modules, and systems of the Plant should be of high quality, and be designed, constructed, installed, tested, evaluated and inspected according to the then-current editions of the National, and International Codes and Standards, including:

*IEC*    *International Electrotechnical Commission;*  
*EN*    *European Standards;*  
*IEEE*   *Institute of Electrical and Electronic Engineers;*  
*UL*    *Underwriters Laboratory; and* —  
*ISO*    *International Organization for Standardization,*

and with Good Industry Practices.

Module or component test and verification in accordance with standards promulgated by the International Electrotechnical Commission shall not be performed if copies of test results for such module or component, certified by an internationally recognized testing laboratory, are available.

The Commissioning Procedures must demonstrate the compliance of the Plant with the following:

- Construction Contract requirements,
- Manufacturer's requirements and recommendations,
- Requirements of the Connection Agreement,
- Requirements of the Operation and Maintenance Agreement,
- Requirements of the relevant Authorizations, and
- Applicable Law.

The final approved Commissioning Procedures shall at minimum include:

- Test schedule including dates and times
- Safety plan during start-up, shutdown, commissioning and operation

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- Visual inspection for compliance
- Start-up and operation testing of equipment, systems and Plant as a whole.
- Check lists, QA/QC that all instrumentation and major equipment i.e. PV modules, inverters, transformers, combiner boxers, SCADA and monitoring system, and meters are in conformance with manufacturers recommended procedures and Good Industry Practices.
- Verify Plant operating data under full sun including MWDC, MWAC, VAC, VDC, IAC, IDC, Irradiance, etc.
- Testing of civil, structural and mechanical installation work.
- Testing procedure of interconnection in accordance with the Connection Agreement.
- Verifying expected output and Performance

## **Part Two: Specific Requirements**

The development and implementation of test procedures for inspection, start-up and performance testing of the Plant in accordance with Plant description, design conditions and technical data shall be the responsibility of the Seller.

### **1. Visual Inspection**

Visual inspection and conformance with the planning documents shall be carried out for the Plant.

- Shading analyses
- Sample inspection of the optical condition of the PV modules (staining, broken glass, etc.).
- Sample inspection of the PV module mounting (used screws, mounting points, interconnection, etc.).
- Sample inspection of the PV module current sorting
- Sample inspection of the mounting system (torsion of the PV modules, damages).
- Inspection of cable laying (UV - protection, fixing, cable tension).
- Inspection of item designation and tagging in the inverter building, substation/transformer station and control building.
- Inspection of position and mounting of weather and module temperature sensors
- Inspection of DC cable wiring

### **2. Mechanical & Electrical Test**

The mechanical and electrical completion tests shall verify that the Plant has been built according to specifications and that there are no major technical shortcomings and visual defects.

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The mechanical Completion tests shall include quality assurance and quality control tests, as well as additional tests including but not limited to testing of:

- DC system inspection;
- AC system inspection;
- electrical equipment to interface/interconnection to Buyer Substation
- metering and protective relaying;
- proper connection and labelling of components;
- installation of safety equipment such as surge arrestors, earthing;
- inspection of mounting structure and tracking system, if any;
- civil works; internal and perimeter roads etc. ;
- inspection of drainage system, etc. ;
- monitoring system (SCADA), telecommunication, interface equipment, etc. ;
- installation of meteorological measurement system;
- installation of security systems such as fences, alarms etc. ;

### 3. Start-up Test

The start-up tests shall be performed once Mechanical Completion (or analogous term as used in the Construction Contract) is achieved. In some cases start-up tests can be carried out off-grid, in other cases they require energisation of the Plant. The start-up tests shall include, among others, but not limited to:

#### 3.1 Modules and DC start-up tests:

- continuity tests;
- earthing tests;
- PV string open circuit/short circuit tests; and
- array insulation tests.

#### 3.2 Inverter tests:

- Inverter start-up and energization tests according to the manual/instructions of the inverter manufacturers and witness proper functionality.
- Transformer/substation test.

#### 3.3 Other tests:

- Fire protection system tests;
- HVAC system tests;
- Start-up and operational testing of the Plant's distributed control system, meteorological station, interface with SCADA;

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- Other tests that may be required in accordance with the Grid Code, the Connection Agreement, and Good Industry Practices.

