
Draft Bulk Power Purchase Agreement

Confidential

[This is a working document that includes discussion points raised by BPE's advisors, and that the discussion points do not reflect the final positions of the BPE or the FGN.]

BULK POWER PURCHASE AGREEMENT

BETWEEN

[...*GENCO*.....] POWER PLC

Seller

AND

NIGERIAN BULK ELECTRICITY TRADING PLC

Buyer

Entered into as of (day), (Month), 2011

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BULK POWER PURCHASE AGREEMENT

This Power Purchase Agreement (hereinafter referred to as “this Agreement”) is entered into this ----- day of -----

BY and **BETWEEN**

.....**[INSERT NAME OF GENCO]**..... **POWER PLC**, a company duly incorporated under the laws of the Federal Republic of Nigeria and having its registered office at [-----] (hereinafter referred to as “Seller” which expression shall where the context so admits include its successors-in- title and assigns) of the one part;

AND

NIGERIAN BULK ELECTRICITY TRADING PLC, a company duly incorporated under the laws of the Federal Republic of Nigeria and having its registered office at [-----] (hereinafter referred to as “Buyer” which expression shall where the context so admits include its successors-in-title and assigns) of the other part

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

RECITALS

WHEREAS,

- A. Seller owns an existing generation facility that will be used to provide capacity and energy to Buyer and Ancillary Services to the System Operator.
- B. Buyer is licensed to carry on the business of bulk trading of electricity products, including electric capacity, electric energy, and electric ancillary services.
- C. Seller desires to sell and Buyer desires to purchase electrical energy and capacity pursuant to the terms and subject to the conditions hereinafter stated.

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

CLAUSE 1

DEFINITIONS

1.1. Definitions

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

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

“Act of Insolvency” means in respect of a Party, the inability of such Party to pay its obligations as they come due, winding-up (excluding a solvent winding up for the purposes of a corporate restructuring), dissolution, administration or liquidation, the making by it of any arrangement or composition with its creditors or the taking of possession by an encumbrancer of, or the appointment of a receiver over, the whole or any substantial part of its property or assets or its ceasing or threatening to cease to carry on business, or the commencement of any analogous proceeding by whatsoever name known against it or any of its assets in whatsoever jurisdiction.

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

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

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

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

“Authorisation” means any approval, consent, exemption, licence, order or permit of or from any Relevant Authority required for the due performance by either Party of any covenant or obligation hereunder.

“Available Capacity” means the capacity of the Plant most recently determined in accordance with Clause 6.

“Availability Failure” means, in respect of any Settlement Period, a failure to provide the Contract Capacity, unless, and to the extent that, such failure is a result of Force Majeure.

“Bank” means Seller’s bank approved by the Market Operator and Buyer.

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

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

“Buyer Default” means and one of the defaults set out in clause 16.3.

“Capacity Payments” means the price payable for Contract Capacity as calculated in accordance with Schedule 6.

“Change in Law” means:

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

which in case of any of the above establishes a material increase in cost, material reduction in revenue, or material delay in schedule as a consequence of any requirement for the design, construction, financing, operation or maintenance of the generation facility that is materially more restrictive than the most restrictive requirements (i) in effect as of the date hereof, (ii) specified in any applications, or other documents filed in connection with such applications, for any Specified Consent or (iii) agreed to by the Company or the Purchaser but excluding a Change in Tax;

"Change in Tax" means the adoption, promulgation, bringing into effect, repeal, amendment, reinterpretation, change or failure in application against the provisions of the relevant legislation, change in interpretation or modification after the date hereof of any Law of Nigeria by any Relevant Authority, relating to any tax, duty, licence fee or other revenue-producing measure, including any application of any tax (including withholding taxes on distribution to Shareholders to the extent such withholding taxes are final tax liabilities of the Shareholders and are not subject to any credit or adjustment, including any credit or adjustment against any other tax liability), duty, licence fee or other revenue-producing measure which is imposed on the Company and causes the Company to incur for itself any tax, withholding obligation, duty, licence fee or similar revenue producing fee [which is materially] in excess of those the Company would have incurred under the Laws of Nigeria in effect as of the date hereof;

"Commission" means Nigerian Electricity Regulatory Commission;

"Constrained Off or Down" means that the Plant output is instructed by the System Operator, or is otherwise forced, to cease delivery of or reduce its delivery of Gross Energy Output below its Available Capacity, due to:

- (a) limitations in the capability of the transmission system to transmit the energy from the Delivery Point;
- (b) being instructed by the System Operator to reduce or terminate delivery of Gross Energy Output or to provide Ancillary Services; or
- (c) [in the case of a hydro plant, environmental permit restrictions, irrigation commitments, flood control and similar factors that require the Plant to terminate or reduce production of Gross Energy Output below the Available Capacity of the Plant].

"Contract Capacity" has the meaning give to that term in Clause 2.1.

"Contract Settlement Agreement" means a contract settlement agreement between the Parties (as applicable) and the Market Operator as entered into from time to time.

"Contract Year" means for the first year, the period from the Effective Date to 31 December of the same year and thereafter 1 January to 31 December.

"Daily Statement" has the meaning ascribed in Clause 11.

"Day" means each period of 24 hours commencing at [00:00] hours, and daily shall be construed accordingly.

"Default" means a Seller Default or Buyer Default

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

"Delivery Point" means the delivery Point as defined in Schedule 7.

["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 Gross Energy Output.^{1]}

"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 10, Part 1.

"Effective Date" means the date of signature of this Agreement.

"Energy Payments" means the price payable for Gross Energy Output as calculated in accordance with Schedule 6.

"Expert" means any competent person appointed for the determination of Disputes reserved for expert determination in this Agreement.

"FGN" means Federal Government of Nigeria

"Force Majeure" has the meaning given to that term in Clause 18.1.

"Fuel Supply Agreement" means the contractual agreements referred to in Clause 5.

"Good Industry Practice" means, at a particular time, those practices, methods and actions in accordance with good standards of skill, diligence, prudence, responsibility and foresight applicable to the international electricity generation industry which would have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety and expedition; and which practices, methods and actions shall include (and shall be adjusted if necessary to take account of):

¹ Reference subject to requirement in practice.

- (a) the operations and maintenance guidelines recommended by the manufacturers of the plant, machinery and equipment included in the Plant;
- (b) the requirements of any Laws of Nigeria; and
- (c) conditions at the Site.

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

“Grid Code” means the Grid Code for the Electricity Industry of Nigeria.

“Gross Energy Output” means the useful electric energy delivered to the Delivery Point for transmission by the Transmission Service Provider associated with the Contract Capacity to the extent such energy output is produced from the Contract Capacity under [the operational parameters set out in Schedule 3] at the time of delivery.

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

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

“Installed Capacity” means [*Plant specific*]²MW.

“kV” means kilovolts, a unit of voltage.

“kW” means kilowatt, a unit of power.

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

“Laws of Nigeria” means:

- (a) the Nigerian constitution and all Nigerian laws, statutes, treaties, rules, codes, ordinances, regulations, certificates, decisions, orders, memoranda, circulars, decrees, resolutions, directives, rulings, interpretations, approvals, licences, and permits of any Relevant Authority; and
- (b) judgments, decrees, injunction, writs, orders or like actions of any Relevant Authority, court, arbitrator or other administrative, judicial or quasi-judicial tribunal or agency of competent jurisdiction,

² MW capacity relevant Plant is capable of achieving to be inserted.

in each case (i) that applies to the Seller or the [Operations]; and (ii) as amended, supplemented, replaced, reinterpreted by a Relevant Authority or court or otherwise modified from time to time;

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

“Market Operator (MO)” means the unit of the Transmission Company of Nigeria or any other independent entity evolving therefrom being responsible for energy and financial settlement within the Nigerian electricity industry.

“Market Rules” means the Market Rules for the Nigerian Electric Power Sector.

“Metering Code” means the Metering Code governing metering of electric energy, reactive power, frequency, harmonic distortion and other aspects of the Nigerian electric sector.

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

“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 associated ancillary equipment used for reading and measurement of Gross Energy Output, reactive power and reactive power demand. Meters shall be construed accordingly.

“Metering Tolerance” means, (i) in relation to any component of the Main Metering System or the Back-up Main Metering System, plus or minus five tenths of a percent (0.5%) from the measurement made by the standard meter used in a test of such component.

“Minimum Availability” means Available Capacity of not less than 85% of the Installed Capacity.

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

“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 6.8.

“Must-Take-Operation” means that period of time when Buyer is obligated to purchase and take all of the Contract Capacity and Gross Energy Output and Seller has an obligation to sell and deliver all of the Contract Capacity and Gross Energy Output.

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

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

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

“Natural Gas” means gaseous hydrocarbons or a mixture of gaseous hydrocarbons and inert gases, consisting principally of methane, whether wet or dry, produced from oil or gas wells, including by-products and or residue gas remaining after the extraction of liquid hydrocarbons.

“Nominations” means Seller’s proposed schedule to deliver a specified volume of energy at a particular time from the Available Capacity provided to the Market Operator, as such may have been revised.

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

[“Operations” means [].]

“Plant” means the generating facilities, transformation facilities and auxiliary equipment as described in Schedule 1.

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

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

“Relevant Authority” means any department, authority, instrumentality, agency or any other relevant entity from which a Consent is to be obtained from time to time and any authority, body or other person having jurisdiction under the Laws of Nigeria with respect to the Seller or the [Operations];

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

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

“Shareholders Agreement” means the shareholders agreement [to be] entered into between (1) [a purchaser of shares in Seller or *[relevant Genco purchaser to be inserted]*]; (2) The

Bureau of Public Enterprise (each as defined in the Shareholders' Agreement) and (3) Seller [dated []].³

“Site” means the site on which the Plant is constructed [plus certain adjoining land] as further described in Schedule 1.

“Stakeholder” or “Stakeholders” means any or all of the Persons falling into any one of the categories listed in the Schedule 9 to this Agreement.

“Successor Generation Companies” means those companies set out in Schedule 10, Part 2.

“System Operator (SO)” means the company or entity that holds a system operating license issued under the Act to provide system operation services under the Act other than or in addition to the administration of the Market. In the event there is more than one such entity, System Operator shall mean the company or entity operating the portion of the Grid to which the Plant is interconnected at the time.

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

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

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

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

“Unscheduled Maintenance Outage” means a failure to make available the Available Capacity that is not the result of:

- (a) a Scheduled Maintenance Outage;

³ Dependent on whether PPA is entered into before SHA.

- (b) being Constrained Off or Down;
- (c) provision of Ancillary Services;
- (d) Buyer Default; or
- (e) [Dispatch Instructions].

“Vesting Contracts” means the vesting contracts for the resale by Buyer to each of the Distribution Companies, of Available Capacity and Gross Energy Output purchased hereunder and under the other bulk power agreements entered into by Buyer with each of the other Successor Generation Companies.

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

1.2 Interpretation

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

- a) 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 main body of this Agreement shall prevail over the provisions of the Schedule;
- b) reference to any consent “not to be unreasonably withheld” is deemed to be qualified by the requirement that such consent shall not be unreasonably conditioned or delayed;
- c) reference to “include” and “including” is deemed to be qualified by the additional term without limitation;
- d) reference to any publication, statute, rule, regulation, instrument or standard means the same as amended, supplemented or re-enacted from time to time;
- e) reference to any contract means the same as amended, supplemented or replaced from time to time;
- f) any requirement that an action may or shall be taken within a specified number of Days means that such action may or shall be taken within the number of Days so specified starting at 00:00:00 hours on the Day on which the requirement to take such action arose and ending at 23:59:59 hours on the last Day;
- g) reference to any amount of money means that amount in Naira;
- h) reference to Clauses and Schedules means reference to Clauses hereof, and Schedules to this Agreement;
- i) 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;

- j) any remedy which provides for the payment of damages by a Party represents a genuine pre-estimate of the likely or possible loss or damage which might otherwise be suffered by the Party to whom such damages are payable in consequence of the act or omission of the Party liable to pay such damages and shall not in any way be construed as a penalty;
- k) any 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;
- l) reference to any notice or notification means a notice or notification made in writing or as otherwise expressly provided in this Agreement;
- m) All measurements and calculations shall be in metric system and calculations done to two (2) decimal places unless such calculation is made to a higher or lesser degree of precision in accordance with Good Industry Practices, with the final digit of five (5) or above being rounded up and below five (5) being rounded down;
- n) In the event of any ambiguity or discrepancy in this Agreement, the following shall apply:
 - a. in the case of any ambiguity or discrepancy between two Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;
 - b. in the case of any ambiguity or discrepancy between the written description of any drawing and the specifications and standards, the latter shall prevail;
 - c. in the case any ambiguity or discrepancy between the dimension scaled from the drawing and its specific written dimension, the latter shall prevail; and
 - d. in the case of any ambiguity or discrepancy between any value written in numerals and that in words, the latter shall prevail.

