



THE DAY OF 2024

CONCESSION AGREEMENT

BETWEEN

**BUREAU OF PUBLIC ENTERPRISES
(THE GRANTOR)**

AND

(THE CONCESSIONAIRE)

**FOR THE CONCESSION OF THE
9MW OYAN HYDRO/ POWER PLANT**

TABLE OF CONTENTS

1. DEFINITIONS	8
1.1. DEFINITIONS	8
1.2. RULES OF INTERPRETATION	24
2. EFFECTIVE DATE, HANDOVER DATE, COMMENCEMENT DATE AND TERM.....	24
2.2. TERM	25
2.3. CONDITIONS PRECEDENT AND COMMENCEMENT DATE	25
3. RIGHTS AND OBLIGATIONS	28
3.1. CONCESSION	28
4. USE OF HYDRO PROPERTY	29
4.1. PERMITTED USE OF HYDRO PROPERTY	29
4.2. ALTERATION OF HYDRO PROPERTY & CONSTRUCTION CONTRACTS	30
4.3. APPLICABLE STANDARDS.....	31
4.4. RIGHTS TO MONITOR AND INSPECT	31
4.5. MAINTENANCE	32
4.6. PEACEFUL AND QUIET ENJOYMENT.....	36
4.7. LEASE OF THE HYDRO PROPERTY & SITE	36
4.8. USE OF WATER.....	36
5. TRANSFER OF CONTRACTS.....	ERROR! BOOKMARK NOT DEFINED.
6. OPERATIONS	37
6.1. OPERATIONS	37
6.2. COMPLIANCE WITH THE MINIMUM PERFORMANCE TARGETS.....	39
6.3. DUTY TO COOPERATE	39
6.4. FINANCING OF OPERATIONS	39
6.5. CONTRACTORS AND RESPONSIBILITY.....	40
6.6. ENVIRONMENTAL PROTECTION, HEALTH, RESETTLEMENT, AND SAFETY.....	40
6.7. SALE OF GENERATED ELECTRICITY	41
7. PERMITS AND APPROVALS.....	41
7.1. APPLICATIONS BY THE CONCESSIONAIRE FOR CONSENTS.....	41
7.2. STATUS OF CONSENT APPLICATIONS	42
7.3. CONDITIONS TO CONSENTS	43
7.4. LIAISON.....	43
7.5. SUPPORT FOR OBLIGATIONS.....	43
7.6. SUPPORT FOR CONSENTS.....	43
8. COVENANTS.....	44
8.1. ASSURANCE AGAINST DISCRIMINATORY ACTION	44
8.2. ACQUISITION OF SHARES OR ASSETS	44
8.3. ACCESS TO LAND, EASEMENT AND RIGHT OF WAY.....	45
8.4. RESTRICTION ON TRANSFER OF SHARES.....	45
8.5. RESTRICTION ON TRANSFER OF HYDRO PROPERTY & THE SITE.....	47
8.6. ACCOUNTS AND REPORTS	48
8.7. ACCESS AND INSPECTION	51
8.8. SCOPE OF ACTIVITIES	52
9. REPRESENTATION AND WARRANTIES	52
9.1. THE GRANTOR'S REPRESENTATIONS AND WARRANTIES	52
9.2. CONCESSIONAIRE REPRESENTATIONS AND WARRANTIES	53
9.3. PARTIES' COVENANT.....	56
10. CONCESSION FEES	58
10.1. PAYMENT OF COMMENCEMENT FEE	58
10.2. PAYMENT OF STATUTORY FEES	58
10.3. PAYMENT OF TRANSACTION MANAGEMENT FEE	58

