

NBET POWER PURCHASE AGREEMENT (PPA)

GAS

Power Purchase Agreement

between

Nigerian Bulk Electricity Trading Plc.

and

- (a) **This Agreement has been or will be submitted to the Commission or any other Relevant Authority for review, and this Agreement will not be executed by the Parties until Buyer shall have received official, written: (i) approval of this Agreement or (ii) a statement of no objection to the execution of this Agreement by the Commission or any other Relevant Authority, or (iii) a statement from the Commission or any other Relevant Authority that this Agreement is not subject to review by the Commission or any other Relevant Authority.**
- (b) **After the receipt of the action of the Commission or any other Relevant Authority in clause (a) in form and substance acceptable to both Parties,**
 - (x) **Buyer will provide a notice to Seller (i) that the conditions of clause (a) have been met and are accepted by Buyer, and (ii) affirming, if possible, that the representations and warranties of Buyer herein are correct as of the date of such notice, and**
 - (y) **Seller shall as soon as reasonably practicable following receipt of the notice from Buyer provide a notice to Buyer (x) that the conditions to effectiveness of clause (b) have been met and are accepted by Seller, and (y) affirming if possible that the representations and warranties of Seller herein are correct as of the date of such notice,**

and upon exchange of such notices the Parties will execute this Agreement.

Draft for Discussion

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THIS POWER PURCHASE AGREEMENT (this “**Agreement**”) is entered into this ____ day of _____ 2017, by and between:

- (1) **NIGERIAN BULK ELECTRICITY TRADING PLC**, a company duly incorporated under the laws of the Federal Republic of Nigeria and having its principal place of business at 8th Floor, Bank of Industry Tower, Off Herbert Macaulay Way, Central Business District, Abuja, Nigeria (“**Buyer**,” which expression shall where the context so admits include its successors-in-title and assigns); and
- (2) _____, a company registered under the Companies and Allied Matters Act, Cap, C20, Laws of the Federation of Nigeria, 2004, and licensed by the Nigerian Electricity Regulatory Commission for the business of Electricity generation, whose registered office is at _____ and licence number _____ (“**Seller**”, which expression shall where the context so admits include its successors-in-title and assigns).

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

RECITALS

- (A) Pursuant to the Electric Power Sector Reform Act No. 6 of 2005 (the “**Act**”), the Federal Government of Nigeria (“**FGN**”) intends as a matter of policy to involve the private sector in the generation, transmission, and distribution of electricity in Nigeria.
- (B) Buyer is a limited liability company established by the National Council on Privatisation of FGN pursuant to the provisions of section 8 of the Act and under the laws of Nigeria to take over the functions of the Power Holding Company of Nigeria Plc relating to bulk purchase and resale of electricity.
- (C) Seller is a limited liability company, incorporated under the laws of the Federal Republic of Nigeria and licenced to generate electricity.
- (D) Seller has proposed that Seller will develop, design, construct, finance, own, operate, and maintain a gas-fired electric power generation facility (as hereinafter defined, the “**Plant**”) to be located on the Site (as hereinafter defined).
- (E) Seller wishes to sell and Buyer wishes to purchase the Available Capacity (as hereinafter defined) up to the Contract Capacity (as hereinafter defined) and all of the Net Electrical Output on and pursuant to the terms and conditions contained herein.
- (F) In accordance with Clause 1.3, the Parties intend to initial this Agreement to memorialize the current state of negotiations as to the form and substance of this Agreement, until negotiations to finalize this Agreement have concluded and this Agreement has been executed and delivered by the Parties.

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

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Clause 1 Definitions

1.1. Definitions

Unless the context indicates otherwise:

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

“Abandonment” means:

- (a) in relation to the Construction and Commissioning Period, the voluntary cessation of the construction of the Plant, or the withdrawal of all, or substantially all, personnel by Seller (or Seller’s Contractors) from the Plant for reasons other than a Buyer Default, a Delayed Commissioning Event or a Force Majeure Event; and
- (b) in relation to the Delivery Term, the voluntary cessation of the operation or maintenance of the Plant, or the withdrawal of all, or substantially all, personnel by Seller (or Seller’s Contractors) from the Plant for reasons other than a Buyer Default, an Availability Event or a Force Majeure Event.

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

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

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

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

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of Insolvency of a Party if it involves a limited recourse obligation of the Party to a third party other than an obligation under a Finance Document, unless it causes any of the circumstances, events or acts listed in (i)-(iii) or (v)-(vi).

“**Actual Capacity**” means the actual net generating capacity of the Plant expressed in MW, calculated using ambient site conditions, gas availability, Grid conditions, Ancillary Service obligations, and Outages. When projected, Actual Capacity shall be projected using the conditions anticipated for the relevant period, including the projected ambient site conditions, projected gas availability, projected Grid conditions, Ancillary Service obligations, and projected Outages.

“**Additional Payments**” has the meaning given to that term in clause 2.3 of Schedule 6.

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

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

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

“**Agreed Financial Model**” means the [●] and delivered to Buyer on [●] as may be amended by agreement of the Parties.

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

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

“**Ancillary Services Agreement**” means the ancillary services agreement between Seller and Transmission Company of Nigeria.

“**Annual Available Capacity**” has the meaning given to that term in Schedule 6.

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

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including any agencies thereof, or any state, local, municipal, regional, or any other duly constituted governmental body, instrumentality, agency in the Federal Republic of Nigeria gazetted or circulated by public notice by any such government or governmental agency charged by the relevant authority to consolidate, amend or replace such Applicable Law and shall include all rules and regulations duly promulgated or waived thereunder.

“**Assumed Debt to Equity Ratio**” has the meaning given to that term in Schedule 1.

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

“**Available Capacity**” means the net generating capacity of the Plant expressed in MW at the Reference Site Conditions that Seller would have been able, in the absence of any Availability Events, to make available for dispatch to Buyer at the Delivery Point; *provided, however*, that Available Capacity may not exceed the lower of Tested Capacity and Initial Tested Capacity.

“**Availability Event**” has the meaning given to that term in Clause 8.1.2.

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

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

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

“**Black Start**” has the meaning given to that term in the Grid Code.

“**Black Start Capability**” has the meaning given to that term in the Grid Code.

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

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

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

“**Buyer Payment Security**” means a form of payment security that is delivered to Seller by Buyer as security for Buyer’s obligation to pay Delayed Commissioning Payments, Availability Event payments, Capacity Payments, Energy Payments, Gas Payments, Start Up Payments, and Supplemental Payments in accordance with the terms of this Agreement and has terms set forth in Paragraph 3 of Schedule 1.

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

“**Capacity Demonstration**” means a demonstration of the Available Capacity of the Plant through dispatch of the Plant at full load for a period specified in Schedule 4, during which period the Available Capacity may be demonstrated by readings on the Main Meter using the methods set out in Schedule 4 with regards to a Capacity Test.

“**Capacity Payments**” means payments by Buyer to Seller that reflect as separate elements the capital cost recovery payment for the Plant and fixed operation and maintenance payment, as provided in Schedule 6.

“**Capacity Test**” a test of the net capacity of the Plant conducted in accordance with the capacity test procedures set out in Schedule 4.

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

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

- (a) the adoption, promulgation, bringing into effect, repeal, amendment, reinterpretation, change in application, or modification after the Execution Date of any Applicable Law, by any Relevant Authority;
- (b) the imposition of any material condition not required as of the Execution Date in connection with the issuance, renewal or modification of any Authorisation by any Relevant Authority;
- (c) the change or modification of any Authorisation by a Relevant Authority or the imposition of other obligations imposing a cost on Seller; or
- (d) the change or modification of any Charge Rate, any components of the Supplemental Payment or related terms and conditions after the initial approval by the Commission (or any other Relevant Authority that may hereafter have authority to modify or change a Charge Rate) of the Charge Rates, any components of the Supplemental Payment and related terms and conditions other than (i) a change or modification resulting from an application for a change or modification by the Party seeking relief for the resulting Change in Law, (ii) where the Party seeking relief for the Change in Law has consented to or approved the change or modification to the Charge Rate or the applicable component of the Supplemental Payment, or (iii) a change required to be made to reflect changes in Charge Rates or any components of the Supplemental Payment or related terms and conditions by the terms of this Agreement.

“**Change in Tax**” means the adoption, promulgation, bringing into effect, repeal, amendment, reinterpretation, change or failure in application of the provisions of the relevant legislation after the Execution Date, or modification after the Execution Date of any Applicable Law by any Relevant Authority, relating to any Tax, including any application of any Tax (including withholding Taxes on distributions to shareholders to the extent such withholding taxes are final

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Tax liabilities of the shareholders and are not subject to any credit or adjustment, including any credit or adjustment against any other Tax liability), which is imposed on Seller or the Project and:

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

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

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

“**Commercial Operations Date**” means the date on which the entire Plant achieves commercial operations after successfully completing its Plant Commercial Operations Tests in accordance with Clause 7.6.1.

“**Commercial Operations Tests**” means tests run in accordance with Schedule 3.

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

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

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

“**Commissioning Procedures**” has the meaning given to that term in Clause 7.3.

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

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

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

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

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

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

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

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“**Contractor**” means the contractor under the Construction Contract, any subcontractor under the Construction Contract and any other contractor of Seller that carries out obligations of Seller under this Agreement.

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

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

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

“**Debt Event**” means a Change in Law, Change in Tax, Force Majeure Event, Buyer Default, Expropriation or the implementation of a Restoration that has the effect stated in Clause 14.7.

“**Debt Outstanding**” has the meaning given to that term in the Put/Call Option Agreement.

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

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

“**Degradation**” means the reduction in capacity that would be experienced by a generating unit or plant based on the design of the Plant during normal operations in accordance with Applicable Law and in accordance with Good Industry Practices, as estimated and projected in good faith and agreed by the Parties as set forth in Schedule 6.

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

“**Delayed Commissioning Event**” is defined in Clause 7.8.2.

“**Delayed Commissioning Payments**” means the payments due to Seller on account of a Delayed Commissioning Event as set forth in Clause 7.8.3.

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

“**Delivery Term**” means the period commencing on the date on which the first Unit achieves the Unit Test Date and expiring upon the expiration of the Term of this Agreement either by passage of time or by early termination.

“**Development Security**” means security for Seller’s obligation to achieve the Closing Date by the Target Closing Date (as the Target Closing Date may be extended) and having the terms set forth in Schedule 10.

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

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

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

“**Distribution Companies**” means those companies set out in Schedule 8, as may be amended.

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

“**Early Availability Bonus Payment**” has the meaning given to that term in Schedule 6.

“**Early Net Electrical Output**” means Net Electrical Output delivered from a Tested Unit before the Commercial Operations Date where Seller and Buyer have agreed that Seller will make each Unit available for dispatch after Unit Testing and before the Commercial Operations Date.

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

“**Engineer’s Certificate**” has the meaning given to that term in Clause 7.6.2.

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

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

“**Expected Commercial Operations Date**” has the meaning given to that term in Clause 7.8.3.

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

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

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

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

“**Extraordinary L/C Event**” means the suspension or termination of the Buyer Payment Security as a result of any action or inaction of Seller or its Affiliates, *provided, however*, that no such action or inaction shall constitute an Extraordinary L/C Event if it results from (i) a breach by Buyer of this Agreement (ii) a Buyer Default, or (iii) or a Local Political Force Majeure Event.

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

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

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

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

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

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

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

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“**Foreign Non-Escalatable Capacity Payments**” has the meaning given thereto in Schedule 6.

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

“**Full Restoration Report**” has the meaning given to that term in Clause 21.10.3.

“**Gas Constraint**” means Public Gas Transportation Constraint, any other gas transportation constraint or Gas Supply Constraint.

“**Gas Payments**” means all payments in respect of the supply or transportation of gas pursuant to the Gas Supply Agreement and Gas Transportation Agreement, as further defined and calculated in Schedule 6.

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

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

“**Gas Supply Constraint**” means any failure of supply or constraints on the supply or delivery of gas caused by any default or breach by the Gas Supplier under the Gas Supply Agreement or any circumstance or event (including, for the avoidance of doubt, a Force Majeure Event (other than a Local Political Force Majeure Event or the occurrence of an event that is analogous with a Local Political Force Majeure Event under the Gas Supply Agreement) or force majeure event pursuant to the Gas Supply Agreement) affecting the Gas Supplier other than a Public Gas Transportation Constraint.

“**Gas Supply Constraint Default Level**” has the meaning given to that term in Schedule 1.

“**Gas Transportation Agreement**” or “**GTA**” means a gas transportation agreement between the Seller and a Public Gas Transporter, or, as the case may be, between the Seller and any other gas transporter.¹

“**Good Industry Practices**” means those practices, methods, and procedures conforming to safety and legal requirements that are attained by exercising that degree of skill, diligence,

¹ Gas Transportation Agreement to be reviewed regarding risk allocation for Public Gas Transporter and any other gas transporter. In addition, Buyer’s obligation to bear the cost of any reservation (or capacity) charge (“RC”) payable by Seller under any Gas Transportation Agreement is subject to the following regime, to be reflected in Schedule 6:

- i. Seller will pay the RC for all ‘actual’ gas quantities transported through the gas transporter’s pipeline.
- ii. Seller will pay the RC where, gas was not transported through the gas transporter’s pipeline due to Seller or TCN default.
- iii. Seller will NOT pay the RC where, gas was not transported through the gas transporter’s pipeline due to Seller or its Gas Supplier’s default. In this case, Buyer will back out the RC from the GTA costs.
- iv. Seller will NOT pay the RC where, gas quantities was not transported through the gas transporter’s pipeline due to the gas transporter’s default. Seller shall ensure that it gets the necessary protection from the gas transporter such that the gas transporter will back out the RC from the GTA costs anytime this event occurs.

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

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

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

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

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

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

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

“**HV**” means High Voltage

“**Implementation Schedule**” has the meaning given to that term in Schedule 12.

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

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

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“**Independent Engineer**” means one of the suitably qualified Persons with requisite skills and experience listed in Schedule 1, selected from the list and appointed by Seller at its own cost and expense, and the identity of which is notified in writing to Buyer not later than forty-five (45) Days before commencement of Commissioning, to conduct inspections of the Plant and installations thereat and to issue independent certifications in respect thereof.

“**Initial Authorisations**” means the Authorisations set out in Schedule 9.

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

“**Initial Tested Capacity**” is the Tested Capacity as at the Commercial Operations Date as certified in accordance with Clause 7.6.2(b), subject to revision in accordance with the procedures set out under Clause 7.9, in each case, following a Capacity Test.

“**Key Defined Milestones**” means all of the Target Closing Date, Long Stop Closing Date, Target Commercial Operations Date, Required Commercial Operations Date, Required Interconnection Date, Required GTSD, Required GSSD and Long Stop Commercial Operations Date.

“**kV**” means kilovolts, a unit of one thousand volts.

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

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

“**Lapse of Authorisation**” means any Authorisation:

- (a) that is revoked by the Relevant Authority which issued it;
- (b) that is not issued, renewed or, having lapsed, is not reissued, within one hundred eighty (180) Days (or such longer period allowed by Applicable Law) of application by Seller for that Authorisation to be issued, renewed or reissued, as the case may be, and as a result Seller’s ability to perform its obligations under any Project Documents or Finance Documents is materially and adversely affected; or
- (c) that is made subject, subsequent to its grant, upon renewal or otherwise, to any terms or conditions that materially and adversely affect Seller’s ability to perform its obligations under an Authorisation, any Project Document or Finance Document; or
- (d) that, in the case of a customs clearance or similar Authorisation is required solely in order to import any item required for the design, construction, installation, operation and maintenance of the Project and is not issued within ninety (90) Days of application by Seller or a Contractor,

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

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

“**Liquidated Damages Limit**” has the meaning given to that term in Schedule 1.

“**Local Non-Escalatable Capacity Payments**” has the meaning given thereto in Schedule 6.

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

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

“**Long Stop Commercial Operations Date**” means the date beyond which the failure by Seller to achieve the Commercial Operations Date constitutes a Seller Default, which date is specified in Schedule 1.

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

“**Loss Factor**” or “**LF**” is defined in Clause 2.5.

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

“**Major Equipment Failure**” means the failure of any major piece of equipment, system or facility forming part of a Unit or the Plant (as applicable) for which a spare is not required to be maintained on or in proximity to the Site in accordance with Good Industry Practices and which an independent expert, the appointment of whom is agreed between the Parties, confirms causes a Forced Outage or Partial Forced Outage that impacts the ability of Seller to meet the Minimum Availability and for which a replacement piece of equipment, system or facility cannot, through Seller’s Reasonable Endeavours, be obtained so as to prevent Seller failing to meet the Minimum Availability for the relevant Contract Year.

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

“**Market Operator Settlement Statement**” means the settlement statement provided to Seller and Buyer by the Market Operator reflecting the information provided to the Market Operator by the System Operator in accordance with the Market Rules and the Market Procedures.

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

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

“**Maximum Initial Tested Capacity**” has the meaning given to that term in Schedule 1.

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

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

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

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

“**Minimum Availability**” means an Annual Available Capacity equal to at least ninety-five per cent (95%) of the Projected Available Capacity for that Contract Year.

“**Minimum Indemnification Amount**” means the amount listed as such in Schedule 1.

“**Minimum Initial Tested Capacity**” has the meaning given to that term in Schedule 1.

“**Minimum Tested Capacity**” has the meaning given to that term in Schedule 1.

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

“**Monthly Report**” means the report to be prepared by Seller in accordance with Clause 6 and 8.

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

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

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

“**Natural Force Majeure Event**” has the meaning given to that term in Clause 21.1.4.

“**Net Electrical Output**” or “**NEO**” means the useful electric energy, expressed in MWh, generated by the Plant, and delivered to the Delivery Point for sale to Buyer, as measured by the Metering System. For the avoidance of doubt, electric energy is deemed useful if it conforms to the standards of the System Operator or the Transmission Company of Nigeria or would have so conformed but for Grid conditions. Net Electrical Output is net of (i) all loads on Seller’s side of

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the Delivery Point, and (ii) transformer losses for transformation to Grid voltage at the point of interconnection even if such transformer is owned by the Transmission Company of Nigeria.

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

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

“**Notice of Dispute**” has the meaning given to that term in Clause 22.2.1.

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

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

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

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

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

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

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

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

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“**Performance Guarantee**” means security for Seller’s obligation to achieve the Commercial Operations Date (i) by the Required Commercial Operations Date and (ii) with an Achieved Capacity of at least the Contract Capacity, denominated in US Dollars and having the terms set forth in Schedule 10.

“**Permitted Free Starts**” has the meaning given to that term in Clause 14.3.

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

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

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

“**Preliminary Restoration Estimate**” has the meaning given to that term in Clause 21.10.1.1.

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

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

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

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

“**Project Transmission Works**” means the design, procurement, financing and construction of the (i) 330 kV transmission line from the high voltage substation within the Plant to the Omotosho substation owned by TCN and all equipment required to connect the transmission works to the Grid, which transmission works (i) will be funded and constructed by Seller and transferred to the Transmission Company of Nigeria pursuant to the Project Transmission Line Agreement, and (ii) are required to enable the Transmission Company of Nigeria evacuate the Net Electrical Output over the Grid.

“**Project Transmission Line Agreement**” means the agreement dated on or about the Execution Date pursuant to which (i) Seller will construct the Project Transmission Works and transfer the ownership thereof to the Transmission Company of Nigeria; and (ii) the Transmission Company of Nigeria will agree to accept such transfer and, thereafter, operate and maintain the Project Transmission Works as part of the Grid.

“**Projected Available Capacity**” or “**PA_n**” means the projected Available Capacity for a Contract Year, “n” as provided in Schedule 6.

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

“**Prolonged Gas Supply Constraint**” has the meaning given to that term in Clause 18.7.1

“**Prolonged Gas Supply Constraint Minimum Level**” has the meaning given to that term in Schedule 1.

“**Prolonged Public Gas Transportation Constraint**” has the meaning given to that term in Clause 18.7.2.

“**Protected Assets**” means:

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

“**Public Gas Transportation Constraint**” means any failure of the delivery of gas caused by (i) any exercise by a Public Gas Transporter of its rights under the Gas Transportation Agreement to which it is a party not to transport gas or (ii) any default or breach by a Public Gas Transporter under the Gas Transportation Agreement to which it is a party or (iii) any circumstance or event (including, for the avoidance of doubt, any scheduled (or unscheduled) maintenance of a Public Gas Transporter’s facilities, a Force Majeure Event or force majeure event pursuant to the Gas Transportation Agreement to which a Public Gas Transporter is party) affecting the ability of a

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Public Gas Transporter to transport and deliver gas in accordance with the Gas Transportation Agreement to which it is a party, other than a failure, circumstance, or event attributable to:

- (a) Seller under the relevant Gas Transportation Agreement;
- (b) the Gas Supplier under the Gas Supply Agreement; or
- (c) a gas transporter other than a Public Gas Transporter that is responsible for transporting gas to or from such Public Gas Transporter's gas transportation facilities.

"Public Gas Transporter" means a Public Sector Entity with authority to provide gas transportation services for a portion of the gas transportation system to which the Plant is connected.

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

"Put/Call Option Agreement" means the put/call option agreement between, amongst others, FGN, Buyer and Seller. Any and all references to the Put/Call Option Agreement in this Agreement are merely indicative of the Parties expectation as to the form and substance of the Put/Call Option Agreement. The Put/Call Option Agreement is a document of FGN which has final authority on whether to execute it and the final terms of the Put/Call Option Agreement.

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

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

"Reduced Available Capacity" has the meaning given to that term in Clause 2.3.1.

"Reference Site Conditions" has the meaning given to that term in Schedule 1.

"Refinancing" has the meaning given to that term in Clause 14.6.1.

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

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

"Relevant Change" has the meaning given to that term in Clause 14.5.1.

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

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

“**Remedial Plan Notice Period**” has the meaning given to that term in Schedule 1.

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

“**Required Commercial Operations Date**” means the date specified in Schedule 1 by which Seller must achieve the Commercial Operations Date in order to avoid paying liquidated damages under Clause 7.10, which date is specified in Schedule 1.

“**Required Gas Transportation Start Date**” or “**Required GTSD**” means the latest date by which the Start Date (as defined in the Gas Transportation Agreement) may occur in accordance with the terms of the Gas Transportation Agreement, which date is specified in Schedule 1, as such date may be extended in accordance with the Gas Transportation Agreement.

“**Required Gas Supply Start Date**” or “**Required GSSD**” means the latest date by which the Start Date (as defined in the Gas Supply Agreement) may occur in accordance with the terms of the Gas Supply Agreement, which date is specified in Schedule 1, as such date may be extended in accordance with the Gas Supply Agreement.

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

“**Restoration**” has the meaning given to that term in Clause 21.10.1.1.

“**Restoration-Related Tariff Modifications**” has the meaning given to that term in Clause 21.10.6.4.

“**Restoration Cost Estimate**” has the meaning given to that term in Clause 21.10.1.1.

“**Restoration Expert**” has the meaning given to that term in Clause 21.10.1.1.

“**Restoration Period**” has the meaning given to that term in Clause 21.10.1.1.

“**Restoration Schedule**” has the meaning given to that term in Clause 21.10.1.1.

“**Restoration Threshold Amount**” has the meaning given to that term in Schedule 1.

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

- (a) has been scheduled by Seller and agreed to by the System Operator in accordance with the Grid Code and Buyer in accordance with Clause 9; and

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(b) is for inspection, testing, preventive maintenance, corrective maintenance, repairs, replacement or improvement of the Plant or any material part thereof.

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

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

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

“**Seller Initial Authorisations**” means the Initial Authorisations set out under the heading “Seller Initial Authorisations” in Schedule 9 (Initial Authorisations).

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

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

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

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

“**Shortfall**” has the meaning given in Clause 2.3.1.

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

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

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

“**Start Up Payment**” means the payment from Buyer to Seller determined in accordance with Schedule 6.

“**Supplemental Payment**” means the monthly payment by Buyer to Seller determined in accordance with Schedule 6.

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

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

“**Target Commercial Operations Date**” means the date specified in Schedule 1.

“**Tax**” means any charge, fee, levy or other assessment imposed by any Relevant Authority, whether federal, state, local or otherwise; including all income, withholding, gross receipts, business, environmental, value added, capital gain, duties, capital stock, registration, excise, ad

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valorem, real property, personal property, land, local development, licence, sales, production, occupation, use, service, transfer, payroll, employment, social security travel, franchise, severance, bonus, or other tax of any kind, as well as any charges and assessments (including any interest, penalties or additions to tax attributable to or imposed on or with respect to any such assessment, whether disputed or not and all stamp or documentary taxes and fees.