## **4. Site Acceptance Test**

Immaterial variations from applicable requirements and procedures shall be identified and included in a report including (i) a “punch list” of items required to be corrected, the method of correction and schedule for correction, and (ii) any immaterial variations which are deemed acceptable to Seller and the EPC Contractor (or analogous term as used in the Construction Contract). Where any test is not satisfactorily completed, Seller shall arrange a further test. After all tests and measurements have been performed, and all measured values lie within the acceptable range, the Plant can be energized for the first time and the site acceptance tests will be carried out with a performance test. This test shall demonstrate the functionality, the performance and the correctness of the components of the Plant in runtime environment. The performance test shall prove that the Plant is able to generate energy continuously with an Achieved Capacity greater than the Minimum Achieved Capacity. The output of the Performance Model Data Collection Systems shall be provided to the Independent Engineer and Buyer.

## **5. Right to Witness**

Buyer or its designee shall have the right to witness the Commissioning Procedures in person, and receive, within fourteen (14) Days thereafter, a written summary of all of the test reports.

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## Schedule 4 Test Procedures

### Part One: General

The purpose of the Commissioning Procedures is to provide the Independent Engineer a basis for certifying (i) the Achieved Capacity of the Plant in the Engineer's Certificate required for declaration of the Commercial Operations Date, and (ii) to validate the initial Performance Model.

#### **Guidelines:**

The capacity test procedures shall at a minimum, include a listing of test instrumentation, calibration procedures, test duration, test data collection procedures, frequency and type of data collected, and reporting. The capacity test procedures shall establish the full power rating of the Plant and the Achieved Capacity expressed in MW at the Commercial Operations Date to deliver Net Electrical Output under the Standard Test Conditions.

The Commissioning Procedures shall detail all test activities including but not limited to:

- Verification of all manufacturers', packing and flash tests, data sheets and calibration certificates for all Performance Model Data Collection Systems.
- List and location of all primary and secondary Performance Model Data Collection Systems.
- Field testing procedures (i.e. test duration, frequency, actions in the event of a failed test, etc.)
- Output calculations, methodology, correction factors, equations and procedures
- Sample test calculations.
- Pre-test uncertainty analysis

Module or component test and verification in accordance with standards promulgated by the International Electrotechnical Commission shall not be performed if copies of test results for such module or component, certified by an internationally recognized testing laboratory, are available.

#### **Verification of manufacturer's documents:**

- Verification of the packing lists of the modules delivered to the Site
- Verification of the modules installed at the Site and their correspondence to the packing lists that were provided.
  - As-built layout of the Plant, including the number of modules installed.
  - Technical specifications or datasheets of the installed modules.
  - Onsite visit to confirm the actual status of the modules installed at the Site.
- Verify that the power indicated in flash list, supplied by the manufacturer, corresponds to the power tolerance specifications and that the sum of the flash test data equals or

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exceeds the specified DC capacity of the Plant (see the procedure in Part Two: Achieved Capacity Test of this Schedule).

## Part Two: Achieved Capacity Test

### Field testing:

Measure the energy generated by the Plant during a one hour period under current environmental conditions; calculate the capacity of the Plant at the Delivery Point (in MW) under current environmental conditions and then; correct for the difference between the current environmental conditions and the Standard Test Conditions.

The test procedure shall use the energy meter to measure the energy generated during a given period for the calculation. The SCADA shall have access to the energy meter readings at the Delivery Point.

A calibrated pyranometer of at least “Secondary Standard” class installed at the modules plane will be used for the irradiation measurements.

A Pt 100 sensor, with a minimum accuracy of  $\pm 1^{\circ}\text{C}$  (class B according to IEC 60751) will be used for measuring the temperature of the modules during the test.

### Location of measurements:

Performance Model Data Collection Systems shall be located on the Site at locations confirmed by the Independent Engineer to be suitable for the purposes of administering the provisions of Clause 1.2. Attachment 2 of Schedule 6. Neither the specification of the Performance Model Data Collection Systems nor the location thereof as so confirmed may be changed without the prior written agreement of the Parties.