CLAUSE 2

SALE AND PURCHASE OF CONTRACTED CAPACITY AND GROSS ELECTRICAL ENERGY

2.1 Purchase and Sale of Contract Capacity and Gross Energy Output

2.1.1 Seller agrees to make available and deliver and Buyer agrees to accept and purchase the "**Contract Capacity**" which shall be the lower of (i) the Available Capacity and (ii) the Installed Capacity

2.1.2 From the Effective Date until the expiry of the Term, Seller shall make available, when dispatched, and deliver to Buyer and Buyer shall accept and purchase from Seller the Gross Energy Output.

2.2 Determination of Available Capacity

[This section should set forth the technical procedures for determining Available Capacity, and how often the Seller must inform Buyer (and Market Operator and/or System Operator) of the Available Capacity of the facility.]

2.3 Ancillary Services

In accordance with the Market Rules, Seller shall supply Ancillary Services to the Transmission Service Provider as directed by the System Operator. Although the provision of Ancillary Services may reduce Contract Capacity available for producing Gross Energy Output Capacity Payments shall not be reduced as a result. Seller shall bear any costs of providing Ancillary Services (except for any costs included in the Capacity Payments or Energy Payments). If and when the Market Rules provide another mechanism of compensation for Ancillary Services, the Parties shall enter into an appropriate contract to achieve the same economic position for each of the Parties.

2.4 Supply and Purchase Obligations, No Strategic Withholding

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

2.5 Transmission Services

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

2.6 Sales to Third Parties

The obligations of Buyer and Seller with respect to the Contract Capacity and Gross Energy Output under this Agreement shall not limit their freedom to enter into other similar agreements with third parties providing that entering into such third party agreements shall not impair the ability of Buyer or Seller, as applicable, to perform its obligations under this Agreement. For the avoidance of doubt, if Seller is capable of generating more than the Contract Capacity, Seller may sell such excess subject to the Market Rules.

2.7 Reserved Rights

2.7.1. Notwithstanding anything to the contrary expressed or implied in this Agreement, Seller shall retain and Buyer shall have no control over the following rights:

(a) without prejudice to its obligations to make available the Contract Capacity and Gross Energy Output, the right to decide the manner in which Seller conducts its operations;

(b) the right to process Natural Gas and or other fuel feed stock received in its Facilities; and

(c) the right to step up and or step down the voltage and or change the target frequency of the electricity from its Plant before making associated energy available to Buyer; provided that, the energy output supplied at the Delivery Point conforms with the requirements of the Transmission Service Provider and the specifications in Schedule 3.

2.7.2. Notwithstanding anything to the contrary expressed or implied in this Agreement, Buyer shall retain and Seller shall have no control over the following rights:

(a) without prejudice to its obligations to take the Contract Capacity and the Gross Energy Output, the right to decide the manner in which it conducts its operations;

(b) the right to arrange for the transmission of energy from the Delivery Point for delivery to its customers; and

(c) the right to sell, or otherwise dispose of the Contract Capacity and Gross Energy Output taken at the Delivery Point.

CLAUSE 3

TERM

3.1 Term of Agreement

- 3.1.1 This Agreement shall commence on the Effective Date and continue in force and effect, valid and binding for a period of fifteen (15) Years from the Effective Date (the "Term"), subject to the provisions of Clause 16, and may be renewed for another period of five (5) Years.
- 3.1.2 The Parties acknowledge that the Commission has the power to issue an order requiring the Parties to extend the Term and agree that if so instructed they will enter into an amendment to this Agreement to give effect to such instruction. The decision of the Commission regarding extension shall take into account the interests of the parties and the maturity of the electricity market.

CLAUSE 4

COVENANTS, REPRESENTATIONS AND WARRANTIES

4.1 Seller's Representations and Warranties

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

- 4.1.1 Seller is a limited liability company, duly organised and validly existing under the Laws of Nigeria, and has all requisite corporate power and authority to own or lease and operate its properties and to carry on its business as proposed to be conducted.
- 4.1.2 Seller has full corporate power and authority to execute and deliver this Agreement and to perform its obligations hereunder.
- 4.1.3 The execution, delivery and performance of this Agreement by Seller:
 - (a) has been duly authorised 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) the Laws of Nigeria 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.
- 4.1.4 This Agreement has been duly executed and delivered by Seller.
- 4.1.5 This Agreement constitutes a legal, valid and binding obligation of Seller, enforceable against it in accordance with its terms, subject to (i) bankruptcy, insolvency, reorganisation, moratorium, or other similar laws now or hereafter in effect relating to creditors' rights and (ii) to general principles of equity.
- 4.1.6 No filing or registration with, no notice to and no permit, authorisation, consent or approval of any Person is required for the execution, delivery or performance of this Agreement by Seller, except for the [Authorisations].
- 4.1.7 Seller is not in default under any agreement or instrument of any nature whatsoever to which it is a party or by which it is bound in any manner that would have a material adverse effect on its ability to perform its obligations hereunder or the validity or enforceability of this Agreement.

- 4.1.8 There is no action, suit, proceeding or investigation pending or, to Seller's knowledge, threatened (i) for the dissolution of Seller, or (ii) 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.
- 4.1.9 It is not in violation of any Laws of Nigeria or judgment entered by any Relevant Authority, which violations, individually or in the aggregate, would affect its performance of any obligations under this Agreement. There are no legal or arbitration proceedings or any proceeding by or before any Relevant Authority, now pending or (to the best knowledge of Seller) threatened against Seller that, if adversely determined, could reasonably be expected to have an adverse effect on the financial condition, operations, prospects or business, as a whole, of Seller, or its ability to perform under this Agreement.
- 4.1.10 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 Laws of Nigeria and it can perform its obligations hereunder in accordance therewith;
 - (c) the experience, resources, qualifications, and capabilities to perform its obligations hereunder; and
 - (d) made all investigations and inspections that it deems necessary to perform its obligations hereunder, including without limitation investigations and inspections of the Site.
- 4.1.11 Seller has in place requisite financing incidental to performing of its obligations hereunder.

4.2 Seller's Covenants

The Seller hereby covenants and agrees with Buyer to:

- 4.2.1 enter into one or more legally binding and enforceable [fuel supply Agreements/water supply arrangements] providing Seller with the right in the aggregate to purchase adequate supplies of [fuel/water] to perform its obligations under this Agreement, and to honour its obligations thereunder to assure the supply of [fuel/water] to its Plant for the generation of electricity]⁴;
- 4.2.2 [obtain all Authorisations required to procure that existing rights to use water in connection with electricity generation shall continue in full force and effect]⁵;

⁴ Delete as applicable for Thermal or Hydro Genco.

⁵ Hydro Gencos only.

- 4.2.3 enter into a legally binding and enforceable contract for the operation and maintenance of its Plant and ancillary facilities, except where it has demonstrated that it has the capability to perform operation and maintenance internally;
- 4.2.4 operate and maintain the Plant in such manner as to extend the useful life of the Plant to be at least equal to the Term;
- 4.2.5 operate and maintain the Plant in all material respects, in accordance with:
 - (a) the Market Rules and Grid Code;
 - (b) operating procedures based on Market Operator and System Operator standards, mechanisms and procedures;
 - (c) the Specifications of the Plant as set out in Schedule 3;
 - (d) all applicable Laws of Nigeria; and
 - (e) Good Industry Practice;
- 4.2.6 to procure and maintain the Authorisations necessary for its performance under this Agreement;
- 4.2.7 engage only such advisors, representatives and experts as are experienced in the financing, operation and maintenance of power stations similar to the Plant;
- 4.2.8 provide at its own risk and expense the necessary facilities and services for the safety, comfort and protection of its personnel in accordance with Good Industry Practice;
- 4.2.9 work and cooperate in good faith with Buyer with respect to all of Buyer's obligations and rights hereunder;
- 4.2.10 enter into any other agreement necessary to perform its obligations under this Agreement, such agreements to remain valid and subsisting for the life of this Agreement, provided that in the event that any such agreement is terminated, it shall obtain an adequate substitute agreement or make other arrangements adequate to permit it to perform its obligations under this Agreement and to honour and perform its obligations under all such agreements; and
- 4.2.11 accept and comply with the Market Rules and Grid Code, and future amendments to these rule and codes including without limitation the following;
 - (a) accepting the settlement data and quantities in the Market Operator's Settlement Statement as contract quantities, in accordance with the Market Rules;

(b) adopting the procedures stipulated in the Market Rules for the review of the settlement data and documents [and for the resolution of any Dispute related thereto – *not to contradict Dispute Resolution Procedure under this agreement*]; and

4.2.12

4.3 Buyer's Representations and Warranties

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

4.3.1 It has full power and authority to execute and deliver this Agreement.

4.3.2 It has full power and authority to perform its obligations hereunder.

4.3.3 The execution, delivery and performance of this Agreement by Buyer:

(a) has been duly authorised by all requisite action on the part of Buyer; and

(b) will not violate the Laws of Nigeria.

4.3.4 This Agreement has been duly executed and delivered by Buyer.

4.3.5 This Agreement constitutes a legal, valid and binding obligation of Buyer, enforceable against it in accordance with its terms subject to general principles of equity.

4.3.6 [No filing or registration with, no notice to and no permit, authorisation, consent or approval of any Person is required for the execution, delivery or performance of this Agreement by Buyer except for such permits, authorisations, consents or approvals as have been obtained.]

4.3.7 Buyer is not in default under any agreement or instrument of any nature whatsoever to which it is a party or by which it is bound in any manner that would have a material adverse effect on its ability to perform its obligations hereunder or the validity or enforceability of this Agreement.

4.3.8 There is no action, suit, proceeding or investigation pending, or to Buyer's knowledge, threatened, 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.

4.4 Buyer's Covenants

Buyer further hereby covenants and agrees with the Seller to:

4.4.1 comply with the Market Rules and operating procedures of the Market Operator and System Operator, as applicable to purchasers of electric energy;

- 4.4.2 work with and cooperate in good faith with Seller with respect to all of the Seller's obligations and rights hereunder;
- 4.4.3 accept and comply with the Market Rules and future amendments to these rules including without limitation the following.

- (a) accepting the settlement data and quantities in the Market Operator's Settlement Statement as contract quantities, in accordance with the Market Rules; and

- (b) adopting the procedures stipulated in the Market Rules for the review of the settlement data and documents and for the resolution of any Dispute related thereto.