“**Tax & Law Threshold Amount**” has the meaning given to that term in Schedule 1.

“**Technical Limits**” means the operating limits of the Plant specified in Schedule 5.

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

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

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

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

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

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

“**Tested Capacity**” means the net generation capacity of the Plant expressed in MW adjusted to Reference Site Conditions, in effect from time to time during the Term as demonstrated by the then most recent Capacity Test or Capacity Demonstration.

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

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

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

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

“**Unit Test Date**” means the date on which a Unit has successfully completed the Unit Tests in accordance with Schedule 3.

“**Unit Tests**” means tests performed on an individual Unit in accordance with Schedule 3.

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

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

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

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

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

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

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

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

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

1.2. Interpretation

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

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

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- 1.2.2 reference to any consent “not to be unreasonably withheld” is deemed to be qualified by the requirement that such consent shall not be unreasonably conditioned or delayed;
- 1.2.3 reference to “include” and “including” is deemed to be qualified by the additional term without limitation;
- 1.2.4 reference to any publication, statute, rule, regulation, instrument or standard means the same as amended, supplemented or re-enacted from time to time;
- 1.2.5 references to this Agreement or any other agreement, document, or instrument shall mean this Agreement or such other agreement, document or instrument as the same may be amended, modified, supplemented, novated or replaced from time to time *provided, that*, in the event that an amendment, modification, supplement, novation or replacement to an agreement other than this Agreement has a material effect on the rights or obligations of a Party under this Agreement, then such amendment, modification, supplement, or replacement shall not be considered in interpreting the rights or obligations of a Party under this Agreement unless such Party has consented to or ratified the amendment, modification, supplement, novation, or replacement of such other agreement;
- 1.2.6 any requirement that an action may or shall be taken within a specified number of Days means that such action may or shall be taken within the number of Days so specified starting at 00:00:00 Hours on the Day on which the requirement to take such action arose and ending at 23:59:59 Hours on the last Day;
- 1.2.7 any reference to time shall be to the time in Abuja, Nigeria;
- 1.2.8 reference to any amount of money means that amount in Naira, except where indicated otherwise;
- 1.2.9 reference to Clauses and Schedules means reference to Clauses hereof, and Schedules to this Agreement;
- 1.2.10 headings are inserted for ease of reference only and shall not form part of this Agreement, affect its interpretation or construction or have any legal effect;
- 1.2.11 any remedy that provides for the payment of damages by a Party represents a genuine pre-estimate of the likely loss or damage which will be suffered by the Party to whom such damages are payable in consequence of the act or omission of the Party liable to pay such damages and shall not in any way be construed as a penalty;
- 1.2.12 any good faith best estimate which is given by a Party when required in accordance with this Agreement is non-binding and given for information only and the Party giving such good faith best estimate shall have no liability to the other Party for any inaccuracy thereof;

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- 1.2.13 reference to any notice or notification means a notice or notification made in writing or as otherwise expressly provided in this Agreement;
- 1.2.14 all calculations done to two (2) decimal places unless such calculation is made to a higher or lesser degree of precision in accordance with Applicable Law or in accordance with Good Industry Practices, with the final digit of five (5) or above being rounded up and below five (5) being rounded down;
- 1.2.15 in the event of any ambiguity or discrepancy in this Agreement, the following shall apply:
 - 1.2.15.1 in the case of any ambiguity or discrepancy between the written description of any drawing and the specifications and standards, the latter shall prevail;
 - 1.2.15.2 in the case any ambiguity or discrepancy between the dimension scaled from the drawing and its specific written dimension, the latter shall prevail; and
 - 1.2.15.3 in the case of any ambiguity or discrepancy between any value written in numerals and that in words, the latter shall prevail.

1.3. Initialling of the Agreement

- 1.3.1 By initialling this Agreement, the Parties hereto are indicating their agreement in principle with the terms of this Agreement, subject to:
 - 1.3.1.1 negotiation and finalization of all the Schedules to this Agreement;
 - 1.3.1.2 negotiation and finalisation of the Put/Call Option Agreement;
 - 1.3.1.3 in the case of Buyer, to the conduct by Buyer of appropriate due diligence in respect of the Project Documents and the Finance Documents (each as defined in this Agreement) after Seller has completed its negotiation with respect to, and entered into, such documents.
- 1.3.2 After:
 - 1.3.2.1 the Parties have concluded negotiations, and agreed on all the Schedules to this Agreement;
 - 1.3.2.2 the Put/Call Option Agreement has been negotiated and finalised;
 - 1.3.2.3 Buyer has completed its due diligence with respect to the Project Documents and the Finance Documents,

the Parties will discuss the changes (if any) that will be made to this Agreement in order to incorporate the agreed Schedules, reflect the terms of the Put/Call Option

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Agreement, reflect the terms of the Project Documents and Finance Documents and address any impact that such Schedules, Put/Call Option Agreement terms, Project Documents terms and Finance Documents terms may have on the balance of risks and rewards that are reflected in and contemplated by this Agreement.

- 1.3.3 The purpose of this initialling is only to memorialize the current state of negotiations as to the form and substance of this Agreement for use as a reference point for the purposes of further discussions. Save for this Clause 1.3, the Parties will not be bound by any provision of this Agreement and the Parties will not have any obligations with respect to the matters addressed in this Agreement until negotiations to finalize this Agreement in form and substance have concluded and this Agreement has been executed and delivered by the Parties, at which time the Parties will have only the obligations set forth in this Agreement.

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Clause 2 Sale and Purchase of Available Capacity and Net Electrical Output

2.1. Sale of Energy Before Commercial Operations Date

2.1.1 If the Parties have agreed in Paragraph 1 of Schedule 1 that Seller may test the Units individually and make the net generating capacity and Net Electrical Output of the Units that have successfully completed the Unit Tests available to Buyer prior to the Commercial Operations Date, then:

2.1.1.1 during the testing of a Unit, Buyer shall accept and pay for Test Power in accordance with Clause 7.7; and

2.1.1.2 during the period commencing on the date of the first Unit Test Date to occur and expiring on the Commercial Operations Date:

(i) Seller shall use Reasonable Endeavours subject to construction related interruptions to make the net generating capacity of each Unit that has achieved its Unit Test Date available to Buyer and Buyer shall pay the Early Availability Bonus Payment in accordance with Schedule 6; and

(ii) Seller shall deliver to Buyer and Buyer shall (a) accept from Seller all dispatched Early Net Electrical Output and (b) pay Seller for all such Early Net Electrical Output in Schedule 6; and

2.1.1.3 in the event the Commercial Operations Date occurs on a Day other than the first or the last Day of a Billing Period, then the Billing Period shall be split into two Billing Periods, with the first of such Billing Periods commencing on the Day on which the single Billing Period commenced and expiring on the Day prior to the Commercial Operations Date and the second of such Billing Periods commencing on the Commercial Operations Date and expiring on the Day on which the single Billing Period would have expired.

2.1.2 If the Parties have not agreed in Schedule 1 that Seller will test the Units individually and make the net generating capacity and Net Electrical Output of the Units that have successfully completed the Unit Tests available to Buyer prior to the Commercial Operations Date, then Buyer shall accept and pay for Test Power and any other Net Electrical Output dispatched by the System Operator on the terms set forth in Clause 7.7.

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

2.2.1 On and after the Commercial Operations Date until the expiry of the Term or earlier termination, Seller agrees to make the Available Capacity available to Buyer and Buyer agrees to pay for the Available Capacity.

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2.2.2 On and after the Commercial Operations Date until the expiry of the Term or earlier termination in accordance with this Agreement, Seller shall deliver to Buyer and Buyer shall accept and purchase from Seller all dispatched Net Electrical Output.

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

2.3.1 Upon there being a shortfall in the delivery by Seller of Net Electrical Output dispatched by the System Operator during a given Hour and such shortfall is in excess of one percent (1.0%) of the Net Electrical Output that was dispatched (a “**Shortfall**”), the Available Capacity for that Hour used to calculate the Capacity Payment under Schedule 6 shall be reduced by the capacity corresponding to the Shortfall (the “**Reduced Available Capacity**”), *provided that*, Seller shall not be deemed to have failed to deliver Net Electrical Output dispatched for the given Hour if and to the extent the cause was an Availability Event.

2.3.2 Following any reduction in Available Capacity pursuant to Clause 2.3.1, Available Capacity shall be deemed not to exceed the Reduced Available Capacity for any subsequent Hour until such time as Net Electrical Output delivered during an Hour actually exceeds the Net Electrical Output delivered during the Hour in which the Shortfall occurred.

2.4. Ancillary Services

In accordance with the Market Rules and Grid Code, Seller will supply Ancillary Services to the Transmission Company of Nigeria as directed by the System Operator during the Delivery Term. For the avoidance of doubt, the provision of Ancillary Services by Seller as directed by the Transmission Company of Nigeria or its designee that reduces Actual Capacity or Net Electrical Output is an Availability Event under Clause 8.1.2, and no reductions in Capacity Payments or Energy Payments will result from the provision of Ancillary Services by Seller as directed by the Transmission Company of Nigeria or the impact of such provision on Actual Capacity. In the event that the Transmission Company of Nigeria provides direct payment to Seller for Ancillary Services, such payments will be credited to the Capacity Payments and Energy Payments described in Schedule 6 to this Agreement.

2.5. Transmission Services, Loss Factor

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

2.5.2 This Agreement is premised on the assumption that the Transmission Company of Nigeria will accept delivery of net generation capacity, Available Capacity and Net Electrical Output at the Delivery Point and an electric transmission loss factor imposed on Seller as a generator connected to the Grid (the “**Loss Factor**”) will apply only to the Net Electrical Output component of the Energy Payments calculation. For the duration of the Term the agreed Loss Factor will be 8.05 per cent as specified by the Commission. The Parties’ expectation is that the energy

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deliveries reported by the Market Operator in settlement statements will be reduced by a Loss Factor of 8.05% from those metered at the Delivery Point, and the Charge Rates established herein reflect that expectation. If the Loss Factor is not used as an adjustment to the metered energy deliveries by the Market Operator in settlement statements, or if the Loss Factor so used is changed from 8.05%, the Parties shall change the Charge Rates specified in Schedule 6 to provide the same effective Charge Rates such that Seller and Buyer are kept whole; the term Loss Factor shall be amended accordingly; and the Parties shall notify the Commission of all such changes.

2.5.3 The calculation of the Local Energy Payments and Foreign Energy Payments in Clause 7 of Schedule 6 has been designed so that Seller will not bear the costs or enjoy the benefit of such Loss Factor. If additional charges not currently addressed in Schedule 6 are imposed on Seller for transmission services or transmission losses, the Capacity Payments, Energy Payments and Gas Payments will be adjusted so that Seller will not bear such costs and if Seller obtains a net benefit of a negative Loss Factor or other similar credit relating to Transmission, the Capacity Payments, Energy Payments and Gas Payments will be adjusted so that Buyer obtains such benefit.

2.6. Purchase for Resale

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

Clause 3 Term and Conditions Precedent

3.1. Term of Agreement

3.1.1 This Agreement shall only become fully effective on the Closing Date and shall continue in full force and effect, valid and binding from the Closing Date until the expiry of the Term, the earlier termination by either Party in accordance with Clause 18, or the expiry of this Agreement pursuant to Clause 3.1.3.

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

- (a) Clause 1 (*Definitions*);
- (b) Clauses 4.2.5, 4.2.6, 4.2.8 and 4.2.9 (*Seller's Covenants*);
- (c) Clause 3 (*Term and Conditions Precedent*);
- (d) Clause 4.1 (*Seller's Representations and Warranties*);
- (e) Clause 4.3 (*Buyer's Representations and Warranties*);

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- (f) Clause 4.4 (*Buyer's Covenant*),
- (g) Clause 4.5 (*Conduct of the Parties*),
- (h) Clause 4.6 (*Effect and Duration of Representations and Warranties*);
- (i) Clause 4.7 (*Disclaimer of Other Representations and Warranties*).
- (j) Clause 17 (*Liability and Indemnification*)
- (k) Clause 20 (*Transfers and Prohibited Shareholders*);
- (l) Clause 22 (*Choice of Law and Dispute Resolution*);
- (m) Clause 23 (*Notices*); and
- (n) Clause 24 (*Miscellaneous Provisions*).

3.1.3 In the event that Seller fails to deliver the Development Security to Buyer in accordance with Clause 4.2.8 by the date that occurs thirty (30) days after the Execution Date, or thereafter fails to continuously maintain the Development Security (or a replacement thereof) in accordance with Clause 4.2.8, then this Agreement shall immediately expire.

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

3.2. Due Diligence Letter

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

3.3. Conditions Precedent

Subject to Clause 3.1.2 and 3.1.3, the:

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

are subject to the satisfaction or waiver of the conditions precedent (collectively, the “**Conditions Precedent**”) set out in the table that appears in Paragraph 5 of Schedule 1.

3.4. Satisfaction of Conditions Precedent – Closing Date Notice

3.4.1 The Parties shall use Reasonable Endeavours to satisfy or procure the satisfaction of the Conditions Precedent as soon as is reasonably practicable and shall satisfy

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or procure the satisfaction of each of the Conditions Precedent for which they are primarily responsible for satisfying (as indicated in the table that appears in Paragraph 5 of Schedule 1) by the Target Closing Date.

- 3.4.2 Each Party, upon request of the other Party and at such other Party's expense, shall use Reasonable Endeavours to assist the other Party in satisfying each Condition Precedent for which such other Party is primarily responsible for satisfying (as indicated in the table that appears in Paragraph 5 of Schedule 1).
- 3.4.3 The Parties shall from time to time, once a month at the minimum, meet to discuss and coordinate their plans for the satisfaction of the Conditions Precedent and each Party shall keep the other informed on a timely basis as to progress in relation to the satisfaction of the Conditions Precedent.
- 3.4.4 Upon satisfaction of a Condition Precedent, the Party that is primarily responsible under Paragraph 5 of Schedule 1 for the satisfaction of the Condition Precedent shall notify the other Party of its satisfaction. Such notice shall include necessary supporting documentation to substantiate the satisfaction of the Condition Precedent. The other Party may by notice within thirty (30) Days dispute whether such Condition Precedent has been satisfied.
- 3.4.5 Where the table that appears in Paragraph 5 of Schedule 1 indicates that the consent of a Party is required to waive a Condition Precedent, then such Condition Precedent shall only be waived with the consent of such Party. Where the table that appears in Paragraph 5 of Schedule 1 indicates that the consent of both Parties is required to waive any Condition Precedent, such Condition Precedent shall only be waived with the consent of both Parties. Either Party may condition the waiver of a Condition Precedent upon the conversion of that Condition Precedent into a condition subsequent.
- 3.4.6 On the Closing Date, each of the Parties shall provide notice to the other acknowledging that all Conditions Precedent have been met or waived, at which point all of the provisions of this Agreement shall become effective.

3.5. Failure to Satisfy Conditions Precedent

- 3.5.1 If any Party becomes aware of the reasonable likelihood that it will not be able to satisfy a Condition Precedent for which it is primarily responsible under Paragraph 5 of Schedule 1 before the Target Closing Date, then:
 - (a) the Party responsible for satisfying such Condition Precedent shall give notice to the other Party giving reasons for the delay or failure to satisfy the Condition Precedent and the revised date by which it is reasonably expected that the Condition Precedent shall be satisfied; and
 - (b) upon such notification in Clause 3.5.1(a) the Parties shall mutually agree on an extension of the Target Closing Date for the satisfaction of such Condition Precedent; *provided that*, the Target Closing Date may not be

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extended beyond the Long Stop Closing Date, except upon request by Seller and approval by Buyer in its sole discretion.

- 3.5.2 Either Party may terminate this Agreement with immediate effect by giving a Termination Notice to the other Party if the Conditions Precedent have not been satisfied or waived in accordance with this Agreement by the Long Stop Closing Date, subject to any agreed extension pursuant to Clause 3.5.1(b).
- 3.5.3 Upon any termination of this Agreement under Clause 3.5.2 due to a failure of Seller to satisfy any Condition Precedent for which Seller is primarily responsible, Buyer shall be entitled to claim liquidated damages in the amount available under the Development Security and draw on or make a demand under the Development Security, provided that, without derogation of the right of Buyer to immediately draw on or make a demand under the Development Security, Seller may dispute its obligation to pay liquidated damages under this Clause 3.6.3 if Seller's failure to satisfy a condition precedent for which it is primarily responsible is directly attributable to a breach by Buyer under this Agreement (which breach is not caused by an inaccuracy of Seller's representations or warranties included in Clause 4.1 or any breach of the Agreement by Seller) by issuing a Notice of Dispute to such effect no later than the termination date set forth in the Termination Notice issued by Buyer. If Seller issues a timely Notice of Dispute disputing its obligation to pay liquidated damages pursuant to the preceding sentence, Buyer shall deposit the liquidated damages amount into an escrow account pending resolution of the Dispute.

3.6. Review of Documents by Buyer

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

Clause 4 Covenants, Representations and Warranties

4.1. Seller's Representations and Warranties

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

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

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

4.1.8 It has:

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

4.2. Seller's Covenants

Seller hereby covenants and agrees with Buyer to:

- 4.2.1 enter into a legally binding and enforceable Gas Supply Agreement and Gas Transportation Agreement;
- 4.2.2 construct, operate, and maintain the Plant in such manner as to maintain the useful life of the Plant to be at least equal to the Term;
- 4.2.3 procure and maintain in effect at all times an Operation and Maintenance Agreement with a Technically Qualified Operator in the form approved by Buyer prior to the Closing Date or in such other form or with such other Technically Qualified Operator approved by Buyer thereafter in its reasonable discretion;
- 4.2.4 operate and maintain the Plant in all material respects, in accordance with this Agreement, Good Industry Practices and Applicable Law;
- 4.2.5 procure and maintain the Authorisations necessary for its performance under this Agreement;
- 4.2.6 work and cooperate in good faith with Buyer with respect to all of Buyer's obligations and rights hereunder;
- 4.2.7 supply, install, maintain, and replace all auxiliary facilities necessary to interconnect the Plant:
 - (a) to the Grid; and

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- (b) to the gas pipelines and transportation equipment of the Public Gas Transporter and/or any other gas transporter;
- 4.2.8 no later than 30 days after the Execution Date, deliver the Development Security to Buyer having the terms set forth in Schedule 10 and thereafter continuously maintain the Development Security (or a replacement thereof) until the Closing Date; and
- 4.2.9 on or before the Closing Date, deliver the Performance Guarantee to Buyer having the terms set forth in Schedule 10 and thereafter continuously maintain the Performance Guarantee (or a replacement thereof) until the Commercial Operations Date.

4.3. Buyer's Representations and Warranties

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

- 4.3.1 Buyer is a company, duly organised and incorporated under Applicable Law, and has all requisite corporate power and authority to carry on its business as proposed to be conducted under this Agreement.
- 4.3.2 Buyer has full corporate power and authority to execute and deliver this Agreement and to perform its obligations hereunder.
- 4.3.3 The execution, delivery, and performance of this Agreement by Buyer:
 - (a) has been duly authorized by all requisite corporate action on the part of Buyer, and no other proceedings on the part of Buyer or any other Person are necessary for such authorisation;
 - (b) will not violate (i) Applicable Law or (ii) any applicable order of any Relevant Authority or (iii) any provision of the memorandum and articles of association of Buyer; and
 - (c) will not violate, be in conflict with, result in a breach of, nor constitute (with due notice or lapse of time or both) a default under any indenture, agreement for borrowed money, bond, note, or other agreement to which Buyer is a party or by which Buyer or its property is bound, excluding defaults or violations that would not, individually or in the aggregate, have a material adverse effect on the business, properties, financial condition, or results of operation of Buyer, nor on its ability to perform its obligations hereunder.
- 4.3.4 This Agreement has been duly executed and delivered by Buyer and constitutes a legal, valid, and binding obligation of Buyer, enforceable against it in accordance with its terms, subject to Applicable Law.

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- 4.3.5 No filing or registration with, no notice to, and no permit, authorisation, consent, or approval of any Person is required for the execution, delivery, or performance of this Agreement by Buyer.
- 4.3.6 Buyer is not in default under any agreement or instrument of any nature whatsoever to which it is a party or by which it is bound in any manner that would have a material adverse effect on its ability to perform its obligations hereunder or the validity or enforceability of this Agreement.
- 4.3.7 There is no action, suit, proceeding or investigation pending or, to Buyer's knowledge, threatened (i) for the dissolution of Buyer, or (ii) against Buyer, which, if adversely determined, would have a material adverse effect on its ability to perform its obligations hereunder or the validity or enforceability of this Agreement.
- 4.3.8 It is not in violation of any Applicable Law or judgment entered by any Relevant Authority, which violation, individually or in the aggregate, would affect its performance of any obligation under this Agreement. There are no legal or arbitration proceedings or any proceeding by or before any Relevant Authority, now pending or (to the best knowledge of Buyer) threatened against Buyer that, if adversely determined, could reasonably be expected to have an adverse effect on the financial condition, operations, prospects, or business, as a whole, of Buyer, or its ability to perform under this Agreement.
- 4.3.9 It has:
- (a) carefully examined this Agreement, together with all Schedules attached hereto, thoroughly and become familiar with all their respective terms and provisions;
 - (b) investigated to its satisfaction the Applicable Law and determined that it can perform its obligations hereunder in accordance therewith; and
 - (c) the experience, qualifications, and capabilities to perform its obligations hereunder.

4.4. Buyer's Covenant

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

4.5. Conduct of the Parties

- 4.5.1 Each Party represents that it and the shareholders, officers, directors, employees, and agents of it and its Affiliates have not made, offered, or authorized, and covenants that it will not (and it shall procure that the shareholders, officers, directors, employees and agents of it and its Affiliates will not) make, offer or authorize, with respect to the matters which are the subject of this Agreement, any

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payment, gift, promise or anything of value or advantage, whether directly or through any other person or entity, to or for the use or benefit of any public official (i.e. any person holding a legislative, administrative or judicial office, including any person employed by or acting on behalf of a public agency, a public enterprise or a public international organisation) or any political party or political party official or candidate for office, where such payment, gift, promise or advantage would violate (a) Applicable Law; (b) the principles described in the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, signed in Paris on 17 December 1997, which entered into force on 15 February 1999, and the Convention Commentaries; (c) the UK Bribery Act 2010, or (d) the US Foreign Corrupt Practices Act.

- 4.5.2 Each Party covenants and represents that it does not desire and will not request any services, action or inaction by any person or entity which would constitute a violation under Clause 4.5.1. Each Party shall promptly (a) respond in reasonable detail to any notice from any other Party reasonably connected with the above warranty; and (b) furnish applicable documentary support for such response upon request from and at the expense of such other Party.
- 4.5.3 Neither of the Parties nor any of their Affiliates, nor any of their officers, employees, representatives or agents (in relation to the Project or in relation to the execution of this Agreement) have, whether acting as principal or agent, received, agreed or attempted to receive the proceeds of or profits from a crime or agreed to assist any person to retain the benefits of a crime.

4.6. Effect and Duration of Representations and Warranties

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

4.7. Disclaimer of Other Representations and Warranties

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

Clause 5

Additional Commitments of the Parties

5.1. Market Rules and Grid Code

- 5.1.1 The Parties agree that they shall each be bound by the Market Rules and Grid Code where applicable to the extent that the Market Rules and Grid Code (or the relevant parts of them) are mandatory in their application and no derogation from their application is permitted by the Relevant Authority.

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

Clause 6 Plant and Facilities

6.1. Seller's Plant and Facilities

6.1.1 Seller shall construct, install, test, commission, and operate (or cause to be so constructed, installed, tested, commissioned, and operated for Seller's benefit) the Plant described in Schedule 2 necessary to enable Seller to make available and deliver at the Delivery Point, from the Commercial Operations Date, Available Capacity and Net Electrical Output in accordance with the terms of this Agreement.

6.1.2 Design and Standards

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

6.1.3 Interconnection Facilities

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

6.2. Seller's Project Implementation

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

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6.2.2 The Plant shall be:

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

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

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

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

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

6.2.5 Buyer may reasonably exercise a right at reasonable times, upon giving reasonable notice, and at Buyer’s risk and cost to visit by itself or its nominees,

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the Site guided by Seller's representative, to inspect the progress of the construction works. In performing any such inspection, Buyer shall comply with Seller's safety rules and procedures.

