

VESTING CONTRACT

BETWEEN

NIGERIAN BULK ELECTRICITY TRADING PLC

Seller

AND

..... ELECTRICITY DISTRIBUTION PLC

Buyer

Entered into this XXX day of XXX, XXX

DRAFT FOR DISCUSSION ONLY

TABLE OF CONTENTS

CLAUSE 1 DEFINITIONS AND INTERPRETATION	3
CLAUSE 2 SALE AND PURCHASE OF ELECTRIC CAPACITY AND ELECTRIC ENERGY	14
CLAUSE 3 TERM.....	16
CLAUSE 4 CONDITIONS PRECEDENT; WAIVER	17
CLAUSE 5 COVENANTS, REPRESENTATIONS AND WARRANTIES.....	18
CLAUSE 6 ADDITIONAL COMMITMENTS OF THE PARTIES	24
CLAUSE 7 MAINTENANCE OF OPERATING RECORDS	25
CLAUSE 8 SCHEDULING NOTICES.....	26
CLAUSE 9 METERING	27
CLAUSE 10 DELIVERY	28
CLAUSE 11 BILLING AND PAYMENT	29
CLAUSE 12 PRICE.....	32
CLAUSE 13 INSURANCE	33
CLAUSE 14 TAXES	34
CLAUSE 15 LIABILITY AND INDEMNIFICATION.....	35
CLAUSE 16 DEFAULT & EARLY TERMINATION.....	38
CLAUSE 17 TRANSFER	41
CLAUSE 18 FORCE MAJEURE.....	42
CLAUSE 19 CHANGE IN TRADING REGIME.....	47
CLAUSE 20 CHOICE OF LAW AND DISPUTES RESOLUTION	48
CLAUSE 21 NOTICES	52
CLAUSE 22 MISCELLANEOUS PROVISIONS	53
SCHEDULE Error! Reference source not found. 1 DESCRIPTION OF BUYER'S FACILITY	
SCHEDULE Error! Reference source not found. 2 FUNCTIONAL SPECIFICATIONS & OPERATING PARAMETERS	
SCHEDULE Error! Reference source not found. 3 SETTLEMENT STATEMENT AND INVOICE	
SCHEDULE 4 ENERGY AND CAPACITY PAYMENTS	
SCHEDULE Error! Reference source not found. 5 BUYER DELIVERY POINTS	
SCHEDULE Error! Reference source not found. 6 INSURANCE COVERAGES	
SCHEDULE Error! Reference source not found. 7 LIST OF STAKEHOLDERS	
SCHEDULE Error! Reference source not found. 8 SCHEDULE OF DISCO SHARES	
SCHEDULE Error! Reference source not found. 9 LIST OF AUTHORISATIONS	

VESTING CONTRACT

This Vesting Contract (this “**Contract**”) is entered into this [XXX day of XXX XXX (“**Execution Date**”).

BETWEEN

NIGERIAN BULK ELECTRICITY TRADING PLC, a company duly incorporated under the laws of the Federal Republic of Nigeria and having its registered office at 8th Floor, Bank of Industry Towers, Off Herbert Macaulay Way, Central Business District, Abuja, FCT (“**Seller**” which expression shall where the context so admits include its successors-in-title and assigns) of the one part;

AND

..... **ELECTRICITY DISTRIBUTION PLC**, a company duly incorporated under the laws of the Federal Republic of Nigeria and having its registered office at (“**Buyer**” which expression shall where the context so admits include its successors-in-title and assigns) of the other part.

Seller and Buyer are hereinafter together referred to as “**Parties**” or individually as “**Party**”.

RECITALS

WHEREAS,

- A. Seller is a limited liability company established by the National Council on Privatisation (the “**Council**”) pursuant to the provisions of section 8 of the Electric Power Sector Reform Act No. 6 of 2005 (the “**Act**”) and under Applicable Law (hereinafter defined) to take over the functions of the Power Holding Company of Nigeria Plc relating to bulk purchase and resale of electricity.
- B. Buyer is a limited liability company registered pursuant to the Act and Laws of Nigeria to take over as a going concern the distribution of electricity and other related activities of Power Holding Company of Nigeria Plc in District distribution district, and to perform such functions of Power Holding Company of Nigeria Plc that are incidental to the distribution of electricity in accordance with the Act.
- C. Pursuant to Section 68(2) of the Act, Nigeria Electricity Regulatory Commission (“**the Commission**”) has issued to Seller a trading licence for the bulk purchase and wholesale resale of electricity in accordance with the Act; and to Buyer, a licence for the purchase of electricity and distribution to End Users (hereinafter defined) within in Nigeria.
- D. Seller has, pursuant to its licence, entered into Bulk Power Purchase Agreements (hereinafter defined) with Generation Companies for the purchase of electric capacity and electric energy for resale to Buyer pursuant to this Contract.

- E. Pursuant to Recital D, Seller desires to sell, and Buyer desires to purchase electric capacity and electric energy pursuant to the terms and subject to the conditions of this Contract.

In consideration of the premises set out above and the mutual covenants, assurances and undertakings hereinafter contained, the Parties hereby agree as follows:

DRAFT FOR DISCUSSION ONLY

CLAUSE 1

DEFINITIONS AND INTERPRETATION

1.1 Definitions

Unless the context indicates otherwise, capitalised words used in this Contract, including the recitals and schedules shall have the corresponding meaning set out below:

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

“**Act of Insolvency**” means in respect of a Party, the inability of such Party to pay its obligations as they come due, winding-up (excluding a solvent winding up for the purposes of a corporate restructuring), dissolution, administration or liquidation, the making by it of any arrangement or composition with its creditors (excluding a solvent winding up for the purposes of a corporate restructuring) or the taking of possession by an encumbrancer 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 substantial part of its property or assets or its ceasing or threatening to cease to carry on business or the commencement of any procedure analogous with any of the above procedures is completed and not dismissed within 60 days in respect of a Party.

“**Affiliate**” means in relation to either Party hereto (a) an entity that is a subsidiary of that Party hereto; (b) a person or entity of which that Party is a subsidiary, (c) an entity that is the subsidiary of another person or entity of which that Party is a subsidiary. For purposes of this definition, an entity is a “subsidiary” of a person or entity if the latter owns legally, beneficially, directly or indirectly, the shares of the former or otherwise holds alone or acting in concert with other entities the power to vote shares of the former that are sufficient to cast over fifty percent (50%) of the votes in a general meeting of shareholders, members, partners or other owners of the former, and a person shall be deemed to have the power to exercise control over another entity if it has the ability to direct the management of such entity.

“**Agreed Interest Rate**” means such interest rates as may be published from time to time by the bank appointed for financial settlement by the Market Operator under the Market Rules.

“**Ancillary Services**” means such services provided by the Generation Companies relating to electric power production and operation of the Grid other than the provision of electric energy and capacity, including without limitation reactive power, voltage control, frequency regulation and black start capability.

“**Applicable Law**” means all laws, treaties, ordinances, decrees, statutes, rules, guidelines and regulations of any state or local government, the FGN or other governmental body, instrumentality, agency or other authority in the Federal Republic of Nigeria having jurisdiction over the Parties, the performance of obligations herein reserved or the provision of Ancillary Services hereunder. Any reference to an Applicable Law shall include all statutory and administrative provisions consolidating, amending or replacing such Applicable Law and shall include all rules and regulations promulgated thereunder.

“**Authorisation**” means the authorisations set out in Schedule **Error! Reference source not found.** [or any approval, consent, exemption, licence, order or permit of or from any

Relevant Authority required for the due performance by either Party of any covenant or obligation hereunder.

“Available Capacity” has the meaning given thereto in the Bulk Power Purchase Agreements.

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

“Bulk Power Purchase Agreements” means the power purchase agreements in effect between Seller and the Generation Companies, as detailed in Schedule **Error! Reference source not found.**

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

“Buyer Default” means any one of the defaults set out in Clause 16.3.

“Buyer Delivery Points” means the points specified in Schedule 5 where Gross Energy Output is metered for the purposes of determining the Energy Payment.

“Buyer’s Forecast” means the forecast set out in Clause 8.1.

“Change in Law” means:

- (a) the adoption, promulgation, bringing into effect, repeal, amendment, reinterpretation, change in application, change in interpretation or modification after the date thereof of any Applicable Law, by any Relevant Authority;
- (b) the imposition of any material condition not required as of the date hereof in connection with the issuance, renewal or modification of any Authorisation, by any Relevant Authority; or
- (c) the change or modification of any Authorisation by the Relevant Authority or the imposition of other obligations imposing a cost on Seller;

which prejudices the financial interest of Buyer or affects Buyer’s ability to carry out its obligations under any Authorisation and which in case of any of the above establishes an increase in Seller’s purchase or operating costs, Buyer’s distribution system costs, a reduction in revenue either of at least Sixteen Million Naira Only (N16,000,000) in absolute quantity or 5 percent of the monthly revenues, or delay in schedule [of at least 10 days as a consequence of any requirement for the design, construction, financing, operation or maintenance of the distribution facility that is materially more restrictive than the most restrictive requirements (i) in effect as of the Execution Date, (ii) specified in any applications, or other documents filed in connection with such applications, for any Authorisation, or (iii) agreed to by Seller or Buyer.

“Change in Tax” means the adoption, promulgation, bringing into effect, repeal, amendment, reinterpretation, change or failure in application against the provisions of the relevant legislation, change in interpretation or modification after the Execution Date of any Applicable Law by any Relevant Authority, relating to any tax, duty, licence fee or other revenue-producing measure, including any application of any tax (including withholding taxes on distribution 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), duty, licence fee or other revenue-producing measure which is imposed on Seller and causes Seller to incur for itself any tax, withholding obligation, duty, licence fee or similar revenue producing fee in excess of those Seller would have incurred under any Applicable Law in effect as of the Execution Date.

“Conditions Precedent” means the conditions upon which the obligations of the Parties are premised as set out in Clause 4.

“Commission” means Nigerian Electricity Regulatory Commission.

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

“Contract Year” means each period of twelve (12) consecutive Months commencing on the Effective Date and on each anniversary thereof and ending at the end of the Day immediately prior to each immediately following anniversary of the Effective Date.

“Council” means the National Council on Privatisation.

“Day” means each period of 24 hours commencing at 00:00 hours, and **“daily”** shall be construed accordingly.

“Declaration Deadline” has the meaning given thereto under Clause 8.1

“Default” means a Seller Default under Clause 16.2 or Buyer Default under Clause 16.3.