4.5 Conduct of the Parties

- 4.5.1 Each Party covenants that it and the owners, stockholders, officers, directors, employees and agents of it and its Affiliates have not made, offered, or authorised and will not make, offer or authorise, with respect to the matters which are the subject of this Agreement, any payment, gift, promise or anything of value or advantage, whether directly or through any other person or entity, to or for the use or benefit of any public official (i.e. any person holding a legislative, administrative or judicial office, including any person employed by or acting on behalf of a public agency, a public enterprise or a public international organisation) or any political party or political party official or candidate for office, where such payment, gift, promise or advantage would violate (i) the Laws of Nigeria; (ii) the laws of the country of incorporation of such Party or such Party's ultimate parent company and of the principal place of business of such ultimate parent company; (iii) 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's Commentaries; or (iv) the United States Foreign Corrupt Practices Act or the principles of such act. Each Party covenants and represents that it does not desire and will not request any services, action or inaction by any person or entity which would constitute such violation. Each Party shall promptly (i) respond in reasonable detail to any notice from any other Party reasonably connected with the above state warranty; and (ii) furnish applicable documentary support for such response upon request from and at the expense of such other Party.
- 4.5.2 None of the Parties nor any of their Affiliates, nor any of their officers, employees, representatives or agents have either in private business dealings or in dealings with the public or government sector directly or indirectly given, offered or received or agreed (either themselves or in agreement with others) to offer, give or receive any bribe or committed or attempted to commit (either themselves or in agreement with others) any other corrupt act whether in the Federal Republic of Nigeria or elsewhere in the world.

4.5.3 None of the Parties nor any of their Affiliates, nor any of their officers, employees, representatives or agents (in relation to the Operations 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 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 Laws of Nigeria, 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 PARTIES⁶

5.1 [Market Rules and Grid Code]

- 5.1.1 The Parties agree that they shall each be bound by the Market Rules and the Grid Code where applicable.
- 5.1.2. The provisions of the Market Rules and the Market Procedures thereunder will supersede the provisions of this Agreement in the event of a conflict unless the Parties have elected to adopt the provisions of this Agreement in lieu of the equivalent provisions of the Market Rules and Market Procedures if and to the extent that such election is allowed by the Market Rules and Market Procedures.
- 5.1.3 The provisions of the Grid Code shall to the extent possible, apply to the Parties. The provisions of the Grid Code will supersede the provisions of this Agreement in the event of a conflict; unless the Parties have elected to adopt the provisions of this Agreement in lieu of the equivalent provisions of the Grid Code if and to the extent that such election is allowed by the Grid Code.

5.2 Contract Settlement Agreement

Upon execution of this Agreement, the Parties will enter into the Contract Settlement Agreement with the Market Operator. If there is any conflict between that Contract Settlement Agreement and this Agreement, the Contract Settlement Agreement shall supersede the provisions of this Agreement to the extent of any such inconsistency.]

⁶ Contractual provisions to be considered against regulatory framework.

CLAUSE 6

CAPACITY TESTING & AVAILABLE CAPACITY

6.1 Standards

Seller shall at all times use the Grid Code, Market Rules and other standards which are no less stringent than Good Industry Practice in the testing, operation, maintenance, repair and replacement of the Plant.

6.2 Capacity Testing

6.2.1 Scheduled Capacity Tests

The Available Capacity of the Plant shall be verified by periodic capacity tests. Such tests will be conducted by the System Operator, or if the System Operator does not conduct such tests, Seller shall arrange for such tests in accordance with Schedule 2, the Grid Code and the Market Rules, as applicable.

6.2.2 Available Capacity

The Available Capacity shall be determined by reference to the operational parameters as further set out in Schedule 3.

6.2.3 Deemed Available Capacity

In the event of an Availability Failure, the Available Capacity of the Plant shall be deemed to be the last Available Capacity determined by testing in accordance with this Agreement in the absence of an Availability Failure[, provided that, in the case of hydro Plant, deemed Available Capacity shall be determined on a seasonal basis by reference to the last Available Capacity determined in the absence of an Availability Failure for that season].

6.2.4 Notice of Availability Failure

Seller shall record any Availability Failure in the operating log maintained in accordance with Clause 6 and report such failure in the reports required in Clause 6 and as required by Market Rules.

6.2.5 Buyer Retest

If Buyer believes there has been an Availability Failure at any time, it may call for a capacity test; provided that, Seller shall not be required to conduct in total more than one Buyer requested capacity test per month.

6.2.6 Seller Retest

Seller may call for a capacity test at any time. If such capacity test demonstrates an increased Available Capacity, this shall apply from the Day on which that test was performed.

6.2.7 Adjustment to Available Capacity

If within forty eight (48) hours of learning of an Availability Failure, Buyer calls for a capacity test and such test (which shall be carried out within a reasonable period of Buyer calling for such test) demonstrates that the Available Capacity is less than the Available Capacity demonstrated by the last preceding capacity test then, for the period beginning from the Day the Availability Failure occurred and ending when a new Available Capacity has been determined pursuant to the new capacity test, the Available Capacity for such period shall be equal to the volume weighted average Available Capacity of the Plant achieved for the Operating Day immediately after the one in which such Availability Failure occurred [with such volume weighted average adjusted upward if the Gross Energy Output was reduced as a result of (i) providing Ancillary Services at the request or direction of the Transmission Service Provider, (ii) Constrained Off or Down, or (iii) Local Political Force Majeure]. If Buyer calls for a capacity test more than forty eight (48) hours after learning of an Availability Failure, the deemed Available Capacity will be calculated as provided above from the Day on which Buyer requests an Availability Capacity Test.

6.2.8 Expense

Seller shall pay the expense of all capacity tests, except for capacity test called for by Buyer in accordance with this Clause 6.2 where such capacity test confirms the deemed Available Capacity or results in an increase in the Available Capacity from the deemed Available Capacity (as determined in accordance with Clause 6.2.3), in which case Buyer shall pay for such test.

6.2.9 Disputes as to Available Capacity

Any Dispute as to the results of a capacity test shall be referred to an Expert for a final determination. In the event that either Party disputes the determination by the Expert, such dispute shall be referred to arbitration in accordance with Clause 20.3.

6.3 Minimum Availability

From the third (3rd) anniversary of the date of the Shareholders' Agreement, Seller shall procure that the Plant achieves Minimum Availability over the course of each Contract Year; provided that, no reduction in Available Capacity calculated for the purpose of the Minimum Availability will result from (i) Scheduled Outages, (ii) Forced Outages (iii) Dispatch Instructions (iv) obligations to provide Ancillary Services, (v) Natural Force Majeure or (vi) Foreign Political Force Majeure. In the event Seller fails to meet the Minimum Availability, Buyer may require Seller to provide and implement a plan for improving the Availability to such level, but the sole financial remedy of Buyer for such failure shall without prejudice to Clause 16.2f), be the adjustments to the Capacity Payments in accordance with Schedule 6.

6.4 Ancillary Services

Except as required by the Grid Code, Market Rules, Transmission Service Provider, System Operator, Market Operator and or any regulations issued by any Relevant Authority, Seller shall not contract for the provision of Ancillary Services or any other services that shall adversely impact Seller's ability to deliver the Contract Capacity and Gross Energy Output to Buyer.

6.7 Maintenance of Operating Records

6.7.1 Each Party shall keep complete and accurate records and all other data required by each of them for the purposes of proper administration of this Agreement. Among, but not limited to, other records and data required hereby or elsewhere in this Agreement, the Seller shall maintain an accurate and up-to-date operating log at the Plant in which Seller shall record:

(a) Gross Energy Output for each demand period and bus voltage at all times, which records shall be based on a Main Meter unless Seller and the System Operator agree to share data from a System Operator meter;

(b) changes in operating status, Scheduled Outages, Forced Outages, Ancillary Services provided, Constrained Off or Down, Dispatch Instructions and Availability Failures; and

(c) circuit breaker trip operations requiring a manual reset, partial deratings of equipment; and

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

6.7.2 In addition, Seller shall maintain a record of all Nominations, Dispatch Instructions and orders of the System Operator.

6.7.3 Records required by this Clause 6.7 shall be available for inspection by Buyer and all Distribution Companies upon reasonable advance request by Buyer, and Seller shall make metered data available on a real-time basis by remote access to Buyer and any Distribution Company, if Buyer and/or such Distribution Company acquires the necessary equipment and software license to process the data by remote access.

6.7.4 All records required under Clause 6.7 shall be maintained for a minimum of twenty four (24) Months after the creation of such record or data, or such longer period as may be required by the Market Rules, Market Procedures or other requirement; provided, however, that the Parties shall not dispose of or destroy any such records after such twenty four (24) Month period without fifteen (15) Days' prior Notice to the other Party. Either Party shall have the right, upon reasonable prior Notice to the other Party, and at reasonable times during normal office hours, to examine the records and data of the other Party relating to this Agreement or the operation and dispatch of the Plant within the Grid at any time during the period such records and data are required hereunder to be maintained.

6.8 Monthly Reports

Seller shall provide to Buyer and all Distribution Companies Monthly reports covering the information in Clause 6.7 no later than seven (7) days after the end of each calendar 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 [a summary of] all information maintained in the operations record. The monthly report shall also include an estimate of monthly output for each month of the Contract Year and such other information related to the operation of the Plant that Buyer reasonably requests.

6.9 Annual Report

Seller shall deliver to Buyer and all Distribution Companies an annual operating and maintenance report for each Contract Year, within two (2) Months following the expiration of each Contract Year. Such annual report must include the operation and maintenance report for the previous Contract Year and the anticipated operation and maintenance plan and emergency plan for the upcoming Contract Year.

CLAUSE 7

MAINTENANCE

7.1 Maintenance

Seller shall at all times during the Term either directly or through a contractor, operate maintain and repair the Plant and components thereof in accordance with the Market Rules, the Grid Code, Market Procedures and Good Industry Practice. The appointment of an operations and maintenance contractor by Seller shall not relieve Seller of any of its obligations or excuse Seller from any liability regarding the design, insuring, operation or maintenance of the Plant or any liability whatsoever resulting from a breach of any term or condition of this Agreement

7.2 Scheduled Maintenance Outages

Seller shall be entitled in each Contract Year to Scheduled Maintenance Outages in accordance with this Clause 7.

7.3 Scheduling of Scheduled Maintenance Outages

The schedule for Scheduled Maintenance for each Contract Year shall be established as follows, subject to the Grid Code, Market Rules and Market Procedures:

(a) Not later than 90 days before the start of each Contract Year, Seller shall submit to System Operator, Buyer and all Distribution Companies proposed dates for Scheduled Maintenance Outages during that Contract Year.

(b) If within 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 Best Endeavours to accommodate System Operator's or Buyer's proposal provided (i) such request would not defer maintenance required at a particular time by Good Industry Practice, and (ii) Buyer agrees to compensate Seller for any reasonable additional costs;

(c) Not less than 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 7.3; provided that, where no agreement was reached then Buyer's last notified alternative dates shall prevail.

7.4 Rescheduling of Scheduled Maintenance Outages

The Parties shall cooperate and use their Best Endeavours to accommodate any reasonable request by either Party to reschedule any Scheduled Outage provided (i) such request would not defer maintenance required at a particular time by Good Industry Practice, and (ii) the Party requesting a schedule change agrees to compensate the other Party for any additional costs. For the avoidance of doubt it is acknowledged that either Party shall be entitled to reschedule a Scheduled Maintenance Outage(s) if and to the extent that such rescheduling is required for health and safety reasons, to avoid damage (or the threat of imminent damage) to its Plant or equipment or if such rescheduling is required by Good Industry Practice.

7.5 No Obligation to Implement Scheduled Maintenance Outages

Nothing in this Agreement shall obligate Seller to take the Plant out of operation at the start of the relevant period specified in the schedule for Scheduled Maintenance Outages or prevent the Seller from returning a generator to operation before the end of any such period.

7.4. Unscheduled Maintenance Outages

Seller may implement an Unscheduled Maintenance Outage to carry out maintenance or repair of the Plant requiring an outage at times other than during a Scheduled Outage where such maintenance or repair cannot, in accordance with Good Industry Practice, be deferred to the next Scheduled Outage (“**Unscheduled Maintenance Outage**”).

CLAUSE 8

NOMINATIONS

8.1 Seller's Nominations

Subject to the terms and conditions of this Agreement, Market Rules, Market Procedures and the Grid Code, Seller shall issue day ahead Nominations to System Operator and Market Operator with a copy to Buyer and all Distribution Companies [in accordance with the procedure set out in Schedule 4]. Except during an Availability Failure, Seller shall nominate not less than the Gross Energy Output adjusted for obligations to provide Ancillary Services, Constrained Off or Down, or Force Majeure [or Dispatch Instructions] unless (i) Seller and Buyer have agreed to a different Nomination, or (ii) Seller determines that a lesser Nomination should be made in accordance with Good Industry Practice or Dispatch Instructions.