10.4.	SET-OFF AND PRE AND POST COMMISSIONING CAPITAL AND EXPENSES RECOVERY AMOUNT	ERROR! BOOKMARK NOT DEFINED.
11.	ENVIRONMENT, HEALTH AND SAFETY	58
11.1.	SAFETY PROCEDURES	58
11.2.	SECURITY SYSTEM SAFETY	59
11.3.	OBLIGATION TO NOTIFY	59
11.4.	CONCESSIONAIRE OBLIGATION TO REMEDIATE	59
11.5.	OBLIGATION TO COMPLY WITH ENVIRONMENTAL LAWS	60
11.6.	WASTE DISPOSAL	60
12.	INSURANCE	61
12.1.	INSURANCE POLICIES AND COVERAGE	61
12.2.	INSURANCE POLICIES PLACED BY THE CONCESSIONAIRE	62
12.3.	APPLICATION OF INSURANCE PROCEEDS	62
13.	TRAINING AND TECHNOLOGY TRANSFER	63
13.1.	EMPLOYMENT OF NIGERIANS	63
14.	LIABILITY AND INDEMNIFICATION	64
14.1.	INDEMNIFICATION	64
14.2.	INDEMNIFICATION FOR FINES AND PENALTIES	65
14.3.	NOTICE OF PROCEEDINGS	65
14.4.	DEFENCE OF CLAIMS	66
14.5.	SUBROGATION	68
14.6.	LIMITATION OF THE GRANTOR'S LIABILITY	69
14.7.	EXTENT OF LIMITATION	71
15.	FORCE MAJEURE	71
15.1.	DEFINITION OF FORCE MAJEURE EVENT	71
15.2.	TYPES OF FORCE MAJEURE EVENT	72
15.3.	NATURAL FORCE MAJEURE EVENT	72
15.4.	POLITICAL FORCE MAJEURE EVENT	73
15.5.	EVENTS EXCLUDED FROM FORCE MAJEURE EVENTS	74
15.6.	NOTIFICATION OF FORCE MAJEURE EVENT	75
15.7.	OBLIGATIONS OF AFFECTED PARTY	76
15.8.	LIABILITY OF AFFECTED PARTY	77
15.9.	OPTION TO TERMINATE IN EVENT OF POLITICAL FORCE MAJEURE EVENT	77
15.10.	OPTION TO TERMINATE IN EVENT OF NATURAL FORCE MAJEURE EVENT	77
16.	EVENTS OF DEFAULT AND TERMINATION OF AGREEMENT	78
16.1.	CONCESSIONAIRE EVENTS OF DEFAULT	78
16.2.	GRANTOR EVENTS OF DEFAULT	80
16.3.	TERMINATION OF THE CONCESSION TERM	81
16.4.	EARLY TERMINATION PURCHASE PRICE	82
16.5.	OTHER REMEDIES	85
16.6.	OBLIGATION UPON TERMINATION OF THE TERM	85
17.	ARBITRATION/DISPUTE RESOLUTION	86
17.1.	DEFINITION OF DISPUTE	86
17.2.	AMICABLE SETTLEMENT	86
17.3.	ASSISTANCE OF EXPERT	86
17.4.	ARBITRATION	86
17.5.	APPOINTMENT OF ARBITRATORS	87
17.6.	SEAT AND PLACE OF ARBITRATION	87
17.7.	LANGUAGE OF ARBITRATION	87
17.8.	RELATED DISPUTES	87
17.9.	FEES AND EXPENSES	88
17.10.	PERFORMANCE DURING ARBITRATION	88
18.	SOVEREIGN WAIVER CLAUSE	ERROR! BOOKMARK NOT DEFINED.
19.	EXPERT DETERMINATION	89

19.1.	REFERENCE TO EXPERT	89
19.2.	QUALIFICATION OF EXPERT	89
19.3.	SUBMISSIONS TO EXPERT	89
19.4.	NOTICE OF DECISION OF EXPERT	89
19.5.	EXPERT NOT ARBITRATOR.....	89
19.6.	COST OF ENGAGING EXPERT.....	90
20.	MISCELLANEOUS	90
20.1.	EXPENSES OF THE PARTIES	90
20.2.	FURTHER ASSURANCES.....	90
20.3.	APPLICABLE LAW	90
20.4.	ENTIRE AGREEMENT	91
20.5.	AMENDMENTS	91
20.6.	WAIVER	91
20.7.	CONFIDENTIALITY	91
20.8.	PERMITTED DISCLOSURE	93
20.9.	REQUIRED DISCLOSURE.....	94
20.10.	TERMINATION OF AGREEMENT	94
20.11.	COUNTERPART	95
20.12.	SEVERABILITY	95
20.13.	ASSIGNMENT AND SECURITY	95
20.14.	RELATIONSHIP OF THE PARTIES	95
20.15.	NO THIRD PARTIES	96
20.16.	LANGUAGE	96
20.17.	CONSENTS	96
20.18.	INTEREST	96
20.19.	NOTICES.....	96
21.	PAYMENT FREE OF DEDUCTION	98
ANNEXURE A:	100
ANNEXURE B:	101
ANNEXURE C:	102
SCHEDULE 1	103
SCHEDULE 2	105
SCHEDULE 3	106
SCHEDULE 4	107
SCHEDULE 5	108
SCHEDULE 6	109
SCHEDULE 7	110
SCHEDULE 8	111
SCHEDULE 9	112
SCHEDULE 10	113
SCHEDULE 11	114
SCHEDULE 12	115
SCHEDULE 13	116
SCHEDULE 14	117
SCHEDULE 15	118
SCHEDULE 16 ERROR! BOOKMARK NOT DEFINED.	
SCHEDULE 17	120
SCHEDULE 18	121