“Disco Share Available Capacity” means the portion of the total Available Capacity of the Generation Companies to be allocated to the Buyer under this Contract, as determined in accordance with Schedule **Error! Reference source not found..**

“Disco Share Capacity Payment” means the amount payable for the Disco Share Dependable Capacity as calculated in accordance with Schedule **Error! Reference source not found..**

“Disco Share Dependable Capacity” means the portion of the total net Dependable Capacity (as defined under the Bulk Power Purchase Agreements) of the Generation Companies to be allocated to the Buyer under this Contract, as determined in accordance with Schedule **Error! Reference source not found..**

“Disco Share Start-Up Payments” means the portion of the total amount of Start-Up Payments (as defined under the Bulk Power Purchase Agreements) payable by Seller under the Bulk Power Purchase Agreements to be passed on to the Buyer under this Contract, as determined in accordance with Schedule **Error! Reference source not found.** [note that the percentage used may be higher than the percentage used for the Disco Share Dependable

Capacity in order to reflect the fact that the international agreements may not include Start-Up Payments].

“Disco Share Take-or-Pay Payment” means the portion of the total amount of the Take-or-Pay Payments (as defined under the Bulk Power Purchase Agreements) payable by Seller under the Bulk Power Purchase Agreements to be passed on to the Buyer under this Contract, as determined in accordance with Schedule **Error! Reference source not found.** [note that the percentage used may be higher than the percentage used for the Disco Share Dependable Capacity in order to reflect the fact that the international agreements may not include pass-through provisions for the take-or-pay in the Fuel Supply Agreements].

“Disco Share Tested Capacity” means the portion of the total Tested Capacity (as defined under the Bulk Power Purchase Agreements) of the Generation Companies to be allocated to the Buyer under this Contract, as determined in accordance with Schedule **Error! Reference source not found.**

“Dispatch Instructions” means instructions from the System Operator relating to the operation of the relevant Generation Companies plant in relation to commencement of interconnected operations or termination of interconnected operations, including instructions relating to the delivery of Gross Energy 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 Contract, or the operations carried out under this Contract, including any dispute concerning the existence, validity, interpretation, performance, breach, or termination of this Contract.

“Distribution Code” means the Distribution Code for the distribution sector of the Electricity Industry of Nigeria pursuant to an order of the Commission dated June 18, 2007.

“Effective Date” means the date subsequent to the Execution Date, which the Council by an order stipulates that this Contract shall become effective and inure for the benefit of the Parties.

“End User” means Buyer’s customer.

“Energy Payment” means the amount payable for the Gross Energy Output metered at the Buyer Delivery Points as adjusted for transmission losses, as calculated in accordance with Schedule **Error! Reference source not found.**

“Expert” means independent specialist appointed by the parties accordance with this Contract for resolution of disputes under Clause 20.6.

“Expert Determination” has the meaning given thereto under Clause 20.6.

“Expropriation” means an act of any governmental authority that confiscates, requisitions, nationalizes or otherwise expropriates the assets of Buyer or Seller for redistribution other than as contemplated by this Contract.

“Facilities” means the distribution facilities, transmission facilities and auxiliary equipment under the control of Buyer.

“FGN” means Federal Government of Nigeria.

“Force Majeure Event” has the meaning given to that term in Clause 18.1.

“Foreign Political Force Majeure Event” has the meaning given to that term in Clause 18.1.

“Fuel Supply Agreements” means the contractual agreements relating to the supply of gas or other fuels for the Generation Companies.

“Generation Companies” means the generation companies listed in Schedule **Error! Reference source not found.**, with which the Seller has entered into Bulk Power Purchase Agreements.

“Genco Bank Account” means the Generation Company’s bank account approved by the Market Operator and Seller.

“Genco Delivery Points” means the Delivery Points (as defined under each Bulk Power Purchase Agreement) under the Bulk Power Purchase Agreements.

“Good Industry Practice” means, at a particular time, those practices, methods and actions in accordance with good standards of skill, diligence, prudence, responsibility and foresight applicable to the international electricity trading, and distribution industry which would have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety and expedition; and which 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 Facilities and the machinery and equipment included in any Facilities including warranties;
- (b) the requirements of Applicable Law; and
- (c) conditions at the Buyer Delivery Points and Genco Delivery Points.

“Grid” means the network of high voltage transmission lines, transformers, switchgear and other transmission equipment which is owned and/or maintained by the Transmission Service Provider and controlled by the System Operator and used for the conveyance of energy from generating plants to distribution systems, and to which the Facilities are interconnected.

“Grid Code” means the Grid Code for the Electricity Industry of Nigeria pursuant to an order of the Commission dated June 18, 2007.

“Gross Energy Output” means the useful electric energy delivered by Seller to the Genco Delivery Points.

“Gross Negligence” means any act done or omitted to be done whether solely, jointly or concurrently, which substantially deviates from the course of action that a diligent person would take or is a reckless disregard or indifference to foreseeable harmful consequences.

“Indemnified Party” means the Party that receives the benefit of an indemnity pursuant to Clauses 10.6, 14.3, or 15.3, together with such Party’s directors, officers, and employees and such Party’s Affiliates, their directors, officers and employees.

“Indemnifying Party” means the Party that gives an indemnity pursuant to Clauses 10.6, 14.3, or 15.3.

“kV” means kilovolts, a unit of voltage.

“kW” means kilowatt, a unit of electrical capacity.

“kWh” means kilowatt-hour, a unit of electrical energy.

“Local Political Force Majeure Event” has the meaning given to the term in Clause 18.1.1 hereof.

“Main Meters” has the meaning given to that term in Clause 9.2.

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

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

“Market Participant” means any person who has entered into a market participation agreement with the Market Operator and is registered as such, upon satisfaction of the requirements set out in the Market Rules.

“Market Rules” means the Market Rules for the Nigerian Electric Power Sector as approved by the Commission from time to time.

“Metering Code” means the Metering Code governing metering of electric energy, reactive power, frequency, harmonic distortion and other aspects of the Nigerian electric sector [as approved by the Commission].

“Metering Point” means each location where output from each of the relevant Generation Companies plant is measured, which for delivery from the relevant Generation Companies shall be at the Genco Delivery Point and at the high voltage side of the relevant Generation Companies plant transformers, subject to Market Rules.

“Metering Procedures” means detailed procedures established by the System Operator from time to time for the day-to-day operations of the Metering Code.

“Metering System” means all forms of meters and metering devices, consisting of the Main Meters and Back Up Meters (as defined in the Bulk Power Purchase Agreements) and the associated current transformers and voltage transformers and associated ancillary equipment used for reading and measurement of Gross Energy Output, reactive power and reactive power demand. Meters shall be construed accordingly.

“Minimum Indemnification Amount” means the amount, equal to [one hundred thousand US Dollars US\$100,000) or its equivalent in Naira.

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

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

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

“Naira” or “N” means the currency of the Federal Republic of Nigeria.

“Natural Force Majeure Event” has the meaning given to the term in Clause 18.1.3 hereof.

“Nominated Quantity” means the specified quantity of Gross Energy Output which Seller proposes to deliver at the Genco Delivery Point at a particular time from the Available Capacity.

“Notice of Dispute” has the meaning given thereto in Clause 20.2.

“Notices” has the meaning given thereto in Clause 21.1.

“Operating Day” means a total of twenty four (24) Settlement Periods beginning at **00:00** hours daily or any such part of a day as the Parties may mutually agree.

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

“Performance Agreement” means the agreement entered between the Bureau of Public Enterprises, the Seller and the purchaser of shares in the Seller and dated _____, 2013.

“Preliminary Conference” has the meaning given thereto in Clause 20.6.4.

“Prolonged Force Majeure Event” has the meaning given thereto in Clause 18.6.

“Reasonable and Prudent Operator” means a Party using its Best Endeavours to act in accordance with applicable industry practices under similar circumstances.

“Related Agreement” means any other vesting contract or Bulk Power Purchase Agreements for the purposes of Clause 20.

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

“Relevant Event” has the meaning given thereto in Clause 15.6.1.

“Rules” has the meaning given thereto in Clause 20.3.1.

“Scheduled Maintenance Outage” means a period during which any of the Generation Companies takes any of its generating assets out of operation for the purpose of carrying out scheduled maintenance (including but not limited to the inspection, maintenance, repair, modification or replacement of any of the plant).

“Seller Default” means any one of the defaults set out in Clause 16.2.

“Seller Service Fee” means the fee payable to the Seller by the Buyer pursuant to Clause 11.1.

“Settlement Period” means a period of one (1) hour within an Operating Day, or as may be defined in the Market Rules.

“Settlement Statement” means a settlement statement issued by the Market Operator.

“Shareholders Agreement” means the agreement between the shareholders of the Seller, currently the Bureau of Public Enterprises, Ministry of Finance Incorporated, and the purchaser of shares in the Seller, providing for the operation and management of the Seller dated 21st February 2013.

“Share Sale Agreement” means the agreement between the Bureau of Public Enterprises, Ministry of Finance Incorporated, and the purchaser of shares in the Seller for the sale of shares in the Seller, dated _____.

“Stakeholder” or “Stakeholders” means any or all of the Persons falling into any one of the categories listed in the Schedule **Error! Reference source not found.** to this Contract.

“Stakeholder Advisory Panel” means the panel constituted by the Commission in accordance with Rule 42.1.1 of the Market Rules.

“Start-Up” means a start-up of the Generation Companies plant after any shut down of the Generation Companies plant.

“Start-Up Payment” has the meaning given thereto in the Bulk Power Purchase Agreements.

“Successor Generation Companies” means the generation companies listed in Schedule **Error! Reference source not found.** hereof.

“System Operator (SO)” means the unit of the Transmission Company of Nigeria or any other independent entity authorised under the Act to provide system operation services other than or in addition to the administration of the market. In the event there is more than one such entity, System Operator shall mean the company or entity operating the portion of the Grid to which the Generation Companies and the Buyer are interconnected at the time.

“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.

“Term” means the term of this Contract, including any extensions, as set forth in Clause 3.1.

“Termination Notice” has the meaning given thereto in Clause 16.4.1.

“Transaction Documents” means this Contract, the Shareholders Agreement, Share Sale Agreement, Performance Agreement, Grid Commotion Agreement, Use of Transmission Network System Agreement and any other related agreement for the privatization of the Buyer.

“Transfer” means a transfer or event requiring consent of the other Party in accordance with Clause 17.

“Transmission Service Provider” or “TSP” means the entity that holds an electricity transmission licence issued under the Act to provide transmission services over the Grid. In the event there is more than one such entity, Transmission Service Provider shall mean the company or entity operating the portion of the Grid to which the Generation Companies and the Buyer are interconnected at the time in question.

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

“Wilful Misconduct” means any act done or omitted to be done solely, jointly or concurrently, with a deliberate and intentional disregard of foreseeable harmful consequences.

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

“Year End” has the meaning given thereto in Clause 15.6.1.