8.2 Buyer's Obligation

Upon receipt of Seller's Nominations of Contract Capacity and Gross Energy Output, Buyer shall use its Best Endeavours to adjust its operation to accept such Nominations. If Buyer is unable to do so, Buyer shall immediately inform Seller, the System Operator and the Market Operator, and any adjustment to Gross Energy Output to balance the Grid will be directed by the System Operator.

8.3 Must-Take-Operation

When the Plant is in Must-Take-Operation, Seller shall Nominate and deliver all Gross Energy Output it can produce and Buyer shall purchase and pay for all of the Gross Energy Output; provided that, in the event that the Market Rules or Market Procedures provide for penalties or forfeitures for exceeding Nominated Amounts, Seller may limit Gross Energy Output to the Nominated Amounts.

CLAUSE 9

METERING

9.1 Metering

Metering of Gross Energy Output, reactive power, voltage, and power quality by the Parties for the purposes of this Agreement shall be done in accordance with the Metering Market Procedures and Metering Code. Seller may maintain additional meters for operational purposes that do not conform to the Metering Code, such as meters measuring gross generator output. In the event of any conflict between the provisions of this Clause 9 and any of the Metering Code, Market Rules or Market Procedures, the provision of Clause 9 shall be superseded by the Metering Code, Market Rules or Market Procedures to the extent of its inconsistency. In the event of any conflict between the meters maintained in accordance with any of the Metering Code, Market Rules or Market Procedures and any additional meters maintained by Seller at its option the meters required to be maintained by the relevant rule or procedure or code shall prevail

9.2 Main Meters

In addition to the official meter installed by the Transmission Service Provider, Seller shall at its cost and expense supply, install and maintain at least one additional meter, recording equipment, telemetry and related equipment (collectively, “**Main Meters**”) to be used for measurement of Gross Energy Output delivered at the Delivery Point, reactive power, and voltage. At least one Main Meter shall be installed and maintained in a manner qualifying it to be designated by the Market Operator as the backup meter for purposes of the Market Rules. The Metering equipment shall measure accurately enough to be in conformity with Good Industry Practice and should be adequate for the purpose of accommodating commercial transactions among Seller and Buyer during the different stages of the electricity market in Nigeria.

9.3 Metering Market Procedure

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

9.4 Delivery of Meter Data

It shall be Seller’s responsibility to ensure that data from any meter controlled by Seller is sent on time and in the proper format as specified in the Metering Market Procedure.

9.5 Meter Failure or Inaccuracy

- 9.5.1 In case a failure, inaccuracy or defect in a metering device used to report data to the Market Operator, or any meter designated as a backup meter by the Market Operator whether or not used to report data to the Market Operator, becomes known to Seller, Seller shall inform the Market Operator in accordance with the Metering Market Procedure, and in any case as soon as reasonably practicable. Seller shall repair, replace, and/or recalibrate any Main Meter owned by it at its own expense and in accordance with the metering Market procedure and Metering Code.
- 9.5.2 Subject to Market Procedures, if there is a Defective Metering Event in relation to the official meter, then, the official measurement of Gross Energy Output shall be determined in accordance with this Clause 9.5.2.
- 9.5.2.1 If the Parties and the Market Operator are able to agree on the amount of the error due to a Defective Metering Event, if any, then all measurements of Gross Energy Output shall be corrected by such amount.
- 9.5.2.2 If the Parties and the Market Operator are unable to agree on the amount of error caused by a Defective Metering Event, if any, then the percentage error by which the official meter is to be corrected, for the period determined in accordance with Clause 9, shall be determined (i) by reference to the back-up meter designated by the Market Operator or the Main 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 Gross Electric Output under similar conditions during the period before the last test.
- 9.5.2.3 If a correction is to be made pursuant to Clause 9.5.2.2, 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 mutual satisfaction of the Parties, or (b) if the Day of the Defective Metering Event cannot be established to the 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.
- 9.5.2.4 Any corrections pursuant to this Clause 9.5.2 will be reflected in the next invoice following determination of the amount, and the appropriate Party shall be paid the difference between the amount previously paid and the amount finally determined to be due.

9.6 Notice of Meter Tampering

If, at any time, either Party discovers that any part of the meters used by the Market Operator or a Main 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.

9.7 Assurances Regarding Meter Tampering

The Parties undertake not to tamper with or otherwise interfere with any part of the meters used by the Market Operator or Main Meters in any way, and shall use reasonable precautions in accordance with Good Industry Practice, the Market Procedures and the Metering Code to ensure that the Main Metering System and Backup Metering Systems are secure and not tampered with by any other person.

9.8 Meter Design, Commissioning and Sealing

The Market Operator shall be responsible for approving initial designs and for the testing, commissioning and sealing of the official and backup meters in accordance with the Metering Code.

9.9 Daily Meter Reading

Unless telemetered data is made available to Buyer, Seller shall have the Main Metering System read daily and report such data to Buyer and all Distribution Companies as part of the Daily Report.

9.10 Metering Inspection and Testing

Seller shall have the Main Meters inspected and tested in accordance with the Metering Market Procedure 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 Main 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 and all Distribution Companies.

CLAUSE 10

DELIVERY

10.1 Delivery Point

Delivery of Contract Capacity and Gross Energy Output shall be at the Delivery Point.

10.2 Title

Title to and custody of electrical energy delivered under this Agreement shall pass from Seller to Buyer at the Delivery Point.

10.3 Risk

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

10.4 Liability for Low Power Quality

Where electrical energy delivered is of such a low quality as to violate the standards of the System Operator, upon investigation by both Parties and the System Operator as appropriate, the Party responsible for the low quality shall bear the cost of correcting the quality of such power. If the low quality of electrical energy is due to the System Operator's equipment or any circumstance on Buyer's side of the Delivery Point, the Plant shall be considered Constrained Off or Down. Seller shall be free to correct any degradation of power quality at any time in accordance with Good Industry Practice, but shall notify the System Operator and Buyer of any changes in operation or equipment.

10.5 Buyer and Seller's Liability

Subject to the provisions of Clause 15, Seller shall be responsible for any damage or injury caused on Seller's side of the Delivery Point, and Buyer shall be responsible for any damage or injury caused after energy has been delivered at the Delivery Point.

10.6 Buyer and Seller Indemnities

Seller shall indemnify, defend and hold Buyer harmless from and against all losses or damages arising from claims, demands, or causes of action by any Person relating to electrical energy on Seller's side of the Delivery Point. Buyer shall indemnify, defend and hold Seller harmless from and against all losses or damages arising from claims, demands, or causes of action by any Person relating to electrical energy at and after delivery at the Delivery Point.

10.7. Transmission Loss Factor

Buyer shall pay for Capacity and Gross Energy Output without regard to any transmission loss factor. If Seller is required to bear any portion of the Transmission Loss Factor by the Market Rules or Market Procedure, the price paid for Gross Energy Output shall be adjusted upward to assure that Seller receives the same payment that it would have if it had not.

CLAUSE 11

BILLING AND PAYMENT

11.1 Market Rules and Market Procedures

- 11.1.1 If and to the extent the Market Operator has provided comprehensive contract settlement services, the billing and payment provisions in Clause 11.1 to 11.6 shall apply.
- 11.1.2 Buyer and Seller shall abide by the Market Rules and Payment Market Procedure issued by the Market Operator. The Market Operator shall administer the billing and payment process under this Agreement in accordance with the provisions of the Market Rules and the Contract Settlement Agreement so long as that agreement is in effect.
- 11.1.3 The Parties agree to use the quantities in the Settlement Statement of the Market Operator as contract quantities except for adjustments provided for by the Market Rules.

11.2 Billing

Every invoice to Buyer with a copy to all Distribution Companies shall specify:

- (a) Gross Energy Output delivered to Buyer for the previous Month;
- (b) the Contract Capacity made available for the previous Month,
- (c) the number of and reason for each Start-up, and
- (d) a detailed computation of the Energy Payment, Capacity Payment and Start-up Payments for the previous Month, in each case calculated in accordance with Schedule 6 [and the Market Rules].

11.3 Settlement Statements

Not later than [] Days after the commencement of each Month, the Market Operator shall send to Seller the final Settlement Statement, which shall be based on the Daily Statements provided in accordance with Clause 11.6 adjusted to rectify any errors or discrepancies in accordance with the Market Procedures.

11.4 Payment

- 11.4.1 With the final Settlement Statement, the Market Operator shall, issue every Month:

- (a) an invoice for the previous Month to each Party that has a net negative Market Transaction amount, indicating the amount that the Party shall pay. This invoice shall be issued coincident with the final Settlement Statement, which will provide the detailed calculations; and
- (b) a statement of the amount due for the previous month to each Party with a net positive Market Transaction, indicating the payment due to that participant. This statement shall be issued coincident with the final Settlement Statement, which will provide the detailed calculations.

11.4.2 No later than 2:00 p.m. on the tenth (10th) Business Day after Buyer receives an invoice from the Market Operator assigning charges under this Agreement to it in accordance with a final Settlement Statement, Buyer shall deposit the charge stated in the invoice in the Market Operator Clearing Account, whether or not Buyer disputes the invoiced amount.

11.4.3 Where Buyer disputes an invoice or any portion thereof, it shall declare a Dispute and refer the same for determination in accordance with the Market Procedures or Clause 20 of this Agreement, as applicable. If any invoice or any portion thereof is disputed by Buyer, payment of any undisputed part thereof shall not be withheld but shall be paid to Seller when due. The Market Operator shall be entitled to withhold payment of any disputed portion until any Dispute in relation thereto is determined in accordance with Dispute Resolution provisions in Clause 20 of this Agreement.

11.4.4 Buyer shall pay interest at the Agreed Interest Rate on any unpaid settlement amount due and payable under this Agreement 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.

11.4.5 All payments under this Agreement shall be made free and clear from, and without set-off, save to the extent that a Party is required to withhold tax under any Applicable Law; provided that, uncontested amounts coming due under this Agreement from one Party to the other may be set off against other uncontested payments coming due to such Party under this Agreement if permitted by Market Procedures.

11.5 Daily Statements

11.5.1 Seller shall provide Daily Statements in evidencing Available Capacity, dispatch orders, energy output for each Settlement Period and any impairment of the Plant's operating characteristics to the System Operator, the Market Operator and Buyer and all Distribution Companies. The Daily Statement shall form the basis for the Capacity Payments payable to Seller.

11.5.2 The Daily Statement shall be provided not later than [_____] hours on the Day following the Day it covers, or so soon thereafter as is practicably possible.

- 11.5.3 Seller shall use its Best Endeavours to assure that the information provided in the Daily Statement is correct and accurate and Buyer and the Market Operator shall, save for the existence of any manifest errors, be entitled to presume the contents of the Daily Statement to be an accurate record of the operating characteristics of the Plant; and the Seller acknowledges that all Distribution Companies shall be entitled to presume the same, provided that, Seller undertakes to use its Best Endeavours to correct any errors discovered in the Daily Statement as soon as possible.

11.6 Bank Accounts

- 11.6.1 In accordance with the requirements of the Market Rules, Seller and Buyer shall each maintain one or more accounts in a bank approved by the Market Operator to administer the payment system under this Agreement and shall notify the Market Operator of the details of their respective accounts, and shall not effect any change to any particulars of the designated bank accounts without giving prior written notice of at least thirty (30) Business Days to the Market Operator.
- 11.6.2 The Market Operator shall immediately notify Seller of any default by Buyer in making payments into the Market Operator clearing account in accordance with Clause 11.4 above. If any payment due from Buyer is not paid when due, the Market Operator shall immediately instruct Buyer to discharge its payment obligations not later than the next Business Day. If, after such deadline expires, Buyer remains in default of its payment obligations, the Market Operator shall take action to enforce such obligations in accordance with the Market Rules and Market Procedures and the Contract Settlement Agreement; provided that, Seller shall be entitled to take all appropriate action in addition to enforce such obligation in consultation with the Market Operator.