THIS CONCESSION AGREEMENT (“This Agreement”) is made this _____ day of _____ 2024

BETWEEN

THE BUREAU OF PUBLIC ENTERPRISES (“BPE”), a body established under the Public Enterprises (Privatisation and Commercialisation) Act Cap38, Laws of the Federation of Nigeria 2004 (“Privatisation Act”) whose address is at 11, Osun Crescent, Maitama, Abuja, Nigeria (hereinafter called the “GRANTOR” which expression shall where the context so admits include its Successors-in-Title, Representatives, Agents and Assigns) of the one part.

AND

.....
.....
.....
.....

The Grantor and the Concessionaire are also hereinafter respectively referred to as "Party" and collectively as "the Parties".

WHEREAS:

- a. The Grantor was established as a body corporate under the Public Enterprises Privatisation and Commercialisation Act and by virtue of Circular Ref No. SGF. 50/S.37/II/749 issued in September 2020 has the mandate to act on behalf of the Federal Government of Nigeria as counterparty in all infrastructure projects developed on a Public Private Partnership (PPP) basis;
- b. The Oyan Hydro Power Plant (OHPP) was commissioned on 29th March 1983 by President Shehu Shagari and is currently operated by the Ogun/Osun River Basin Authority. The 9MW Hydro Power Plant is located at the Oyan Dam, at Abeokuta North Local Government of Ogun State (the ‘Power station’)
- c. The FGN desires to concession the OHPP to the private sector under a PPP arrangement in accordance with the Infrastructure Concession Regulatory Commission (ICRC) Act 2005 and National Policy on Public Private Partnership (N4P);

- d. The Federal Ministry of Power has by a Letter dated 13th April, 2022 transferred twelve (12) small Hydros including the OHPP to the Bureau to act on its behalf in relation to the concessioning of the Power Station.
- e. The Concessionaire is a company with professional skill, technical competence, experience and reliability in its specialised area including but not limited to PPP project funding, energy development, power generation, hydropower plant operation, management and maintenance services in line with industry best practice.
- f. A Project Delivery Team (PDT) was inaugurated by the Director General (BPE) on 27th of October 2021 to handle the concession of Hydro Power Plants across the country.
- g. The Proponent (Momas Power Generation Limited) prepared the Outline Business Case (OBC) as required by the provisions of the Infrastructure Concession Regulatory Commission (ICRC) Act 2005. In which it proposed to increase the generation capacity of the hydro power plant from 9MW to a minimum of 18MW through the rehabilitation of the 3 turbines and the conversion to a hybrid hydro-solar power plant by the installation of floating solar panels .
- h. The Grantor forwarded the OBC to ICRC for review and after the review, an OBC Certificate of Compliance dated 20th September 2022 was issued to the Grantor by ICRC;
- i. The OBC was approved thus indicating that the Grantor could commence the procurement process that would culminate in the emergence of a preferred PPP bidder for the Project in accordance with ICRC guidelines;
- j. The Grantor commenced the procurement process of selecting a preferred bidder in accordance with the provisions of the ICRC guideline on unsolicited proposals through a “Swiss Challenge” procurement method in which the winning bid will await the original proponent’s right of first refusal to submit and match or concede to the preferred bidders proposal.

- k. The Concessionaire was adjudged the most responsive bidder in terms of technical and financial consideration and has been selected to Build-Finance-Rehabilitate-Operate-Maintain-Transfer the Power Station in accordance with the terms of this Agreement;
- l. Consequent upon the issuance of the OBC Certificate and in pursuance of the negotiation leading to the conclusion of the Full Business Case (FBC) certification, the FBC Financial model and draft Concession Agreement were submitted to ICRC for review. ICRC issued the requisite FBC Certificate of Compliance No. _____ dated _____ to the Grantor;
- m. The Grantor thereafter submitted the FBC Certificate of Compliance issued and a Memorandum Number EC _____ to the Federal Executive Council (FEC) at its _____ Extraordinary meeting held on _____ and same was approved by FEC vide its Extract Council Conclusion No. _____ of the _____ day of _____ 2024;
- n. After FEC's approval which portrays the procurement and transaction justification in favour of the Concessionaire for the award of the Project, the Grantor issued a letter of award of the Concession contract to the Concessionaire for the Building, Financing, Rehabilitation , Operation, maintenance and transfer services of the facility vide its letter Ref. _____ dated _____ attached to this Agreement as Annexure 'B';
- o. The Concessionaire accepted the award vide its Letter of Acceptance dated _____ and is committed to the full implementation of the Concession, subject to the terms and conditions of this Agreement. A copy of the letter is hereby attached as Annexure "C" to this Agreement; and
- p. The Parties having complied with all due process requirements under the law have agreed to execute this Project subject to the terms and conditions hereinafter contained.