1.2 Interpretation

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

- (a) schedules hereto shall form part of this Contract and in the event of any conflict between the main body of this Contract and a Schedule the main body of this Contract shall prevail over the provisions of the Schedule;
- (b) 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;
- (c) reference to “include” and “including” is deemed to be qualified by the additional term without limitation;
- (d) reference to any publication, statute, rule, regulation, instrument or standard means the same as amended, supplemented or re-enacted from time to time;
- (e) reference to any contract means the same as amended, supplemented or replaced from time to time;
- (f) 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;

- (g) reference to any amount of money means that amount in Naira except where indicated otherwise;
- (h) reference to Clauses and Schedules means reference to Clauses hereof, and Schedules to this Contract;
- (i) headings are inserted for ease of reference only and shall not form part of this Contract, affect its interpretation or construction or have any legal effect;
- (j) any remedy that provides for the payment of damages by a Party represents a genuine pre-estimate of the likely or possible loss or damage which might otherwise 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;
- (k) any best estimate made using Best Endeavours which is given by a Party when required in accordance with this Contract is non-binding and given for information only and the Party giving such best estimate shall have no liability to the other Party for any inaccuracy thereof;
- (l) reference to any notice or notification means a notice or notification made in writing or as otherwise expressly provided in this Contract;
- (m) all measurements and calculations shall be in metric system and calculations done to two (2) decimal places unless such calculation is made to a higher or lesser degree of precision 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;
- (n) in the event of any ambiguity or discrepancy in this Contract, the following shall apply:
 - a. in the case of any ambiguity or discrepancy between two Clauses of this Contract, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;
 - b. in the case of any ambiguity or discrepancy between the written description of any drawing and the specifications and standards, the latter shall prevail;

- c. in the case of any ambiguity or discrepancy between the dimension scaled from the drawing and its specific written dimension, the latter shall prevail; and
- d. in the case of any ambiguity or discrepancy between any value written in numerals and that in words, the latter shall prevail.

1.3 Agreement Review

- 1.3.1 This Agreement may, at the instance of NBET, be reviewed within 6 (six) months from the execution date hereof, upon the occurrence of any of the following events ("Review Events"):
 - a. **If it is determined by the National Council on Privatisation ("NCP") that any of the underlying fundamental assumptions for the Agreement, including assumptions regarding ownership structure, risk allocation and financial guarantees, have changed; or**
 - b. **If it is determined by the Commission that such a review is required and necessary pursuant to and in consonance with the Commission's principal object under Section 32(1)(a) of the Act which is "to create, promote and preserve efficient industry and market structures, and to ensure the optimal utilisation of resources for the provision of electricity services"; or**
 - c. If it is determined by the Board of Directors of NBET, acting in good faith, alone or in consultation with the NCP or the Commission, that it is in the national interest to so review the Agreement.
- 1.3.2 Upon the occurrence of any of the Review Events, NBET shall serve notice ("Review Event Notice") on the other Parties specifying in reasonable detail the facts and particulars of the Review Event and shall specify the process and procedure including timelines for such review.
- 1.3.3 Subject to all the further terms of this Agreement, the Parties shall, pursuant to the Review Event Notice and within the timeframe specified therein or any agreed extensions thereto, in good faith, negotiate and agree upon the proposed review terms.

CLAUSE 2

SALE AND PURCHASE OF ELECTRIC CAPACITY AND ELECTRIC ENERGY

2.1 Purchase and Sale of the Disco Share Dependable Capacity & Gross Energy Output

2.1.1 From the Effective Date, Seller shall make available to Buyer the Disco Share Dependable Capacity and associated Gross Energy Output, and Buyer shall accept and purchase from Seller the Disco Share Dependable Capacity and associated Gross Energy Output.

2.1.2 Seller shall have the right to suspend delivery of the Gross Energy Output (or any part thereof) to Buyer for Buyer Default.

2.2 Ancillary Services

2.2.1 Buyer acknowledges that the Generation Companies may supply Ancillary Services to the Transmission Service Provider as directed by the System Operator in accordance with the Market Rules, the Grid Code and pursuant to the Ancillary Services Agreements between the Generation Companies and the Transmission Service Provider.

2.2.2 Any reduction in the capacity available for producing Gross Energy Output under the Bulk Power Purchase Agreements arising from the Generation Companies' provision of Ancillary Services in accordance with Clause 2.2.1 above shall not lead to a proportional reductions of the Disco Share Capacity Payment.

2.3 Supply and Purchase Obligations, No Strategic Withholding

Seller shall not nominate less than the Disco Share Available Capacity or curtail or interrupt the availability of Gross Energy Output for economic or strategic reasons. Buyer shall not reject delivery of Gross Energy Output for economic or strategic reasons.

2.4 Transmission Services

Seller does not undertake, in this Contract, to provide any transmission services to Buyer. Buyer shall obtain transmission services required to transmit and deliver the Gross Energy Output from the Genco Delivery Points to the Buyer Delivery Points at its own risk and expense including losses.

2.5 Sales to Third Parties

The obligations of Buyer and Seller under this Contract shall not limit their freedom to enter into other similar agreements with third parties, provided that, entering into such third party agreements does not impair the ability of Buyer or Seller, as applicable, to perform its obligations under this Contract. For the avoidance of doubt, if Seller is capable of providing more than the Disco Share Available Capacity, Seller may, in its absolute discretion, offer such additional capacity and associated energy

output (or any part thereof) to Buyer or otherwise sell such excess to a third party subject to the Market Rules.

2.6 Reserved Rights

- 2.6.1 Notwithstanding anything to the contrary expressed or implied in this Contract, Seller shall retain and Buyer shall have no control over, without prejudice to its obligations under this Contract, the right to decide the manner in which Seller conducts its operations.
- 2.6.2 Notwithstanding anything to the contrary expressed or implied in this Contract, Buyer shall retain and Seller shall have no control over, without prejudice to its obligations under this Contract, the following rights:
- (a) the right to decide the manner in which it conducts its operations;
 - (b) the right to arrange for the transmission of energy from the Genco Delivery Points for delivery to End Users; and
 - (c) the right to use, sell, or otherwise dispose of the Gross Energy Output at the Genco Delivery Points.

2.7 Disco Share Dependable Capacity

- 2.7.1 Disco Share Dependable Capacity shall be calculated in accordance with Schedule **Error! Reference source not found.**, as amended in accordance with this Clause 2.7.
- 2.7.2 In accordance with Market Rules, Buyer shall declare the amount of Disco Share Dependable Capacity it wishes to purchase from Seller. Seller shall use Best Endeavours to secure generation capacity sufficient to provide the Disco Share Dependable Capacity requested by Buyer.
- 2.7.3 Whenever the total amount of Contract Capacity (as defined in the Bulk Power Purchase Agreements) provided for under the Bulk Power Purchase Agreements changes, Seller shall amend Schedule **Error! Reference source not found.** to reflect any changes to Disco Share Dependable Capacity, provided, however, that Buyer shall not be allocated more Disco Share Dependable Capacity than the highest amount ever requested.

CLAUSE 3

TERM

- 3.1 This Contract shall commence on the Effective Date and continue in force and effect, valid and binding for 20 years [an open-ended term tied to the longest term in the Bulk Power Purchase Agreements] from the Effective Date (the “**Term**”).
- 3.2 This Contract may be renewed upon the expiration of the Term for such further period and upon such terms as may be mutually agreed upon by the Parties.

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CLAUSE 4

CONDITIONS PRECEDENT; WAIVER

4.1 Conditions Precedent

- 4.1.1 This Contract is conditional on the Council having, by an order, stipulated the Effective Date for this Contract whereupon this Contract shall become effective and inure for the benefit of the Parties from the Effective Date;
- 4.1.2 The following Conditions Precedent must be satisfied by the Party primarily responsible or waived in writing by the other Party on or before the Effective Date:
- (a) the Parties have registered as Market Participants and obtained all material Authorisations for the discharge of their respective obligations under this Contract;
 - (b) Seller has entered into the Bulk Power Purchase Agreements, such agreement to be in full force and effect; and
 - (c) Buyer has put in place security cover to the reasonable satisfaction of Seller, as provided in Clause 11 below.

4.2 Satisfaction of Conditions Precedent

- 4.2.1 Both Parties shall use Best Endeavours to obtain the satisfaction of the Condition Precedent in Clause 4.1.1.
- 4.2.2 Each of the Parties shall use Best Endeavours to satisfy or obtain the satisfaction of each Condition Precedent in Clause 4.1.2 for which such Party is primarily responsible.
- 4.2.3 Each Party, upon request of the other Party and at such other Party's expense, shall use Best Endeavours to assist the other Party in satisfying each Condition Precedent under Clause 4.1.2 for which such other Party is primarily responsible.
- 4.2.4 Each Party shall keep the other informed on a timely basis as to progress in relation to the satisfaction of the Conditions Precedent.

4.3 Failure to Satisfy Conditions Precedent

- 4.3.1 If the Condition Precedent in Clause 4.1.1 is not satisfied, then this Contract shall not come into effect.
- 4.3.2 If any Condition Precedent in Clause 4.1.2 is not satisfied or waived on the Effective Date, then this Contract shall be terminated and the Parties shall be discharged from any further obligations or liabilities under this Contract, except for any rights, obligations or liabilities which have accrued from the Execution Date to the Effective Date.

CLAUSE 5

COVENANTS, REPRESENTATIONS AND WARRANTIES

5.1 Seller's Representations and Warranties

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

- 5.1.1 it is a limited liability company duly organised and incorporated under the laws of Federal Republic of Nigeria and has all requisite corporate power and authority to carry on its business as proposed to be conducted;
- 5.1.2 it has full power and authority to execute and deliver this Contract and perform its obligations hereunder;
- 5.1.3 the execution, delivery and performance of this Contract by Seller:
 - (a) has been duly authorised by all requisite action on the part of Seller; and
 - (b) will not violate Applicable Law;
- 5.1.4 this Contract has been duly executed and delivered by Seller;
- 5.1.5 this Contract constitutes a legal, valid and binding obligation of Seller, enforceable against it in accordance with its terms subject to general principles of equity;
- 5.1.6 no filing or registration with, no notice to and no permit, authorisation, consent or approval of any Person is required for the execution, delivery or performance of this Contract by Seller except for such permits, authorisations, consents or approvals as have been obtained;
- 5.1.7 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 Contract; and
- 5.1.8 there is no action, suit, proceeding or investigation pending, or to Seller's knowledge, threatened, 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 Contract.

5.2 Seller's Covenants

Seller further hereby covenants and agrees with Buyer to:

- 5.2.1 comply with the Market Rules and operating procedures of the Market Operator and System Operator, as applicable to sellers of electric energy;
- 5.2.2 work with and use Best Endeavours to cooperate with Buyer with respect to all of Buyer's obligations and rights hereunder; and

5.2.3 accept and comply with the Market Rules including without limitation the following:

- (a) accepting the settlement data and quantities in the Market Operator's Settlement Statement as contract quantities in accordance with the Market Rules; and
- (b) adopting the procedures stipulated in the Market Rules for the review of the settlement data and documents [and for the resolution of any dispute related thereto].