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

Clause 7

Commissioning and Commercial Operations

7.1. Standards

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

7.2. Commissioning Period

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

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

7.2.3 In the event that the Commissioning of the Plant is not successfully completed by the expiration of the Commissioning Period, then the Commissioning Period shall be extended until completion of the Commissioning Procedures and Seller shall ensure that the Commissioning is carried out and successfully completed as soon as practicable.

7.3. Commissioning Procedures

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

7.3.1 Seller shall provide draft procedures for the Commissioning of the Plant (the "**Commissioning Procedures**") as soon as reasonably practicable following the Closing Date and in any case no later than the date falling sixty (60) Days before the date on which the Unit Tests for the first Unit to be tested are anticipated to begin. The Commissioning Procedures shall consist of procedures and tests designed to demonstrate that each Unit and the Plant is capable of operating to

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standards of performance and safety consistent with Applicable Law and in accordance with Good Industry Practices.

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

7.3.3 Seller shall complete the installation of the facilities required for the connection of the Plant:

- (a) to the Grid; and
- (b) to the gas pipelines and transportation equipment owned by the Public Gas Transporter and/or any other gas transporter; and
- (c) enable the System Operator to complete the testing and commissioning of Grid connection facilities before the Required Interconnection Date.

7.4. Cooperation during Commissioning Period

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

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

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

7.5. Unit Test Dates

7.5.1 If the Parties have agreed in Paragraph 1 of Schedule 1 that Seller will test the Units individually and make the net generating capacity and Net Electrical Output of the Units that have successfully completed the Unit Tests available to Buyer prior to the Commercial Operations Date, then, any Unit that is not the last Unit to successfully complete the Unit Tests may complete the Unit Tests on a Unit-by-Unit basis in accordance with Schedule 3.

7.6. Commercial Operations Tests and Date

7.6.1 Buyer shall have the right to attend the Site to witness the Commercial Operations Tests, and receive, within fourteen (14) Days thereafter, a written summary of all of the test reports.

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- 7.6.2 The Commercial Operations Date for the Plant shall occur on the Day that is no earlier than the Target Commercial Operations Date and following the date that:
- (a) the results of the Commercial Operations Tests demonstrate that the Plant has attained the minimum criteria for commercial operations specified in Schedule 3; and
 - (b) the Independent Engineer has issued a certificate addressed to both Parties, certifying, without material qualification, that Seller has installed all plant and equipment consistent with the requirements of Grid Code and this Agreement, and that Commissioning of the Plant has been completed (“**Engineer’s Certificate**”). The Engineer’s Certificate shall certify availability of the Plant to commence commercial operations, and state the capacity achieved during the Capacity Test conducted as part of the Commercial Operations Tests (the “**Initial Tested Capacity**”), and that the capacity of the Plant is in accordance with Clauses 7.9.
 - (c) The Commercial Operations Date shall not be achieved in the absence of compliance with the Commissioning and Commercial Operations Tests requirements and delivery of a satisfactory Engineer’s Certificate.
- 7.6.3 Seller shall, upon issuance of the Engineer’s Certificate, notify Buyer of the Commercial Operations Date, which shall be the Day following the Day Buyer receives a satisfactory Engineer’s Certificate.
- 7.6.4 Buyer shall be required to accept the Plant if and only if Seller has met the requirements for Commissioning and Commercial Operations Date.

7.7. Output during Commissioning Period

- 7.7.1 Not less than thirty (30) Days prior to the Commissioning Period, Seller shall notify Buyer of its estimate of the Test Power that Seller reasonably expects to be able to make available during the Commissioning Period and its estimate of the schedule.
- 7.7.2 Buyer shall be obligated to request the System Operator to dispatch and Buyer shall accept and purchase all Test Power generated by Seller during the Commissioning Period.
- 7.7.3 With respect to each Hour during which Seller generated Test Power, Seller shall invoice to Buyer and Buyer shall pay all amounts payable for Test Power under Schedule 6.

7.8. Commercial Operations

- 7.8.1 Obligation to Achieve Commercial Operations Date

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Seller shall procure the construction of the Plant such that Seller is able to achieve the Commercial Operations Date on or after the Target Commercial Operations Date and on or before the Required Commercial Operations Date.

7.8.2 Delayed Commissioning Events

“**Delayed Commissioning Event**” means an event listed below or combination of events listed below, that is beyond the reasonable control of Seller, which causes a delay or interruption of the construction or Commissioning of the Plant, except to the extent caused by (i) Seller Default or an action or inaction of Seller in breach of any Project Document or Authorisation; or (ii) the Gross Negligence or Wilful Misconduct of Seller:

- (a) Buyer’s Default;
- (b) Buyer’s Gross Negligence or Buyer’s Wilful Misconduct;
- (c) the Transmission Company of Nigeria’s failure or inability to perform its obligations under the Connection Agreement or the Project Transmission Line Agreement, or a failure of the Transmission Company of Nigeria to use Reasonable Endeavours to cooperate with the construction or Commissioning of the Plant or the Project Transmission Works, except in any case as a result of a default or breach by Seller under the Connection Agreement or the Project Transmission Line Agreement;
- (d) actions or inactions of the System Operator contrary to the Grid Code, including a failure to provide permission to connect to the Grid in due course after submission of a proper and complete application;
- (e) lack of availability, or constraint in the availability of the Grid (for the avoidance of doubt excluding lack of availability of, or constraint in the availability of the Grid forming part of the Project Transmission Works, prior to the transfer of ownership of the Project Transmission Works to the Transmission Company of Nigeria);
- (f) any event disturbing or preventing the normal operation or Start Up of a Unit or the Plant resulting from a Grid condition outside those stipulated in the Technical Limits, including voltage and frequency excursions and spikes, short circuit events, harmonic disturbance and activation of protective equipment on the Grid or at the Plant owing to such events;
- (g) a Local Political Force Majeure Event that has occurred and is continuing;
or
- (h) a Public Gas Transportation Constraint,

provided that no event that would otherwise constitute a Delayed Commissioning Event shall constitute a Delayed Commissioning Event to the extent such Delayed

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Commissioning Event was caused by any failure of Seller to complete the design and construction of the Seller Connection Works or Project Transmission Works unless such failure was itself caused by a Delayed Commissioning Event.

7.8.3 Delayed Commissioning Payments

In the event that the Commercial Operations Date is delayed as a result of a Delayed Commissioning Event, then, *provided that* Seller shall have made all Reasonable Endeavours to prevent and/or mitigate the effect of such Delayed Commissioning Event:

- (a) on and from the later of (i) the date on which Seller would have been able to achieve the Commercial Operations Date but for the occurrence of such Delayed Commissioning Event, and (ii) the Required Commercial Operations Date (without extension pursuant to Paragraph (b) below) (such later date is defined as the “**Expected Commercial Operations Date**”) until the date that the Commercial Operations Date is actually achieved:
 - (i) Buyer shall pay to Seller Delayed Commissioning Payments equal to the Foreign Non-Escalatable Capacity Payments and Local Non-Escalatable Capacity Payments that would have been due had Commercial Operations Date occurred on the Expected Commercial Operations Date based on the Contract Capacity;
 - (ii) Buyer shall pay to Seller any gas take or pay payments that Seller is required to pay under the GSA on account of the Delayed Commissioning Event;
 - (iii) Buyer shall pay to Seller any capacity payments that Seller is required to pay under the GTA on account of the Delayed Commissioning Event; and
- (b) the Required Commercial Operations Date shall be extended for a period equal to the period of delay caused by the Delayed Commissioning Event.

7.8.4 Seller shall proceed with the Commissioning Procedures for any part of the Plant that is not affected by the Delayed Commissioning Event and of the entire Plant as soon as practicable after the end of the Delayed Commissioning Event.

7.8.5 If Delayed Commissioning Payments are paid, and either:

- (i) the Plant fails, following the cessation of the relevant Delayed Commissioning Event, to achieve a Tested Capacity equal to or greater than the capacity in respect of which the Delayed Commissioning Payments have been paid, or

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- (ii) it is determined that the cause of the delay was not a Delayed Commissioning Event,

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

7.9. Initial Tested Capacity - Retest

- 7.9.1 The Initial Tested Capacity must equal or exceed the Minimum Initial Tested Capacity for the Commercial Operations Date to occur under this Agreement.
- 7.9.2 In the event that the Initial Tested Capacity is greater than the Minimum Initial Tested Capacity but less than the Contract Capacity and the Commercial Operations Date has occurred under Clause 7.9.1 above, Seller will have the right to remedy and re-test the Plant within six (6) months of the Commercial Operations Date. The Tested Capacity during such retest shall become the Initial Tested Capacity from and after the certification of test results by the Independent Engineer.

7.10. Liquidated Damages for Failure to Achieve COD; Reduction in Contract Capacity

- 7.10.1 Seller acknowledges that Buyer will suffer actual damage if Seller fails to achieve the Commercial Operations Date by the Required Commercial Operations Date. In the event of such failure, Seller shall pay liquidated damages to Buyer for each Day (or any part thereof) of delay at the rate set forth in Schedule 1 based on the number of Days from the Required Commercial Operations Date to the Commercial Operations Date, *provided that* the aggregate amount of liquidated damages payable by Seller under this Clause 7.10.1 shall not exceed the Liquidated Damages Limit. Seller agrees that the liquidated damages set forth in Schedule 1 represents a genuine pre-estimate of damage Buyer would suffer as a result of the failure by Seller to achieve the Commercial Operations Date by the Required Commercial Operations Date and is in lieu of actual damages. Seller hereby waives, to the extent permitted by the Applicable Law, any defence as to the validity of liquidated damages payable hereof on the ground that such liquidated damages are void as penalties or otherwise. Payment of liquidated damages to Buyer for delay in the Commercial Operations Date beyond the Required Commercial Operations Date will be the sole remedy for Buyer for such delay, but payment of such liquidated damages shall not affect any other remedy of Buyer for any other breach of this Agreement.
- 7.10.2 Seller acknowledges that Buyer will suffer actual damage if the Initial Tested Capacity on the Commercial Operations Date is less than the Contract Capacity.

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In the event of such failure, Seller shall pay liquidated damages to Buyer for each MW (or any part thereof) of reduction at the rate set forth in Schedule 1. Seller agrees that the liquidated damages set forth in Schedule 1 represents a genuine pre-estimate of damage Buyer would suffer if the Initial Tested Capacity on the Commercial Operations Date is less than the Contract Capacity, and is in lieu of actual damages. Seller hereby waives, to the extent permitted by the Applicable Law, any defence as to the validity of liquidated damages payable hereof on the ground that such liquidated damages are void as penalties or otherwise. Payment of liquidated damages to Buyer for failure of the Initial Tested Capacity to equal or exceed the Contract Capacity on the Commercial Operations Date will be the sole remedy for Buyer for such failure, but payment of such liquidated damages shall not affect any other remedy of Buyer for any other breach of this Agreement.

7.10.3 If Seller fails to pay the liquidated damages within thirty (30) Days of Buyer's invoice for liquidated damages, then Buyer shall be entitled to claim such amounts under the Performance Guarantee.

7.10.4 To the extent the amount of liquidated damages due to Buyer exceeds the amount of the Performance Guarantee, Buyer may deduct the excess amount from future Capacity Payments until the liquidated damages amount is paid in full.

7.11. Authorisations

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

Clause 8 Available Capacity, Capacity Testing

8.1. Calculation of Available Capacity

8.1.1 In respect of any Hour, Capacity Payments are calculated in accordance with Schedule 6 in reference to Available Capacity. The calculation of, and any limitations to the Capacity Payments arising during the occurrence of any Availability Event in Clause 8.1.2 shall be as set out in Schedule 6

8.1.2 “**Availability Event**” means an event listed below or combination of events listed below which occurs after the occurrence of the Commercial Operations Date, that is beyond the reasonable control of Seller and that reduces the Actual Capacity of the Plant or delivery of Net Electrical Output except to the extent caused by (i) Seller Default or an action or inaction of Seller in breach of any Project Document or Authorisation; or (ii) the Gross Negligence or Wilful Misconduct of Seller:

(a) Buyer Default;

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- (b) a Local Political Force Majeure Event that has occurred and is continuing;
- (c) lack of availability, or constraint in the availability of the Grid (for the avoidance of doubt excluding lack of availability of, or constraint in the availability of the Grid forming part of the Project Transmission Works, prior to the transfer of ownership of the Project Transmission Works to the Transmission Company of Nigeria);
- (d) any event disturbing or preventing the normal operation or Start Up of a Unit or the Plant resulting from a Grid condition outside those stipulated in the Technical Limits including voltage and frequency excursions and spikes, short circuit events, harmonic disturbance and activation of protective equipment on the grid or at the Plant owing to such events;
- (e) a Dispatch Instruction or other direction of the System Operator;
- (f) the provision of Ancillary Services as instructed by the System Operator;
or
- (g) a Public Gas Transportation Constraint;

8.2. Capacity Testing

8.2.1 Scheduled Capacity Tests

- (a) The Tested Capacity of the Plant shall be verified at least annually by further Capacity Tests that will establish the revised Tested Capacity. Such tests will be conducted in consultation with the System Operator at Seller's expense, or if the System Operator does not participate in such tests, then Seller shall arrange for such tests in accordance with Schedule 4 or the Grid Code as applicable. Seller shall provide Buyer a copy of the report for each Capacity Test conducted.
- (b) No later than one Month prior to the scheduled date of a Capacity Test Seller shall appoint the Independent Engineer to witness the Capacity Test and certify the Capacity Test results to Buyer. In the event that Seller fails to appoint the Independent Engineer, Buyer may by notice to Seller with a copy to the System Operator call for a Capacity Demonstration.

8.2.2 Buyer Requested Capacity Test or Capacity Demonstration

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

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provided that Capacity Demonstrations required without an indication of an Outage will be limited to twelve (12) per Contract Year.

- (c) A Capacity Demonstration will not involve any additional compensation or reimbursement of costs to Seller. Buyer agrees to pay the reasonable costs for any Capacity Test that does not reveal an unreported Outage.

8.2.3 Seller Requested Capacity Demonstration or Capacity Test

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

8.2.4 Net Electrical Output During Capacity Demonstrations and Capacity Tests

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

8.2.5 Disputes as to Tested Capacity

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

8.2.6 Availability Event during Tests

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

8.3. Minimum Availability, Minimum Tested Capacity

- 8.3.1 Seller shall ensure that the Plant achieves the Minimum Availability over the course of each Contract Year from the Commercial Operations Date and the Minimum Tested Capacity during each Capacity Test. Without prejudice to Clause 18.7, if Seller fails to meet the Minimum Availability and Minimum Tested Capacity other than as a result of an event described in Clauses 8.3.2, 8.3.3, 8.3.4 or 8.3.5, Buyer may require Seller to provide, within the Remedial Plan Notice Period, a plan (a “**Remedial Plan**”) for improving the Annual

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Available Capacity to the Minimum Availability or the Tested Capacity to the Minimum Tested Capacity, as the case may be, as soon as practicable. Failure to provide and implement a Remedial Plan, if requested, will constitute a Seller Default in accordance with Clause 18.2(d). If Annual Available Capacity or Tested Capacity, as the case may be, cannot be restored to the minimum levels within one year for a reason other than an Availability Event or a Force Majeure Event, Buyer may elect to terminate this Agreement (and such termination shall constitute a Seller Default). If this Agreement is not terminated by Buyer, the sole remedy of Buyer for such failure shall without prejudice to Clause 18.5 be the adjustments to the Capacity Payments, Energy Payments, Gas Payments, Start Up Payments, and Supplemental Payments in accordance with Schedule 6.

- 8.3.2 If Seller fails to meet the Minimum Availability due to a Gas Supply Constraint above the Gas Supply Constraint Default Level, Seller shall commence and diligently continue to remedy the effects of such Gas Supply Constraint to restore Annual Available Capacity to the Minimum Availability as soon as practicable and Seller and Buyer agree that the sole remedy of Buyer for such failure shall without prejudice to Clause 18.5 be the adjustments to the Capacity Payments, Energy Payments, Gas Payments, Start Up Payments, and Supplemental Payments in accordance with Schedule 6.
- 8.3.3 If Seller fails to meet the Minimum Availability due to a Gas Supply Constraint below the Gas Supply Constraint Default Level but above the Prolonged Gas Supply Constraint Minimum Level, Buyer may require Seller to provide, within the Remedial Plan Notice Period, a Remedial Plan for improving the Annual Available Capacity to the Minimum Availability as soon as practicable. Failure to provide and implement a Remedial Plan, if requested, will constitute a Seller Default in accordance with Clause 18.2(d). If Annual Available Capacity cannot be restored to the minimum levels within one year for a reason other than an Availability Event, Major Equipment Failure or a Force Majeure Event, Buyer may elect to terminate this Agreement (and such termination shall constitute a Seller Default). If this Agreement is not terminated by Buyer, the sole remedy of Buyer for such failure shall without prejudice to Clause 18.5 be the adjustments to the Capacity Payments, Energy Payments, Gas Payments, Start Up Payments, and Supplemental Payments in accordance with Schedule 6.
- 8.3.4 If Seller fails to meet the Minimum Availability or Minimum Tested Capacity due to a Force Majeure Event, the provisions of Clause 21 shall apply.
- 8.3.5 If Seller fails to meet the Minimum Availability or Minimum Tested Capacity due to a Major Equipment Failure, Buyer may require Seller to provide, within the Remedial Plan Notice Period, a Remedial Plan for improving the Annual Available Capacity to the Minimum Availability and Minimum Tested Capacity, as soon as practicable. If the Remedial Plan demonstrates that Annual Available Capacity or Tested Capacity, as the case may be, can be restored to the minimum levels and Seller and Buyer agree that the restoration costs associated with the Major Equipment Failure are commercially practicable, Seller shall implement the

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Remedial Plan to remedy such Major Equipment Failure; *provided that*, if Seller does not implement the Remedial Plan and diligently pursue such restoration pursuant thereto, or if Annual Available Capacity is not restored to the minimum levels within the period agreed within the Remedial Plan for a reason other than an Availability Event or a Force Majeure Event, Buyer may elect to terminate this Agreement and this termination will constitute a Seller Default. If Buyer and Seller agree that the Remedial Plan demonstrates that Annual Available Capacity or Tested Capacity, as the case may be, cannot be restored to the minimum levels without the Seller incurring restoration costs that are commercially impracticable, Buyer may terminate this Agreement and this termination will constitute a Seller Default. Failure to provide and implement a Remedial Plan, if requested, will constitute a Seller Default in accordance with Clause 18.2(d). If this Agreement is not terminated by Buyer, the sole remedy of Buyer for such failure shall without prejudice to Clause 18.5 be the adjustments to the Capacity Payments, Energy Payments, Gas Payments, Start Up Payments, and Supplemental Payments in accordance with Schedule 6.

8.4. Ancillary Services

Without prejudice to Clause 2.4, and except as required by the Grid Code, Market Rules, the Transmission Company of Nigeria, System Operator, Market Operator and/or any regulations issued by any Relevant Authority, Seller shall not contract, other than with Buyer, for the provision of Ancillary Services or any other services that may adversely impact Seller's ability to make available Available Capacity or deliver Net Electrical Output to the Delivery Point under this Agreement.

8.5. Maintenance of Operating Records

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

- (a) operations and maintenance manuals and other technical documentation (including electronic files) for all items of equipment incorporated into the Plant and set forth in Schedule 13;
- (b) test results (including electronic files) for tests performed on the Plant in accordance with Schedule 4;
- (c) a continuous record of Actual Capacity, Net Electrical Output and bus voltage for each Hour and each Settlement Period. Net Electrical Output and bus voltage records shall be based on a Main Meter unless Seller and the System Operator cannot agree to share data from the Main Meter, in

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which case Seller shall maintain such records based on data from a Back Up Meter;

- (d) changes in operating status, Scheduled Maintenance Outages, Unscheduled Outages, Forced Outages or Partial Forced Outages, Ancillary Services provided, Dispatch Instructions and other orders of the System Operator;
- (e) circuit breaker trip operations requiring a manual reset, partial deratings of equipment; and
- (f) any other significant event related to the operation of the Plant, and unusual conditions found during inspections.

8.5.2 Records required by this Clause 8.5 shall be available for inspection by Buyer upon reasonable advance request by Buyer, and Seller shall make meter data available on a real-time basis by remote access to Buyer.

8.5.3 All records required under Clause 8.5 shall be maintained for a minimum of sixty (60) Months after the creation of such record or data, or such longer period as may be required by the Market Rules or other requirement. Either Party shall have the right, upon reasonable prior Notice to the other Party, and at reasonable times during normal office Hours, to examine the records and data of the other Party relating to this Agreement or the operation and dispatch of the Plant.

8.6. Monthly Reports

During the Delivery Term, Seller shall provide to Buyer Monthly reports that include the information in Clause 8.5 no later than ten (10) Days after the end of each Month, with such information and in such form as Buyer shall reasonably request, by electronic mail and hard copy, covering operations of the Plant for the previous Month. Each Monthly report shall include all information maintained in the operations record. The Monthly report shall also include non-binding estimates of capacity availability and non-binding requirements for Scheduled Maintenance Outages for each of the following twelve (12) Months and such other information related to the operation and maintenance of the Plant that Buyer reasonably requests.

8.7. Annual Report

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

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8.8. Rebate on Overpayment

In the event that:

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

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

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

Clause 9 Operation and Maintenance

9.1. Operation and Maintenance

Seller shall at all times during the Term, either directly or through a contractor, operate and maintain the Plant in accordance with this Agreement, Good Industry Practices, and Applicable Law, and the requirements set forth in Schedule 14. The appointment of an operations and maintenance contractor by Seller shall not relieve Seller of any of its obligations or excuse Seller from any obligations under this Agreement, Good Industry Practices, and Applicable Law regarding the design, construction, insurance, operation, and/or maintenance of the Plant, or any liability whatsoever resulting from a breach of any term or condition of this Agreement

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9.2. Scheduled Maintenance Outages

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

9.3. Scheduling of Scheduled Maintenance Outages

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

9.3.1 Seller shall use Reasonable Endeavours to coordinate with Gas Supplier and gas transporter to align its Scheduled Maintenance Outages with the scheduled maintenance outages proposed by the Gas Supplier and gas transporter.

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

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

9.3.4 If within twenty (20) Days after receiving Seller's proposed dates, System Operator or Buyer notifies Seller of alternative dates for Scheduled Maintenance Outages which System Operator or Buyer prefers, the Parties shall consult and Seller shall use its Reasonable Endeavours to accommodate System Operator's or Buyer's proposal provided such request would not defer maintenance required at a particular time by Good Industry Practices.

9.3.5 Not less than thirty (30) Days before the start of the relevant Contract Year, Seller shall issue a final schedule for Scheduled Maintenance Outages after consultation under this Clause 9.3; *provided that*, where no agreement was reached, the last notified alternative dates provided by Buyer and the System Operator shall prevail.

9.4. Rescheduling of Scheduled Maintenance Outages

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

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imminent damage) to the Plant or equipment, or if such rescheduling is required by Good Industry Practices.

9.5. **Unscheduled Outages**

Seller shall advise Buyer and System Operator of the need for any Unscheduled Outage, together with the proposed commencement date and estimated duration of the work to be undertaken. Buyer and System Operator shall advise Seller of the periods during which such Unscheduled Outage may be undertaken, such periods to be reasonable in light of Buyer's requirements for Net Electrical Output and System Operator's requirements for Ancillary Services and the necessity for the Unscheduled Outage.

9.6. **Notification of Forced Outages**

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

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

9.6.3 For the avoidance of doubt, the Available Capacity used to calculate the Capacity Payment in Schedule 6 shall be reduced to reflect any Forced Outage or Partial Forced Outage.

Clause 10 Scheduling Notices

10.1. **Declarations**

10.1.1 During the Delivery Term, not later than 12:00 Hours on the Day prior to each Operating Day, Seller shall notify Buyer of the Available Capacity of the Plant and the projected Actual Capacity of the Plant for each Settlement Period of such Operating Day. If Seller fails to give such notice on or before 12:00 Hours, the Available Capacity for each Settlement Period of such Operating Day shall be deemed to be equal to the Available Capacity for each Settlement Period declared by Seller for the immediately previous Operating Day or for the last Operating Day on which Seller notified Buyer of the Available Capacity and the projected Actual Capacity in accordance with this Clause 10.1.