### Achieved Capacity Test:

The performance test will have a minimum duration of one hour, and will consist of at least four measurement periods of equal duration. The energy generated by the Plant at the Delivery Point during each measurement period will be measured (in MWh) together with Performance Model Data for such measurement period.

During the whole testing period the irradiance measured in the tilted plane of the array shall be greater than  $800 \text{ W/m}^2$ . In the case this criteria is not met, the Achieved Capacity Tests shall be repeated again to meet these conditions.

In order to calculate the capacity of the Plant at the Delivery Point the following formula is applied:

$$P_{sc} = \left( \frac{\sum_{i=1}^n E_{measured}}{t} \right)$$

Where:

- $P_{sc}$  is the capacity of the Plant at the Delivery Point measured under current environmental conditions and expressed in MW.



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- $E_{measured}$  is the energy generated by the Plant at the Delivery Point during each measurement period and expressed in MWh.
- $n$  means the number of measurement periods in the performance test.
- $t$  means the total time of the performance test expressed in hours (i.e.  $n * \text{measurement period (min)} / 60$ )

The Achieved Capacity of the Plant will be given by extrapolating the capacity of the Plant at the Delivery Point under the Standard Test Conditions from the capacity of the Plant at the Delivery Point measured under current environmental conditions ( $P_{sc}$ ) as follows:

$$\text{Achieved Capacity} = P_{sc} \times \frac{G^*}{G_{solar}} \times \left[ 1 - \frac{\delta}{100} \times (T_c - T_c^*) \right]$$

Where:

**Achieved Capacity** means the capacity of the Plant at the Delivery Point expressed in MW at the Commercial Operations Date to deliver Net Electrical Output under the Standard Test Conditions .

$P_{sc}$  is the capacity of the Plant at the Delivery Point measured under current environmental conditions and expressed in MW.

$G_{solar}$  is the global irradiance incident on the photovoltaic module plane measured by the pyranometer during the capacity test (average value between all the readings).

$G^*$  is the irradiation under the Standard Test Conditions (1000 W/m<sup>2</sup>).

$T_c$  is the cell temperature measured by the PT100 sensor (in °C) during the performance test (average value between all the readings).

$T_c^*$  is the cell temperature under the Standard Test Conditions (25°C).

$\delta$  is the module temperature coefficient of power in %/°C.

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## **Schedule 5**

### **Technical Limits; Minimum Functional Requirements and Acceptance Tests**

Seller will comply with the terms of the Grid Code and the Connection Agreement. To the extent the Connection Agreement imposes additional obligations to those that would otherwise be imposed on Seller under the Grid Code, Seller will comply with such obligations. To the extent the Connection Agreement relieves Seller of obligations that would otherwise be imposed on Seller under the Grid Code or substitutes different obligations, Buyer and Seller expect that such variations are duly authorized or will be duly authorized by the Commission. The Connection Agreement reflects anticipated changes in the Grid Code, and obligations and rights reflected in the Connection Agreement shall not be considered a Change in Law if such obligations or the equivalent are in fact reflected in amendments to the Grid Code, and Seller will not be entitled to any change in the tariff or other terms of this Agreement as a result of any such changes in the Grid Code.

For the avoidance of doubt:

- a. The Grid Code as of the Execution Date is version 2.
- b. The Connection Agreement as of the Execution Date has been entered into by Seller and TCN, and Seller has provided a copy of the executed Connection Agreement to Buyer.

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## **Schedule 6 TARIFF SCHEDULE**



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## Schedule 7 Insurance Coverages

[Note: 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’ 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 or Availability Event Energy Volume 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’ 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 [•] US\$ per claim and [•] 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

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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 [•] US\$ per claim and [•] US\$ in the aggregate.
- (h) **Cargo Insurance:** Coverage shall be a minimum of [•] US\$ per claim and [•] US\$ in the aggregate.