5.3 **Buyer's Representations and Warranties**

Buyer represents and warrants to Seller that as at the Effective Date:

- 5.3.1 Buyer is a limited liability company, duly organised and validly existing under the laws of the Federal Republic of Nigeria, 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;
- 5.3.2 Buyer has full corporate power and authority to execute and deliver this Contract and to perform its obligations hereunder;
- 5.3.3 the execution, delivery and performance of this Contract by Buyer:
 - (a) has been duly authorised by all requisite corporate action on the part of Buyer, and no other proceedings on the part of Buyer or any other Person are necessary for such authorisation;
 - (b) will not violate (i) Applicable Law or any applicable order of any Relevant Authority or (ii) 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 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 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, or on its ability to perform its obligations hereunder;
- 5.3.4 this Contract and other Transaction Documents have been duly executed and delivered by Buyer;
- 5.3.5 this Contract constitutes a legal, valid and binding obligation of Buyer, enforceable against it in accordance with its terms, subject to (i) bankruptcy, insolvency, reorganisation, moratorium, or other similar laws now or hereafter in effect relating to creditors' rights and (ii) to general principles of equity;

- 5.3.6 to the best of its knowledge, after reasonable inquiry, no filing or registration with, no notice to and no permit, authorisation, consent or approval of any Person is required for the execution, delivery or performance of this Contract by Buyer, except for the Authorisations;
- 5.3.7 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 Contract;
- 5.3.8 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 Contract;
- 5.3.9 Buyer is not in violation of any Laws of Nigeria or judgment entered by any Relevant Authority, which violations, individually or in the aggregate, would affect its performance of any obligations under this Contract. 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 Contract;
- 5.3.10 Buyer has:
- (a) carefully examined this Contract and the Transaction Documents, together with all Schedules attached hereto, thoroughly and become familiar with all their respective terms and provisions;
 - (b) investigated to its satisfaction Applicable Law and it can perform its obligations hereunder in accordance therewith;
 - (c) the experience, resources, 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 sites of the Generation Companies; and
- 5.3.11 Buyer has in place requisite financing incidental to performing of its obligations hereunder.

5.4 Buyer's Covenants

Buyer hereby covenants and agrees with Seller to:

- 5.4.1 enter into a legally binding and enforceable contract for the operation and maintenance of its Facilities, except where it has demonstrated that it has the capability to perform operation and maintenance internally;
- 5.4.2 operate and maintain the Facilities in such manner as to extend the useful life of the Facilities according to Good Industry Practice;
- 5.4.3 operate and maintain the Facilities in all material respects, in accordance with:
- (a) the Market Rules and the Grid Code;
 - (b) operating procedures based on Market Operator and System Operator standards, mechanisms and procedures;
 - (c) the specifications of the Facilities as set out in Schedule **Error! Reference source not found.;**
 - (d) all applicable Laws of Nigeria; and
 - (e) Good Industry Practice;
- 5.4.4 to procure and maintain the Authorisations necessary for its performance under this Contract;
- 5.4.5 engage only such advisors, representatives, and experts as are experienced in the financing, operation and maintenance of distribution systems similar to the Facilities;
- 5.4.6 provide at its own risk and expense the necessary facilities and services for the safety, comfort and protection of its personnel in accordance with Good Industry Practice;
- 5.4.7 work with and use Best Endeavours to cooperate with Seller with respect to all of Seller's obligations and rights hereunder;
- 5.4.8 enter into any other agreement necessary to perform its obligations under this Contract, such agreements to remain valid and subsisting for the life of this Contract, provided that in the event that any such agreement is terminated, it shall obtain an adequate substitute agreement or make other arrangements adequate to permit it to perform its obligations under this Contract and to honour and perform its obligations under all such agreements;
- 5.4.9 accept and comply with the Market Rules and the Grid Code, and future amendments to these rules and codes including without limitation the following:
- (a) accepting the settlement data and quantities in the Settlement Statement as contract quantities in accordance with the Market Rules; and

- (b) adopting the procedures stipulated in the Market Rules for the review of the settlement data and documents [and for the resolution of any dispute related thereto]; and

5.4.10 maintain such level of financial security as is reasonably acceptable to Seller in accordance with the terms of this Contract.

5.5 Conduct of the Parties

5.5.1 Each Party represents that it and its 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 use its Best Endeavours to procure that its shareholders, officers, directors, employees and Affiliates will not) make, offer or authorize, with respect to the matters which are the subject of this Contract, 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) the Applicable Law; (b) or other Applicable Laws; (c) the principles described in the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, signed in Paris on 17 December 1997, which entered into force on 15 February 1999, and the Convention Commentaries; (d) the [UK Bribery Act 2010] and/or [US Foreign Corrupt Practices Act] as may be applicable to the Parties.

5.5.2 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 such violation. Each Party shall promptly (a) respond in reasonable detail to any notice from any other Party reasonably connected with the above state warranty; and (b) furnish applicable documentary support for such response upon request from and at the expense of such other Party.

5.5.3 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 Contract) 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.

5.6 Effect and Duration of Representations and Warranties

Each representation and warranty shall be true and accurate in all material respects when made.

5.7 **Disclaimer of Other Representations and Warranties**

To the full extent permitted by Applicable Law, except as expressly stated in this Contract, 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.

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CLAUSE 6

ADDITIONAL COMMITMENTS OF THE PARTIES

- 6.1 The Parties agree that they shall each be bound by the Market Rules, the Grid Code, and the Distribution Code where applicable.
- 6.2 The provisions of the Market Rules and the Market Procedures thereunder will supersede the provisions of this Contract in the event of a conflict; unless the Parties have elected to adopt the provisions of this Contract in lieu of the equivalent provisions of the Market Rules and Market Procedures if and to the extent that such election is allowed by the Market Rules and Market Procedures.
- 6.3 The provisions of the Grid Code shall, to the extent possible, apply to the Parties. The provisions of the Grid Code shall supersede the provisions of this Contract in the event of a conflict; unless the Parties have elected to adopt the provisions of this Contract in lieu of the equivalent provisions of the Grid Code if and to the extent that such election is allowed by the Grid Code.
- 6.4 Each Party undertakes that it shall promptly report any non-compliance by the Market Operator with the Market Rules or Grid Code that it may become aware of to the Stakeholder Advisory Panel.

CLAUSE 7

MAINTENANCE OF OPERATING RECORDS

7.1 Maintenance of Operating Records

- 7.1.1 Each Party shall keep complete and accurate records and all other data required by each of them pursuant to this Contract, the Grid Code, the Market Rules, and Good Industry Practice for the purposes of proper administration of this Contract.
- 7.1.2 Records required by this Clause 7.1 shall be available for inspection by a party upon reasonable advance request by the other party.
- 7.1.3 All records required under this Clause 7.1 shall be maintained for a minimum of twenty four (24) Months after the creation of such record or data, or such longer period as may be required by the Market Rules, Market Procedures or applicable Laws of Nigeria; provided, however, that the Parties shall not dispose of or destroy any such records after such twenty four (24) Month period without fifteen (15) Days prior Notice to the other Party. 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 Contract.

CLAUSE 8

SCHEDULING NOTICES

8.1 Buyer's Forecast

From the Effective Date, Buyer shall notify Seller and System Operator (or revise any such information previously given) of the forecast demand for each Settlement Period ("**Buyer's Forecast**") of the following Day no later than [16] hours prior to the beginning of each Operating Day ("**Declaration Deadline**"). The Buyer's Forecast shall not exceed the Disco Share Tested Capacity.

8.2 Seller's Nominations

Seller shall issue to Buyer not later than [5] hours before the start of each Operating Day the Nominated Quantity projecting non-binding requirements for Gross Energy Output that will be delivered to Buyer for each Settlement Period of the next Operating Day.

8.3 Buyer's Obligation

Upon receipt of the Nominated Quantity, Buyer shall use its Best Endeavours to adjust its operation to accept such Nominated Quantity. If Buyer is unable to do so, Buyer shall immediately inform Seller, the System Operator and the Market Operator, and any adjustment to balance the Grid will be directed by the System Operator, save that Buyer shall remain liable for the Disco Share Capacity Payments, Energy Payments and Disco Share Start-Up Payments. PROVIDED THAT, where the Seller sells the Nominated Quantity to a third party, the Buyer shall only be liable for the shortfall (if any) between the amount paid by the third party and the amount the Buyer would have paid had it received the Nominated Quantity.

CLAUSE 9

METERING

9.1 Metering Procedure

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

9.2 Assurances Regarding Meter Tampering

The Parties undertake not to tamper with or otherwise interfere with any part of the meters used by the Market Operator or Main Meters (as defined in the Bulk Power Purchase Agreements) in any way.

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CLAUSE 10

DELIVERY

10.1 Disco Share Dependable Capacity Delivery Points

Delivery of the Disco Share Dependable Capacity and Gross Electric Output shall be at the Genco Delivery Points as set out on Schedule **Error! Reference source not found..**

10.2 Title

Title to, custody of, and liability for injury or damage caused by Gross Electric Output under this Contract shall pass from Seller to Buyer at the Genco Delivery Points as set out on Schedule **Error! Reference source not found..**

10.3 Risk

The risk of loss of electrical energy delivered in accordance with this Contract shall pass from Seller to Buyer at the Genco Delivery Points.

10.4 Buyer and Seller Indemnities

Each Party shall indemnify, defend and hold the other Party harmless from and against all losses or damages arising from claims, demands, or causes of action by any Person relating to electrical energy for which it holds title.

10.5 Transmission Loss Factor

Buyer shall pay for Disco Share Capacity Payments and Energy Payments without regard to any transmission loss factor. If Seller or the Generation Companies is required to bear any portion of the transmission loss factor by the Market Rules or Market Procedures, the price paid for the Disco Share Capacity Payments and Energy Payments shall be adjusted upward to ensure that Seller receives the same payment that Seller would have received if no transmission loss factor had been applied.

CLAUSE 11

BILLING AND PAYMENT

11.1 Seller Invoice

Every invoice by Seller to Buyer shall specify:

- 11.1.1 the Gross Energy Output delivered to Buyer for the previous Month;
- 11.1.2 the Disco Share Dependable Capacity made available to Buyer in each Settlement Period for the previous Month;
- 11.1.3 the number of and reason for each Start-Up by the Generation Companies during the previous Month;
- 11.1.4 a detailed computation of the Energy Payment, Disco Share Capacity Payment, Disco Share Start-Up Payment and Disco Share Take-or-Pay Payment for the previous Month, in each case calculated in accordance with Schedule **Error! Reference source not found.**, the prorated quantities in the Settlement Statement of the Market Operator and the Market Rules.
- 11.1.5 the Seller management fee for the previous Month.
- 11.1.6 the deposit information for the bank accounts of the Generation Companies and Seller.