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

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to Seller stating the Available Capacity of the Plant (which would be available but for the Availability Event).

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

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

10.2. Dispatch Projection by Buyer

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

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

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

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

10.3. Buyer Nominations

10.3.1 Daily Notices

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

10.3.2 Variation Notice

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

10.3.3 Upon receipt of Buyer’s nominations, Seller shall procure the operation of the Plant pursuant to the nominations given in accordance with this Clause 10. Seller may however refuse to comply with nominations where such operations would violate Good Industry Practices, the Grid Code or Market Rules, would conflict with a Scheduled Maintenance Outage, or would not be in accordance with Applicable Law or the Technical Limits.

10.3.4 Seller Responsible for Deviations, Exceptions

- (a) Seller shall have sole responsibility for all notices or declarations required to be provided by Seller to the System Operator under the Grid Code or Market Operator under the Market Rules.

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

Clause 11 Metering

11.1. Metering

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

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

11.2. Main Meters and Back Up Meters

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

11.3. Metering Code

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

11.4. Delivery of Meter Data

Seller will ensure that data from any meter controlled by Seller is sent (i) to the System Operator on a real time basis and in the proper format as specified in the Metering Code and (ii) to Buyer, and to do so on a real time basis at such time as Buyer is prepared to

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receive such data stream. Seller will request the System Operator or the Transmission Company of Nigeria as applicable to send data from any meter controlled by System Operator or the Transmission Company of Nigeria to Buyer, and to do so on a real time basis at such time as Buyer is prepared to receive such data stream.

11.5. Meter Failure or Inaccuracy

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

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

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

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

11.5.2.3 If a correction is to be made pursuant to Clause 11.5.2, then such correction shall be made to readings given by the official meter for the period commencing on (a) the Day of the Defective Metering Event, if such Day can be established to the reasonable mutual satisfaction of the Parties, or (b) if the Day of the Defective Metering Event cannot be established to the reasonable mutual satisfaction of the Parties, the Day which is halfway between the Day of the immediately preceding test of such metering device and the Day the Defective Metering Event was discovered.

11.5.2.4 Any corrections pursuant to this Clause 11.5.2 will be reflected in the next invoice following determination of the amount, and the appropriate

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Party shall pay the other Party the difference between the amount previously paid and the amount finally determined to be due.

11.6. Assurances Regarding Meter Tampering

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

11.7. Notice of Meter Tampering

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

11.8. Meter Design; Commissioning and Sealing

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

11.9. Daily Meter Reading

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

11.10. Metering Inspection and Testing

Seller shall have the Back Up Meters inspected and tested in accordance with the Metering Code and Metering Code but in any event at least annually, and may have such inspection and testing performed at any time at its direction, all at its own expense. Buyer shall have the right to be present at any meter test. Upon request by Buyer on reasonable notice and not more frequently than once a month, Buyer may request an additional inspection or test of a Back Up Meter. The actual expense of any additional inspection or testing will be borne by Buyer, unless upon such inspection or testing, the metering device is found to register inaccurately by more than the Metering Tolerance, in which event the expense of the requested additional inspection or testing will be borne by Seller. If requested by Buyer, Seller will, without charge, provide copies of any inspection or testing reports to Buyer.

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Clause 12 Delivery

12.1. Delivery Point

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

12.2. Title and Risk

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

Clause 13 Billing and Payment

13.1. Settlement Statement Quantities used for Invoicing

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

13.2. Invoice

Every invoice to Buyer shall specify:

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

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

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Capacity of the Plant, the actual site conditions, and the occurrence of an Availability Event claimed by Seller as a basis for the establishment of the Available Capacity, in each case specifying the specific Availability Event and the date Seller delivered notice to Buyer of the occurrence of such event.

13.3. Daily Settlement Statements from Seller

13.3.1 Seller shall provide to the System Operator, the Market Operator, and Buyer a daily settlement statement (a “**Seller Settlement Statement**”) evidencing:

- (a) the Net Electrical Output delivered to Buyer in each Hour occurring during the previous Day;
- (b) the Available Capacity in each Hour occurring during the previous Day, including the calculations and correction factors that were used to derive this number;
- (c) the Actual Capacity in each Hour occurring during the previous Day;
- (d) the actual site conditions in each Hour occurring during the previous Day;
- (e) the number of and reason for each Start Up that occurred during the previous Day; and
- (f) the occurrence of any Availability Event in each Hour occurring during the previous Day.

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

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

13.4. Billing and Payment

13.4.1 For each Billing Period during the Delivery Term, and, if Clause 7.8.3 applies, at any time that Delayed Commissioning Payments are due and payable, Seller shall submit to Buyer an invoice for any amounts due from Buyer to Seller pursuant to this Agreement, with any amounts denominated in US Dollars under this Agreement stated in US Dollars, and with any amounts denominated in Naira under this Agreement stated in Naira.

13.4.2 Any undisputed portion of the payments shown in such invoice as due to Seller shall be paid by Buyer in Naira on or before the fifteenth (15th) Business Day

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following the Day the invoice is delivered to Buyer, with any amount denominated in US Dollars in the invoice converted from US Dollars to Naira at the Exchange Rate on the date of payment.

- 13.4.3 Buyer shall have the right to review an invoice or statement prepared by Seller, and if it disagrees with the determination of the amount payable under such invoice or statement, may request clarification and substantiation of such invoice or statement. Buyer shall use its Reasonable Endeavours to review invoices promptly and notify Seller of an error it believes to exist in such invoice within ten (10) Business Days of becoming aware of such error.
- 13.4.4 Where Buyer disputes an invoice or any portion thereof, it shall declare a Dispute and refer the same for determination in accordance with Clause 22 of this Agreement. If any invoice or any portion thereof is disputed by Buyer, Buyer shall pay the portion of the invoice that is not disputed and withhold the disputed portion until any Dispute in relation thereto is determined in accordance with dispute resolution provisions in Clause 22 of this Agreement.
- 13.4.5 Each Party shall have the right to set off against any amounts payable by it to the other Party hereunder any and all amounts then due and payable to it by the other Party hereunder. Such rights of setoff shall relate only to amounts payable by the Parties under this Agreement and only to amounts that are then due and payable to and by a Party and not to any amounts which have been disputed by the Party against whom such amounts are claimed in accordance with the terms of this Agreement.
- 13.4.6 Buyer shall pay interest at the Agreed Interest Rate (Local) on any unpaid amounts invoiced in Naira and due and payable under this Clause 13.4 from the date payment was due, up to and including the date on which payment is made, except in circumstances where Buyer disputes an invoice or any portion thereof, and any Dispute referred in relation thereto is resolved in its favour (in which case interest shall not apply in respect of the amount that was resolved in Buyer's favour).
- 13.4.7 Buyer shall pay interest at the Agreed Interest Rate (Foreign) on any unpaid amounts invoiced in US Dollars and due and payable under this Clause 13.4 from the date payment was due, up to and including the date on which payment is made, except in circumstances where Buyer disputes an invoice or any portion thereof, and any Dispute referred in relation thereto is resolved in its favour.
- 13.4.8 Where Buyer disputes an invoice or any portion thereof and the Dispute referred in relation thereto is resolved in favour of Seller, Buyer shall promptly pay the disputed portion that has been resolved in Seller's favour with interest thereon at the Agreed Interest Rate (Foreign) or Agreed Interest Rate (Local), as applicable.

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13.5. First and Last Billing Period

Without prejudice to Clause 2.1.1.3, if, due to any reason, a Billing Period begins in the middle of a Month, for that Month the Billing Period shall commence on the relevant start date and continue until the end of the Month, and the Capacity Payment, if any, shall be invoiced on a pro-rata basis. If the Term expires or is otherwise terminated prior to the end of a Month, the last Billing Period shall cover the period from the beginning of the Month through and including the date of expiration or termination, and the Capacity Payment, if any, shall be invoiced on a pro-rata basis.

Clause 14 Prices

14.1. Capacity Payments

14.1.1 During the Delivery Term, Buyer shall pay to Seller Monthly in arrears the Capacity Payment calculated in accordance with Schedule 6 for the relevant Billing Period.

14.1.2 In accordance with Schedule 6 (*Tariff Schedule*), the Initial Tested Capacity will be used to determine the Projected Available Capacity for each Contract Year *provided that*:

- (a) if the Initial Tested Capacity exceeds the Contract Capacity, then the portion of the Initial Tested Capacity that exceeds the Contract Capacity shall only be used in determining the Projected Available Capacity to the extent that (w) the Gas Supplier confirms that additional quantities of gas will be available to support the generation of additional Net Electrical Output using the additional capacity, (x) the gas transporter confirms that it will transport the additional quantities of gas necessary to support the generation of additional Net Electrical Output using the additional capacity, (y) the Transmission Company of Nigeria confirms that additional transmission capacity is available, and (z) the Commission has approved such increase; and
- (b) the Initial Tested Capacity shall not, in any event, exceed the Maximum Initial Tested Capacity.

14.2. Energy Payments and Additional Payments

During the Delivery Term, Buyer shall pay Seller each Month in arrears the Energy Payment, the Additional Payment and any other amounts calculated pursuant to Schedule 6 for the previous Billing Period.

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14.3. Start Up Payments

Buyer shall not be required to pay Seller for the first twelve (12) Start Ups requested by any one or more of Buyer, the Market Operator, or the System Operator, in any Contract Year (the “**Permitted Free Starts**”).

14.4. Remedies for Gas Constraint

Seller shall not exercise any of the remedies available to it under any Gas Transportation Agreement in relation to any Public Gas Transportation Constraint without the prior written approval of Buyer.

14.5. Consequences of Change in Law or Change in Tax

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

- (a) increases or will increase the cost to, or decreases or will decrease the cost to, or on behalf of, Seller of carrying out the Project, including the cost of constructing, modifying, repairing, operating and maintaining and financing the Plant (including any increase or decrease in the cost of any Contractor and any capital expenditure) and any documented costs incurred by the Seller under the Gas Supply Agreement or any Gas Transportation Agreement as a result of a Change in Law or Change in Tax affecting the Gas Supplier or Public Gas Transporter or any other gas transporter, in an amount that is, in the aggregate, in excess of the Tax & Law Threshold Amount; or
- (b) increases or will increase, or decreases or will decrease the gross revenue earned by, or on behalf of, Seller in respect of the Project, in an amount that is, in the aggregate, in excess of the Tax & Law Threshold Amount,

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

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

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- (a) the financial obligations of Seller and its Affiliates under the Finance Documents and, in particular, the need to ensure that financial covenants and ratios thereunder are appropriately maintained;
- (b) the increase or decrease in any costs or expenses (including any operational, administrative or compliance costs) to be incurred by Seller as a result of the Relevant Change;
- (c) the cost or savings (including on-going financing costs (if any)) of any capital items installed or upgraded or made unnecessary or of any modifications to the Plant or otherwise made as a result of the Relevant Change;
- (d) the change (if any) in the risk profile of the Project or of the risks being accepted by Seller;
- (e) the useful life of any capital items installed or upgraded as a result of the Relevant Change; and
- (f) the effect of the Relevant Change on the future revenues and returns of the Project.

14.5.3 The Parties shall attempt to agree the amount payable to Seller and whether it is to be paid by way of a lump sum, a change to the Capacity Payment or otherwise (in the event of an increase in costs) or the reduction to the Capacity Payments, Energy Payments, and Start Up Payments (in the event of a reduction in costs); and

- (a) if within thirty (30) Days of submission of such notice pursuant to Clause 14.5.2, the Parties are unable to reach agreement on the amount of compensation payable or the manner in which it is payable, the matter (including any dispute as to whether a Relevant Change has occurred) shall be referred to an Expert for determination in accordance with Clause 22.6.
- (b) For the avoidance of doubt, the claiming Party shall be entitled to be compensated for only that amount of the effects of a Relevant Change that is in excess of the Tax & Law Threshold Amount.

14.5.4 Any adjustment to the Capacity Payment or other changes or payments under this Agreement pursuant to this Clause 14.5 shall be effective as of the effective date of the Relevant Change.

14.5.5 Not later than forty-five (45) days prior to Financial Close, Seller shall deliver to Buyer a tax opinion which lists all Taxes and tax rates applicable to the Project, Seller and Buyer on the Execution Date. If such tax opinion identifies any uncertainty as to the applicability or interpretation of any Tax or tax rate, the Buyer and Seller shall meet within ten (10) days of receipt of the tax opinion and

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agree the basis on which such Taxes and tax rates shall be reflected in the Agreed Financial Model. The method of application or interpretation of such Taxes and tax rates, as agreed between Seller and Buyer, shall be set out in Appendix 2 of Schedule 1. Notwithstanding the foregoing, Seller and Buyer agree that Buyer takes no responsibility for, nor makes any commitment with respect to the applicability or interpretation of the Taxes or tax rates provided for in the Agreed Financial Model.

14.6. Refinancing of the Plant

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

14.6.2 Seller and Buyer agree that to the extent that a Refinancing is put into effect, the benefit of such Refinancing to Seller will be shared between Seller and Buyer in the proportions set forth in Schedule 1. The determination of the benefit of a refinancing and the means of providing such benefit to NBET, whether through a reduction in the Energy Charge Rate, invoices or otherwise, shall be determined by an international financial advisor acceptable to both parties (or failing agreement, the international financial advisor shall be appointed by the International Centre for Expertise in accordance with the provisions for the appointment of experts under the Rules for Expertise of the International Chamber of Commerce within fifteen (15) Days of such referral).

14.6.3 Seller and Buyer further agree to meet within thirty (30) days of the receipt of a notice referred to in Clause 14.6.1 to discuss and agree the basis on which Seller may attempt to procure the Refinancing and to agree the basis on which the sharing mechanism referred to in Clause 14.6.2 shall be put into effect. A Refinancing pursuant to this Clause 14.6 shall not change any obligations under any put/call option agreement or other agreement unless each of the parties thereto have agreed to a change in its sole discretion.

14.7. Change of Debt Outstanding

14.7.1 Seller will not engage in a Refinancing except as provided in Clause 14.6 or as a result of a Debt Event as permitted below. Buyer and Seller agree that following:

- (a) a Debt Event that delays the achievement of the Commercial Operations Date;
- (b) a Debt Event that increases or decreases the cost of any Contractor or the amount of any capital expenditure or requires the incurrence of an additional capital expenditure with respect to the Plant;

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- (c) a Debt Event that results in the increase or non-payment of any principal outstanding to the Finance Parties under the Finance Documents, or the rescheduling of the payments of principal to the Finance Parties under the Finance Documents; or
- (d) the Parties agreement to a re-financing of the principal outstanding to the Finance Parties under the Finance Documents to clause 14.6 (*Refinancing of the Plant*),

Seller may engage in a Refinancing and the total Debt Outstanding amount may increase or decrease, as appropriate, from the Debt Outstanding amounts in the Finance Documents notified by Seller to Buyer prior to the Execution Date to reflect any required modifications to the principal owed to the Finance Parties under the Finance Documents and the schedule for repayment of the debt obligations owing thereunder; *provided that*, Seller shall use Reasonable Endeavours to minimise any resulting delays under the Project Documents and/or any capital expenditure increases and Seller shall provide Buyer with details of (i) the required modifications to the principal owed to the Finance Parties under the Finance Documents, and (ii) any required revisions to the schedule for debt repayment, together with supporting evidence and calculations, for review and approval by Buyer no later than ten (10) days prior to then scheduled execution, by Seller and the Finance Parties, of the amendment agreement(s) required to implement such modifications to the Finance Documents. If Buyer does not approve such changes, Buyer and Seller will agree on such other changes as may be reasonably required.

14.7.2 The consent of the Buyer shall be required (consent not to be unreasonably withheld) for the Finance Parties to agree, in writing, to the Seller deferring any amount of principal to any later payment date(s) where such deferral is as a result of (i) a Buyer Default, or (ii) where the so deferred principal fell due during a Consultation Period (as such term is defined in the Put/Call Option Agreement).

Clause 15 Insurance

15.1. Required Insurance Coverage

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

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15.2. Additional Insurance

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

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

15.3. Use of Insurance Proceeds

Seller shall apply the proceeds of any insurance claim in respect of physical loss or damage to the Plant made against the insurers pursuant to the construction and erection all risks, all risks, and machinery breakdown policies maintained pursuant to Clause 15.1 and 15.2.1 towards repair of the Plant or recovery of the loss or damage as soon as is reasonably possible.

15.4. Certificates of Insurance

At the time of initial inception, and thereafter not less than seven (7) Days prior at the time of any renewal, amendment or replacement thereof, Seller shall cause its insurers or agents to provide Buyer with certificates of insurance evidencing the insurance policies and endorsements required under Clauses 15.1 and 15.2.1. In addition, Seller shall provide to Buyer evidence of the payment of premiums then due and payable thereunder.

15.5. Waiver of Subrogation

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

15.6. Finance Parties' Interests

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

Clause 16 Taxes

16.1. Liability for Taxes

Each Party shall be responsible for and shall pay or cause to be paid all Taxes arising in respect of its facilities, taxes based on its income, profits, and capital gains, and all other taxes arising from the generation, sale, and delivery or receipt of capacity and/or energy at the Delivery Point as contemplated in this Agreement in accordance with Applicable Law. If a Party has a legal responsibility to collect any Tax directly from the other Party

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for payment to the appropriate taxing authorities, such as value added tax (VAT), the portion of any payment representing such Tax shall be separately stated in the invoice.

16.2. Proof of Payment

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

16.3. Tax Indemnity

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

16.3.2 Following a Change in Tax, each Party shall be liable for and shall indemnify the other Party for any incremental withholding Tax imposed by Relevant Authority on payments in excess of amounts initially withheld under Clause 16.2 above, *provided that* any amount indemnified by Seller shall be included in the calculation of compensation payable as a result of the Change in Tax.

Clause 17 Liability and Indemnification

17.1. Limitation of Liability

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

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

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17.1.3 Clause 17.1.1, Clause 17.6, and Clause 17.7 shall not apply in respect of amounts payable by Buyer to Seller for the purchase of the Plant or the Shares pursuant to the Put/Call Option Agreement upon termination of this Agreement or any amounts payable as a result of a Change in Law or Change in Tax.

17.2. Mitigation of Damages

Each Party shall use Reasonable Endeavours (with or without incurring expense reasonable in the circumstances arising) to mitigate or avoid any loss or damage caused by the failure of the other Party to meet its obligations under this Agreement, whether or not such failure is the result of a Force Majeure Event.

17.3. Mutual Indemnifications

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

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

17.4. Notice of Claims

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

17.5. Defence of Claims

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

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- 17.5.2 Unless and until the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party and assumes control of the defence of a claim, suit, action or proceeding in accordance with Clause 17.6, the Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate, with legal advisers of its own selection, any claim, action, suit or proceeding by any third party alleged or asserted against the Indemnified Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and the reasonable costs thereof shall be subject to the indemnification obligations of the indemnifying party hereunder.
- 17.5.3 Upon assumption by the Indemnifying Party of the control of the defence of a claim, suit, action or proceeding, the Indemnifying Party shall reimburse the Indemnified Party for the reasonable costs and expenses of the Indemnified Party in the defence of the claim, suit, action or proceeding prior to the Indemnifying Party's acknowledgement of the indemnification and assumption of the defence.
- 17.5.4 Following the acknowledgement of the indemnification and the assumption of the defence by the Indemnifying Party, the Indemnified Party shall have the right to employ its own legal advisers and such legal advisers may participate in such claim, suit, action or proceeding, but the fees and expenses of such legal advisers shall be at the expense of such Indemnified Party, when and as incurred, unless (i) the employment of legal advisers by such Indemnified Party has been authorized in writing by the Indemnifying Party, (ii) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defence of such action, (iii) the Indemnifying Party shall not in fact have employed independent legal advisers reasonably satisfactory to the Indemnified Party to assume the defence of such action and shall have been so notified by the Indemnified Party, or (iv) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either that there may be specific defences available to it that are different from or additional to those available to the Indemnifying Party. If clauses (ii), (iii) or (iv) of the preceding sentence shall be applicable, then legal advisers for the Indemnified Party shall have the right to direct the defence of such claim, action, suit or proceeding on behalf of the Indemnified Party and the reasonable fees and disbursements of such legal advisers shall constitute legal or other expenses, subject to the indemnification obligations of the Indemnifying Party.

17.6. Limitation on Indemnification

Each Party shall be solely liable, and shall not be entitled to assert any claim for indemnification under this Agreement for any loss that would otherwise be the subject of indemnification under this Agreement until all losses of such Party arising during the current Contract Year exceed the Minimum Indemnification Amount. For purposes of this Clause 17, a loss (or claim for indemnification) shall be deemed to arise in the Year during which the event giving rise to the loss (or claim for indemnification) occurred or, in the case where the event is continuing in more than one Year, in the Contract Year

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during which the event ends, *provided that* a Party shall not be obliged to refrain from making a claim under this Clause 17.6 (where it is otherwise entitled to do so) at the end of a given year (“**Year End**”) by reason of the fact that the event in question (“**Relevant Event**”) is still continuing, and provided further that in the event that such Party does make such a claim at the Year End it shall continue to be able to claim in relation to all remaining losses arising from the Relevant Event regardless of when they occur.

17.7. Fines and Penalties

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

17.8. No Fine or Penalty

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

17.9. Allocation of Liability

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

Clause 18 Default & Early Termination

18.1. Early Termination

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

- (a) the mutual agreement of the Parties;
- (b) the delivery of a Termination Notice by Buyer pursuant to Clause 18.2 following a Seller Default;
- (c) the delivery of a Termination Notice by Seller pursuant to Clause 18.3 following a Buyer Default;

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- (d) the delivery of a Termination Notice by Seller pursuant to Clause 18.6 following an Expropriation;
- (e) the delivery of a Termination Notice by either Party pursuant to Clause 18.7.1 following a Prolonged Gas Supply Constraint;
- (f) the delivery of a Termination Notice by either Party pursuant to Clause 18.7.2 following a Prolonged Public Gas Transportation Constraint or pursuant to Clause 18.7.3 following any other gas transportation constraint;
- (g) the delivery of a Termination Notice by either Party pursuant to Clause 18.8;
- (h) the delivery of a Termination Notice by either Party pursuant to Clause 21.8 following the occurrence of a Prolonged Force Majeure Event; or
- (i) the delivery of a Termination Notice by Buyer pursuant to Clauses 21.10.5 or 21.10.6.

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

18.1.3 In the event that either Party terminates this Agreement prior to the expiration of its Term in accordance with the terms of this Agreement, the Put/Call Option Agreement shall apply.

18.2. Seller Default

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

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

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continues diligently to pursue such action and (y) such default could not reasonably be expected to have a material adverse effect on Buyer during such extended cure period), or (II) a series of breaches by Seller of any of its obligations other than those referred to elsewhere in this Clause 18.2 which adversely affects the performance of its material obligations under this Agreement which continues for an aggregate of ninety (90) Days in any year, for which there shall be no further cure period;

- (b) any Acts of Insolvency in respect of Seller;
- (c) a breach by Seller of the provisions of Clause 20 (*Transfer*) occurs;
- (d)
 - (i) failure to propose a Remedial Plan, implement a Remedial Plan, or to achieve a restoration in accordance with Clause 8.3, or
 - (ii) Buyer's election to terminate this Agreement in accordance with Clause 8.3;
- (e) a breach by Seller of its obligation to obtain and maintain the insurances required under Clause 15.1 and 15.2.1 of this Agreement which has not been cured during a Cure Period of thirty (30) Days from receipt of a Cure Notice;
- (f) any statement, representation, or warranty made by Seller herein or in any certificate or other contract delivered or made under or pursuant to this Agreement proving to have been incorrect in any material respect, when made or when deemed to have been made, which inaccuracy has a material adverse effect on the ability of either Party to perform its obligations under this Agreement which has not been cured during a cure period of thirty (30) Days from receipt of a Cure Notice (or if such inaccuracy cannot be remedied within such thirty day (30) cure period but is susceptible of remedy within a longer period, such thirty (30) day period shall be extended for up to an additional sixty (60) days so long as (x) Seller has commenced action reasonably planned to remedy such default and continues diligently to pursue such action and (y) such default could not reasonably be expected to have a material adverse effect on Seller during such extended cure period);
- (g) revocation, cancellation, or withdrawal of this Agreement by Seller or of any Authorisation applicable to Seller as a result of breach of any terms and/or conditions imposed by any Authorisation that, in the case of such Authorisation, has a material adverse effect on the ability of either Party to perform its obligations under this Agreement and such failure is (i) not a Lapse of Authorisation and (ii) continues for a period of sixty (60) Days (or such longer period permitted by Applicable Law);

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- (h) Abandonment for a continuous period of thirty (30) Days or more which has not been cured during a cure period of thirty (30) Days from receipt of a Cure Notice;
- (i) failure by Seller to achieve Commercial Operations Date before or on the Long Stop Commercial Operations Date due;
- (j) termination of the Connection Agreement as a result of breach or default by Seller;
- (k) failure by Seller to obtain or maintain any Authorisation required under Applicable Law or by a Relevant Authority in order for it to perform its material obligations pursuant to this Agreement and such failure is (i) not a Lapse of Authorisation and (ii) continues for a period of sixty (60) Days (or such longer period permitted by Applicable Law);
- (l) any failure by Seller to pay to Buyer any undisputed sum of money due and owing within thirty (30) Days from the date when such sum was first due and demanded; *provided, however*, that no such failure to pay shall constitute a Seller Default in the event that Buyer receives the sum of money due and owing by drawing on the Development Security or Performance Guarantee as applicable, or by other means stipulated in this Agreement;
- (m) Seller's failure to maintain any required Development Security or Performance Guarantee which has not been cured during a Cure Period of thirty (30) Days from receipt of a Cure Notice.