11.7 Security Cover

- 11.7.1 Seller shall at all times provide and maintain security for performance of its obligations under this Agreement in accordance with [the Market Rules, Contract Settlement Agreement and] this Agreement.
- 11.7.2 The security required from Seller may include, among other things, a parent company guarantee, performance bond, advance payment, the deposit of collateral monies, or the provision of a bank guarantee or irrevocable letter of credit from a bank, which is, in Buyer's reasonable opinion, suitably creditworthy. The choice of the method of providing security listed above shall, subject to the Market Rules, be at Buyer's discretion. The aggregate security shall at no time be less than the value of [_____].
- 11.7.3 The Buyer shall at all times;
- (a) maintain such credit support arrangements as the Market Rules may prescribe for the Seller from time to time; and
 - (b) ensure that all proceeds from such payment security arrangements as the Distribution Companies may have entered into for the Buyer's benefit, shall be available to meet the Buyer's obligations to sellers of Electric Power to the Buyer (including but not limited to the Seller).

11.8 Billing and Payment where no Contract Settlement Services by the Market Operator

- 11.8.1 If, for any reason, the Market Operator does not provide comprehensive contract settlement services, the billing and payment provisions in this Clause 11.8.2 to 11.8.6 shall apply.
- 11.8.2 For each Month after the Effective Date, Seller shall invoice Buyer with a copy to all Distribution Companies for the Capacity Payment, Energy Payment and Start up Costs payable to Seller for such Month (or portion thereof in the case of the Month in which the Effective Date occurs) within five [5] Days of the Month following the applicable Month. Each invoice shall specify (a) Gross Energy Output delivered to Buyer for the relevant Month; (b) the Contract Capacity made available for the relevant Month, (c) the number of and reason for each Start-up for the relevant month, and (d) a detailed computation of the Capacity Payment, Energy Payment, and Start-up Costs for the relevant Month, in each case calculated in accordance with Schedule 6. The payments shown in such invoice as due to Seller shall be paid by Buyer on or before the fifteenth [15th] Business Day following the Day the invoice is delivered to Seller whether or not Buyer disputes the invoiced amount.
- 11.8.3 Buyer shall have the right to review an invoice or statement prepared by Seller, and if it disagrees with the determination of the amount payable under such invoice or statement, may request clarification and substantiation of such invoice or statement. Buyer shall use its Best Endeavours to review invoices promptly and notify Seller of an error it believes to exist in such invoice within ten [10] Business Days of becoming aware of such error.
- 11.8.4 Where Buyer disputes an invoice or any portion thereof, it shall declare a Dispute and refer the same for determination in accordance with Clause 20 of this Agreement. If any invoice or any portion thereof is disputed by Buyer, payment of the invoice shall not be withheld but shall be made to Seller until any Dispute in relation thereto is determined in accordance with Dispute Resolution provisions in Clause 20 of this Agreement. Buyer shall not be entitled to withhold payment of any disputed portion of the invoice.
- 11.8.5 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.
- 11.8.6 Buyer shall pay interest at the Agreed Interest Rate on any unpaid amounts due and payable under this clause 11.8 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.

11.8.7 Where Buyer disputes an invoice or any portion thereof, and the Dispute referred in relation thereto is resolved in favour of Buyer, Seller shall refund the amounts paid on the Disputed Invoice with interest thereon at the Agreed Interest Rate.

11.9 Independent Obligations

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

CLAUSE 12

PRICE

12.1 Capacity Payments

12.1.1 From and after the Effective Date, Buyer shall pay to Seller Monthly in arrears the Capacity Payment calculated in accordance with Schedule 6; provided that, where the Effective Date is a date other than the first (1st) day of the Month, then for that Month the Capacity Payment shall be prorated for the number of Days from the Effective Date until the last day of that Month.

12.1.2 When the Market Operator obtains the capability of accounting and invoicing for Gross Energy Output delivered from the Plant on an hourly basis, the Parties will revise Schedule 6 to provide for calculation of Capacity Payments on an hourly basis to reflect Available Capacity during peak demand periods, or that different prices may apply for different hours and or periods of the Day. Seller shall not be required to agree to a change in Capacity Payments that may adversely affect its cash flow or ability to meet its obligations to Lenders, including debt service coverage ratios or similar covenants.

12.1.3 The Parties understand and acknowledge that System Operator shall be able to dispatch the Plant to change energy output levels and/or for Ancillary Services by issuance of Dispatch Instructions.

12.2 Energy Payments

Buyer shall pay Seller Monthly in arrears the Energy Payment for each kWh of Gross Energy Output calculated in accordance with Schedule 6.

12.3 Start-Up Charges

Where a shutdown of the Plant results from Dispatch Instructions, or from a failure of the transmission or distribution systems (including due to Force Majeure, Buyer shall not be liable to Seller for Start-Up Payments calculated in accordance with Schedule 6 and, in all other circumstances, Buyer shall not be required to pay Seller for the first twelve (12) Start-Ups in any year.

CLAUSE 13

INSURANCE

13.1 Contractually 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 8 of this Agreement; provided however, that such minimum amounts may be changed from time to time with the written consent of Buyer, which consent may not be unreasonably withheld. Seller shall not be in breach of its obligations hereunder if and to the extent that any particular risk becomes uninsurable or the cost of such insurance becomes uneconomic for reasons other than any negligence or default by, or the financial condition of, Seller.

13.2 Additional Insurance

In addition to the coverages set forth in Schedule 8, each Party shall obtain any additional coverages required by the Laws of Nigeria and/or as the Party deems necessary for the effective fulfilment of its obligations herein at its own expense. Each Party shall be free to obtain any additional insurance coverages beyond the foregoing at its own expense.

13.3 Use of Insurance Proceeds.

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

13.4 Certificates of Insurance.

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

CLAUSE 14

TAXES

14.1 Several Liability for Taxes

The Parties shall be severally liable to pay Taxes arising in respect of their respective facilities, taxes based on income, profits and capital gains or any taxes arising from the generation, transmission, sale and delivery of energy as contemplated in this Agreement, whether present or future. Liability for any VAT shall be as specified by law.

14.2 Proof of Payment

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

14.3 Tax Indemnity

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

CLAUSE 15

LIABILITY AND INDEMNIFICATION

15.1 Limitation of Liability

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. 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 or any activity contemplated by this Agreement.

15.2 Mitigation of Damages

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

15.3 Mutual Indemnifications

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

15.3.2 Subject to 15.6, 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 in connection with this Agreement. Notwithstanding anything to the contrary contained in the preceding sentence, nothing in this Clause 15.3.2 shall apply to any loss to the extent that the Seller receives indemnification for the same loss or such loss is covered by insurance maintained by or on behalf of the Seller

15.4 Notice of Claims.

Each Party shall promptly notify the other Party of any loss, claim, action, demand or proceeding in respect of which it is or may be entitled to indemnification under Clause 15.3. Such Notice shall be given as soon as reasonably practicable (in any event not later than [] weeks] after the relevant Party becomes aware of the loss, claim, action, demand or proceeding. Failure to give such Notice in a timely fashion shall not affect the indemnified Party's rights to indemnification hereunder except to the extent that the indemnifying Party is materially prejudiced thereby.

15.5. Defence of Claims

- 15.5.1 The indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding at its expense with counsel of its selection reasonably satisfactory to the indemnified Party, provided it gives prompt Notice of its intention to do so to the indemnified Party and reimburses the indemnified Party for the reasonable costs and expenses incurred by the indemnified Party prior to the assumption by the indemnifying Party of such defence.
- 15.5.2 Unless and until the indemnifying Party acknowledges in writing its obligation to indemnify the indemnified Party and assumes control of the defence of a claim, suit, action or proceeding in accordance with Clause 15.6.1, the indemnified Party shall have the right, but not the obligation, to contest, defend and litigate, with counsel of its own selection, any claim, action, suit or proceeding by any third party alleged or asserted against the indemnified Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and the reasonable costs thereof shall be subject to the indemnification obligations of the indemnifying Party hereunder.
- 15.5.3 Upon assumption by the indemnifying Party of the control of the defence of a claim, suit, action or proceeding, the indemnifying Party shall reimburse the indemnified Party for the reasonable costs and expenses of the indemnified Party in the defence of the claim, suit, action or proceeding prior to the indemnifying Party's acknowledgement of the indemnification and assumption of the defence.

15.5.4 Following the acknowledgement of the indemnification and the assumption of the defence by the indemnifying Party, the indemnified Party shall have the right to employ its own counsel and such counsel may participate in such claim, suit, action or proceeding, but the fees and expenses of such counsel shall be at the expense of such indemnified Party, when and as incurred, unless (i) the employment of counsel by such indemnified Party has been authorised in writing by the indemnifying Party, (ii) the indemnified Party shall have reasonably concluded that there may be a conflict of interest between the indemnifying Party and the indemnified Party in the conduct of the defence of such action, (iii) the indemnifying Party shall not in fact have employed independent counsel reasonably satisfactory to the indemnified Party to assume the defence of such action and shall have been so notified by the indemnified Party, or (iv) the indemnified Party shall have reasonably concluded and specifically notified the indemnifying Party either that there may be specific defences available to it that are different from or additional to those available to the indemnifying Party or that such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement. If clauses (ii), (iii) or (iv) of the preceding sentence shall be applicable, then counsel for the indemnified Party shall have the right to direct the defence of such claim, action, suit or proceeding on behalf of the indemnified Party and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder, subject to the indemnification obligations of the indemnifying Party hereunder.

15.6 Limitation on Indemnification

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

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

15.7 Fines and Penalties

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

15.8 Allocation of Liability.

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

CLAUSE 16

DEFAULT & EARLY TERMINATION

16.1 Early Termination

16.1.1 Either Party shall have the right to terminate this 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) service of notice by Buyer following a Seller Default;
- (c) service of notice by Seller following a Buyer Default;
- (d) service of notice by either Party for a Prolonged Force Majeure Event.

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

16.2 Seller's Default

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

- (a) a breach by Seller which materially and adversely affects the performance of any of its obligations under this Agreement;
- (b) any Acts of Insolvency of Seller;
- (c) a breach by Seller of the provisions of Clause 17 (Transfer) occurs;
- (d) the willful and unexcused failure by Seller to operate the Plant in accordance with the provisions of this Agreement to generate and deliver power;
- (e) from the third (3rd) anniversary of the date of the Shareholder's Agreement, failure to maintain the Minimum Availability which failure continues for a continuous period of [] Days or more;
- (f) a breach by Seller of its obligation to obtain and maintain the insurances required under Clause 13 of this Agreement;

- (g) 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 significant effect on the ability of Seller to perform its obligations under this Agreement;
- (h) revocation, cancellation or withdrawal of any Authorisation as a result of (i) breach of any terms and/or conditions imposed by such Authorisation or (ii) Seller Default; or
- (i) failure to provide, maintain and or replace the security as required under Clause 11.7 of this Agreement.

16.3 Buyer's Default:

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

- (a) a breach by Buyer of any of its obligations under this Agreement which substantially frustrates or renders it impossible for Seller to perform its obligations under this Agreement for a continuous period of [] Month;
- (b) any failure to pay any sum of money due and owing within thirty (30) Business Days or more from the date when such sum was first due and demanded;
- (c) a breach by Buyer of the provisions of Clause 17 (Transfer) occurs;
- (d) any statement, representation or warranty made by Buyer herein proving to have been incorrect in any material respect, when made or when deemed to have been made, which inaccuracy has significant effect on the ability of Buyer to perform its obligations under this Agreement;
- (e) revocation, cancellation or withdrawal of any Authorisation (other than for a Seller Default).
- (f) Failure of Buyer to maintain adequate security as required under Clause 11.7..

16.3 Rectification

16.3.1 Upon the occurrence of a Seller Default or Buyer Default, the non-defaulting Party may service a notice to terminate on the defaulting Party ("**Termination Notice**").