11.2 Billing and Payment

- 11.2.1 For each Month after the Effective Date, Seller shall invoice Buyer in accordance with Clause 11.1 for such Month (or portion thereof in the case of the Month in which the Effective Date occurs) upon receipt of the final Settlement Statement from the Market Operator as provided in the Market Rules.
- 11.2.2 The payments shown in such invoice as due to Seller shall be paid by Buyer on or before the [tenth [10th] Business Day] following the Day the invoice is delivered to Buyer whether or not Buyer disputes the invoiced amount as follows:
 - (a) Energy Payment, Disco Share Capacity Payment, Disco Share Start-Up Payment and Disco Share Take-or-Pay Payment shall be made to the account of the Generation Companies, and notice/evidence of payment to each Generation Company shall be delivered to Seller not later than one Day after payment; and
 - (b) Seller Service Fee payment shall be made to Seller bank account.
- 11.2.3 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 Best Endeavours to review invoices promptly and notify Seller of an error it believes to exist in such invoice within five [5] Business Days of becoming aware of such error. Buyer shall not be entitled to withhold payment of any portion of the invoice believed to be included in the invoice in error.

- 11.2.4 Where Buyer disputes an invoice or any portion thereof, it shall declare a Dispute and refer the same for determination in accordance with Clause 20 of this Contract. If any invoice or any portion thereof is disputed by Buyer, payment of the invoice shall not be withheld but shall be made to Seller until any Dispute in relation thereto is determined in accordance with Dispute resolution provisions in Clause 20 of this Contract. Buyer shall not be entitled to withhold payment of any disputed portion of the invoice prior to or upon the commencement of Dispute resolution under Clause 20.
- 11.2.5 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.
- 11.2.6 Buyer shall pay interest at the Agreed Interest Rate on any unpaid amounts due and payable under this Clause 11.2 from the date payment was due, up to and including the date on which payment is made.
- 11.2.7 Where Buyer disputes an invoice or any portion thereof, and the Dispute referred in relation thereto is resolved in favour of Buyer, Seller shall refund the amounts paid on the Disputed Invoice or shall set off such refund against amounts due from Buyer in subsequent invoices to the Buyer.

11.3 Independent Obligations

The Parties hereby agree that Buyer's payment obligations under this Clause 11 are distinct from and independent of Buyer's right to receive payment for the resale of electrical energy or capacity, and the failure of Buyer to receive revenue for the resale of electrical energy shall not in any way impair or affect Buyer's obligations under this Clause 11.

11.4 Security Cover

- 11.4.1 Buyer shall at all times provide and maintain security for payment of its obligations as required by:
- (a) the Market Rules and Market Procedures; and
 - (b) this Contract.
- 11.4.2 The obligations of Seller to provide Disco Share Dependable Capacity and supply Gross Energy Output to Buyer under this Contract shall be

conditional upon Buyer first providing and thereafter maintaining the security in Clause 11.4.1.

- 11.4.3 The security required from Buyer in Clause 11.4.1(a) shall include such sums as the Market Operator may impose under the Market Rules.
- 11.4.4 The aggregate security required in Clause 11.4.1(b) shall include at least one of advance payment, the deposit of collateral monies, or the provision of a bank guarantee or irrevocable letter of credit in either case from a bank, which is, in Seller's reasonable opinion, suitably creditworthy. The choice of the method of providing security listed above shall be at Buyer's discretion, provided, however, that the security cover shall at no time be less than the value of three (3) months payments under the terms of this Contract at any given period.
- 11.4.5 Buyer acknowledges that Seller shall be entitled to draw on the security in Clause 11.4.1(b) if Buyer fails to pay on the due date any sum owing to Seller under this Contract and, where Seller makes any such drawdown, Buyer shall forthwith replenish or top up such security forthwith to restore the amount of security required by this Contract within 10 Business Days of such drawdown.

CLAUSE 12

PRICE

12.1 Disco Share Capacity Payments

12.1.1 From and after the Effective Date, Buyer shall pay to Seller Monthly in arrears the Disco Share Capacity Payment calculated in accordance with Schedule **Error! Reference source not found.**; provided that, where the Effective Date is a date other than the first (1st) day of the Month, then for that Month the Disco Share Capacity Payment shall be prorated for the number of Days from the Effective Date until the last day of that Month.

12.1.2 When the Market Operator obtains the capability of accounting and invoicing for Gross Energy Output delivered by Seller on an hourly basis, the Parties will revise Schedule **Error! Reference source not found.** to provide for calculation of Disco Share Capacity Payments on an hourly basis to reflect Disco Share Dependable Capacity during peak demand periods, or that different prices may apply for different hours and or periods of the Day. Seller shall not be required to agree to a change in Disco Share Capacity Payments that may adversely affect its cash flow or ability to meet its obligations to Successor Generation Companies under the Bulk Power Purchase Agreements.

12.2 Energy Payments

Buyer shall pay Seller Monthly in arrears the Energy Payment as calculated in accordance with Schedule **Error! Reference source not found.** The Parties understand and acknowledge that System Operator shall dispatch the Generation Companies' plant as it deems fit to ensure the proper running of the system and agree that Buyer's liability for Energy Payments may be reduced by such Dispatch Instructions.

12.3 Start-Up Charges

Buyer shall pay Seller in arrears the Disco Share Start-Up Payment as calculated in accordance with Schedule **Error! Reference source not found.** for start-up payments made by Seller to the Generation Companies in any month under the Bulk Power Purchase Agreements.

12.4 Take-or-Pay Payments

Buyer shall reimburse Seller for any payments that Seller has made in accordance with any take-or-pay provisions in the Bulk Power Purchase Agreements arising from Fuel Supply Agreements between the Generation Companies and fuel suppliers. In the event that Seller receives any credit or benefit from any take-or-pay provisions in the Bulk Power Purchase Agreements arising from the Fuel Supply Agreement, Seller shall pass that credit or benefit to Buyer.

12.5 **Payments Gross Up**

If a Change in Law or Change in Tax adversely affects the amounts payable to the Seller under this Clause 12, the sums to be paid by Buyer shall be adjusted so that Seller shall be in no less favourable a position than Seller was in prior to such change.

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CLAUSE 13

INSURANCE

13.1 Required Insurance Coverage

Buyer shall, at its own cost and expense, obtain and maintain insurance coverage of the nature and in the minimum amounts set forth in Schedule **Error! Reference source not found.** of this Contract; provided however, that such minimum amounts may be changed from time to time with the written consent of Seller, which consent may not be unreasonably withheld. Buyer shall not be in breach of its obligations hereunder if and to the extent that any particular risk 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, Buyer.

13.2 Additional Insurance

In addition to the coverages set forth in Schedule **Error! Reference source not found.**, 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. Each Party shall be free to obtain any additional insurance coverages beyond the foregoing at its own expense.

13.3 Use of Insurance Proceeds

Buyer shall apply the proceeds of any insurance claim in respect of the physical loss or damage to the Facilities as a result of any event which may be made against the insurers pursuant to the insurance maintained pursuant to this Clause 13 towards reinstatement and remedy of such loss or damage as soon as reasonable possible.

13.4 Certificates of Insurance

Buyer shall cause its insurers or agents to provide Seller with certificates of insurance evidencing the policies and endorsements required under this Clause 13.

CLAUSE 14

TAXES

14.1 Several Liability for Taxes

Each Party shall be responsible for and shall pay or cause to be paid all Taxes arising in respect of their respective facilities, taxes based on income, profits and capital gains or any taxes arising from the generation, transmission, sale and delivery of energy as contemplated in this Contract, whether present or future. Liability for any value added tax shall be as specified by law.

14.2 Proof of Payment

The Parties shall upon request, provide each other necessary proof to establish due satisfaction of any tax obligation.

14.3 Tax Indemnity

Each Party agrees to indemnify in full and hold the other Party harmless against any claim, loss or damage that may arise as a result of failure of the Indemnifying Party to discharge its tax obligations.

CLAUSE 15

LIABILITY AND INDEMNIFICATION

15.1 Limitation of Liability

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

15.1.2 Notwithstanding Clause 15.1.1 or Clause **Error! Reference source not found.**, each Party shall be liable to the other Party for any loss or damage arising by virtue of Gross Negligence or Wilful Misconduct.

15.2 Mitigation of Damages

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

15.3 Mutual Indemnifications

15.3.1 Subject to Clause 15.6, Buyer shall indemnify Seller against, and hold Seller harmless from, at all times after the Execution Date, 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 Contract to the fullest extent. Notwithstanding anything to the contrary contained in the preceding sentence, nothing in this Clause 15.3.1 shall apply to any loss to the extent that Buyer receives indemnification for the same loss or such loss is covered by insurance maintained by or on behalf of Buyer.

15.3.2 Subject to 15.6, Seller shall indemnify Buyer against, and hold Buyer harmless from, at all times after the Execution Date, 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 in connection with this Contract. Notwithstanding anything to the contrary contained in the preceding sentence, nothing in this Clause 15.3.2 shall apply to any loss to the extent that Buyer receives indemnification for the same loss or such loss is covered by insurance maintained by or on behalf of Buyer.

15.4 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 15.3. Such Notice shall be given as soon as reasonably practicable after the relevant Party becomes aware of the loss, claim, action, demand or proceeding. Failure to give such Notice in a timely fashion shall not affect the indemnified Party's rights to indemnification hereunder except to the extent that the indemnifying Party is materially prejudiced thereby.

15.5 Defence of Claims

- 15.5.1 The indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding at its expense with counsel of its selection reasonably satisfactory to the indemnified Party, provided it gives prompt Notice of its intention to do so to the indemnified Party and reimburses the indemnified Party for the reasonable costs and expenses incurred by the indemnified Party prior to the assumption by the indemnifying Party of such defence.
- 15.5.2 Unless and until the indemnifying Party acknowledges in writing its obligation to indemnify the indemnified Party and assumes control of the defence of a claim, suit, action or proceeding in accordance with Clause 15.6.1, the indemnified Party shall have the right, but not the obligation, to contest, defend and litigate, with counsel 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.
- 15.5.3 Upon assumption by the indemnifying Party of the control of the defence of a claim, suit, action or proceeding, the indemnifying Party shall reimburse the indemnified Party for the reasonable costs and expenses of the indemnified Party in the defence of the claim, suit, action or proceeding prior to the indemnifying Party's acknowledgement of the indemnification and assumption of the defence.
- 15.5.4 Following the acknowledgement of the indemnification and the assumption of the defence by the indemnifying Party, the indemnified Party shall have the right to employ its own counsel and such counsel may participate in such claim, suit, action or proceeding, but the fees and expenses of such counsel shall be at the expense of such indemnified Party, when and as incurred, unless (i) the employment of counsel by such indemnified Party has been authorised in writing by the indemnifying Party, (ii) the indemnified Party shall have reasonably concluded that there may be a conflict of interest between the indemnifying Party and the indemnified Party in the conduct of the defence of such action, (iii) the indemnifying Party shall not in fact have employed independent counsel reasonably satisfactory to the indemnified Party to assume the defence of such action and shall have been so notified by the indemnified Party, or

(iv) the indemnified Party shall have reasonably concluded and specifically notified the indemnifying Party either that there may be specific defences available to it that are different from or additional to those available to the indemnifying Party or that such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Contract. If Clauses (ii), (iii) or (iv) of the preceding sentence shall be applicable, then counsel for the indemnified Party shall have the right to direct the defence of such claim, action, suit or proceeding on behalf of the indemnified Party and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder, subject to the indemnification obligations of the indemnifying Party hereunder.