18.3. Buyer Default

Each of the following shall be a “**Buyer Default**”, which, if not cured within the time permitted (if any) under this Agreement, shall give rise to the right on the part of Seller to terminate this Agreement pursuant to Clause 18.1, *provided, however*, that no such event shall become a Buyer Default if it results from (i) a Seller Default or (ii) the occurrence of a Force Majeure Event, subject to Clause 21.2 (*Effect of Force Majeure*):

- (a) (I) a breach by Buyer of any of its obligations other than those referred to elsewhere in this Clause 18.3 which adversely affects the performance of its material obligations under this Agreement which continues for thirty (30) Days which has not been cured during a cure period of a further thirty (30) Days from receipt of a Cure Notice, or if such failure cannot be remedied within such thirty day (30) cure period but is susceptible of remedy within a longer period, such thirty (30) day period shall be extended for up to an additional sixty (60) days so long as (x) Seller has commenced action reasonably planned to remedy such default and continues diligently to pursue such action and (y) such default could not reasonably be expected to have a material adverse effect on Buyer during such extended cure period), or (II) a series of breaches by Seller of any of

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its obligations other than those referred to elsewhere in this Clause 18.3 which adversely affects the performance of its material obligations under this Agreement which continues for an aggregate of ninety (90) Days in any year, for which there shall be no further cure period;

- (b) any failure by Buyer to pay to Seller any undisputed sum of money due and owing within thirty (30) Days from the date when such sum was first due and demanded; *provided, however*, that no such failure to pay shall constitute a Buyer Default in the event that Seller receives the sum of money due and owing by drawing on the Buyer Payment Security;
- (c) any statement, representation or warranty made by Buyer herein or in any certificate or contract delivered or made under or pursuant to this Agreement proving to have been incorrect in any material respect, when made or when deemed to have been made, which inaccuracy has significant effect on the ability of either Party to perform its obligations under this Agreement which has not been cured during a cure period of thirty (30) Days from receipt of a Cure Notice (or if such inaccuracy cannot be remedied within such thirty day (30) cure period but is susceptible of remedy within a longer period, such thirty (30) day period shall be extended for up to an additional sixty (60) days so long as (x) Seller has commenced action reasonably planned to remedy such default and continues diligently to pursue such action and (y) such default could not reasonably be expected to have a material adverse effect on Seller during such extended cure period);
- (d) revocation, cancellation or withdrawal of this Agreement by Buyer or of any Authorisation applicable to Buyer as a result of breach of any terms and/or conditions imposed by any such Authorisation that, in the case of such Authorisation, has a material adverse effect on the ability of either Party to perform its obligations under this Agreement;
- (e) any Acts of Insolvency in respect of Buyer;
- (f) the transfer by Buyer of this Agreement, or of any of the rights or obligations of Buyer under this Agreement, except as permitted by Clause 20.2; and
- (g) failure to maintain the Buyer Payment Security, or a replacement thereof, in accordance with Paragraph 3 of Schedule 1 for a continuous period of thirty (30) Days or more following the delivery of notice of such failure from Seller to Buyer; *provided, that* such thirty (30) day period shall be extended to ninety (90) days in the event that:
 - (i) a Buyer Payment Security properly posted by Buyer is terminated, suspended, or otherwise becomes ineffective due to the suspension or termination of any guarantee agreement between the

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International Bank for Reconstruction and Development and the issuer of such Buyer Payment Security (a “**Guarantee Agreement**”) other than due to a breach of, or any action or inaction by Buyer that is inconsistent with, this Agreement, the Put/Call Option Agreement, any other Project Document, any Finance Document, or any document entered into in connection with a Guarantee Agreement by Buyer or FGN;

- (ii) the issuer of such Buyer Payment Security fails to continue to meet the criteria for an Acceptable Commercial Bank, *and* the Buyer Payment Security from such downgraded issuer continues to be available to be drawn during such ninety (90) day period;
- (iii) the Acceptable Confirming Bank fails to continue to meet the criteria for an Acceptable Commercial Bank, *and* the Buyer Payment Security from such downgraded confirming bank continues to be available to be drawn during such ninety (90) day period; or
- (iv) an Extraordinary L/C Event occurs.

18.4. Cure Period

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

18.4.2 The Cure Notice must specify:

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

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

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

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18.5. Termination for Seller Default or Buyer Default

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

18.6. Termination for Expropriation

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

18.7. Termination for Prolonged Gas Constraint

18.7.1 In the event that one or more Gas Supply Constraints occurs during a six (6) consecutive month period (a “**Prolonged Gas Supply Constraint**”) and causes the Net Electrical Output during that period to fall below the Prolonged Gas Supply Constraint Minimum Level specified in Schedule 1, Seller will use Reasonable Endeavours to find an alternative gas source that is reasonably acceptable to both Parties. In the event that Seller cannot find an alternative gas source that is reasonably acceptable to both Parties within six (6) consecutive months after commencement of such Reasonable Endeavours and the Gas Supply Constraint is continuing, then either Party may deliver a Termination Notice to the other Party.

18.7.2 In the event that one or more Public Gas Transportation Constraints occurs during a period of six (6) consecutive months (a “**Prolonged Public Gas Transportation Constraint**”) and causes the Net Electrical Output during that period to fall below the Prolonged Gas Supply Constraint Minimum Level specified in Schedule 1, the Parties will use Reasonable Endeavours to find an alternative means of transporting gas to the Plant that is reasonably acceptable to both Parties. In the event that the Parties cannot find an alternative means of transporting gas to the Plant that is reasonably acceptable to both Parties within six (6) consecutive months after commencement of such Reasonable Endeavours and the Public Gas Transportation Constraint is continuing, then either Party may deliver a Termination Notice to the other Party.²

18.7.3 In the event that any other gas transportation constraint other than a Public Gas Transportation Constraint continues for a period of six (6) consecutive months and causes the Net Electrical Output during that period to fall below the Prolonged Gas Supply Constraint Minimum Level specified in Schedule 1, the Seller will use Reasonable Endeavours to find an alternative means of transporting gas to the Plant that is reasonably acceptable to both Parties. In the event that the Seller cannot find an alternative means of transporting gas to the

² To be inserted where the Nigerian Gas Company, owned by FGN is responsible for transporting gas from the gas supplier to the power plant.

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Plant that is reasonably acceptable to both Parties within six (6) consecutive months after commencement of such Reasonable Endeavours and the gas transportation constraint is continuing, then either Party may deliver a Termination Notice to the other Party.

18.8. Termination for a Local Political Force Majeure Event or Change in Law

In the event that either Party elects to terminate this Agreement pursuant to Clause 21.9, then either Party shall have the right to issue a Termination Notice to the other Party in accordance with the terms set out in Clause 21.9.1.

Clause 19 Sole Remedies Upon Termination

19.1. Sole Remedy

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

- (a) the right to payment of amounts accrued and owing under this Agreement; and
- (b) any rights pursuant to the Put/Call Option Agreement.

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

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

19.1.3 not to sue, commence, voluntarily aid in any way, prosecute or cause to be commenced or prosecuted against the other Party any action, suit or other proceeding concerning this Agreement.

Clause 20 Transfers and Prohibited Shareholders

20.1. Transfer of Ownership Interests

20.1.1 Prior to the Commercial Operations Date, Seller shall ensure that the Sponsors (or any permitted transferee of any Ownership Interest previously held by the Sponsors) shall not transfer any legal or beneficial interest in any Ownership

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Interest in Seller subscribed to or held by them unless such transfer is approved by Buyer or:

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

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

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

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

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

- (a) its name, nationality, the names and nationalities of all natural Persons who directly or indirectly hold five percent (5%) or more of, or exercise influence or control over, the proposed purchaser;

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- (b) audited financial statements for the preceding five fiscal years, together with any more recent unaudited quarterly financial statements;
- (c) a description of its business, specifically relating to its experience in managing the operations of power plants similar to the Plant; and
- (d) such additional information as Buyer may reasonably request in order to determine whether such transferee is a Technically Qualified Shareholder.

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

20.1.6 The foregoing restrictions shall not apply to:

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

20.2. Transfer of the Agreement

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

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

- (a) the transferee expressly undertakes in an instrument reasonably satisfactory to Seller to perform the obligation of Buyer under this Agreement and obtains any necessary Authorisations for the Transfer;

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- (b) Buyer has obtained Seller's written consent (such consent not to be unreasonably withheld);
- (c) the transferee is a single entity that has the financial, technical and legal capacity to enter into and perform Buyer's obligations under this Agreement in form and substance satisfactory to Seller; and
- (d) the Put/Call Option Agreement, and FGN's obligations under it, shall continue to apply to this Agreement and the transferee shall, if requested by Seller, accede to the terms of the Put/Call Option Agreement.

provided that nothing in this Clause 20 shall prohibit Buyer from novating this Agreement, with the written consent of Seller and pursuant to Section 26(1)(d) of the Act, to a distribution company or eligible customer upon the declaration by the Minister for Power that a more competitive market be initiated in accordance with Section 26(1)(a) of the Act.

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

20.3. Prohibited Shareholder

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

Clause 21 Force Majeure

21.1. Definition of Force Majeure Event

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

- (a) such circumstance, event or condition, despite the exercise of diligence, cannot be prevented, avoided or overcome by the affected party;
- (b) the affected Party has taken all reasonable precautions, due care and measures to prevent, avoid or overcome the effect of such circumstance,

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event or condition on its ability to perform its obligations under this Agreement and to mitigate its consequences; and

- (c) such circumstance, event or condition is not the direct result of a breach or failure by the affected Party to perform any of its obligations under Applicable Law, this Agreement, or any other Project Document.

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

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

- (a) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, civil commotion, or act of terrorism;
- (b) any act of sabotage against the Plant that (i) is not carried out by an employee, Contractor, or agent of Seller or an employee, Contractor, or agent of any of Seller’s Contractors, Affiliates or the Sponsors (unless the act constitutes a Political Force Majeure Event under Clause 21.1.2(a), and (ii) could not have been prevented through the use of reasonable security measures by Seller or the Contractors or agents of Seller;
- (c) strikes, go-slows or works to rule which are widespread or nationwide, of a political nature but excluding any such matters involving only the workforce of the claiming Party, its contractors, its sub-contractors or suppliers;
- (d) the issuance or making of either any:
 - (i) order, injunction, direction or instruction having the force of law issued by any Relevant Authority, or
 - (ii) any declaration pursuant to a statutory instrument,in either case in respect of archaeological or paleontological remains discovered on or under the Site;
- (e) any Change in Law or Change in Tax that has not been fully compensated for under Clause 14.5.1 and:
 - (i) makes unenforceable, invalid or void any material obligation of Buyer; or

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- (ii) makes it unlawful for Seller to make or receive any payment, to perform any obligation or to enjoy or enforce any material right under this Agreement; or
- (iii) places material restrictions or limitations on the ability of Seller to meet its debt service obligations under Finance Documents or to repatriate any dividends (or distributions of capital) to its shareholders which restrictions or limitations remain in place more than one hundred eighty (180) Days without an arrangement being provided to exempt Seller from all such restrictions or limitations;

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

- (f) radioactive contamination or ionizing radiation originating from a source inside Nigeria to the extent it exceeds applicable standards;
- (g) the occurrence of an event that is analogous with a Local Political Force Majeure Event under any Project Document entered into by either Party;
- (h) lack of or constraint in the availability of the Grid (for the avoidance of doubt excluding lack of availability of, or constraint in the availability of the Grid forming part of the Project Transmission Works, prior to the transfer of ownership of the Project Transmission Works to the Transmission Company of Nigeria);
- (i) a Public Gas Transportation Constraint; or
- (j) Lapse of Authorisation.

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

- (a) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, civil commotion, or act of terrorism;
- (b) radioactive contamination or ionizing radiation originating from a source outside Nigeria to the extent it exceeds applicable standards;
- (c) strikes, go-slows or works to rule but excluding any such matters involving only the workforce of the claiming Party, its contractors, its sub-contractors or suppliers; or
- (d) the occurrence of a Foreign Political Force Majeure Event under any Project Document entered into by either Party.

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21.1.4 the following natural events (each a “**Natural Force Majeure Event**”):

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

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

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

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

21.2. Effect of Force Majeure

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

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21.3. Payment During Force Majeure Event

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

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

- (a) Capacity Payments in respect of the last Tested Capacity preceding the Force Majeure Event; and
- (b) Energy Payments, in respect of any Net Electrical Output delivered to Buyer; and
- (c) any Gas Payments due under Schedule 6.

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

- (a) Capacity Payments in respect of the last Tested Capacity determined without reference to such Force Majeure Event;
- (b) Energy Payments in respect of any Net Electrical Output delivered to Buyer; and
- (c) any Gas Payments due under Schedule 6.

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

- (a) Capacity Payments in respect only of that portion of the last Tested Capacity that Seller is able to make available to Buyer during the Force Majeure Event;
- (b) Energy Payments in respect of any Net Electrical Output delivered to Buyer during the Force Majeure Event; and
- (c) any Gas Payments in respect of any Net Electrical Output delivered to Buyer during the Force Majeure Event.

21.4. Notification Obligations

21.4.1 The Party affected by a Force Majeure Event shall give Notice to the other Party of any event constituting a Force Majeure Event as soon as reasonably practicable after the Party first learns of the Force Majeure Event. Any Notice shall include

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

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

21.5. Responsibilities of the Parties

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

21.6. Delay Caused by Force Majeure Event

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

21.7. Access

At the request of the other Party, the claiming Party shall provide, or use its Reasonable Endeavours to procure, access to the areas and facilities affected by the Force Majeure

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

21.8. Prolonged Force Majeure Events

Upon the occurrence of:

- (a) a Force Majeure Event (including a Local Political Force Majeure Event) affecting Buyer and the continuation of such Force Majeure Event for a period of one hundred eighty (180) Days or more from the date of the occurrence of such Force Majeure Event;
- (b) any Force Majeure Event other than a Force Majeure Event referred to in paragraph (a) above and the continuation of such Force Majeure Event for a period of one year or more from the date of the occurrence of such Force Majeure Event; or
- (c) a series of related Force Majeure Events (including Local Political Force Majeure Events) affecting Buyer and the continuation in the aggregate of such Force Majeure Events for a period of one hundred eighty (180) Days or more during any Contract Year;
- (d) a series of related Force Majeure Events other than those referred to in paragraph (c) above and the continuation in the aggregate of such Force Majeure Events for a period of one year or more,

(each such occurrence, a "**Prolonged Force Majeure Event**"), then either Party shall have the right, but not the obligation, to terminate this Agreement by delivering a Termination Notice to the other Party; *provided, that*, such right of termination shall not apply during the implementation of a Restoration in accordance with Clause 21.10.6 or a Voluntary Restoration agreed to by the Parties or after completion of the Restoration or Voluntary Restoration. Whether a Restoration or Voluntary Restoration is being implemented and whether it has been completed will be initially determined in the reasonable discretion of the Party giving the Termination Notice and any dispute will be governed by Clause 22

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

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

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

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

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

21.9.2 In the event that the Parties do not terminate this Agreement pursuant to this Clause 21.9, then Clause 21.10 shall continue to apply.

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

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

- 21.10.1.1 In the event that a Local Political Force Majeure Event results in uninsured material damage to the Plant or that compliance by Seller with a Change in Law requires a material modification or a material capital addition to the Plant (unless Seller has been compensated by Buyer for the cost of such material modification or repair pursuant to Clause 14.5.1 (in which case, Clause 14.5.1 shall apply to such modification or repair)) (each such repair, material modification or capital addition referred to

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herein as a “**Restoration**”), Seller shall, at Buyer’s cost, engage an internationally recognized independent engineering consultancy firm reasonably acceptable to Buyer (the “**Restoration Expert**”) to develop and deliver to Seller and Buyer a preliminary written estimate (the “**Preliminary Restoration Estimate**”) of:

- (i) the projected Restoration costs (the “**Restoration Cost Estimate**”); and
- (ii) a preliminary schedule (such schedule and each such schedule contained in the Full Restoration Report, a “**Restoration Schedule**,” which Restoration Schedule shall include the period of time reasonably estimated to complete the Restoration, which period shall be referred to herein as the “**Restoration Period**”) for the activities required to complete Restoration, including, if the Restoration Cost Estimate is greater than the Restoration Threshold Amount, a reasonable period to arrange the financing.

21.10.1.2 Seller shall use its Reasonable Endeavours to procure that the Restoration Expert’s Preliminary Restoration Estimate is as comprehensive and as complete as possible under the circumstances.

21.10.1.3 Seller shall use its Reasonable Endeavours to procure the delivery of the Preliminary Restoration Estimate within thirty (30) Days after the date by which it was first required to provide notice to Buyer under Clause 21.4.1; *provided, however*, if the Force Majeure Event has not ended by the time of such notice, Seller shall deliver the Preliminary Restoration Estimate within thirty (30) Days of the notice required by Clause 21.4.2.

21.10.2 Determination as to Preparation of Full Restoration Report

Buyer and Seller shall meet within fifteen (15) Days of the delivery of the Preliminary Restoration Estimate to discuss the conclusions set forth therein. If Seller concludes that the Restoration Cost Estimate shall be less than the Restoration Threshold Amount and Buyer agrees with the Restoration Cost Estimate and with the Restoration Schedule, then Seller shall proceed with the Restoration in accordance with Clause 21.10.6. Otherwise, Seller shall proceed with the preparation of a Full Restoration Report and the provisions of Clause 21.10.3 shall apply.

21.10.3 Preparation of Full Restoration Report

21.10.3.1 When required under Clause 21.10.2, Seller shall engage the Restoration Expert to prepare an appraisal report (a “**Full Restoration Report**”) and use its Reasonable Endeavours to procure the delivery of a copy of such Full Restoration Report to Buyer as soon as practicable, but in any event not later than sixty (60) Days after the date it was determined

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that a Full Restoration Report would be necessary. The Full Restoration Report shall address in good faith and in such detail as is practicable under the circumstances the following matters (to the extent applicable):

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

21.10.3.2 Seller shall request the Restoration Expert to provide reasonable supporting data for the information included in the Full Restoration Report and shall provide copies of all certificates and reports of Seller's financial and technical advisers, as appropriate or as reasonably requested by Buyer, in support of the applicable matters referred to in this Clause 21.10.3.

21.10.4 Full Restoration Report Disputes

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

21.10.5 Determination Following Full Restoration Report

21.10.5.1 Following the delivery of a Full Restoration Report, if the Seller concludes that the Restoration Cost Estimate is less than the Restoration Threshold Amount and Buyer agrees with the Restoration Cost Estimate and with the Restoration Schedule, Seller shall be entitled to proceed, but if the Restoration Cost Estimate is more than the Restoration Threshold Amount Buyer shall have the right to determine whether to proceed with Restoration (subject to the obligation to make the Restoration-Related Tariff Modifications following the completion of the Restoration) or to terminate this Agreement.

21.10.5.2 Subject to the Restoration being economically and technically feasible, Buyer shall make the determination described in Clause 21.10.5.1 acting reasonably and in good faith. Buyer shall make such determination primarily based on the Restoration-Related Tariff Modifications that would be required to be made to the following the completion of the Restoration.

21.10.5.3 Buyer shall, within thirty (30) Days of the issuance of the Full Restoration Report, either:

- (i) deliver a Termination Notice to Seller exercising Buyer's right to terminate this Agreement pursuant to Clause 21.10.5.1; or
- (ii) authorize Seller to proceed with the Restoration.

21.10.6 Implementation of Restoration

The following provisions shall apply:

- (a) in the event the Restoration Cost Estimate is less than the Restoration Threshold Amount and Buyer agrees with the Restoration Cost Estimate and with the Restoration Schedule pursuant to Clause 21.10.1.1; or
- (b) following an election by Buyer to authorize Seller to proceed with a restoration.

21.10.6.2 Seller shall proceed in good faith to try to secure financing for the cost of Restoration on terms satisfactory to Buyer and at a debt to equity

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ratio that is equal to or greater than the Assumed Debt to Equity Ratio. If Seller is unable to obtain binding commitments for such financing within three hundred (300) Days of receipt of Buyer's notice authorizing Seller to proceed with Restoration, then unless Buyer commits to provide financing for the Restoration within the next sixty (60) Days, and obtains such financing within an additional two hundred forty (240) Days, the failure to secure financing shall be treated as an election by Buyer to terminate this Agreement pursuant to Clause 21.10.5.1. Seller shall use commercially Reasonable Endeavours to maximize the debt to equity ratio associated with its investment in the Restoration so that such debt to equity ratio exceeds the Assumed Debt to Equity Ratio.

21.10.6.3 In the event that conditions in the market for debt of the type borrowed by Seller in order to finance the Plant or any other asset of Seller in relation to its participation in the Project change such that either:

- (i) it would be possible for Seller to achieve a debt to equity ratio that is higher than the Assumed Debt to Equity Ratio; or
- (ii) it is not possible to Seller to achieve a debt to equity ratio that at least equals the Assumed Debt to Equity Ratio,

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

21.10.6.4 Seller shall proceed with the Restoration in accordance with the Restoration Schedule once:

- (a) financing for the Restoration has been secured by Seller on terms that are reasonably acceptable to the Parties; and
- (b) Buyer and Seller have agreed to such modifications to the methodology for calculating the Capacity Payments, Energy Payments, Start Up Payments and Supplemental Payments as are necessary in order to enable Seller to recover its investment in the Restoration and service the additional financing secured for the Restoration (such modifications, the "**Restoration-Related Tariff Modifications**"), and the Commission shall have approved such Restoration-Related Modifications.

21.10.6.5 Seller shall provide Buyer with a detailed accounting of all costs actually incurred in implementing the Restoration, together with copies of all invoices for such work. Buyer shall have the right to engage an

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independent auditor to audit the costs incurred by Seller in connection with the implementation of the Restoration.

21.10.6.6 During the implementation of a Restoration, Seller shall not be deemed to be in breach of any of its obligations under Clauses 8.2 (*Capacity Testing*) and/or 8.3 (*Minimum Availability, Minimum Tested Capacity*) or the Seller Default in Clause 18.2(i).

21.10.7 Payments During the Implementation of a Restoration

For the avoidance of doubt, Buyer shall make the payments to Seller referred to in Clause 21.3.2, 21.3.3 and 21.3.4 from the occurrence of the Force Majeure Event referred to in Clause 21.10.1.1 until re-commencement of full commercial operations of the Plant following the completion of the Restoration or termination of this Agreement prior to the expiration of its Term.

21.11. Other Restoration of the Plant

In the event of damage to the Plant that does not result in a Restoration under Clause 21.10, Seller shall have the right to restore the Plant in accordance with Good Industry Practices (“**Voluntary Restoration**”). Unless Buyer has agreed to a plan of Voluntary Restoration providing for relief from the requirements of this Agreement, Seller will not be entitled to relief from the requirements of this Agreement as a result of a Voluntary Restoration beyond any relief afforded in Clause 21.8 (*Prolonged Force Majeure Events*). Seller will not be entitled to a change in the tariff rates as a result of a Voluntary Restoration.