16.3.2 The Termination Notice must specify:

- (a) the type and nature of Default that has occurred, giving reasonable details;
- (b) that in the case of a Seller Default pursuant to Clauses 16.2(a), (d), (g), (h), [(i)] and (j) or a Buyer Default pursuant to Clauses 16.3(a), (c), (d), [and (e)] this Agreement will terminate on the day falling [] Days after the date of the receipt of the Termination Notice, unless:

- (i) in the case of a breach under Clauses 16.2(a) and 16.3(a) the defaulting Party puts forward an acceptable rectification programme within [] Days after the date of receipt of the Termination Notice (and implements such programme in accordance with its terms and rectified the Default in accordance with the programme); or
 - (ii) in the case of all Defaults set out in this Clause 16.3.2(b) the defaulting party rectifies the Default within [] Days of receipt of the Termination Notice; or
- (c) that in the case of any other Default (not set out in Clause 16.3.2(b)), this Agreement will terminate on the date falling [] Days after the date of receipt of the Termination Notice.

16.3.3 If the defaulting Party either rectifies the Default within the time period specified in the Termination Notice, or implements the rectification programme, if applicable, in accordance with its terms, the Termination Notice will be deemed to be revoked and this Agreement will continue.

16.3.4 If the defaulting Party fails to implement any rectification programme in accordance with its terms or rectify the Default within the time period specified in the Termination Notice, this Agreement will terminate on the date falling [seven (7)] Days after the date of notification by the non-defaulting Part of such failure.

16.3.5 The expiry or termination of this Agreement shall not affect any rights or obligations which may have accrued prior to such expiry or termination and shall not affect obligations of each of the Parties under this Agreement or, any other licence, agreement or document between the Parties which are expressed to continue after such expiry or termination.

16.3.6 Notwithstanding other provisions of this clause, either Party may pursue such other remedies as may be available to it under any Laws of Nigeria if this Agreement is terminated in accordance with this clause.

16.4 Payment Upon Termination⁷

- 16.4.1 If this Agreement is terminated prior to the expiration of its Term as a result of a Seller Default, Buyer may on behalf of FGN elect to purchase the Plant at [fair market value] discounted at []⁸ as determined by an appraisal carried out by an independent appraiser acceptable to the Parties, which is experienced in the methods of valuation of power generation plant and equipment and has an office or an associated office in Nigeria and in London or Washington, D.C. If the Parties cannot agree on the identity of the independent appraiser within fifteen [15] Business Days of an election to purchase the Plant by Buyer (which election by Buyer shall be non-binding on Buyer until Buyer receives the appraiser's valuation and notifies Seller within fifteen [15] Business Days thereafter that it elects to Purchase the Plant and pay such amount to Seller), a Party may request the Institute of Chartered Accountants of Nigeria to nominate an independent firm of chartered accountants to serve as the appraiser, and the entity so nominated shall be the appraiser hereunder. Such costs incurred by Seller and recoverable hereunder shall be evidenced by invoices of vendors and contractors of Seller and payment records of Seller, which shall be provided to Buyer and the independent appraiser in connection with the determination carried out by it.
- 16.4.2 If this Agreement is terminated prior to the expiration of its Term for Force Majeure, Buyer may on behalf of FGN elect to purchase the Plant [at the fair market value] as determined by an appraisal carried out by an independent appraiser appointed in accordance with Clause 16.4.1 of this Agreement.
- 16.4.3 If this Agreement is terminated prior to the expiration of its Term due to a Buyer Default, Seller may elect to sell the Plant to FGN and Buyer shall upon the election by the Seller to sell, purchase the Plant on behalf of FGN at the [fair market value of the Plant] plus [a reasonable return on investment] as determined by an appraisal carried out by an independent appraiser appointed in accordance with Clause 16.4.1 of this Agreement..
- 16.4.4 If the termination of this Agreement relates to an event that gives rise to an insurance payment to Seller in respect of the Plant, Seller shall pay such proceeds to Buyer on termination or otherwise an amount equivalent to such proceeds shall be deducted from the relevant termination payment.

⁷ SHA and PPA compensation mechanism to be reviewed following Bidder financing proposals. Compensation may contemplate repayment of third party debt financing subject to Bidder financing proposals and further discussions save that any payments under the SHA and/or PPA will exclude double recovery.

⁸ To be bid.

CLAUSE 17

TRANSFER

17.1 Transfer

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

(a) the transferee expressly undertakes in an instrument reasonably satisfactory to the other Party to perform the obligations of the transferring Party under this Agreement, obtains any necessary Authorisations for the Transfer and furnishes any guarantees required under this Agreement or any Laws of Nigeria; and

(i) in the case of a Transfer by Seller, Seller has obtained Buyer's written consent; or

(ii) in the case of a Transfer by Buyer, Buyer has obtained Seller's written consent (such consent not to be unreasonably withheld) save that Seller's consent shall be deemed given for the purposes of this Clause 17 where such Transfer is to (i) another FGN entity (with appropriate credit support); or (ii) a Distribution Company of sufficient financial standing and maintains a credit rating of [] according to []; or

(iii) a transfer (whether by novation or by assignment) is necessitated by a change in the trading regime in the Nigerian electricity supply industry.

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

17.1.3 Nothing in this Clause 17 shall prohibit either Party from transferring its rights under this Agreement as part of its security package with any lender or other institution providing financial security.

17.2 Termination

If the transferring Party makes a Transfer in breach of this Clause 17, then the other Party shall have the right to terminate this Agreement in accordance with Clause 16.

17.3. Successors and Assigns

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

CLAUSE 18

FORCE MAJEURE

18.1 Definition of Force Majeure

“**Force Majeure**” shall mean any event or circumstance or combination of events or circumstances that is beyond the reasonable control of a Party and that materially and adversely affects the ability of that Party to perform any of its obligations under this Agreement; provided, however, that such material and adverse effect could not have been prevented, overcome, or remedied by the affected Party through the exercise of Best Endeavours, it being understood and agreed that Best Endeavours includes the expenditure of sums of money to protect its assets from a casualty event, which sums are reasonable in light of the likelihood of such event, the probable effect of such event if it should occur, and the likely efficacy of the protection measures.

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

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

- (a) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, civil commotion, act of terrorism, or sabotage;
- (b) 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;
- (c) [subject to Clause 19.2, any Change in Law]⁹;
- (d) radioactive contamination or ionising radiation originating from a source inside Nigeria to the extent it exceeds applicable standards;
- (e) the occurrence of Local Political Force Majeure under any agreement approved by the Commission, entered into by either Party and having a relevant impact on this Agreement; or
- (f) Significant archaeological discoveries, officially recognised by FGN, at the Parties relevant locations;

18.1.2 events not resulting from natural causes that occur outside Nigeria and do not directly involve Nigeria (“**Foreign Political Force Majeure**”) including:

- (a) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, civil commotion, or act of terrorism;

⁹ To be considered.

- (b) radioactive contamination or ionising radiation originating from a source outside Nigeria to the extent it exceeds applicable standards;
- (c) strikes, go-slows or works to rule but excluding any such matters involving only the workforce of the claiming Party, its contractors, its sub-contractors or suppliers; or
- (d) the occurrence of a Foreign Political Force Majeure under any gas supply or other agreements approved by the Commission, entered into by either party and having a relevant impact on this Agreement;

18.1.3 natural events (“Natural Force Majeure”), including, but not limited to:

- (a) lightening, 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 a Natural Force Majeure under any agreement approved by the Commission, entered into by either Party and having a relevant impact on this Agreement;

18.1.4 “**Force Majeure**” shall expressly not include the following conditions, except and to the extent that they result directly from a Force Majeure:

- (a) normal wear and tear or inherent flaws in materials and equipment or breakdowns of equipment; and
- (b) unavailability of (i) fuel supply, reserves or transportation, (ii) water supply, or (iii) electric transmission or distribution service sufficient to export the output of the Plant in whole or part, except to the extent such unavailability is itself due to Force Majeure.

18.2 Effect of Force Majeure

Subject to Clause 18.3, a Claiming Party shall be relieved from the duty to perform its obligations under this Agreement 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.

18.3 Payment During Force Majeure

18.3.1 Buyer shall not be obliged to pay Capacity Payments, Energy Payments [or Start-up Payments] during a Force Majeure other than as set out in Clauses 18.3.2 to 18.3.4.

18.3.2 If Local Political Force Majeure 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 average Available Capacity for 12 months preceding such Force Majeure Event; and
- (b) Energy Payments, in respect of Gross Energy Output delivered to Buyer.

18.3.3 If Local Political Force Majeure does not affect the ability of Seller to make available Contract Capacity, but affects the ability of Seller to deliver Gross Energy Output to the Delivery Point or of Buyer to accept such delivery, Buyer shall continue to make:

- (a) Capacity Payments in respect of Available Capacity determined without reference to such Force Majeure; and
- (b) Energy Payments, in respect of Gross Energy Output delivered to Buyer.

18.3.4 If Local Political Force Majeure affects the performance of Buyer's obligations under this Agreement, Buyer shall continue to make:

- (a) Capacity Payments in respect to Available Capacity determined without reference to such Force Majeure; and
- (b) Energy Payments, in respect of Gross Energy Output delivered to Buyer.

18.4 Notification Obligations

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

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

18.5 Responsibility of a the Parties

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

18.6 Delay Caused by Force Majeure

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 events of Force Majeure or its or their effects or by any combination thereof, and the periods allowed or dates required for the performance by Parties of such obligation(s) shall be extended on a day-for-day basis; provided that, no relief shall be granted to the Party claiming Force Majeure pursuant to this Clause 18.6 to the extent that such failure or delay would have nevertheless been experienced by that Party had such Force Majeure not occurred. Other than for breaches of this Agreement by the Party not claiming Force Majeure, and without prejudice to the rights of the Party claiming Force Majeure to indemnification under this Agreement, the Party not claiming Force Majeure shall not bear any liability for any loss or expense suffered by the Party claiming Force Majeure as a result of a Force Majeure.

18.7 Access

At the request of the other Party, the Claiming Party shall provide, or use its Best Endeavours to procure, access to the areas and facilities affected by the Force Majeure Event, and to its records relating to that Force Majeure Event, for a reasonable number of representatives of the other Party, at that other Party's sole risk and expense, in order that those representatives may verify the impact of that Force Majeure Event on the Claiming Party's performance and the likely duration of its effects.

18.8 Prolonged Force Majeure Event

If a Force Majeure Event, which prevents or substantially impairs the satisfaction of any material condition required to be satisfied under this Agreement or a Claiming Party's performance of any material obligation required to be performed under this Agreement, continues for a period of twelve (12) consecutive months from the date of the occurrence of the Force Majeure Event (a "**Prolonged Force Majeure Event**"), then either Party shall have the right, but not the obligation, to terminate this Agreement after due consultation with the relevant Relevant Authority and Stakeholders as to ways of mitigating the prolonged Force Majeure Event; provided that, such material condition has not been completely satisfied and or the performance of such material obligation has not been completely restored (insofar as may reasonably be determined by the Party giving notice of termination) as of the time such right of termination is exercised..

CLAUSE 19

CHANGE IN TRADING REGIME

- 19.1 Subject to the terms of this Agreement, upon the occurrence of a change in the Market Rules, Grid Code, Metering Code, or any other event which substantially affects either Party's performance of its obligations under this Agreement under the pre-existing procedures governing Buyer, Seller or the marketing of power, the Parties shall as soon as practicable but not later than [] prior to any proposal for such event, meet to review the operational procedures and information flows under this Agreement, and shall in conjunction with the relevant Governmental Authority and Stakeholders, agree to such changes to procedures as may be required to enable the Parties comply with the Market Rules and sufficiently adjust their operations to accommodate the change in trading regime particularly with regard to settlement of contracts with the Market Operator and adhere to the Market Rules. If the any changes are imposed upon Seller which will result in an increase in costs of performance or impose opportunity costs on Seller, Seller shall be entitled to be compensated by Buyer for such costs or Opportunity Costs in addition to any other payments required under this Agreement.
- 19.2 Upon the occurrence of a Change in Law affecting Seller or Buyer, the Party affected will be entitled to propose to the other Party and on agreement of the Parties, the Relevant Authority, an amendment to this Agreement or other compensation that will allow the Party to perform its obligations under this Agreement, and, in the case of Seller, on a basis that will preserve its investment and the opportunity to earn an equitable return on its investment.