15.6 Limitation on Indemnification

15.6.1 Each Party shall be solely liable, and shall not be entitled to assert any claim for indemnification under this Contract for any loss that would otherwise be the subject of indemnification under this Contract until all losses of such Party arising during the current Contract Year exceed the Minimum Indemnification Amount. For purposes of this Clause 15, a loss (or claim for indemnification) shall be deemed to arise in the Year during which the event giving rise to the loss (or claim for indemnification) occurred or, in the case where the event is continuing in more than one Year, in the Contract Year during which the event ends, provided that a Party shall not be obliged to refrain from making a claim under this Clause 15.3 (where it is otherwise entitled to do so) at the end of a given year (“**Year End**”) by reason of the fact that the event in question (“**Relevant Event**”) is still continuing, and provided further that in the event that such Party does make such a claim at the Year End it shall continue to be able to claim in relation to all remaining losses arising from the Relevant Event regardless of when they occur.

15.6.2 Neither Party shall be entitled to the indemnity under Clause 15.3 if and to the extent that a Party has received payment in respect of a loss or proceeding under the indemnities contained in other contracts or agreements that the parties signed or entered into in respect of the relevant act or omission.

15.7 Fines and Penalties

Any fines or other penalties incurred by either Party for non-compliance with Laws of Nigeria or Authorisations shall not be reimbursed by the other Party but shall be the sole responsibility of the Party that incurred the fine or penalty, except where such non-compliance is caused by the negligence or intentional act or omission of, or breach of this Contract, by the other Party.

15.8 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 16

DEFAULT & EARLY TERMINATION

16.1 Early Termination

16.1.1 Either Party shall have the right to terminate this Contract prior to the expiration of its Term upon the occurrence of any of the following events:

- (a) the mutual agreement of the Parties;
- (b) service of notice by Buyer following a Seller Default;
- (c) service of notice by Seller following a Buyer Default;
- (d) service of notice by either Party following a Prolonged Force Majeure Event in Clause 18.6; or
- (e) Expropriation.

16.1.2 The termination of this Contract prior to the expiry of the Term (as provided in this Clause 16 above but without prejudice to any rights, obligations and remedies arising out of or in connection with this Contract, which have vested, matured, or accrued to either Party before the date of such termination.

16.2 Seller's Default

For the purposes of this Contract, a Default by Seller shall be:

- 16.2.1 a breach of this Contract by Seller that materially and adversely affects the performance of any of its obligations under this Contract;
- 16.2.2 a breach by Seller of the provisions of Clause 17 (Transfer) occurs;
- 16.2.3 any statement, representation or warranty made by Seller herein or in any certificate or other contract delivered or made under or pursuant to this Contract 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 Seller to perform its obligations under this Contract; or
- 16.2.4 revocation, cancellation, or withdrawal, of any Authorisation (other than for Buyer Default) that materially adversely affects the ability of Seller to perform its obligations under this Contract.

16.3 Buyer's Default

For the purposes of this Contract, a Default by Buyer shall be:

- 16.3.1 a breach of this Contract by Buyer that materially adversely affects the performance of any of its obligations under this Contract or breach of any

agreement approved by the Commission, entered into by the Buyer that materially and adversely affects the performance of any of its obligations under this Contract;

- 16.3.2 any Acts of Insolvency of Buyer;
- 16.3.3 any failure to pay any sum of money due and owing within fifteen (15) Business Days or more from the date when such sum was first due and demanded;
- 16.3.4 a breach by Buyer of the provisions of Clause 17 (Transfer) occurs;
- 16.3.5 any statement, representation or warranty made by Buyer herein 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 Buyer to perform its obligations under this Contract;
- 16.3.6 failure to provide, maintain and or replace the security as required under Clause 11.2 of this Contract; or
- 16.3.7 revocation, cancellation, or withdrawal of any Authorisation (other than for Seller Default) which materially adversely affects the ability of either Party to perform its obligations under this Contract.

16.4 Rectification

- 16.4.1 Upon the occurrence of a Seller Default or Buyer Default, the non-defaulting Party may serve a notice to terminate on the defaulting Party ("**Termination Notice**").
- 16.4.2 The Termination Notice must specify:
 - (a) the type and nature of Default that has occurred, giving reasonable details;
 - (b) that in the case of a Seller Default or a Buyer Default pursuant to Clauses 16.2.1, 16.3.1, 16.3.3, and 16.3.6 of this Contract will terminate on the day falling 7 Days after the date of the receipt of the Termination Notice, unless:
 - i. in the case of a breach under Clauses 16.2.1 and 16.3.1, the defaulting Party puts forward an acceptable rectification programme within 7 Days or such other periods as maybe agreed by the parties, after the date of receipt of the Termination Notice (and implements such programme in accordance with its terms and rectified the Default in accordance with the programme); or
 - ii. in the case of all Defaults set out in this Clause **Error! Reference source not found.** the defaulting party rectifies the

Default within a period to be agreed by the parties upon receipt of the termination notice that in the case of any other Default not set out in Clause **Error! Reference source not found.**, this Contract will terminate on the date falling 7Days after the date of receipt of the Termination Notice.

- 16.4.3 If the defaulting Party either rectifies the Default within the time period specified in the Termination Notice or implements the rectification programme, if applicable, in accordance with its terms, the Termination Notice will be deemed to be revoked and this Contract will continue.
- 16.4.4 If the defaulting Party fails to implement any rectification programme in accordance with its terms or rectify the Default within the time period specified in the Termination Notice, this Contract will terminate on the date falling [seven (7)] Days after the date of notification by the non-defaulting Party of such failure.
- 16.4.5 The expiry or termination of this Contract shall not affect any rights or obligations which may have accrued prior to such expiry or termination and shall not affect obligations of each of the Parties under this Contract or any other licence, agreement or document between the Parties which are expressed to continue after such expiry or termination.
- 16.4.6 Notwithstanding other provisions of this Clause, either Party may pursue such other remedies as may be available to it under any Laws of Nigeria if this Contract is terminated in accordance with this Clause.

16.5 **Payment on Default**

If, and to the extent that, a Buyer Default causes (whether directly or indirectly) a Seller default under the Bulk Power Purchase Agreements, Buyer shall be liable to Seller to the extent of any payment made and costs incurred by Seller on a termination of the Bulk Power Purchase Agreements.

CLAUSE 17

TRANSFER

17.1 Transfer

17.1.1 No transfer of this Contract or any of the rights or obligations hereunder shall be effective, and no purported transferee shall have any rights under this Contract unless and until the following requirements are satisfied:

- (a) the transferee expressly undertakes in an instrument reasonably satisfactory to the other Party to perform the obligations of the transferring Party under this Contract, obtains any necessary Authorisations for the Transfer and furnishes any guarantees required under this Contract or any Laws of Nigeria; and
- (b) in the case of a Transfer by Buyer, Buyer has obtained Seller's written consent; or
- (c) in the case of a Transfer by Seller, Seller has obtained Buyer's written consent (such consent not to be unreasonably withheld or delayed);
- (d) a transfer (whether by novation or by assignment) is necessitated by a change in the trading regime in the Nigerian electricity supply industry.

17.1.2 Notwithstanding any Transfer, both the transferring Party and the transferee shall be liable to the other Party for the transferring Party's obligations (financial or otherwise), which have vested, matured or accrued under the provisions of this Contract before such Transfer.

17.1.3 Nothing in this Clause 17 shall prohibit either Party from transferring its rights under this Contract as part of its security package in a *bona fide* financing transaction with any lender or other institution providing financial security provided that notice in Clause 21 is given to the other Party.

17.2 Successors and Assigns

This Contract shall be binding upon and inure for the benefit of the respective successors in title and permitted transferees of each Party if the transfer is made in accordance with Clause 17.

CLAUSE 18

FORCE MAJEURE

18.1 Definition of Force Majeure Event

“Force Majeure Event” shall mean any event or circumstance or combination of events or circumstances 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 Contract but only to the extent that;

- (a) such circumstance, event or condition, despite the exercise of diligence, cannot be prevented, reasonably anticipated, 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 Contract and to mitigate its consequences;
- (c) such circumstance, event or condition is not the direct or indirect result of a breach or failure by the affected Party to perform, any of its obligations under this Contract; and
- (d) such circumstance, event or condition is without fault or negligence of the affected Party.

“Force Majeure Events” shall include the following events and circumstances, but only to the extent that each satisfies the requirements above:

18.1.1 events not resulting from natural causes that occur inside or directly involve Nigeria (each a “**Local Political Force Majeure Event**”), including:

- (a) any act of war or serious threat of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, host community disturbance, acts of public enemies, trade sanctions, embargo, revolution, riot, insurrection, civil commotion, act of terrorism, or sabotage;
- (b) strikes, lock outs, industrial disturbances, 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;
- (c) subject to Clause 19.2, any Change in Law or Change in Tax;
- (d) Pollution, chemical or radioactive contamination, or ionising radiation originating from a source inside Nigeria to the extent it exceeds applicable standards;

- (e) the occurrence of a Local Political Force Majeure Event under any agreement approved by the Commission, entered into by either Party and having a material adverse impact on this Contract; or
 - (f) significant archaeological discoveries, officially recognised by FGN, at the Parties relevant locations;
- 18.1.2 events not resulting from natural causes that occur outside Nigeria and do not directly involve Nigeria (each a “**Foreign Political Force Majeure Event**”) including:
 - (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 ionising 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 agreement approved by the Commission, entered into by either party and having a material adverse impact on this Contract;
- 18.1.3 natural events (each a “**Natural Force Majeure Event**”), including, but not limited to:
 - (a) atmospheric disturbance, drought, lightening, fire, earthquake, flood, fog, haze, hurricane, volcanic eruption, soil erosion, perils of the sea, storm, tempest, cyclone, typhoon, tornado, wash out 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 a Natural Force Majeure Event under any agreement approved by the Commission, entered into by either Party and having a material adverse impact on this Contract;
- 18.1.4 “Force Majeure Event” shall expressly not include the following conditions, except and to the extent that they result directly from a Force Majeure Event:
 - (a) normal wear and tear or inherent flaws in materials and equipment or breakdowns of equipment;

- (b) unavailability of (i) fuel supply, reserves or transportation, (ii) water supply, or (iii) electric transmission or distribution service sufficient to export the output of the Generation Companies plant in whole or part, except to the extent such unavailability is itself due to Force Majeure Event;
- (c) any event or circumstance which makes the performance of this Contract uneconomic or commercially impracticable or any changes in market conditions or any deterioration in the ability to make a profit or to receive a satisfactory rate of return from the production, sale or consumption of electricity including in the case of the Buyer any lack of demand for electricity from or other adverse events or circumstances affecting the End Users or any other Persons to whom the Buyer sells or supplies electricity;
- (d) the imposition of sanctions by a Relevant Authority due solely to the failure of the affected Party to comply with any applicable Laws of Nigeria or Authorisations;
- (e) the inability or the failure of the affected Party to make payment of any money when due in accordance with this Contract or the inability or the failure of the affected party to raise any financing required in connection with the performance of the affected Party's covenants or obligations in accordance with this Contract;
- (f) any failure to take into account prevailing ambient or weather related conditions; and
- (g) delays resulting from reasonably foreseeable unfavourable weather conditions or other similar reasonably foreseeable adverse conditions.