Clause 22

Choice of Law and Dispute Resolution

22.1. Governing Law

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

22.2. Informal Dispute Resolution

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

22.2.2 For a period of not less than thirty (30) Days from delivery of a Notice of a Dispute, the Parties shall attempt in good faith to settle the Dispute by negotiations among the designated or authorized representatives of each Party. In the event that the Parties are unable to reach an agreement within thirty (30) Days,

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or such longer period as they may agree, then either Party may refer the Dispute to arbitration which Dispute shall be determined and settled in accordance with Clause 22.3. Upon agreement of the Parties, the Parties may appoint an impartial expert to review and give the Parties an advisory opinion on any technical, commercial, accounting, metering, or other issue (or combination of issues) in dispute, in such time and at the sole or agreed joint cost of either or both Parties.

22.3. Arbitration of Disputes

- 22.3.1 In the event that the parties to a Dispute are unable to resolve any Dispute pursuant to Clause 22.2, then the Dispute shall be referred to and finally settled by arbitration conducted in accordance with the Rules of Arbitration of the International Chamber of Commerce (“**ICC**”) as amended by this Clause 22 (the “**Rules**”), which Rules shall be deemed to be incorporated into this Clause 22. Notwithstanding the provisions of Clause 22.1, this Clause 22 shall be governed by, and construed in accordance with, the laws of England and Wales. The arbitration proceedings shall be conducted, and the award shall be rendered, in the English language.
- 22.3.2 Any arbitral tribunal to be appointed for the resolution of Disputes under this Agreement shall consist of three (3) arbitrators. The three arbitrators will be appointed by the International Court of Arbitration of the International Chamber of Commerce (the “**ICC Court**”). No arbitrator may (i) be a present or former employee or agent of, or consultant or counsel to either Party or any Affiliate of either Party or (ii) be in any way closely connected with the Project or (iii) have any interest in the outcome of the proceeding.
- 22.3.3 The 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 England and Wales.
- 22.3.4 The seat of the arbitration proceedings shall be London, England.
- 22.3.5 Any arbitral award issued under this Clause 22.3 shall be final and binding upon the Parties and shall be the sole and exclusive remedy between the Parties regarding all Disputes, and each Party undertakes to comply with and to carry out any such arbitral award, fully and without delay. The Parties expressly waive to the fullest extent permitted by law or under equity any rights of appeal to the courts of any jurisdiction with respect to any award of arbitration pursuant to this Clause 22.3. The Parties expressly agree that any rights of appeal that may not be waived by a Party shall be exercisable by a Party only (i) after the award has been fully implemented under this Clause 22.3 or (ii) if such Party must pay an amount under such award, after such Party has either paid such amount to the other Party or deposited the amount of the award with the tribunal or a court of competent jurisdiction.

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22.3.6 Notwithstanding any Dispute between the Parties, each Party shall continue to perform all of its obligations under this Agreement.

22.3.7 Each Party will bear all of its own costs and expenses (including legal fees) incurred by it (or by any agent or trustee on its behalf) in connection with the enforcement of, or the preservation of any rights under this Agreement. If a Dispute is determined by arbitration pursuant to this Agreement, the arbitrators shall have the power to direct any party to the proceeding to pay any part or all of the costs and expenses (including legal fees) reasonably incurred by another party in connection with the enforcement of, or the preservation of any rights under this Agreement.

22.4. Interim Relief & Enforcement of Arbitral Awards

Notwithstanding Clause 22.3, this Clause 22 is without prejudice to any right of a Party granted by law to apply to the courts of England & Wales or any other courts of competent jurisdiction to:

22.4.1 seek interim or conservatory relief against another Party in support of arbitration proceedings; or

22.4.2 seek relief against another Party to enforce the agreement to submit any Dispute to arbitration pursuant to this Agreement; or

22.4.3 enforce an arbitral award made in arbitration proceedings brought pursuant to this Agreement or, in the case of proceedings to which Clause 22.5 below applies, any Related Agreement (as defined in Clause 22.5 below).

22.5. Disputes under Related Agreements

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

(a) arbitration under the Rules of Arbitration of the International Chamber of Commerce;

(b) before an arbitral tribunal composed of three (3) arbitrators who are to be appointed by the ICC Court; and

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(c) the arbitral tribunal constituted thereunder to be seated in London, England,

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

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

22.6. Expert Determination

22.6.1 In the event that the Parties are unable to resolve any Dispute pursuant to Clause 22.2, and the amount to be claimed by either Party is equal to or less than three million US Dollars (US\$3,000,000), then the Dispute shall be settled by an expert determination in accordance with the provisions of this Clause 22.6 (“**Expert Determination**”).

22.6.2 Any Party may, by notice in writing (“**Notice of Expert Determination**”), give notice that it requires a Dispute to be referred to expert determination, and call on the other Party to agree on the identity of the person to be appointed as Expert. The Expert shall be appointed on the mutual agreement of the Parties.

22.6.3 If within ten (10) Days of the Notice of Expert Determination, the Parties are unable to agree on the identity of the person to be appointed as an Expert, the Expert shall be appointed by the International Centre for Expertise in accordance with the provisions for the appointment of experts under the Rules for Expertise of the International Chamber of Commerce within fifteen (15) Days of such referral.

22.6.4 The Expert shall, within seven (7) Days of such appointment, give written notice to the Parties of the time and place of a preliminary conference (“**Preliminary Conference**”) to be held in accordance with Clause 22.6.6, which the Parties shall attend.

22.6.5 Prior to that Preliminary Conference, the Expert may advise any conditions he or she wishes to impose (including provision of security for the fees and expenses of the Expert) and request the agreement of the Parties to such conditions.

22.6.6 At the Preliminary Conference, the Parties and the Expert shall discuss and agree on the issues in Dispute, or formulate a procedure by which those issues can be clarified and agreed; plan and agree on the determination process including a timetable for provision of submissions, documents and any other evidentiary material; make arrangements for confidentiality agreements to be signed by all persons taking part in the determination process, make such other planning and

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administrative arrangements as may be required in relation to the determination process, including in respect of the terms of appointment of the Expert.

- 22.6.7 The Expert shall adopt procedures suitable to the circumstances of the particular case, avoiding unnecessary delay and expense, so as to provide an expeditious cost-effective and fair means of determining the Dispute. The Expert shall be independent of, and act fairly and impartially as between the Parties, giving each party a reasonable opportunity of putting its case and dealing with that of the other Party, and a reasonable opportunity to make submissions on the conduct of the determination process.
- 22.6.8 The Parties shall continue to perform their contractual obligations notwithstanding the existence of the determination process.
- 22.6.9 As soon as reasonably practicable after receiving the submissions and evidentiary material from the Parties, the Expert shall determine the Dispute between the Parties and notify such determination in writing to the Parties and the Expert's determination shall contain a statement of reasons in such form as the Expert considers reasonably appropriate, having regard to the amount and complexity of the Dispute. The Expert's determination may include for the payment of interest on any monetary sum determined, in such amount as the Expert considers reasonable, in view of the cap in Clause 22.6.1.
- 22.6.10 Unless otherwise agreed in writing by the Parties or in the face of manifest error or fraud, the determination of the Dispute by the Expert shall be final and binding on the Parties.
- 22.6.11 All costs of the Expert Determination and all fees payable to the Expert shall be borne by the Party who refers the Dispute to Expert Determination where the Dispute is determined in 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 23

Notices

23.1. Method of Providing Notices

Except as otherwise expressly provided in this Agreement, all notices, communications, or other contacts that are required or permitted to be given or made under this Agreement (“**Notices**”) shall be in English, in writing, and addressed for the attention of the person indicated below (or such other person as a Party shall nominate in a Notice given in accordance with this clause from time to time). Any such notice shall be delivered personally, as evidenced by the corresponding seal or receipt or acknowledgement signed by the recipient Party, or sent by reputable international express courier or by fax or email (provided the sender has evidence of successful transmission) and shall be addressed to the addresses indicated in Schedule 1.

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23.2. Time of Receipt

All notices shall be deemed delivered:

- (a) when presented personally,
- (b) when transmitted by facsimile or email to the receiving Party's facsimile number and receipt of confirmation of a successful transmission, or to an email address specified above upon confirmation of receipt electronically or telephonically, or
- (c) five (5) Day(s) after being delivered to the courier for express delivery, addressed to the receiving Party, at the address indicated in Schedule 1 (or such other address as such Party may have specified by written Notice).

Clause 24 Miscellaneous Provisions

24.1. Amendment

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

24.2. Third Parties

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

24.3. No Implied Waiver

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

24.4. Relationship of the Parties

The Parties enter into this Agreement as independent entities. Nothing herein shall be interpreted or construed as creating an association, joint venture, partnership or agency between the Parties or as imposing any partnership obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement

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or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party. Nothing in this Agreement shall be construed as creating any relationship between the Parties other than that of independent sale and purchase of capacity and electricity generated at the Plant. Except as otherwise set forth herein, the Parties do not intend to create any rights, or grant any remedies to, any third party beneficiary of this Agreement.

24.5. Conflict of Interest

Each Party shall avoid any conflict of interest between its own interests (including the interests of Affiliates) and the interests of the other Party in dealing with suppliers, customers and all other organisations or individuals doing or seeking to do business with the Parties in connection with activities contemplated under this Agreement. The provisions of this Clause 24.5 shall not apply to:

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

24.6. Survival

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

- (a) Clause 1.1 (*Definitions*);
- (b) Clause 13.4 (*Billing and Payment*);
- (c) Clause 14.5 (*Consequences of Change in Law or Change in Tax*);
- (d) Clause 16.3 (*Tax Indemnity*);
- (e) Clause 17 (*Liability and Indemnification*);
- (f) Clause 18 (*Default and Early Termination*);
- (g) Clause 19 (*Sole Remedies Upon Termination*);
- (h) Clause 21.8 (*Prolonged Force Majeure Events*);
- (i) Clause 22 (*Choice of Law and Dispute Resolution*); and
- (j) Clause 24.9 (*Waiver of Sovereign Immunity*); and
- (k) Clause 24.10 (*Confidentiality*)

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24.7. Language

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

24.8. Entirety

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

24.9. Waiver of Sovereign Immunity

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

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

24.9.3 Protected Assets shall be immune from any enforcement, attachment, execution or other legal process in any jurisdiction, and Seller hereby agrees not to commence any enforcement, attachment, execution, or other legal process in respect of any of the Protected Assets in any jurisdiction regardless of whether the Protected Assets are entitled to immunity in such jurisdiction.

24.10. Confidentiality

24.10.1 Confidential Information

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

24.10.2 Exclusions to Confidential Information

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

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

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

24.10.4 Exceptions to Confidentiality

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

- (a) to directors and employees of such Party and of its Affiliates to the extent required for the proper performance of their work in connection with this Agreement *provided that* such Party shall use Reasonable Endeavours to ensure that such directors and employees keep the Confidential Information confidential on the same terms as are provided in this Clause 24.10 and disclosure or use of the Confidential Information by any such directors and employees in contravention of such terms shall be deemed to be an unauthorised disclosure or use by the Party disclosing the same to such directors and employees;
- (b) to any consultants, insurers, banks or financial institutions (and their advisers) from whom such Party is seeking or obtaining finance, insurance or consulting services in connection with the Project but only to the extent reasonably necessary, or to third parties engaged by or on behalf of such Party but only to the extent required for the proper performance of their work for the purpose or purposes incidental to or arising out of this Agreement *provided that* the proposed recipients of such information shall be required by a Party providing information to undertake to such Party to keep such information confidential on the same terms as are provided in

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this Clause 24.10 and provided further that the Party providing information shall use Reasonable Endeavours to secure compliance with such undertaking;

- (c) to the extent such Party is required by law to make a disclosure to any government department or any governmental or regulator agency having jurisdiction over such Party;
- (d) to the extent required by any Applicable Law, rules and regulations of any recognized stock exchange or to the extent required by any process having the force of law in connection with any judicial, arbitral or administrative proceedings; and
- (e) to an expert appointed pursuant to Clause 22.6 *provided that* such expert agrees to be bound to confidentiality provisions substantially the same as those contained in this Clause 24.10.

24.11. Severability

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

24.12. Counterparts

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

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

NIGERIAN BULK ELECTRICITY TRADING PLC

Name:

Title:

In the presence of:

Name:

Title:

.....

Name:

Title:

In the Presence of

Name:

Title

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Schedule 1 Terms Specific to This Agreement

[Note: To be Finalised.]

Paragraph 1 Plant Specific Provisions

| | |
|---|--|
| Seller | |
| Sponsors | |
| Name of project | |
| Site | The Land to be occupied by the plant, equipment and materials constitute the Project in _____, Nigeria as shown in the map attached as Appendix 1 to this Schedule 1 |
| Contract Capacity | ___ MW |
| Minimum Initial Tested Capacity | 95% of Contract Capacity |
| Maximum Initial Tested Capacity | 105% of Contract Capacity |
| Minimum Tested Capacity | 85% of Initial Tested Capacity net of agreed degradation. |
| Term | The period commencing on the Closing Date and expiring on the earlier to occur of (i) the 20 th anniversary of the Commercial Operations Date, and (ii) the date in respect of which Delayed Commissioning Payments first became payable in accordance with Clause 7.8.3. |
| Prolonged Gas Supply Constraint Minimum Level | Available Capacity being [65]% of the Projected Available Capacity over a period of six (6) consecutive months |
| Gas Supply Constraint Default Level | Available Capacity being [80]% of the Projected Available Capacity over a period of six (6) consecutive months |
| Reference Site Conditions | Ambient Temperature (dry bulb) at 28 deg.C, Barometric pressure at 1000 mbar, Relative humidity at 71% |
| Remedial Plan Notice Period | 60 calendar days |
| Minimum Indemnification Amount | US\$100,000 (or Naira equivalent) per calendar year |

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|--------------------------------------|--|
| Project Documents | (a) the Long Term Service Agreement; (b) the Gas Supply Agreement; (c) the Gas Transportation Agreement; (d) the Construction Contract; (e) the Operation and Maintenance Agreement; (f) the Connection Agreement; (g) the Documents of Title; (h) the Ancillary Services Agreement; (i) the Project Transmission Line Agreement; (j) the policies of insurance required to be obtained and maintained by Seller under Clauses 15.1 and 15.2.1; and (k) any other document which the Parties agree to designate as a Project Document. |
| Long Stop Closing Date | The date that is 12 (twelve) months after the Execution Date, as may be extended in accordance with the terms of this Agreement |
| Target Commercial Operations Date | The date that is 24 (twenty-four) months after the Closing Date |
| Required Commercial Operations Date | The date that is 30 (thirty) months after the Closing Date, as may be extended in accordance with the terms of this Agreement |
| Required GSSD | The date to be agreed by the Parties prior to the Closing Date and stated as a number of months after the Closing Date, as may be extended in accordance with this Agreement. |
| Long Stop Commercial Operations Date | The date that is 42 (forty-two) months after the Closing Date, as may be extended in accordance with the terms of this Agreement |
| Required Interconnection Date | The date that is 18 (eighteen) months after the Closing Date |
| Agreed Interest Rate (Local) | The margin over NIBOR is 2% per annum. |
| Agreed Interest Rate (Foreign) | The margin over LIBOR is 2% per annum. |
| Restoration Threshold Amount | US\$3 million (or Naira equivalent) during any calendar year |

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|--|--|
| Tax & Law Threshold Amount | US\$50,000 (or Naira equivalent) during any calendar year |
| Liquidated damages payable if Seller fails to achieve COD by Required COD | US\$55,000 (or Naira equivalent) per day |
| Liquidated damages payable - If Achieved Capacity on the Commercial Operations Date is less than the Contract Capacity | US\$150,000 (or Naira equivalent) per MW |
| Liquidated Damages Limit | US\$10 million during the period on and from the Required Commercial Operations Date up to and including the Commercial Operations Date |
| Development Security | US\$20,000 per MW |
| Assumed Debt to Equity Ratio | 70:30 |
| Seller will, at its option, test Units individually and make the Available Capacity of the Units that have successfully completed the Unit Tests available to Buyer in accordance with Clause 2.1.1. | YES |
| Where a Refinancing is put into effect pursuant to Clause 14.6, the benefit of such Financing shall be shared between Seller and Buyer as follows: | Fifty per cent (50%) of the benefit of such Financing shall be used to reduce the Capacity Payments; Fifty per cent (50%) of the benefit of such Financing shall be retained by Seller. |
| Independent Engineer | To be selected from the following: - _____ - _____ - _____ - Any other entity in writing between the Parties |

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Paragraph 2 Addresses for Delivery of Notices

24.13. Addresses

The addresses for the delivery of notices pursuant to Clause 23 are set forth below.

If to Seller:

Attention: Chief Executive Officer

With a copy to:

Email:

If to Buyer:

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

Attention: Managing Director/Chief Executive Officer

Email: contractnotices@nbet.com.ng

With a copy to:

Email:

Paragraph 3 Buyer Payment Security

A. Buyer Payment Security

- i. Buyer shall deliver the initial Buyer Payment Security to Seller as a Condition Precedent to Seller's obligations in accordance with Clause 3.3.1(h) of this Agreement 1. Subject to Paragraph 3, section A(v) (*Extraordinary L/C Events*) of this Schedule 1, Buyer shall thereafter continuously maintain the Buyer Payment Security,

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- or a replacement thereof, in full force and effect in the required amount for the remainder of the Term. Seller shall pay all commitment and other fees that are payable to the issuer of the Buyer Payment Security in respect of the issuance or maintenance thereof.
- ii. In the event Buyer fails to pay any Delayed Commissioning Payment, Capacity Payment, Energy Payment, Gas Payment, Start Up Payment or Supplemental Payment within two (2) Business Days of the date such payment becomes due, then Seller may draw on the Buyer Payment Security for the undisputed amount that is due in respect thereof from Buyer, *provided, however*, that the payment obligation of Buyer may be, but in any event is not required to be, fulfilled on behalf of the Buyer by the Federal Ministry of Finance, or any other entity or agency of FGN.
 - iii. In the event that Seller draws on the Buyer Payment Security, Seller shall provide notice to Buyer of such event within three (3) Days.
 - iv. The Buyer Payment Security shall:
 - a. name Seller as the beneficiary thereof;
 - b. have a term to be agreed between Seller and Buyer;
 - c. have, as of the first Day of each Contract Year, a maximum amount available for draw equal to the product obtained by multiplying:
 - (x) an estimate (agreed to by the Parties, or in the event that the Parties cannot agree, determined in accordance with Clause 22 hereunder) of the sum of the Capacity Payments, Energy Payments, Gas Payments, Start Up Payments and Supplemental Payments that will become payable in respect of capacity made available and energy delivered during such Contract Year divided by twelve (12) (or in the case of the first and last Contract Year, the number of whole months in that Contract Year), calculated assuming that the Plant will be available to generate, and will generate all energy that can be generated with, the Projected Available Capacity for such Contract Year, by
 - (y) three (3);
 - d. be issued or confirmed by an Acceptable Commercial Bank (or branch thereof) which has two of the following three unsecured debt ratings (or one of the following three unsecured debt ratings following the occurrence of an Extraordinary L/C Event):
 - i. a minimum "Foreign Currency Long-Term Issuer Default Rating" of "A" (or "B" following the occurrence of an Extraordinary L/C Event) from Fitch Ratings Ltd;

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- ii. a minimum "Foreign Long-Term Issuer Credit Rating" of "A" (or "B" following the occurrence of an Extraordinary L/C Event) by Standard & Poor's Financial Services LLC; and
 - iii. a minimum "Long-Term Issuer Rating" of "A2" (or "B2" following the occurrence of an Extraordinary L/C Event) by Moody's Investors Service, Inc.;
 - e. not prohibit the Seller from assigning or transferring its rights under the Buyer Payment Security as part of a security package in a bona fide financing transaction with any lender or other institution providing financing for Seller's Plant;
 - f. provide that the beneficiary thereof may make multiple drawings upon it; and
 - g. in the case of a letter of credit, expressly state that it shall be governed by the laws of England and Wales or the state of New York and subject to International Standby Practices 1998 or UCP 600; or
 - h. in the case of a demand guarantee, expressly state that it shall be governed by the laws of England and Wales or the state of New York and subject to the Uniform Rules for Demand Guarantees.
- v. Extraordinary L/C Events
 - a. Following the occurrence of an Extraordinary L/C Event, the Parties shall use their Reasonable Endeavours to negotiate a new guarantee from the International Bank for Reconstruction and Development or such other multilateral (or similar) institution as may be agreed between Buyer and Seller, and post as soon as is reasonably practicable thereafter a Buyer Payment Security that meets the ratings criteria specified in Paragraph 1.41.4(d) that apply prior to the occurrence of an Extraordinary L/C Event.
- vi. The Parties acknowledge and agree that the issuer of the Buyer Payment Security may sell a participation in the Buyer Payment Security to one or more commercial banks that are organized under the laws of Nigeria, *provided, that*, the sale of such participation shall not affect the liability of the issuing bank that issued the Buyer Payment Security for the full amount available to be drawn thereunder.

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Paragraph 4 Not Used

Paragraph 5 Conditions Precedent

| No. | Condition Precedent | Responsible Party | Consent Required to Waive |
|-----|--|-------------------|---------------------------|
| 1. | Seller shall have obtained all of the Seller Initial Authorisations. | Seller | Both Parties |
| 2. | Seller and the counterparty to each Project Document shall have entered into each of the Project Documents and Seller shall have made the originals available for review by, and provided a certified copy thereof to, Buyer. | Seller | Both Parties |
| 3. | The Transmission Company of Nigeria shall have presented evidence acceptable to both Parties that the necessary transmission and associated interconnection facilities, and any other necessary enhancement of the Grid will be ready to safely and reliably evacuate power generated by Plant by the Required Interconnection Date. | Seller | Both Parties |
| 4. | Seller shall have secured all debt financing required for the Project and Financial Close shall have occurred. | Seller | Both Parties |
| 5. | Buyer, Seller, and FGN shall have entered into the Put/Call Option Agreement. | Both Parties | Both Parties |
| 6. | Seller shall have entered into a Connection Agreement with the Transmission Company of Nigeria. | Seller | Both Parties |
| 7. | Seller shall have entered into an Operations and Maintenance Agreement on terms reasonably acceptable to Buyer with a Technically Qualified Operator reasonably | Seller | Buyer |

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|-----|--|--------------|--------------|
| | acceptable to Buyer. | | |
| 8. | Buyer, Seller and the representative of the Finance Parties nominated by the Finance Parties shall have entered into the Direct Agreement. | Both Parties | Both Parties |
| 9. | Buyer shall have delivered the initial Buyer Payment Security to Seller. | Buyer | Seller |
| 10. | Seller shall have posted the Performance Guarantee in favour of Buyer. | Seller | Buyer |
| 11. | Seller shall have provided Buyer with a reasonable opportunity to review all of the Project Documents, and Buyer shall have reviewed and approved: (a) any Project Document to which an Affiliate of Seller is a party; (b) the GSA; and (c) the GTA. | Both Parties | Buyer |
| 12. | Buyer having performed due diligence on all aspects of the Project with satisfactory results, including verification of any amounts included in tariff calculations unless this Agreement is the result of an open, competitive procurement. | Both Parties | Buyer |
| 13. | Seller shall have obtained from the Finance Parties and from any party engaged to provide reports that address technical, financial, or economic matters related to the Project, an agreement permitting the final versions of such reports to be provided to Buyer on a no-reliance basis following receipt and approval of those reports by Seller, following which Seller shall provide all such reports to the Buyer. | Seller | Buyer |
| 14. | Buyer shall have provided to Seller a copy of all relevant resolutions of the board of directors of Buyer authorising the execution, delivery, and performance by Buyer of this Agreement, the other Project Documents to which Buyer is a party, and the Finance Documents to which Buyer is a party, together with: (a) a legal opinion reasonably acceptable to Seller in form and substance from counsel to Buyer as to the due authorisation, execution, and delivery of this Agreement, the other Project Documents to which Buyer is a party, and the Finance Documents to which Buyer is a party, and the | Buyer | Seller |

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|-----|--|--------|-------|
| | <p>enforceability thereof against Buyer, and</p> <p>(b) an officer’s certificate of Buyer confirming that Buyer’s representations and warranties made as of the Execution Date pursuant to Clause 4.3 are true and correct on the Closing Date.</p> | | |
| 15. | <p>Seller shall have provided to Buyer a copy of all relevant resolutions of the board of directors and shareholders of Seller authorising the execution, delivery, and performance by Seller of this Agreement, the other Project Documents, and the Finance Documents, together with:</p> <p>(a) a legal opinion reasonably acceptable to Buyer in form and substance from counsel to Seller as to the due authorisation, execution, and delivery of this Agreement, the other Project Documents, and the Finance Documents, and the enforceability thereof against Seller; and</p> <p>(b) an officer’s certificate of Seller confirming that Seller’s representations and warranties made as of the Execution Date pursuant to Clause 4.1 are true and correct on the Closing Date.</p> | Seller | Buyer |

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Appendix 1
Site Map

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Schedule 2
Description of Plant and Facilities

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Schedule 3 Plant Commercial Operations Testing Procedures

1. General

- 1.1. This Schedule 3 specifies the Commercial Operations Tests for the Plant, which comprise the tests prior to synchronisation, the tests after synchronisation, the Reliability Test and the Capacity Test to determine Initial Tested Capacity.
- 1.2. In this Schedule, references to Seller shall include Seller's Contractor.
- 1.3. In the event that the Initial Tested Capacity is greater than the Minimum Initial Tested Capacity but less than the Contract Capacity and the Commercial Operations Date has occurred, Seller shall have the right to remedy and re-test the plant within 6 (six) months of the Commercial Operations Date. Such re-test shall be conducted according to the procedure for the Capacity Test outlined in this Schedule 3. The capacity measured in the re-test shall become the Initial Tested Capacity upon successful completion of the test.
- 1.4. The Independent Engineer will be notified sufficiently ahead of any testing to ensure that he will have the opportunity to attend and witness all important tests whose results he is required to certify.