CLAUSE 20

CHOICE OF LAW AND DISPUTES RESOLUTION¹⁰

20.1 Governing Law

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

20.2 Informal Dispute Resolution

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

20.2.2 For a period of not less than 30 days of delivery of a Notice of a Dispute, the Parties shall attempt 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 30 days, or such longer period as they may agree, then either Party may refer the Dispute to arbitration which Dispute shall be determined and settled in accordance with Clause 20.3 herein.

20.3 Arbitration of Disputes

20.3.1 In the event that the Parties are unable to resolve any Dispute pursuant to Clause 20.2 then the Dispute shall be settled by arbitration conducted in accordance with the Rules of Arbitration of the United Nations Commission on International Trade Law (UNCITRAL) as in effect on the date of this Agreement (the “Rules”). The arbitration proceedings shall be conducted, and the award shall be rendered, in the English language.

20.3.2 Unless the Parties otherwise agree, there shall be three (3) arbitrators for the resolution of Disputes hereunder. Each Party shall select one (1) arbitrator within thirty (30) Days of a request by a Party for arbitration pursuant to this Clause 20.3. The two arbitrators thus appointed shall, within thirty (30) Days of the selection of the second arbitrator, select the third (3rd) arbitrator, which three (3) arbitrators shall serve as the arbitration tribunal for resolution of the Dispute hereunder. If a Party does not select an arbitrator where it is entitled to do so within thirty (30) Days of a request for arbitration by a Party or if the two Party-appointed arbitrators fail to agree on the third (3rd) arbitrator, the President of the Nigerian Chamber of Commerce shall make such appointment.

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

20.3.4 The arbitration shall be conducted in Abuja, Nigeria; provided, however, that if Seller is privatized then the arbitration shall be conducted in London, England.

¹⁰ To be conformed to SHA/Concession Agreement if required/as relevant.

20.3.4 Any arbitral award or procedural order under this Clause 20.3 shall be final and binding upon the Parties and shall be the sole and exclusive remedy between the Parties regarding all Disputes, and each Party undertakes to comply with and to carry out any such arbitral award or procedural order, fully and without delay. The Parties expressly waive to the fullest extent permitted by law or under equity any rights of appeal to the courts of any jurisdiction with respect to any award of arbitration pursuant to this Clause 20.3. The Parties expressly agree that any rights of appeal that may not be waived by a Party shall be exercisable by a Party only (i) after the award has been fully implemented under this Clause 20.3 or (ii) if such Party must pay an amount under such award, after such Party has either paid such amount to the other Party or deposited the amount of the award with the tribunal or a court of competent jurisdiction.

20.4 **Consent to Jurisdiction**

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

20.5 **Related Agreement:**

20.5.1 If more than one arbitration is commenced under this Agreement and any Vesting Contract (for the purpose of this Clause 20.5, the "**Related Agreements**") and the Buyer or any Party to the Vesting Contract contends that the two or more arbitrations commenced under the Related Agreements are substantially related and/or involve the same issues and that the issues should be heard in one proceeding, the Tribunal appointed in the first-filed of such proceedings shall have the power to determine whether, in the interests of justice and efficiency, the whole or part of the matters at issue should be consolidated before that Tribunal upon such terms or conditions as the Tribunal thinks fit. The Parties expressly accept that any dispute which may be referred to arbitration under this Agreement may accordingly be disposed of in the same arbitration proceedings as any other dispute arising under another Related Agreement, even in the presence of parties other than the Parties to this Agreement. The Parties hereby waive any right to object to the validity and/or enforceability of an arbitral award rendered by a Tribunal appointed pursuant to a Related Agreement on the basis that such award was made in arbitral proceedings which were consolidated under this Clause 20.5 or in accordance with an equivalent provision under another Related Agreement.]

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

CLAUSE 21

NOTICES

21.1 Method of Providing Notices

Except as otherwise expressly provided in this Agreement, all notices, communications, or other contracts which are required or permitted hereunder to be given or made ("Notices") shall be in English, in writing and addressed for the attention of the person indicated below (or such other person as a Party shall nominate in a Notice given in accordance with this clause from time to time). Any such notice shall be delivered personally, as evidenced by the corresponding seal or receipt or acknowledgement signed by the recipient Party, or sent by reputable international express courier or by facsimile (provided the sender has evidence of successful transmission) and shall be addressed as follows:

If to Seller:

Attention: _____

E mail Address _____

Telephone No: _____

Facsimile: _____

If to Buyer:

Attention: _____

E mail Address: _____

Telephone No: _____

Facsimile: _____

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

CLAUSE 22

MISCELLANEOUS PROVISIONS

22.1 Amendment

The Parties shall not vary, add to, supplement, cancel, replace or novate this Agreement except by mutual consent evidenced by an instrument in writing signed by the authorised representatives of the Parties and with the prior consent and approval of the the Council.

22.2 Headings

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

22.3 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.

22.4 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.

22.5 Relationship of the Parties

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

22.6 Periodic Reports

22.6.1 Each Party shall, as soon as available but in any event within one hundred and twenty (120) Days after the end of each fiscal year, furnish to the other Party: (a) two (2) copies of its complete financial statement for such fiscal year (which are in agreement with its books of accounts and are prepared in accordance with accounting principles which are generally accepted in Nigeria and consistently applied), together with an audited report thereon; (b) a copy of any management letter or other communication sent by the auditors to the Party or to its management in relation to the Party's financial, accounting and other systems, management and accounts; and (c) a report by the auditors certifying that, based on its financial statements, the Party was in compliance with its financial obligations as of the end of the relevant fiscal year or, as the case may be, detailing any non-compliance. In addition, each Party shall authorise its auditors (whose fees and expenses shall be for the account of that Party) to communicate directly with the other Party at any time regarding the Party's accounts and operations and shall furnish to the other Party a copy of such Authorisation.

22.6.2 Each Party shall, as soon as available but in any event within sixty (60) Days after the end of each six (6) Month period of each fiscal year, furnish to the other Party: (i) two (2) copies of balance sheets of such Party, as of the close of that period, and statements of sources and uses of income and retained earnings and changes in the Party's capital accounts and financial position, for the period and for the portion of the fiscal year ending with that period, in each case setting forth in comparative form the figures for the corresponding period for the preceding fiscal year, all in reasonable detail and in accordance with the generally accepted accounting principles in Nigeria consistently applied and certified as complete and correct, subject to changes resulting from year-end adjustments, by the chief accounting officer of the Party; and (ii) a report on any factors materially and adversely affecting or that might materially and adversely affect the Party's business and operations or its financial condition.

22.6.3 Each report required under this Clause 22.6 shall include a reconciliation to international accounting standards consistently applied and such further disclosures as are required thereunder.

22.7 Conflict of Interest

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

- a) a Party's performance which is in accordance with the Laws of Nigeria 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.

22.9 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, including, warranties, remedies, promises of indemnity and confidentiality.

22.10 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.

22.11 Entirety

This Agreement and 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 capacity and energy hereunder to Buyer by Seller or to Seller by Buyer are hereby abrogated and withdrawn.

22.12 Waiver of Sovereign Immunity

Each Party recognizes and acknowledges that this Agreement constitutes a commercial transaction, and that its rights and obligations under this Agreement are of a commercial and not a governmental nature. To the fullest extent not prohibited by any Applicable Law, each Party hereby irrevocably waives on behalf of itself and its assets, any and all sovereign or other immunities from jurisdiction, from enforcement and for any other purpose whatsoever.

22.13 Confidentiality

This provisions of this Agreement are not confidential except that each of the Parties shall hold in confidence agreements, contracts and other information, which is of a confidential nature or information which is stated by the disclosing Party to be confidential at the time of disclosure and is supplied to it by or on behalf of the other Party and shall not publish, disclose or use the same for its own purposes other than as may be required to perform its obligations under this Agreement or as may be required by law.

22.14 Corrupt and Fraudulent Practises

The Parties require that among themselves, their employees, representatives and consultants as well as bidders/suppliers/contractors under this Agreement shall, observe the highest standard of ethics during the execution of this Agreement and eschew all corrupt and /or fraudulent practices. In pursuance of this understanding, the Parties define, for the purposes of this provision, the terms set forth above as follows:

- a) “corrupt practice” means the offering, giving, receiving or soliciting of anything of value to influence the action of a person engaged in any process relating to or connected with the execution of this Agreement; and

- b) “fraudulent practice” means a misrepresentation of facts in order to influence a the execution of this contract to the detriment of any of the Parties, and includes collusive practice among employees, representatives or consultants

22.15 **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.

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

[...*GENCO*.....].POWER PLC

Name:
Title:

NIGERIAN BULK ELECTRICITY TRADING PLC

Name:
Title:

SCHEDULE 1

DESCRIPTION OF SELLER'S PLANT AND FACILITIES

[TBC]

SCHEDULE 2

TEST PROCEDURES¹¹

[Available Capacity Tests]

For each Contract Year Seller shall carry out the Available Capacity Tests as described:

The schedule will include arrangements to:

- Schedule of Available Capacity Tests
- Reschedule of Available Capacity Tests
- Allocation of Costs of rescheduling Performance Tests
- Performance of Additional Monitoring Tests
- Re-perform Annual Performance Test
- Handling of Disputes

1. Testing Protocol

1.1 Objective

The primary objective of the Tested Capacity test is to determine the Available Capacity at Guarantee Conditions.

The power output measured during the test will be corrected to the Guarantee Conditions for the purpose of demonstrating the Tested Capacity.

This Annex 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.

Changes to this procedure may be made only with the written consent of the test representatives (**Test Representatives**) of both Company and (_____) and, if requested by either Party, the Engineer.

If the tests are prevented from being undertaken due to the inability of the Grid System 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 gas turbine basis) and aggregating the results of such tests, as provided in the sixth paragraph of clause 6 above.

1.2 Test Code Reference

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

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.

¹¹ Subject to renew by technical team

ANSI/ASME PTC 1-1991

ANSI/ASME PTC 2-1980

ANSI/ASME PTC 3.1-1992

ANSI/ASME PTC 19.1-1985

ANSI/ASME PTC 19.2-1987

ANSI/ASME PTC 19.3-1974

ANSI/ASME PTC 19.3-1955

ANSI/ASME PTC 19.10-1981

- General Instructions
- Definitions and Values
- Gaseous Fuels
- Measurement Uncertainty
- Pressure Measurement
- Temperature Measurement
- Electric Measurements in Power Circuits
- Flue and Exhaust Gas Analysis

1.3 Division of Responsibilities for Testing– Party Responsibilities

Company and (_____) 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.

Test Representatives, and the Company's Test Director shall ensure that the 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.

The Test Representatives of Company and (_____), and the Company's Test Director shall ensure that the Engineer shall have the full and unrestricted opportunity to examine all Units and machinery prior to, during, and after each test run. The Test Representatives and the Engineer shall have the opportunity to conduct preliminary testing to determine the need for re-calibration, cleaning, or other adjustments.

1.4 Company's Responsibilities

Company shall be responsible for directing operation of the Complex during performance testing, including supervision of operating and maintenance personnel in the operation of all equipment associated with the Complex.

The Company shall nominate and notify to (_____) a test director (**Test Director**) to oversee all tests leading up to and including the Commissioning Tests. The Test Director shall ensure that each such test is conducted in accordance with the relevant test procedure. The Test Director shall be present during all tests leading up to and including the Commissioning Tests and any repeat thereof. Test Representatives should direct questions and concerns to the Test Director.