18.2 Payment During Local Political Force Majeure Events

18.2.1 If any Local Political Force Majeure Event affects the ability of Seller to make available the Disco Share Dependable Capacity, Buyer shall continue to make:

- (a) Disco Share Capacity Payments in respect of the last Tested Capacity determined without reference to such Force Majeure Event; and
- (b) Energy Payments, in respect of any Gross Energy Output delivered to Buyer.

18.2.2 If Local Political Force Majeure Event does not affect the ability of Seller to make available the Disco Share Dependable Capacity, but affects the ability of Seller to deliver Gross Energy Output to the Genco Delivery Points or of Buyer to accept such delivery, Buyer shall continue to make:

- (a) Disco Share Capacity Payments in respect of in respect of the last Disco Share Tested Capacity determined without reference to such Force Majeure Event; and
 - (b) Energy Payments, in respect of any Gross Energy Output delivered to Buyer or made available by Seller at the Genco Delivery Points.
- 18.2.3 If a Local Political Force Majeure Event affects the performance of Buyer's obligations under this Contract, Buyer shall continue to make:
 - (a) Disco Share Capacity Payments in respect to the in respect of the last Disco Share Tested Capacity determined without reference to such Force Majeure Event; and
 - (b) Energy Payments, in respect of the Gross Energy Output delivered to Buyer.

18.3 Notification Obligations

- 18.3.1 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 cost of 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.
- 18.3.2 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, as soon as reasonably practicable after becoming aware of each of (i) and (ii) above.

18.4 Responsibility of the Parties

The claiming party shall, as soon as practicable after the commencement of the Force Majeure Event, diligently proceed to do all things reasonably practicable at its own reasonable cost to expeditiously remedy and mitigate the Force Majeure Event causing the failure and to minimize the interruption of performance of its affected obligations, provided that, (i) a claiming party shall not be required to settle any labour dispute or industrial or public disturbance, except in such manner as it shall in its own judgment consider acceptable, and (ii) a claiming party shall not be required to incur any extraordinary costs or to act other than as a Reasonable and Prudent Operator. If a claiming party's facilities have been damaged or destroyed, then such claiming party shall apply any proceeds of insurance in respect of such loss or damage in accordance with the provisions of Clause 13.

18.5 Delay Caused by a 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 the periods allowed or dates required for the performance by Parties of such obligation(s) shall be extended on a day-for-day basis; provided that, no relief shall be granted to the Party claiming a Force Majeure Event pursuant to this Clause 18.5 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 Contract by the Party not claiming a Force Majeure Event, and without prejudice to the rights of the Party claiming a Force Majeure Event to indemnification under this Contract, the Party not claiming a Force Majeure Event shall not bear any liability for any loss or expense suffered by the Party claiming a Force Majeure Event as a result of a Force Majeure Event.

18.6 Prolonged Force Majeure Event

If a Force Majeure Event that prevents or substantially impairs (i) the satisfaction of any material condition required to be satisfied under this Contract or (ii) a claiming party's performance of any material obligation required to be performed under this Contract continues for a period of [twelve (12)] consecutive months from the date of the occurrence of the Force Majeure Event ("**Prolonged Force Majeure Event**"), then either Party shall have the right, but not the obligation, to terminate this Contract; provided that the material condition has not been completely satisfied and/or the performance of the material obligation has not been completely restored (insofar as may reasonably be determined by the Party giving notice of termination) as of the time such right of termination is exercised.

CLAUSE 19

CHANGE IN TRADING REGIME

- 19.1 Subject to the terms of this Contract, upon the occurrence of a change in the Market Rules, the Grid Code, the Metering Code, or any other event which substantially affects either Party's performance of its obligations under this Contract under the pre-existing procedures governing Buyer, Seller or the marketing of power, the Parties shall upon either Party becoming aware of such change, meet to review the operational procedures and information flows under this Contract, and shall in conjunction with the Relevant Authority and Stakeholders, agree to such changes to procedures as may be required to enable the Parties comply with the Market Rules and sufficiently adjust their operations to accommodate the change in trading regime particularly with regard to settlement of contracts with the Market Operator and adhere to the Market Rules. If any changes are imposed upon Seller which will result in an increase in costs of performance by Seller, Seller shall be entitled to be compensated by Buyer for such costs in addition to any other payments required under this Contract.
- 19.2 Upon the occurrence of a Change in Law or Change in Tax affecting Seller or Buyer, the Party affected will be entitled, in addition to the remedy under Clause 12.4, to propose to the other Party, and upon agreement by the Parties, to the Relevant Authority, an amendment to this Contract or other compensation that will allow the Party to perform its obligations under this Contract, and, in the case of Buyer, on a basis that will preserve its investment and the opportunity to earn an equitable return on its investment.

CLAUSE 20

CHOICE OF LAW AND DISPUTES RESOLUTION

20.1 Governing Law

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

20.2 Informal Dispute Resolution

20.2.1 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**”).

20.2.2 For a period of not less than 30 days of delivery of a Notice of a Dispute, the Parties shall attempt with Best Endeavours 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 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 20.3 herein.

20.3 Arbitration of Disputes

20.3.1 In the event that the Parties are unable to resolve any Dispute pursuant to Clause 20.2, and the amount in dispute exceeds the sum of Five Million Dollars (\$5,000,000), then the Dispute shall be settled by arbitration conducted in accordance with the Rules of Arbitration of the United Nations Commission on International Trade Law (UNCITRAL) as in effect on the Execution Date (the “**Rules**”). The arbitration proceedings shall be conducted, and the award shall be rendered, in the English language.

20.3.2 There shall be three (3) arbitrators for the resolution of Disputes hereunder. Each Party shall select one (1) arbitrator within thirty (30) Days of a request by a Party for arbitration pursuant to this Clause 20.3. The two arbitrators thus appointed shall, within thirty (30) Days of the selection of the second arbitrator, select the third (3rd) arbitrator, which three (3) arbitrators shall serve as the arbitration tribunal for resolution of the Dispute hereunder. If a Party does not select an arbitrator where it is entitled to do so within thirty (30) Days of a request for arbitration by a Party or if the two Party-appointed arbitrators fail to agree on the third (3rd) arbitrator, such arbitrator shall at the request of that party be appointed by the London Court of International Arbitration. PROVIDED THAT where the dispute in question involves a monetary amount not exceeding [USD 5,000,000.00 (Five Million Dollars)], there shall be only one single arbitrator appointed by agreement of the parties or in default appointed on the nomination of the London Court of International Arbitration at the request of either party, the President of the Institute of Chartered Accountants of Nigeria shall make such appointment.

- 20.3.3 The conduct of the arbitration (including any resort to a court for provisional remedy) and any other question of arbitration law shall be governed by the laws of the Federal Republic of Nigeria.
- 20.3.4 The arbitration shall be conducted in Abuja, Nigeria; provided, however, that if Buyer is privatized then the arbitration shall be conducted in London, England.
- 20.3.5 Any arbitral award or procedural order under this Clause 20.3 shall be final and binding upon the Parties and shall be the sole and exclusive remedy between the Parties regarding all Disputes, and each Party undertakes to comply with and to carry out any such arbitral award or procedural order, fully and without delay. The Parties expressly waive to the fullest extent permitted by law or under equity any rights of appeal to the courts of any jurisdiction with respect to any award of arbitration pursuant to this Clause 20.3. The Parties expressly agree that any rights of appeal that may not be waived by a Party shall be exercisable by a Party only (i) after the award has been fully implemented under this Clause 20.3 or (ii) if such Party must pay an amount under such award, after such Party has either paid such amount to the other Party or deposited the amount of the award with the tribunal or a court of competent jurisdiction.

20.4 Consent to Jurisdiction

Each Party hereby consents to the jurisdiction of the Federal High Courts of Nigeria solely with respect to any action filed by the other Party to have a judgment entered for the purpose of recognising any award or decision of any industry dispute resolution tribunal or expert(s) who were duly appointed under this Contract to resolve any Dispute between the Parties.

20.5 Related Agreement

- 20.5.1 If more than one arbitration is commenced under this Contract and the Related Agreements and any Party to this Contract contends that the two or more arbitrations commenced under the Related Agreements are substantially related and/or involve the same issues and that the issues should be heard in one proceeding, the Tribunal appointed in the first-filed of such proceedings shall have the power to 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. The Parties expressly accept that any dispute which may be referred to arbitration under this Contract may accordingly be disposed of in the same arbitration proceedings as any other dispute arising under another Related Agreement, even in the presence of parties other than the Parties to this Contract. The Parties hereby waive any right to object to the validity and/or enforceability of an arbitral award rendered by a Tribunal appointed pursuant to a Related Agreement on the basis that such award was made in arbitral proceedings which were consolidated under this Clause 20.5 or in accordance with an equivalent provision under another Related Agreement.

- 20.5.2 Any invalidation of any part of or the entirety of this Contract or any contractual obligation resulting hereunder shall in no way affect the validity of this Clause 20.5, which shall survive any such invalidation. Even if invalidation is decided, all other pending disputes among the Parties shall remain subject to settlement by arbitration pursuant to the provisions of this Clause.

20.6 Expert Determination

- 20.6.1 In the event that the Parties are unable to resolve any Dispute pursuant to Clause 20.2, and the amount in dispute is equal to or less than [], then the Dispute shall be settled by an expert determination in accordance with the provisions of this Clause 20.6 (**"Expert Determination"**).
- 20.6.2 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.
- 20.6.3 If within 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 London Court of International Arbitration within fifteen (10) days of such referral.
- 20.6.4 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 20.6.6, which the Parties shall attend.
- 20.6.5 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.
- 20.6.6 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.
- 20.6.7 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.

- 20.6.8 The Parties shall continue to perform their contractual obligations notwithstanding the existence of the determination process.
- 20.6.9 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 20.6.1.
- 20.6.10 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.
- 20.6.11 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 favour of the other Party. Both Parties shall bear the cost of the Expert Determination where the Dispute is determined in favour of the Party that referred it to Expert Determination.

CLAUSE 21

NOTICES

21.1 Method of Providing Notices

Except as otherwise expressly provided in this Contract, all notices, communications, or other contracts which are required or permitted hereunder to be given or made ("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 or receipt or acknowledgement signed by the recipient Party, or sent by reputable international express courier or by facsimile (provided the sender has evidence of successful transmission) and shall be addressed as follows:

If to Seller:

Attention: _____

Email Address _____

Telephone: _____

Fax: _____

If to Buyer:

Attention: _____

Email: _____

Telephone: _____

Fax: _____

21.2 **Time of Receipt**

All notices shall be deemed delivered:

21.2.1 when presented personally;

21.2.2 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

21.2.3 **5** Day(s) after being delivered to the courier for express delivery, addressed to the receiving Party, at the address indicated above (or such other address as such Party may have specified by written Notice).