2. Tests Prior to Synchronisation

- 2.1. Seller shall carry out, or shall cause the Contractor to carry out the following tests on each Unit. The tests may be carried out in any order.
 - (a) Automatic voltage regulator ("AVR") setting and adjusting in stand-still condition and with the generator running at no load. The purpose of the test is to evaluate the small signal dynamic response of the Unit's generator excitation system on no load. The test shall be carried out with the Unit's generator operating at rated terminal voltage and speed. The test shall be conducted by injecting a 2% step change into the AVR reference input and measuring the dynamic response parameters; overshoot and settling time. The demonstrated voltage regulation capability of the AVR shall meet the requirements specified in Schedule 5 (*Functional Specifications and Operating Parameters*).
 - (b) Turbine governor control checks to evaluate the small signal dynamic response of the Unit's turbine governor system on no load. The test shall be carried out with the Unit's turbine generator operated at rated terminal voltage and speed. The test shall be conducted by injecting a 2% step into the turbine governor reference input and measuring the dynamic response parameters; overshoot and settling time. The demonstrated speed control capability of the governor shall meet the requirements specified in Schedule 5 (*Functional Specifications and Operating Parameters*).
 - (c) Open and short circuit tests on the generator to measure the Unit's generator field current characteristics. The Unit's generator field shall be

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excited with the field current progressively increased in not less than ten steps and the stator terminal voltage measured, up to a voltage of 110% of nominal. The resultant curve of the generator field current and stator terminal voltage shall approximate to expected levels

- (d) Functional testing and timing of high voltage switchgear in the sub-station of the Plant. Seller shall, using secondary injection methods, prove and test all inter-tripping circuits between the Plant and the System Operator's equipment. Seller and Buyer shall verify the protection level settings for the following:
 - (i) stator earth fault;
 - (ii) negative phase sequence;
 - (iii) generator transformer over current and earth fault;
 - (iv) high voltage bus bar protection;
 - (v) reverse power;
 - (vi) over and under frequency; and
 - (vii) phase discordance/imbalance.
- (e) Voltage phasing checks shall be carried out between the sub-station of the Complex and the Grid System.
- (f) All inter-tripping circuits between the Plant and System Operator's equipment shall be proved.
- (g) Seller shall provide Buyer with test reports on ground resistance readings close to the unit and inside the substation.

3. Unit Tests After Synchronisation

3.1. After first synchronising of any Unit, initial operational testing of such Unit, the "Unit Tests", shall be conducted by Seller or its Contractor. Once Seller is satisfied that the Unit is capable of continued reliable operation, Seller shall so notify Buyer and carry out or cause its Contractor to carry out, further tests on each Unit, which shall include the tests listed below. The tests shall be carried out on each Unit and may be carried out in any order.

- (a) Automatic voltage regulator droop to demonstrate that the Unit's AVR can control the generator voltage to within an accuracy of +/- zero point five per cent (0.5%) over the range specified in the Schedule 5 (*Functional Specifications and Operating Parameters*). The test shall comprise progressively stepping the voltage over the operating voltage range of the

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generator, including no less than five increasing and five decreasing steps. These tests shall be carried out at base load conditions, however if the Grid experiences voltage level excursions outside those specified in the Reference Site Conditions the test may be carried out at appropriately reduced load levels.

- (b) Turbine governor operation to verify the ability of the Unit to contribute to system frequency control, confirm key characteristics of the turbine governor such as, incremental droop, demonstrate stable operation of the turbine governor under steady state and dynamic operation. This test shall be carried out at not less than three load points of the Unit's generator in the range 75% to 100% of rated load, and shall consist of a series of sub-tests. At each load point a simulated frequency deviation signal of varying amplitude shall be injected into the turbine control system and the response of the power output of the Unit monitored. The results shall be within +/- 20% of the value stated in Schedule 5 (*Functional Specifications and Operating Parameters*). Only positive frequency steps shall be applied at 100% load. Following each step change, the speed measurements shall be noted after a delay of 30 seconds, and continued every 30 seconds, over a period of at least 2 minutes.
- (c) Reactive capability to prove unit can operate at the power factor stated in the Schedule 5 (*Functional Specifications and Operating Parameters*). The generator of the Unit shall be operated at full load at a power factor as stated in Schedule 5 (*Functional Specifications and Operating Parameters*) for a period of not less than 15 minutes. In the event that during the test the Grid voltage conditions are not at Reference Site Conditions the tests shall be performed at an appropriately modified power factor such that the voltage limits are not exceeded.
- (d) Minimum load capability to demonstrate the Unit can operate at minimum load. During this test the minimum operating load shall be demonstrated. The Unit shall be operated at, or below, 60% load for a period of not less than one hour. The Unit shall operate continuously and in a stable manner with appropriate stack emissions.
- (e) Full load rejection.
- (f) Time for a cold and hot start-up through to synchronisation complete.
- (g) Recording of operational values during steady state operation at 75% and 100% rated load.

4. Timing of Capacity Test and Reliability Test

- 4.1. Upon completion of the tests after synchronisation specified in Clause 3 of this Schedule 3 for the last Unit and such additional base load and part load running as Seller shall determine is necessary to stabilise the operational parameters of the

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Units, Seller shall declare to Buyer the commencement of the sustained operations test (the “**Reliability Test**”).

5. Reliability Test Description

- 5.1. The Reliability Test shall last for a period of Seven (7) Days. The Reliability Test shall be used to demonstrate the ability of the Plant to operate in the operating states defined under Schedule 5 (*Functional Specifications and Operating Parameters*).
- 5.2. During the Reliability Test, the equipment and systems shall be placed in normal mode of operation, such as start-up, stable load operation, load changes and shut-down.
- 5.3. Gas shall be used as required and permitted.
- 5.4. During the Reliability Test, the Facility shall be operated in Automatic Governor Control.
- 5.5. The Net Electrical Output data shall be adjusted: (i) to account for trips and suspensions for which Seller is not responsible; and (ii) for corrections based on ambient site, and any other relevant conditions, such as grid frequency and power factor, that differ from the Reference Site Conditions.

6. Reliability Test Minimum Satisfactory Result

- 6.1. The Reliability Test shall have been satisfactorily completed only if The minimum generation shall be no less than the Minimum Initial Tested Capacity or any other load required from the grid operator converted to the actual conditions (atmospheric pressure, atmospheric temperature, Grid frequency, etc.) During the Reliability Test only three periods of time equal to or greater than three (3) hours when the Plant operates below the Minimum Initial Tested Capacity shall be allowed. Such a period shall, for the purposes of this Schedule 3, be defined as an “Interruption”. In circumstances where the total number of Interruptions exceeds three then the Seller shall recommence the Reliability Test. Should more than two Interruptions be as a result of the same mechanism of failure then the Reliability Test shall be restarted.
- 6.2. For the purposes of the Reliability Test, an Interruption is only that which is attributable to the behaviour of the Plant or the Seller’s actions. For the avoidance of doubt, any loss of load disruption attributable to the behaviour of the Grid, or the Buyer’s actions, shall not be treated as an Interruption and the Reliability Test shall resume after the disruption has been rectified as if it had not occurred.

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7. Objective of Capacity Test

- 7.1. The objective of the Capacity Test under this Schedule 3 is to determine the Initial Tested Capacity.
- 7.2. This Schedule 3 details the test set-up, the test instrumentation and measurements, the test preparations, and the operational conditions to be used. It also presents the evaluation methodology by which results are to be determined.
- 7.3. Changes to this procedure may be made only with the written consent of the Test Representatives of both Seller and Buyer, or if requested by either Party, the Independent Engineer.
- 7.4. If the tests are prevented from being undertaken due to the inability of the Grid to reliably take all the Net Electrical Output generated by all gas turbines operating at full load, then the Tested Capacity shall be determined by undertaking the tests in parts (on a Unit by Unit basis) and aggregating the results of such tests.
- 7.5. Capacity Test is to be performed before the Reliability Test.
- 7.6. For the avoidance of doubt, any events occurring during the Reliability Test which may impact the effective fired hours of the turbines in the Plant, will be taken into account in the determination of Initial Tested Capacity.

8. Test Code Reference

- 8.1. The performance tests shall be generally in compliance with the following test code:
- 8.2. ANSI/ASME PTC 22-1997 – Gas Turbine Power Plants—or ISO 2314-Gas turbines – Acceptance tests.

9. Division of Responsibilities for Testing

- 9.1. Seller and Buyer shall each assign a Test Representative and ensure that the designated Test Representatives are present to witness the test. The Test Representatives shall have the authority to approve, by their prior written approval, reasonable changes to the performance test procedure provided herein due to unforeseen circumstances.
- 9.2. The Test Representative of Seller shall ensure that the Independent Engineer shall have complete access to information applicable to the conduct of the test. This information includes, but is not limited to, the instrument calibration records for the test, observation of unit operation, data acquisition, and the test log.
- 9.3. The Test Representative of Seller shall ensure that the Independent Engineer shall have the full and unrestricted opportunity to visually examine all Units and machinery prior to, during, and after each test run.

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10. Seller's Responsibilities

- 10.1. Seller shall be responsible for directing operation of the Plant during performance testing, including supervision of operating and maintenance personnel in the operation of all equipment associated with the Plant.
- 10.2. Seller shall issue a formal 30-day and 7-day test notification to the Test Representative of Buyer and to the Independent Engineer and shall keep the Test Representative of Buyer and the Independent Engineer informed of test activities and progress. Delays in achieving the test dates set out in the 30 day and 7 day notices shall not require the Seller to resubmit such notices unless the projected delay exceeds 30 or 7 days respectively. In case of such a delay, the new test dates will be mutually agreed between Seller, Test Representative of Buyer, and the Independent Engineer.
- 10.3. Seller shall provide all calibrated test class instrumentation and certification.
- 10.4. Immediately after each test run, Seller shall collect all performance test data, obtain all required signatures and make copies for each Test Representative and the Independent Engineer.
- 10.5. Seller shall submit to Buyer and the Independent Engineer a letter providing preliminary corrected test results per section 19 of this Schedule.
- 10.6. The Independent Engineer shall prepare and submit to Seller and to Buyer a detailed Commissioning Test report providing final test results per section 19 of this Schedule, which shall be certified by the Independent Engineer if the Independent Engineer has concluded that the Commercial Operations Tests have been carried out in accordance with the Power Purchase Agreement and this Schedule 3.
- 10.7. Seller shall provide to Buyer and the Independent Engineer Commissioning Test instrument calibration sheets.
- 10.8. Seller is responsible for providing the gas and water and all other consumables necessary to carry out the test program. Seller shall provide at its cost and expense reasonable accommodations and meals on Site for Test Representative of Buyer and the Independent Engineer so as to permit them to remain on Site during the continuation of the Capacity Tests.
- 10.9. Seller is responsible for providing all manufacturers' generated correction curves to the Test Representatives of Seller and Buyer and to the Independent Engineer and the Independent Engineer shall be responsible for applying the manufacturers' generated correction curves in the preparation of the detailed Commissioning Test report.

11. Buyer's Responsibilities

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

12. Preparation General

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

13. Test Log

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

14. Test Set-Up, Measurements and Instrumentation

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

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

15. Test Preparation

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

16. Conduct of the Capacity Test - general

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- 16.1. The Capacity Test shall be performed with its gas turbines operating on gas, with its generators fully loaded and after the gas turbines have been allowed to achieve the thermal stability criteria specified below.
- 16.2. Seller may declare to Buyer and the Independent Engineer the commencement of the test of Initial Tested Capacity. The Capacity Test duration will be One (1) continuous hours. At the commencement of the Capacity Test, Seller will record the new reading of the Metering System. The electrical output during each period as derived from the Metering System readings shall be corrected to Reference Site Conditions based on the ambient conditions prevailing during the period and other conditions, such as grid frequency and power factor, to give the Net Electrical Output. The Initial Tested Capacity shall be determined by taking the average of the Net Electrical Output for all the periods during the test. The Initial Tested Capacity shall not be considered to have been established unless the result of such determination is equal to or greater than the Minimum Tested Capacity.

17. Stability Requirements before and during the Capacity Test

- 17.1. Before starting the test, the gas turbine shall be run until stable conditions have been established. Stability will be achieved when continuous monitoring indicates the readings have been within the maximum permissible variation established by the manufacturer.
- 17.2. The system will be considered in a steady state condition during the test when variations from the average value during the tests do not exceed the criteria in the relevant performance test code.

18. Corrections to Measured Data and Calculation of Results

- 18.1. The input-output test method shall be used whereby energies entering and exiting through a control boundary around the Unit shall be accounted for to determine the measured performance values. Corrections to the measured Net Electrical Output produced during testing shall be made for ambient conditions and other boundary conditions during the test that are different from the Reference Site Conditions, including grid frequency and power factor, to determine the corrected performance values. Manufacturer's correction curves shall be used in determining all pertinent correction factors.

19. Test Report

- 19.1. Seller shall issue a preliminary test report for the Initial Tested Capacity within 24 hours after the conclusion of the test. The preliminary report of Initial Tested Capacity shall be based on test data and shall include preliminary results and a short discussion. The Independent Engineer shall issue a final report for the Initial Tested Capacity within five Days of the completion of the test. The Initial Tested Capacity contained in the preliminary report shall be applicable for purposes of this Agreement until the earlier of five (5) Days from its issue to the

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Independent Engineer and the issuance of the final report of Initial Tested Capacity as certified by the Independent Engineer.

19.2. The final Capacity Test report shall include, as a minimum, the following sections:

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

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Schedule 4 Test Procedures

Plant Scheduled Capacity Test and Capacity Demonstration Procedures

1. Introduction

- 1.1. This Schedule 4 specifies the procedures for annual Capacity Tests scheduled by Seller, Buyer requested Capacity Tests, and Buyer or Seller requested Capacity Demonstrations for the Plant pursuant to Clause 8.2 in the main body of this Agreement.

Section A: Capacity Tests

2. Timing of Capacity Tests

- 2.1. Each annual Capacity Test scheduled by Seller in accordance with Clause 8.2.1 of the main body of this Agreement shall be conducted between each anniversary of the Commercial Operations Date and one month after each anniversary of the Commercial Operations Date.
- 2.2. The Seller shall give the System Operator and Buyer at least 30 days' notice of its intention to perform a scheduled Capacity Test in accordance with Clause 8.2.1. Subject to achieving stable grid conditions and stable thermal conditions as set out in section 13 of this Schedule 4, Seller shall conduct the test on the date specified to the System Operator.
- 2.3. The Buyer shall give the Seller and the System Operator at least 30 days' notice of its request for a Capacity Test under Clause 8.2.2 of the main body of this Agreement. Subject to achieving stable grid conditions and stable thermal conditions as set out in section 13 of this Schedule 4, and provided there is no conflict with Seller's scheduled maintenance activities, Seller shall conduct the test on the date specified and agreed with Buyer and the System Operator.

3. Objective of Capacity Test

- 3.1. The objective of the Capacity Test under this Schedule 4 is to determine the Tested Capacity.
- 3.2. This Schedule details the test set-up, the test instrumentation and measurements, the test preparations, and the operational conditions to be used. It also presents the evaluation methodology by which results are to be determined.
- 3.3. Changes to this procedure may be made only with the written consent of the Test Representatives of both Seller and Buyer, or if requested by either Party, the Independent Engineer.
- 3.4. If the tests are prevented from being undertaken due to the inability of the Grid to reliably take all the Net Electrical Output generated by all gas turbines operating at full load, then the Tested Capacity shall be determined by undertaking the tests in parts (on a Unit by Unit basis) and aggregating the results of such tests.

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4. Test Code Reference

4.1. The performance tests shall be generally in compliance with the following test code:

- (a) ANSI/ASME PTC 22-1997 – Gas Turbine Power Plants.

The performance test shall be in compliance with the following performance test codes where referenced and to the extent stated in this procedure and the above performance test code:

- (b) ANSI/ASME PTC 1-1991 – General Instructions;
- (c) ANSI/ASME PTC 2-1980 – Definitions and Values;
- (d) ANSI/ASME PTC 3.1-1992 – Gaseous Fuels;
- (e) ANSI/ASME PTC 19.1-1985 – Measurement Uncertainty;
- (f) ANSI/ASME PTC 19.2-1987 – Pressure Measurement;
- (g) ANSI/ASME PTC 19.3-1974 – Temperature Measurement;
- (h) ANSI/ASME PTC 19.3-1955 – Electric Measurements in Power Circuits;
- (i) ANSI/ASME PTC 19.10-1981 – Flue and Exhaust Gas Analysis.

5. Division of Responsibilities for Testing

5.1. Seller and the Buyer shall each assign a Test Representative and ensure that the designated Test Representatives are present to witness the test. The Test Representatives shall have the authority to approve, by their prior written approval, reasonable changes to the performance test procedure provided herein due to unforeseen circumstances.

5.2. The Test Representative of Seller shall ensure that the Independent Engineer shall have complete access to information applicable to the conduct of the test. This information includes, but is not limited to, the instrument calibration records for the test, observation of unit operation, data acquisition, and the test log.

5.3. The Test Representative of Seller shall ensure that the Independent Engineer shall have the full and unrestricted opportunity to visually examine all Units and machinery prior to, during, and after each test run.

6. Seller's Responsibilities

6.1. Seller shall be responsible for directing operation of the Plant during testing, including supervision of operating and maintenance personnel in the operation of all equipment associated with the Plant.

6.2. Seller shall issue a formal 30 day test notification to the Test Representative of Buyer and to the Independent Engineer and shall keep the Test Representative of

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Buyer and the Independent Engineer informed of test activities and progress. Delays in achieving the test dates set out in the 30 day notices shall not require the Seller to resubmit such notices unless the projected delay exceeds 30 days. In case of such a delay, the new test dates will be mutually agreed between Seller, Test Representative of Buyer, and the Independent Engineer.

- 6.3. Seller shall provide all calibrated test class instrumentation and certification.
- 6.4. Immediately after each test run, Seller shall collect all performance test data, obtain all required signatures and make copies for each Test Representative and the Independent Engineer.
- 6.5. Seller shall submit to Buyer and the Independent Engineer a letter providing preliminary corrected test results per section 15 of this Schedule.
- 6.6. The Independent Engineer shall prepare and submit to Buyer and to Seller a detailed Capacity Test report providing final test results per section 15 of this Schedule, which shall be certified by the Independent Engineer if the Independent Engineer has concluded that the scheduled Capacity Test has been carried out in accordance with the Power Purchase Agreement and this Schedule 4.
- 6.7. Seller shall provide to Buyer and the Independent Engineer the scheduled Capacity Test instrument calibration sheets.
- 6.8. Seller is responsible for providing the gas and water and all other consumables necessary to carry out the test program. Seller shall provide at its cost and expense reasonable accommodations and meals on Site for Test Representative of Buyer and the Independent Engineer so as to permit them to remain on Site during the continuation of the scheduled Capacity Test.
- 6.9. Seller is responsible for providing all manufacturers' generated correction curves to the Test Representatives of Seller and Buyer and to the Independent Engineer and the Independent Engineer shall be responsible for applying the manufacturers' generated correction curves in the preparation of the detailed Capacity Test report.

7. Buyer's Responsibilities

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

8. Preparation General

- 8.1. All safety devices, protective relays, trip mechanisms and support systems shall be checked and confirmed to be operational before performance testing. All protective equipment shall be in service and operating, unless a specific protection feature must be disabled to demonstrate an operational limit. The Plant equipment shall be operated in accordance with manufacturer's operating guidelines.

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8.2. Turbine manufacturer's recommended operating procedures and instructions must be followed.

9. Test Log

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

10. Test Set-Up, Measurements and Instrumentation

10.1. The test set-up consists of the gas turbine generators, selected station instruments, and special temporary instrumentation.

10.2. The purpose of the special temporary instrumentation is to provide precise determination of test parameters that are not monitored by the gas turbine control system, or station instrumentation, and/or to improve upon the accuracy of the data collected.

10.3. The parameters to be measured with special test instrumentation include, but are not limited to:

- (a) Air temperature;
- (b) Relative humidity; and
- (c) Barometric pressure;

10.4. The parameters to be measured with the plant instrumentation include, but are not limited to:

- (a) Gas turbine speed;
- (b) Gross output power from each Unit generator;
- (c) Auxiliary power consumption;
- (d) Excitation power for each generator; and generator voltage and power factor;
- (e) Unit net power output (using tariff meters on the high voltage side of the generator transformers); and
- (f) Fuel consumption.

10.5. The special instruments used in the Capacity Test shall be calibrated prior to the test. Copies of the calibration records shall be provided to all Test Representatives.

10.6. The air temperature shall be measured near the compressor bell mouth.

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- 10.7. The relative humidity shall be measured with a precision psychrometer placed in the immediate vicinity of the entrance to the compressor inlet air system. Measurements of dry and wet bulb temperatures shall be recorded.
- 10.8. The barometric pressure shall be measured by a precision barometer located near the compressor inlet air system and at an elevation equal to the gas turbine centreline.
- 10.9. Temporary test instrumentation shall have an accuracy at least equal to that recommended by the gas turbine manufacturer for use during performance tests

11. Test Preparation

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

12. Conduct of the Capacity Test - general

- 12.1. The Scheduled Capacity Test shall be performed with its generators fully loaded and after the gas turbines have been allowed to achieve the thermal stability criteria specified in section 13 of this Schedule 4.
- 12.2. Seller may declare to Buyer and the Independent Engineer the commencement of the scheduled Capacity Test. The scheduled Capacity Test duration will be three (3) continuous hours. At the commencement of the Scheduled Capacity Test, Seller will record the new reading of the Metering System. The Tested Capacity shall be determined by taking the average of the Net Electrical Output for all the periods during the three hours test. The scheduled Capacity Test shall not be considered to have been passed unless the result of such determination is equal to or greater than the Minimum Tested Capacity.

13. Stability Requirements before and during Capacity Test

- 13.1. The gas turbines will be considered in a steady state condition prior to a Capacity Test when the turbine wheel space temperatures change no more than three degrees Centigrade over a 15-minute period. The thermal stability of the gas turbine shall be documented by printouts of the wheel space temperatures prior to the start of each test.

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- 13.2. The system will be considered in a steady state condition during the test when variations from the average value during the tests do not exceed the criteria in Table 1, below.

Table 1 Thermal Stability Requirements

| Variable | Max Variation |
|------------------------------|---------------|
| Compressor inlet temperature | ±2 degrees C |
| Barometric pressure | ±5 mbar |
| Gas turbine generator speed | ±2% |
| Power output | ±1% |

14. Corrections to Measured Data and Calculation of Results

- 14.1. The input-output test method shall be used whereby energies entering and exiting through a control boundary around the Plant shall be accounted for to determine the measured performance values. Corrections to the measured Net Electrical Output produced during testing shall be made for ambient conditions and other boundary conditions during the test that are different from the Reference Site Conditions, including grid frequency and power factor, to determine the corrected performance values. Manufacturer's correction curves shall be used in determining all pertinent correction factors.