The Test Director shall issue formal 30-day and 7-day test notifications to Test Representatives and to the Engineer and shall keep Test Representatives and the Engineer informed of test activities and progress.

The Company shall provide all calibrated test class instrumentation and certification.

Immediately after each test run, the Company shall collect all performance test data, obtain all required signatures and make copies for each Test Representative and the Engineer.

The Company shall submit to (_____) and the Engineer a letter providing preliminary corrected test results per the **Reports** section of this test procedure.

The Company shall prepare and submit to (_____) and the Engineer a detailed Commissioning Test report (**Commissioning Test Report**) providing final test results per the

Reports section of this test procedure, which shall be countersigned and certified by the Engineer if the Engineer has concluded that the Commissioning Tests have been carried out in accordance with the Power Purchase Agreement and this Annex 6 and agrees with the Commissioning Test Report and concurs with its conclusions.

The Company shall provide to (_____) and the Engineer Commissioning Test instrument calibration sheets.

The Company is responsible for providing the fuel and water and all other consumables necessary to carry out the test program. The Company shall provide at its cost and expense reasonable accommodations and meals for the (_____) Representative and the Engineer on Site so as to permit them to remain on Site during the continuation of all Commissioning Tests.

The Company is responsible for providing all manufacturers generated correction curves to the Test Representatives of Company and (_____) and to the Engineer.

1.5 (_____)’s Test Representative

(_____) is responsible for designating and identifying to the Company a Test Representative to be present at the Unit sites immediately before and during the execution of the test program. (_____)’s Test Representative shall have the authority to approve changes to this procedure if they become necessary.

1.6 Preparation General

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 Complex equipment shall be operated in accordance with manufacturer’s operating guidelines.

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

1.7 Test Log

The Test Director 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 at any time. A copy of the Test Log shall become part of the Performance Test Report.

1.8 Test Set-Up, Measurements and Instrumentation

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

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.

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)
- (e) Gas turbine bell mouth static pressure (for information purposes only).

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

- a) Gas turbine speed;
- b) Gross output power from the generator;
- c) Auxiliary power consumption;
- d) Excitation power for each generator; and generator voltage and power factor;
- e) Unit net power output.

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

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

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.

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.

1.9 Test Preparation

The Test Director shall confirm the calibration and proper operation of all unit instruments and recording systems to be used for the test.

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.

The Test Director shall give notice of test readiness to all Test Representatives and the Engineer.

The Test Director will compile and make available test instrument calibration record to all Test Representatives and the Engineer.

The Test Director will meet with data takers and delegate assignments and distribute blank data sheets.

The Test Director will confirm that (_____) is scheduled to accept power generated by a Unit or the Complex during testing.

1.10 Conduct of the Test - general

The 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.

At any time during the seventy-two (72) hours of the Reliability Test, the Company may declare to (_____) and the Engineer the commencement of the test of initial Tested Capacity. The test duration will be six (6) continuous hours. To accommodate changes in ambient conditions and grid frequency over the six hour period, the six hour test may be broken into a series of shorter test periods of equal duration, and at the commencement of each test period the Company will record the Net Electrical Output reading of the Metering System or such other test measuring equipment as may be provided for the Commissioning Tests as approved by the Engineer, and at the end of this test period the Company will record the new reading of the Metering System or such other test measuring equipment as may be provided for the Commissioning Tests as approved by the Engineer. The electrical output during each period as derived from the Metering System readings shall be corrected to Guarantee Conditions based on the ambient conditions prevailing during the period to give the Period Electrical Output. The initial Tested Capacity shall be determined by taking the average of the Period Electrical Outputs for all the periods during the six hours 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 ninety percent (90%) of the Contract Capacity and satisfies the minimum criteria for such test set forth in this Annex 6.

1.11 Thermal Stability Requirements

The gas turbines will be considered in a steady state condition when the turbine wheel space temperatures change no more than five degrees Fahrenheit 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.

The system will be considered in a steady state condition when variations from the average value during the tests do not exceed the following criteria:

Variable	Tag No.	Max Variation
(a) Compressor inlet temperature		±2%
(b) Barometric pressure		±2%
(c) Gas turbine generator speed		±2%
(d) Power output		±1%

1.12 Corrections to Measured Data and Calculation of Results

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 Guarantee Conditions, as provided in this Annex 6, to determine the corrected performance values. Manufacturer's correction curves shall be used in determining all pertinent correction factors.

1.13 Test Report

A preliminary test report for the Tested Capacity shall be issued 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. A final report for the Tested Capacity shall be issued within 10 days of the completion of the test. The Tested Capacity contained in the preliminary report shall be applicable for purposes of the Power Purchase Agreement until the earlier of ten (10) days from its issue by the Engineer and the issuance of the final report of Tested Capacity as approved and certified by the Engineer.

The final Performance 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;
- Correction factors to be applied because of deviations, if any, from Guarantee Conditions;
- Results
 - Raw Data
 - Summary of Calculations
 - Correction Curves
 - Instrument Calibration and Data Sheets
 - Copy of Final Test Procedure
 - Deviations from Test Procedure (only where approved in writing by _____)

SCHEDULE 3

FUNCTIONAL SPECIFICATIONS & OPERATING PARAMETERS

[TBC¹²]

This schedule describes the physical attributes of the plant at varying times during its operation and allows for degradation over the operating periods.

[In the case of a hydro plant, seasonal adjustments shall also be made in accordance with long-term historical conditions as agreed to by the Parties].

Operational and Technical Parameters and specifications:

Capacity, Heat Rate, Unit Performance/Derate

Frequency Control Capability

Voltage Control Capability

Black Start Capability

Historical Performance

[NOTE: THE FOLLOWING ARE ADDITIONAL PARAMETERS THAT MIGHT BE INCLUDED IN SIMILAR CONTRACTS FOR A THERMAL POWER PLANT, AND SHOULD BE ADDED AS APPROPRIATE]

¹² Subject to technical review

Capacity and Efficiency Adjustment Factors

- Correction Curves required for the station operation – link to the O+M
- Capacity Degradation Adjustment
- Capacity Temperature Adjustment
- Efficiency Degradation Adjustment
- Efficiency Temperature Adjustment
- Part Load Efficiency Adjustment Factors
- Efficiency and performance adjustments

Performance Adjustments

- Annual target capacity target
- Calculation of installed heat rate performance adjustment
- Calculation of operational heat rate performance adjustment
- Annual target heat rate based on the Lower Heating Value of the Operating Gas
- Calculation of availability performance Adjustments
- Calculation of annual actual availability annual target availability

Agreed performance termination criteria

- Net Available Capacity
- Operational Heat Rate
- Average Availability

Operational Parameters stated as:

- Cold Start - Time required from "Ready to Start position"* to Plant base load
- Warm Start - Time required from "Ready to Start position" to Plant base load
- Hot Start - Time required from "Ready to Start position" to Plant base load
- Cold Start - Time required from "Ready to Start position" to base load for single unit
- Warm Start - Time required from "Ready to Start position" to base load for single unit
- Hot Start - Time required from "Ready to Start position" to base load for single unit
- Shutdown time from base load, minimum time from completion of shutdown to commencement of subsequent start-up
- Minimum stable generation gross load – full Plant (to comply with emissions requirements)
- Minimum stable generation gross load - single train (to comply with emissions requirements)
- Run-up ramp time (GT in hot condition) for load changes between minimum stable generation and maximum generating capacity
- Maximum gross inductive reactive power @base load (lagging)
- Maximum gross capacitive reactive power@ base load (leading)
- Stable frequency generation (@ rated voltage)
- Peak loading capability
- Voltage range (@ rated frequency)

Correction Curves

Correction curves to be included for the purposes of correcting Net Heat Rate and Net Available Capacity:

- Output and Heat Rate versus Ambient Air Pressure
- Output versus ambient wind speed
- Output versus Ambient Air Humidity
- Heat Rate versus Ambient Air Humidity
- Output versus Grid Frequency
- Heat Rate versus Grid Frequency
- Output and Heat Rate versus Gas Sulphur Content
- Output and Heat Rate versus Terminal Fuel Gas
- Conditions (Gas Supply pressure and Gas Supply temperature)
- Output versus Gas Lower Heating Value
- Heat Rate versus Gas Lower Heating Value
- Gas Turbine Generator Loss (Power Factor correction)
- Steam Turbine Generator Loss (Power Factor correction)
- Output and Heat Rate]

SCHEDULE 4

NOMINATION AND DISPATCH PROCEDURE

[TBC]

The Seller will make nominations to the various interested parties (Buyer, System Operator, Market Operator, Distribution Companies) in accordance with the Market Rules and Market Procedures to enable commercial operation of the station as part of the Grid. The Plant will also be required to provide long term operational plans to the various parties including availability declarations, outage planning and changes to plant capability.

Nominations Procedures

- Day ahead Nominations of Gross Energy Output per Market Procedures and Market Rules, subject to Dispatch Instructions
- Intra-day nominations when allowed by Market Procedures and Market Rules
- Gas nominations

Seller will make following declarations:

- Operating gas requirements nominated to gas supplier for the Gross Energy Output per Nomination/Dispatch Instructions
- Notification to gas supplier of revisions to Gas requirements based on changes in Nominations, Dispatch Instructions and outages
- Any changes in Availability Capacity for the day in daily report to Buyer

Buyer notifications

- Buyer to notify Market Operator, System Operator and Seller if Buyer cannot accommodate Seller's Nomination or delivery per Dispatch Instruction

SCHEDULE 5

[FORMS – DAILY STATEMENTS, MONTHLY REPORTS, INVOICES]

[TBC]

[This schedule will describe the format and timing of the invoices and statements that will be issued by Seller and Buyer to cover all items chargeable under the agreement and their reconciliation.

Buyer invoice to Seller to include (where relevant):

Seller invoice to Buyer to include (where relevant):

- Adjustments and reconciliations outside Market Operator procedures
- Costs of Rescheduling Performance Tests
- Incremental costs relating to additional Monitoring Test
- Start Fee per Generation Unit
- Expert costs
- Reasonable costs of communication links and interfaces to Buyer
- Payments, charges and cost payable by Buyer
- Costs for the verification of Metering Equipment]

SCHEDULE 6
ENERGY AND CAPACITY PAYMENTS

[TBC]

[Note: Capacity Payments should cover Seller's fixed costs (including financing costs, subject to Bidders' financing proposals) plus a reasonable element of profit assuming operation of the Plant in accordance with Good Industry Practice.

Energy Payments should cover Seller's variable costs of production including operation and maintenance costs and fuel costs.

Start –up payments – tbc.

Buyer pays Capacity and Energy Payments for Available Capacity except for Availability Failures, Dispatch Instructions, Scheduled Outage, Forced Outage or Natural or Foreign Political FM (i.e. when Capacity and Energy reduced for Local Political FM, Ancillary Services, Buyer Default and Constrained Off or Down it is a Buyer risk).

SCHEDULE 7
DELIVERY POINT

[TBC¹³]

¹³ Same contractual DP under Vesting Contracts

SCHEDULE 8:

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 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 against legal liability to third parties for bodily injury or damage to property arising out of the construction, testing, Commissioning, ownership, operation and maintenance of the Facility. Coverage shall be a maximum of [] Naira for any one claim.
- (f) Workers Compensation and Employers Liability: This insurance will include workers compensation, temporary disability and other similar insurance required by the Laws of Nigeria . Additionally, coverage under this subsection shall include a voluntary compensation and employers’ liability endorsement for employees not subject to the workers compensation laws.
Coverage shall be a maximum of [] Naira for any one claim.

SCHEDULE 9
LIST OF STAKEHOLDERS

[TBC]

SCHEDULE 10
PART 1
DISTRIBUTION COMPANIES

Company Name	Address for Notices	Addressee
[To be inserted for each Disco SC]	[To be inserted for each Disco SC]	[To be inserted for each Disco SC]

PART 2
SUCCESSOR GENERATION COMPANIES

Company Name	Address for Notices	Addressee
[To be inserted for each Disco SC]	[To be inserted for each Disco SC]	[To be inserted for each Disco SC]