CLAUSE 22

MISCELLANEOUS PROVISIONS

22.1 Amendment

The Parties shall not vary, add to, supplement, cancel, replace or novate this Contract except by mutual consent evidenced by an instrument in writing signed by the authorised representatives of the Parties and with the prior consent and approval of the Commission. If one or more provisions contained in the Bulk Power Purchase Agreements are held or found to be invalid, illegal, or unenforceable in any respect, the corresponding provision, if any, in this Contract shall accordingly be amended forthwith.

22.2 Headings

The headings contained in this Contract are used solely for convenience and do not constitute a part of this Contract nor shall such headings be used in any manner to aid in the construction of this Contract.

22.3 Third Parties

This Contract is intended for the benefit of the Parties hereto. Nothing in this Contract 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 Contract.

22.4 No Implied Waiver

The failure or delay of either Party to enforce at any time any of the provisions of this Contract, 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 Contract 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 Contract shall be in writing.

22.5 Relationship of the Parties

The Parties enter into this Contract 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 Contract 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 Generation Companies 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 Contract.

22.6 Conflict of Interest

Each Party shall avoid any conflict of interest between its own interests (including the interests of Affiliates) and the interests of the other Party in dealing with suppliers, customers and all other organizations or individuals doing or seeking to do business with the Parties in connection with activities contemplated under this Contract. The provisions of this Clause 22.7 shall not apply to:

22.6.1 a Party's performance which is in accordance with Applicable Law or policies of any Relevant Authority; or

22.6.2 a Party's acquisition of products or services from an Affiliate, or the sale thereof to an Affiliate, made in accordance with this Contract.

22.7 Survival

The cancellation, expiration or termination of this Contract 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, including, warranties, remedies, promises of indemnity and confidentiality.

22.8 Language

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

22.9 Entirety

This Contract and Schedules attached hereto are intended as a complete and exclusive statement of the terms with respect to the subject matter of this Contract. All prior written or oral understandings, offers or other communications of every kind pertaining to the sale or purchase of capacity and energy hereunder to Buyer by Seller or to Seller by Buyer are hereby abrogated and withdrawn.

22.10 Waiver of Sovereign Immunity

Each Party recognizes and acknowledges that this Contract constitutes a commercial transaction, and that its rights and obligations under this Contract 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.

22.11 Confidentiality

22.11.1 Each Party and its employees, contractors, consultants and agents shall hold in confidence all documents and other forms of information, including electronic communications, marked as confidential by or on behalf of the Party providing the information relating to this Contract. Each Party undertakes that all information obtained by it under this Contract shall only be made available to and used by its employees or staff

having a need for such information in order to permit the Party/Parties to perform its obligations and exercise its rights under this Contract and except as may be required by law or regulatory authorities, shall not publish or otherwise dispose the same to third parties. Notwithstanding the foregoing, either party may disclose such information to its professional advisers and to prospective lenders or investors in such Party, to succeeding entities, to prospective transferees and assignees and their professional advisors, in the case of Seller to the Generation Companies provided it has agreed to be bound by these confidentiality provisions.

22.11.2 The provisions of this Clause 22.11 shall not apply to:

- (a) any information which is required to be disclosed by a competent court or tribunal or any applicable law or regulation;
- (b) any information in the public domain otherwise than by a breach of this Clause by the same Party;
- (c) information in the possession of the Party before divulgence that was not obtained under any obligation of confidentiality;
- (d) information obtained from a third party who is free to divulge same to other third parties and that was not obtained by either Party under an obligation of confidentiality; or
- (e) information contained in a document that has been reviewed and cleared for public disclosure by the Party claiming confidentiality in the information;
- (f) on termination of this Contract, a Party shall have the option to require the other Party holding any confidential information obtained pursuant to this Contract from the requesting Party to return or destroy all such confidential information.

22.11.3 The provisions of this Clause 22.11 shall survive for a period of 5 (five) years from the termination of this Contract.

22.12 Severability

If one or more provisions contained in this Contract 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 Contract.

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

For: NIGERIA BULK ELECTRICITY TRADING PLC

by:

Name: _____

Signature: _____

Title: _____

In the presence of:

Name: _____

Signature: _____

Title: _____

For: ELECTRICITY DISTRIBUTION COMPANY PLC

by:

Name: _____

Signature: _____

Title: _____

In the presence of:

Name: _____

Signature: _____

Title: _____

SCHEDULE 1

DRAFT FOR DISCUSSION ONLY

SCHEDULE 2

FUNCTIONAL SPECIFICATIONS & OPERATING PARAMETERS

DRAFT FOR DISCUSSION ONLY

SCHEDULE 3

SETTLEMENT STATEMENT AND INVOICE

SETTLEMENT STATEMENT FOR THE MONTH OF FEBRUARY 2015			
DISCO:		DISCO1	
SETTLEMENT N°		0000001	

	GENCOS	CAPACITY (MW) QTY (MW)	ENERGY (KWH) QTY (KWH)
THERMAL	THERMAL 1		
	THERMAL 2		
	THERMAL 3		
	THERMAL 4		
	THERMAL 5		
	THERMAL 6		
	THERMAL 7		
	TOTAL THERMAL	0.00	0.00
HYDRO	HYDRO1		
	HYDRO2		
	HYDRO3		
	TOTAL HYDRO	0.00	0.00
IPPs	IPP 1		
	IPP 2		
	IPP 3		
	IPP 4		
	IPP 5		
	IPP 6		
	TOTAL IPPs Genco	0.00	0.00
NIPPs	NIPP 1		
	NIPP 2		
	NIPP 3		
	NIPP 4		-
	NIPP 5	0.00	0.00
	TOTAL	0.00	0.00

Name:

Department:

Date:

NIGERIAN BULK ELECTRICITY TRADING PLC

8th floor Bank of Industry Tower off Herbert Marcavlay Way, CBD, FCT, Abuja



DATE: _____

INVOICE FOR THE MONTH OF FEBRUARY 2013

DISCO: DISCO 1
INVOICE NO: NBET13/INV/DISCO1/00001

PERIOD	GENCOS	CAPACITY (MW)			ENERGY (KWh)			START Ups			TOTAL CHRGES (N)
		QTY (MW)	RATE (N/MW)	TOTAL CHARGE (N)	QTY (KWh)	RATE (N/KWh)	TOTAL CHARGE (N)	NO.	RATE (N)	TOTAL CHARGE (N)	
JAN 1 - JAN 31	ABUJA DISTRIBUTION COMPANY										
SUB - TOTAL											

PERIOD	CHARGES	DESCRIPTION	RATE (N)	AMOUNT (N)
JAN 1 - JAN 31	ADMINISTRATIVE CHARGES			
	BANK CHARGES			
GRAND TOTAL				

AMOUNT IN WORDS: _____

PAYMENT DETAILS:

BANK NAME: XYZ BANK
ACCOUNT NO: 123456789
ACCOUNT NAME: NIGERIAN BULK ELECTRICITY TRADING

Name:
Department:
Date:

SETTLEMENT STATEMENT AND INVOICE SHALL COMPLY WITH THE MARKET RULES

SCHEDULE 4

ENERGY AND CAPACITY PAYMENTS

SUBJECT TO THE ENERGY AND CAPACITY PAYMENT TO BE ENTERED BETWEEN NBET AND THE GENCOS/IPPS AND ALSO THE SHARE DEPENDABLE CAPACITY ALLOCATION FOR EACH DISCO AS DETERMINED IN MYTO II AND THE SCHEDULE 8 OF THIS VESTING CONTRACT.

THIS SCHEDULE WOULD BE SUBSEQUENTLY UPDATED WHEN NBET ENTERS INTO A NEW BULK POWER PURCHASE AGREEMENT WITH GENCOS/IPPS.

SCHEDULE 5
BUYER DELIVERY POINTS

DRAFT FOR DISCUSSION ONLY

SCHEDULE 6

INSURANCE COVERAGES

(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, collapse and/or loss of contents of tanks. Coverage shall be in an amount not less than Facilities.

(b) Loss Following All Risks Incident: This insurance shall cover against loss of revenue due to loss of Capacity 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 Capacity 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 or derangement, explosion or collapse, 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 and ancillary equipment forming part of the Facilities.

(d) Loss Following Machinery Breakdown: This insurance shall insure against loss of revenue due to loss of capacity 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 Capacity 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 maximum of [] Naira for any one claim.

(f) Workers Compensation and Employers Liability: This insurance will include workers compensation, temporary disability and other similar insurance required by Applicable Law. Additionally, coverage under this subsection shall include a voluntary compensation and employers’ liability endorsement for employees not subject to the workers compensation laws.

Coverage shall be a maximum of [] Naira for any one claim.

SCHEDULE 7

LIST OF STAKEHOLDERS

- 1. NIGERIAN ELECTRICITY REGULATORY COMMISSION**
- 2. TRANSMISSION COMPANY OF NIGERIA**
- 3. MARKET OPERATOR**
- 4. SYSTEM OPERATOR**
- 5. TRANSMISSION SERVICE PROVIDER**
- 6. NIGERIAN BULK ELECTRICITY TRADING PLC**
- 7. ALL POWER GENERATION COMPANIES IN NIGERIA**
- 8. ALL POWER DISTRIBUTION COMPANIES IN NIGERIA**

SCHEDULE 8

SCHEDULE OF DISCO SHARES

Serial Number	Bulk Power Purchase Agreement	Contract Capacity	Tested Capacity	Disco Share Tested Capacity	Disco Share Available Capacity Computation	Disco Share Dependable Capacity Computation
				1%		

**SCHEDULE 8 WILL BE POPULATED AND SUBSEQUENTLY UPDATED ONCE
BULK POWER PURCHASE AGREEMENT (PPA) IS SIGNED BETWEEN
GENCOS/IPPS AND NBET**

SCHEDULE 9

LIST OF AUTHORISATIONS

Licence/Permit	Issuing Agency
Licence to distribute, supply and use electrical energy	The Commission
Environmental Impact Assessment	Federal Ministry of Environment
Transmission Lines	The Commission
Permit for disposal of waste in a residential or commercial area	Department of Petroleum Resources/State Environmental Protection Agency
Certificate of Registration of contract involving transfer of foreign technology	National Office of Technology Acquisition and Promotion (“NOTAP”)
Certificate of Registration with the Nigerian Investment Promotion Commission (“NIPC”)	NIPC
Business permit [For companies with foreign participation]	Ministry of Internal Affairs/NIPC
Pioneer Status Certificate [For tax holiday]	Ministry of Commerce/NIPC
Expatriate Quota [For expatriate personnel to work in local companies]	Ministry of Internal Affairs/NIPC