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## **Schedule 8 Distribution Companies**

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

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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 Nigerian Environmental Standards and Regulation Enforcement Agency (NESREA) 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) **Permit for Storage of Chemicals and Petroleum Products:** Issued by NESREA State Environmental Protection Agency if required for operation of the Plant.
- (f) **Permit for Disposal of Petrochemicals Effluent:** Issued by NESREA if required for operation of the Plant.
- (g) **Permit for Waste Disposal:** Issued by NESREA.
- (h) **Business Permit (where Seller has foreign participation):** Issued by the Federal Ministry of Interior.
- (i) **NIPC Registration:** Obtained from the Nigerian Investment Promotion Commission (NIPC).
- (j) **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.



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## **Schedule 10** **Terms of Development Security and Performance Guarantees**

**[Note: To be Finalized.]**

The Development Security and the Performance Guarantees shall:

1. name Buyer as the beneficiary thereof;
2. have a term of not less than twelve (12) months;
3. in the case of the Development Security, have a maximum amount available for drawing equal to the Contract Capacity times the amount per MW set forth in Schedule 1 for Development Security, or in the case of the Performance Guarantee have a maximum amount available for drawing equal to US\$[•].
4. become drawable on first demand solely against delivery of a demand certificate to the issuer notifying the issuer that:
  - (a) in the case of the Development Security, Seller has failed to achieve the Closing Date by the Target Closing Date (or the Long Stop Closing Date where applicable), and that Buyer has terminated the Agreement;
  - (b) in the case of the Performance Guarantee, Seller is obligated to pay liquidated damages to Buyer pursuant to Clause 0 of the Agreement, and Seller has failed to pay such liquidated damages to Buyer within thirty (30) Days of the date on which such liquidated damages became due and payable; or
  - (c) that Seller has failed to deliver a replacement or extension of the Development Security or the Performance Guarantee (as the case may be) at least ten (10) Business Days prior to the expiration thereof;
5. include feasible and practical drawing procedures in the reasonable view of Buyer; *provided, however*, that it shall not contain any condition to drawing other than the confirmation by the issuer that any drawing certificate required to be delivered in connection with a drawing appears to comply on its face with the requirements of the Development Security or the Performance Guarantee (as the case may be);
6. be issued by an Acceptable Commercial Bank (or branch thereof);
7. provide that the beneficiary thereof may make multiple drawings upon it; and
8. in the case of a letter of credit, expressly state that it shall be subject to International Standby Practices 1998 and the laws of the location of the issuing bank; or

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9. in the case of a demand guarantee, expressly state that it shall be subject to the Uniform Rules for Demand Guarantees and the laws of the location of the issuing bank.

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## **Schedule 11 Delivery Point Diagram**

The following Delivery Point Diagram is required to be consistent with the definition of Delivery Point as defined in the PPA.

# Draft for Discussion

**Schedule 12**  
**[Reserved]**



Schedule 12

# Draft for Discussion

Schedule 13  
[Reserved]



# Draft for Discussion

## **Schedule 14 Maintenance Schedule**

**[Note: Subject to Technical Review]**

### **Clause 1 Maintenance**

#### **1.1. Maintenance Obligations**

1.1.1 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.

1.1.1.1. 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.

1.1.1.2. 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.

1.1.1.3. 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.

#### **1.2. Maintenance Inspections**

1.2.1 Buyer shall be entitled to perform a maintenance inspection of the Plant annually on a schedule to be agreed.

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1.2.2 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.

1.2.3 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 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.

1.2.4 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.

## **1.3. Maintenance Records**

1.3.1 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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## **Schedule 15 Emission Reduction Rights**

- 1.1. In its sole discretion, Seller may develop and market Emission Reduction Rights relating to the Plant. Seller shall be responsible for paying for all costs associated with the development, marketing, and sale of any Emission Reduction Rights associated with the Plant and shall deliver to Buyer, within thirty (30) days of the end of each Contract Year, a report detailing the Emission Reduction Profits earned or the Emission Reduction Losses suffered during such Contract Year (the “**ERP Report**”).
- 1.2. Half of the Emission Reduction Profits earned by Seller from the sale of Emission Reduction Rights shall be used to reduce the monthly amounts payable by Buyer to Seller pursuant to this Agreement. Seller shall be entitled to retain the remaining half of the Emission Reduction Profits earned by Seller from the sale of Emission Reduction Rights.