15. Test Report

- 15.1. Seller shall issue a preliminary test report for the Tested Capacity within 24 hours after the conclusion of the test. The preliminary report of Tested Capacity shall be based on test data and shall include preliminary results and a short discussion. The Independent Engineer shall issue a final report for the Tested Capacity within five Days of the completion of the test. The Tested Capacity contained in the preliminary report shall be applicable for purposes of this Agreement until the earlier of five (5) Days from its issue to the Independent Engineer and the issuance of the final report of Tested Capacity by the Independent Engineer.
- 15.2. The final Capacity Test report shall include, as a minimum, the following sections:
- Description of the test, arrangements, equipment, instruments and their location and operating conditions;
 - Summary of relevant measurements and observations;
 - Calculation methodology;
 - Calibration curves of instruments and apparatus used in the test;

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

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Section B: Capacity Demonstrations

16. Timing of Capacity Demonstration

- 16.1. Buyer or Seller may at any time request Capacity Demonstrations pursuant to Clauses 8.2.2 and 8.2.3 respectively.
- 16.2. Buyer and Seller shall give each other and the System Operator at least 2 days' notice of its desire to perform a Capacity Demonstration, but no notice if there is a suspicion of false declaration by Seller. Subject to achieving stable grid conditions and stable thermal conditions as set out in section 13 of this Schedule 4, provided there is no conflict with Seller's scheduled maintenance activities, Seller shall conduct the Capacity Demonstration on the date specified by the Buyer.

17. Objective of a Capacity Demonstration

- 17.1. The objective of a Capacity Demonstration under this Schedule 4 is to establish that the Plant can achieve the Tested Capacity without the need to carry out a Capacity Test.
- 17.2. This Schedule details the set-up, the instrumentation and measurements, the preparations, and the operational conditions to be used. It also presents the evaluation methodology by which results are to be determined.
- 17.3. Changes to this procedure may be made only with the written consent of both Seller and Buyer.
- 17.4. If the Capacity Demonstration is prevented from being undertaken due to the inability of the Grid to reliably take all the Net Electrical Output generated by all gas turbines operating at full load, then the Tested Capacity shall be determined by undertaking the Capacity Demonstration in parts (on a Unit by Unit basis) and aggregating the results.

18. Seller's Responsibilities

- 18.1. Seller shall be responsible for directing operation of the Plant during the Capacity Demonstration, including supervision of operating and maintenance personnel in the operation of all equipment associated with the Plant.
- 18.2. Immediately after the Capacity Demonstration, Seller shall collect all performance test data, obtain all required signatures and make copies for Buyer.
- 18.3. Seller shall submit to Buyer a letter providing preliminary corrected demonstration results per Section 25 of this Schedule.
- 18.4. Seller shall prepare and submit to Buyer a detailed report providing final demonstration results per Section 25 of this Schedule, which shall be countersigned by Buyer to certify that the Capacity Demonstration has been carried out in accordance with the Power Purchase Agreement and this Schedule 4 and agrees with the Capacity Demonstration report and concurs with its conclusions.

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18.5. Seller is responsible for providing the gas and water and all other consumables necessary to carry out the test program. Seller shall provide at its cost and expense reasonable accommodations and meals on Site for Buyer so as to permit them to remain on Site during the continuation of the Capacity Demonstration. Seller is responsible for providing all manufacturers' generated correction curves to Buyer.

19. Preparation General

19.1. All safety devices, protective relays, trip mechanisms and support systems shall be checked and confirmed to be operational before performance testing. All protective equipment shall be in service and operating, unless a specific protection feature must be disabled to demonstrate an operational limit. The Plant equipment shall be operated in accordance with manufacturer's operating guidelines.

19.2. Turbine manufacturer's recommended operating procedures and instructions must be followed.

20. Test Log

20.1. The Seller shall keep a test log ("Test Log") for recording significant events and notes. The information in the Test Log shall be available to Buyer at any time. A copy of the Test Log shall become part of the Capacity Demonstration report.

21. Test Set-Up, Measurements and Instrumentation

21.1. The test set-up consists of the gas turbine generators, and selected station instruments.

21.2. The parameters to be measured with the plant instrumentation include, but are not limited to:

- (a) Gas turbine speed;
- (b) Plant net power output (using tariff meters on the high voltage side of the generator transformers);
- (c) Fuel consumption;
- (d) Air temperature;
- (e) Relative humidity; and
- (f) Barometric pressure.

22. Test Preparation

22.1. The Test Representative of Seller shall confirm the calibration and proper operation of all instruments and recording systems to be used for the Capacity Demonstration.

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- 22.2. The gas turbine compressor may be cleaned as described in the gas turbine generator manual. The compressor inlet and inlet plenum may be inspected before and after the wash. If the compressor is judged to be dirty after the initial wash, additional compressor washing may be required.
- 22.3. The Seller shall give notice of test readiness to Buyer.
- 22.4. Seller will compile and make available instrument calibration records to Buyer.
- 22.5. The Seller will meet with data takers and delegate assignments and distribute blank data sheets.

23. Conduct of the Capacity Demonstration - general

- 23.1. The Capacity Demonstration shall be performed with its generators fully loaded and after the gas turbine wheel space temperatures change no more than three degrees Centigrade over a 15-minute period.
- 23.2. Seller may declare to Buyer the commencement of the Capacity Demonstration. The Capacity Demonstration duration will be two (2) continuous hours. At the commencement of the Capacity Demonstration, Seller will record the new reading of the Metering System.

24. Corrections to Measured Data and Calculation of Results

- 24.1. The input-output test method shall be used whereby energies entering and exiting through a control boundary around the Plant shall be accounted for to determine the measured performance values. Corrections to the measured Net Electrical Output produced during testing shall be made for ambient conditions and other boundary conditions during the test that are different from the Reference Site Conditions, including grid frequency and power factor, to determine the corrected performance values. Manufacturer's correction curves shall be used in determining all pertinent correction factors.

25. Test Report

- 25.1. Seller shall issue a preliminary report within 24 hours after the conclusion of the demonstration. The preliminary report shall be based on test data and shall include preliminary results and a short discussion. Seller shall issue a final report within five Days of the completion of the demonstration. The Available Capacity contained in the preliminary report shall become the Tested Capacity for the purposes of this Agreement until the earlier of five (5) Days from its issue and the issuance of the final report, at which time the Available Capacity shown in the final report shall become the Tested Capacity.
- 25.2. The final Capacity Demonstration report shall include, as a minimum, the following sections:
 - (a) Description of the test, arrangements, equipment, instruments and their location and operating conditions;
 - (b) Correction factors to be applied because of deviations from Reference Site Conditions;

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- (c) Correction Curves;
- (d) Raw Data;
- (e) Summary of Calculations; and
- (f) Results

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Schedule 5 Functional Specifications & Operating Parameters

1. TECHNICAL REVIEW

1.0 Electric energy Standards based on Grid Code

“Net Electrical Output” (“NEO”) means the useful electric energy, expressed in MWh, generated by the Plant, and delivered to the Delivery Point for sale to Buyer, as measured by the Metering System. For the avoidance of doubt, electric energy is deemed useful if it conforms to the standards of the System Operator or the Transmission Company of Nigeria or would have so conformed, in accordance with Schedule 5, but for Grid conditions. Net Electrical Output is net of (i) all loads on Seller’s side of the Delivery Point, and (ii) transformer losses for transformation to Grid voltage at the point of interconnection even if such transformer is owned by the Transmission Company of Nigeria.

Operations outside the Nigeria Grid Code limit shall be treated as availability event as long as it is not safe to run the plant. The Grid Code operational limits supersedes the OEM specifications and if the Plant decides not to run in line with the grid code, it shall not be treated as an Availability Event. ***[NBET Note – Please kindly keep this initial wordings from NBET. NBET will only pay for availability event outside the grid code limit.]***

2.0 Technical Limits

| 2.1 Performance Limit | <u>Max</u> | <u>Min</u> | <u>Remarks</u> |
|-------------------------------------|-------------------------------|------------|-------------------------------------|
| - Net Capacity (MW) | : 549.8 | | Based on 28°C, 71%RH |
| - Net Heat Rate (KJ/kWh) | : 9,335 | | |
| 2.2 Grid Limit | | | |
| - Voltage Variation (kV, pu) | : 346.5 | 313.5 | Base on 330 kV |
| - Frequency Variation (%) | : 50 Hz ± 2.5 % (Limit) | | 50 Hz ± 0.5 % (at normal condition) |
| - Power Factor | : lagging 0.85 & leading 0.95 | | |
| 2.3 Supplied Fuel Gas Limit (at TP) | | | |
| - Heating Value (HHV, Btu/SCF): | 1,150 | 1,000 | |
| - Pressure (bar g) | : 40.0 | 35.0 | |
| - Temperature (°C) | : 25 | 20 | |

3.0 Demonstrated voltage regulation capability of the AVR

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Automatic voltage regulator (“AVR”) setting and adjusting in stand-still condition and with the generator running at no load. The purpose of the test is to evaluate the small signal dynamic response of the Unit’s generator excitation system on no load. The test shall be carried out with the Unit’s generator operating at rated terminal voltage and speed.

The test shall be conducted by injecting a 2% step change into the AVR reference input and measuring the dynamic response parameters; overshoot and settling time. The demonstrated voltage regulation capability of the AVR shall meet the requirements specified as below:

- The System Operator shall endeavour to control the different busbar voltages to be within the Voltage Control ranges

| Voltage level | Minimum Voltage kV (pu) | Maximum Voltage kV (pu) |
|---------------|----------------------------|----------------------------|
| 330 kV | 313.5(0.95) | 346.5(1.05) |

4.0 Demonstrated speed control capability of the governor

Turbine governor control checks to evaluate the small signal dynamic response of the Unit’s turbine governor system on no load. The test shall be carried out with the Unit’s turbine generator operated at rated terminal voltage and speed. The test shall be conducted by injecting a 2% step into the turbine governor reference input and measuring the dynamic response parameters; overshoot and settling time. The demonstrated speed control capability of the governor shall meet the requirements specified as below:

- Each gas turbine Generating Unit must be fitted with a fast acting Governor Control System. The turbine speed control principle shall be that the Generating Unit output shall vary with rotational speed according to a proportional droop characteristic (“Primary Control”). Superimposed load control loops shall have no negative impact on the steady state and transient performance of the turbines rotational speed control.

- The Governor Control System shall be sufficiently damped for both isolated and interconnected operation modes. Under all operation conditions, the damping coefficient of the Turbine Speed Control shall be above 0.25 for speed droop settings above 3% for gas turbines and 5% for steam turbines. For Generating Unit oscillations with frequencies below 2 Hz, the Governor Control System shall have no negative effect on Generating Unit oscillation damping.

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- The Governor Control System and any other superimposed control loop (Load control, gas turbine temperature limiting control, etc.) shall contribute to the Primary Control to maintain the unit within the Generating Unit capability limits.

- The Primary Control characteristics shall be maintained under all operational conditions. Additionally, in the event that a Generating Unit becomes isolated from the System but is still supplying Demand the Generating Unit must be able to provide Primary Control to maintain Frequency and voltage.

5.0 Generator voltage to within an accuracy of +/- zero point five per cent (0.5%) over the range specified as below:

Automatic voltage regulator droop to demonstrate that the Unit's AVR can control the generator voltage to within an accuracy of +/- zero point five per cent (0.5%) over the range specified in the Schedule 5 (Functional Specifications and Operating Parameters). The test shall comprise progressively stepping the voltage over the operating voltage range of the generator, including no less than five increasing and five decreasing steps. These tests shall be carried out at base load conditions, however if the Grid experiences voltage level excursions outside those specified in the Reference Site Conditions the test may be carried out at appropriately reduced load levels.

- A continuous Automatic Voltage Regulator (AVR) acting on the excitation system is required to provide constant terminal voltage of the Generating Unit without instability over the entire operating range of the Generating Unit. Control performance of the voltage. The Grid Code -Version 02 61 of 199 control loop shall be such that under isolated operating conditions, the damping coefficient shall be above 0.25 for the entire operating range.

6.0 Ability of the Unit to contribute to system frequency control

Turbine governor operation to verify the ability of the Unit to contribute to system frequency control, confirm key characteristics of the turbine governor such as, incremental droop, demonstrate stable operation of the turbine governor under steady state and dynamic operation. This test shall be carried out at not less than three load points of the Unit's generator in the range 75% to 100% of rated load, and shall consist of a series of sub-tests. At each load point a simulated frequency deviation signal of varying amplitude shall be injected into the turbine control system and the response of the power output of the Unit monitored. The results shall be within +/- 20% of the value stated in Schedule 5 (Functional Specifications and Operating Parameters). Only positive frequency steps shall be applied at 100% load. Following each step change, the speed measurements shall be noted after a delay of 30 seconds, and continued every 30 seconds, over a period of at least 2 minutes.

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7.0 Reactive capability to prove unit can operate at the power factor

Reactive capability to prove unit can operate at the power factor stated as below:

The generator of the Unit shall be operated at full load at a power factor as stated in Schedule 5 (Functional Specifications and Operating Parameters) for a period of not less than 15 minutes. In the event that during the test the Grid voltage conditions are not at Reference Site Conditions the tests shall be performed at an appropriately modified power factor such that the voltage limits are not exceeded.

Each Generating Unit must be capable of supplying rated power output (MW) at any point between the limits of 0.85 power factor lagging and 0.95 power factor leading, at the Generating Unit terminals at rated voltage level in the Transmission Network within the Power System Frequency within a narrow operating band of +/- 0.5% from 50Hz (49.75 – 50.25 Hz).

The Reactive Power output of any Generating Unit in respect of which a Dispatch Instruction is given shall then, without delay be adjusted in accordance with its Registered Information, to the new target Reactive Power so instructed, within, a tolerance of +/- 2% of the target or +/- 2MVAr whichever is greater.

8.0 Acceptance Test - Reliability Test Operating Condition

The Reliability Test shall last for a period of seven (7) Days. The Reliability Test shall be used to demonstrate the ability of the Plant to operate in the operating states defined as below:

Reliability Test Condition:

- Temperature : 28.0 °C
- Relative Humidity : 71.0 %
- Site Altitude : Approx 109 m ASL
- Fuel Gas Condition : Refer to Schedule 5 (Entry Point Specification & Exit Point

Specification)

9.0 Acceptance Test - Times to complete each Start Up

Times to complete each Start Up shall be no longer than specified as below:

- Times to complete each Start Up : not more than 30 min excluding synchronization and purging time

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10.0 Acceptance Test - Ramp Rate

The Ramp Rate shall be specified as below:

- Ramp Rate : 13 MW/min until IGV full open (approx. 98.5% load), then 6 MW/min until 100% load.

11.0 Acceptance Test - Ability to follow load

The ability to follow load shall be specified later

12.0 Acceptance Test – Performance

In order to verify the contractual guaranteed values like power output and thermal efficiency (heat rate), acceptance test measurements shall be conducted at the specified operating conditions.

In addition to determining performance, the tests provide the customer with benchmark data. Subsequent periodic tests on the unit may be compared with these benchmark data to reveal equipment wear or deterioration of performance from other reasons.

The acceptance tests shall be performed based on the ISO 2314 “Gas Turbines - Acceptance Tests”.

The guarantees and operating conditions for the gas turbine are as per the contract document.

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Schedule 6 Tariff Schedule

[Note: tariff schedule remains under review by the parties]

Clause 1 Defined Terms

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Schedule 7 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 the full replacement value of the Plant.
- (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, boilers 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 of boilers and pressure vessels, electrical short circuits, vibration, misalignment, excessive current or voltage, abnormal stresses, centrifugal forces, failure of protective or regulating devices, overheating, entry of foreign bodies, impact, collision and other similar causes. Coverage shall be in an amount not less than the full replacement value of all machinery, plant, boilers, and ancillary equipment forming part of the Plant.
- (d) **Loss Following Machinery Breakdown:** This insurance shall insure against loss of revenue due to loss of 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 legal liability against third parties for bodily injury and property damage arising out of the construction, testing, Commissioning, ownership, operation and maintenance of the Facility. Limit of liability shall be no less than USD _____ for any one occurrence.
- (f) **Workers Compensation and Employers Liability:** This insurance will include workers compensation, temporary disability and other similar insurance required by the Applicable Law. Additionally, coverage under this subsection shall include a voluntary compensation and employers’ liability endorsement for employees not subject to the workers compensation laws.
- (g) **Construction and Erection All Risk Insurance:** Construction/Erection All Risk Insurance policy shall be maintained for whole construction period, and the limit of

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liability should be no less than USD _____, also should have 'Advanced Loss of Profit' coverage, with no less than 24 months indemnity period.

- (h) **Cargo Insurance:** Cargo policy shall be written in 'All Risk' basis, its insured value should be no less than 110% of CIF value.

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Schedule 8 Distribution Companies

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

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Schedule 9 Initial Authorisations

[Note: To be Finalised.]

Seller Initial Authorisations

- (a) **Generation Licence:** Licence to generate and supply electrical power issued by the Commission pursuant to Section 64(1) of the Act.
- (b) **Permit to Survey Pipelines Route (PTS) and Oil Pipeline Licence (OPLL):** Issued by the Department of Petroleum Resources.;
- (c) **Environmental Impact Assessment (EIA):** Performed by the Nigerian Environmental Standards and Regulation Enforcement Agency (NESREA) and the relevant State agency.
- (d) **Development Permit:** Issued by the relevant State building control agency.
- (e) **Building Permit:** Obtained from the relevant State physical planning authority.
- (f) **Permit for Storage of Chemicals and Petroleum Products:** Issued by NESREA State Environmental Protection Agency.
- (g) **Permit for Disposal of Petrochemicals Effluent:** Issued by NESREA.
- (h) **Permit for Waste Disposal:** Issued by NESREA.
- (i) **Business Permit (where Seller has foreign participation):** Issued by the Federal Ministry of Interior.
- (j) **NIPC Registration:** Obtained from the Nigerian Investment Promotion Commission (NIPC).
- (k) **Pioneer Status Certificate:** Issued by NIPC.
- (l) **Certificate for Tax Holiday for Gas Utilization Project:** Issued by the Ministry of Finance/Federal Inland Revenue Service (“FIRS”).

Buyer Initial Authorisations

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

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Schedule 10 Terms of Development Security and Performance Guarantees

[Note: To be Finalised.]

The Development Security and the Performance Guarantees shall:

1. name Buyer as the beneficiary thereof;
2. have a term of not less than one (1) Year;
3. in the case of the Development Security, have a maximum amount available for drawing equal to the \$ _____, in the case of the Performance Guarantee (Dollars) have a maximum amount available for drawing equal to US\$[•], or in the case of the Performance Guarantee (Naira) have a maximum amount available for drawing equal to Naira[•].
4. become drawable on first demand solely against delivery of a demand certificate to the issuer notifying the issuer that:
 - (a) in the case of the Development Security, Seller has failed to achieve the Closing Date by the Target Closing Date (or the Long Stop Closing Date where applicable), and that Buyer has terminated the Agreement;
 - (b) in the case of the Performance Guarantee, Seller is obligated to pay liquidated damages to Buyer pursuant to Clause 7.9 of the Agreement, and Seller has failed to pay such liquidated damages to Buyer within thirty (30) Days of the date on which such liquidated damages became due and payable; or
 - (c) that Seller has failed to deliver a replacement or extension of the Development Security or the Performance Guarantee (as the case may be) at least ten (10) Business Days prior to the expiration thereof;
5. include feasible and practical drawing procedures in the reasonable view of Buyer; provided, however, that it shall not contain any condition to drawing other than the confirmation by the issuer that any drawing certificate required to be delivered in connection with a drawing appears to comply on its face with the requirements of the Development Security or the Performance Guarantee (as the case may be);
6. be issued by an Acceptable Commercial Bank (or branch thereof);
7. provide that the beneficiary thereof may make multiple drawings upon it; and
8. in the case of a letter of credit, expressly state that it shall be subject to International Standby Practices 1998, and, to the extent not inconsistent with

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International Standby Practices 1998, the laws of the location of the issuing bank;
or

9. in the case of a demand guarantee, expressly state that it shall be subject to the Uniform Rules for Demand Guarantees, and, to the extent not inconsistent with the Uniform Rules for Demand Guarantees, the laws of the location of the issuing bank.

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Schedule 11 Delivery Point Diagram

[Note: In preparing this schedule note the following definition

“**Delivery Point**” means:

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

as identified in the diagram in Schedule 12.

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

See following page for diagram.

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Schedule 12 Implementation Schedule

See following two (2) pages

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**Schedule 13
Operating Records**

See following four (4) pages

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Schedule 14 Maintenance Schedule

[Note: Subject to Technical Review]

Maintenance

A. Maintenance Obligations

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

B. Maintenance Inspections

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

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- ii. Buyer shall be entitled to perform a maintenance inspection of the Plant at any time if Buyer has reasonable grounds to believe the Plant is not being maintained in accordance with Applicable Law and in accordance with Good Industry Practices, which inspection shall be without prior notice or on such notice as the circumstances permit. Buyer initiated maintenance inspections that interfere with normal operation of the Plant will be an Availability Event unless they reveal a need for unscheduled maintenance or repair or an unreported reduction in Available Capacity.
- iii. Buyer and Seller will each pay its own costs of such inspection. If Buyer requires equipment to be taken out of service for inspection, disassembled or tested and such action is not a normal part of Good Industry Practices, Buyer will pay the cost of disassembly and testing unless the inspection indicates a need for unscheduled maintenance or repair, in which case Seller shall pay such cost.
- iv. Seller shall perform maintenance or repairs determined to be required by a maintenance inspection at its own costs and in compliance with Applicable Law and Good Industry Practices, which shall determine the schedule of such maintenance or repairs taking into account the potential impact on the Plant and the performance of the Plant as well as cost benefits.

C. Maintenance Records

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

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Schedule 15 Form of PPA Addendum

[Note: To be Finalised]

This contract addendum (the “**Addendum**”) to a power purchase agreement is entered into this [•] day of [•] between:

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

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

RECITALS

- A. The Parties entered in to a power purchase agreement (the “**Agreement**”) dated [•] pursuant to which Seller agreed to sell and Buyer agreed to buy capacity and energy generated by the Plant (as defined in the Agreement).
- B. Pursuant to Clause [3.8] (*Post-Execution Date Agreement of Schedules*) of the Agreement, the Parties have agreed that certain schedules to the Agreement were to be finalised after the Execution Date (as defined in the Agreement) and the Parties now wish to enter into this Addendum to record their agreement as to such schedules.
- C. This Addendum is supplemental to the Agreement.

NOW, THEREFORE, the Parties hereby agree as follows:

1. Definitions & Interpretation

- 1.1. Terms defined in the Agreement shall have the same meaning when used in this Addendum.
- 1.2. The rules of interpretation of the Agreement shall apply to this Addendum as if set out in this Addendum.

2. Amendment to Schedule

- 2.1. The Parties hereby agree that Schedule [•] of the Agreement shall be deleted and replaced with a new Schedule [•] in the form set out in Annex [1] to this Addendum.

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- 2.2. [Where more than one Schedule has been finalised, repeat the above clause such that each new Schedule is inserted as a new Annex (2, 3, etc) to this Addendum.]
- 2.3. The Agreement shall be amended as set out herein with effect on and from the date of this Addendum.
- 2.4. All other provisions of the Agreement shall not be affected by this Addendum.

3. Counterparts

This Addendum may be executed in any number of counterparts and by the Parties in separate counterparts, each of which shall be deemed an original, but all such counterparts taken together will be deemed to constitute one and the same instrument.

4. Governing Law & Jurisdiction

Clause 23 (*Choice of Law and Dispute Resolution*) of the Agreement shall apply to this Addendum, as if set out in full and so that references in that provision to “this Agreement” shall be construed as references to this Addendum and references to “Party” or “Parties” in that provision shall be construed as references to Parties to this Addendum.

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

NIGERIAN BULK ELECTRICITY TRADING PLC

Name:

Title:

Title:

.....

Name:

Title:

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Annex to PPA Addendum

[Insert agreed form of relevant PPA Schedule(s)]