NOW, THEREFORE, in consideration of the mutual benefits to be derived and the representations and warranties, conditions and promises herein contained, and intending to be legally bound, the Parties hereby agree as follows:

1. DEFINITIONS

1.1. Definitions

Unless the context otherwise requires, capitalised terms used in this Agreement shall have the respective meanings given to them below.

“Action” means any claims, lawsuits, or proceedings.

“Additional Consent” means the approval(s), consents, authorisation or other requirements not listed in SCHEDULE 4 and which are required from any Regulatory Authority under any Laws of Nigeria by the Concessionaire and for the Contractors in the context of the Operations.

“Affected Party” has the meaning given to it in Clause 14.1.

“Affiliate” means, in relation to any person, any other person directly or indirectly controlled by, or controlling of, or under common control with, that person and, in the case of a trust, any trustee or beneficiary (actual or potential) of that trust and, in the case of an individual, any person connected with him.

“Agreed Interest Rate” means NIBOR plus 2%

“Agreement” means this concession agreement, together with all Annexures and Schedules attached hereto, and as may be amended from time to time.

“Ancillary Services” has the meaning assigned to that term in the Grid Code.

“Annual Fee” has the meaning given to it in paragraph (b) of Part A of SCHEDULE 6.

“Applicable Laws” means all State and Federal laws, including but not limited to Constitution of the Federal Republic of Nigeria, legislation, subordinate or delegated legislation, codes ordinances, statutes, decrees, mandatory guidelines or instructions, regulations (including without limitation, Grantors’ bye-laws, Government policy circulars, Executive Orders, guidelines and the regulations) judicial decisions of courts or quasi-judicial decisions of any Government Agency in the Federal Republic of

Nigeria including any replacement or amendment thereof which relate to the Project, the operations or the interpretation or application of this Agreement as the case may be.

“Approved Indebtedness” means the Senior Debt under any financing arrangements which includes financing costs, which have been:

- (A) approved by Grantor (i) by their inclusion in the Initial Budget as set out in SCHEDULE 13 and/or Post-Acquisition Plan as set out in SCHEDULE 13, and (ii) pursuant to the terms of Clause 5.4.1; and
- (B) entered into for the purpose of financing no more than 70% of: (a) the payment of the Concession Fees, and/or (b) Improvements or maintenance required under or pursuant to this Agreement.

“Approved Lenders” means lenders providing Approved Indebtedness and/or other lenders who are not Restricted Persons.

“Authorised Representatives” has the meaning given to it in Clause 16.2

“Business Day” means any day of the week other than Saturday or Sunday, a Federal Government declared public holiday, an Ogun State -declared public holiday, or a day on which banks are authorised by law or executive order to be closed in the Federal Republic of Nigeria.

“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 hereof of any Law of Nigeria, by any Regulatory 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 Regulatory Authority; or
- (C) the change or modification of the terms of the Generation Licence or the Water Licence after the date hereof by a Regulatory Authority or the imposition of other obligations imposing a cost on the Concessionaire;

but the term ‘Change in Law’ shall not include any Change in Tax or any change or modification implemented to address and rectify any Concessionaire Event of Default or as a direct result of any Concessionaire Action or Inaction.

“Change in Tax” means the adoption, promulgation , bringing into effect, repeal, amendment, interpretation, change or failure in application against the provisions of the relevant legislation, change in interpretation or modification after the date hereof by any Regulatory Authority of any Law of Nigeria relating to any tax, duty, licence fee or other revenue-producing measure, including any application of any tax (including withholding taxes on distributions to shareholders to the extent such withholding taxes are final tax liabilities of the shareholders and are not subject to any credit or adjustment, including any credit or adjustment against any other tax liability) duty, licence fee or other revenue-producing measure which is imposed on the Concessionaire.

“Commencement Date” shall have the meaning provided in Clause 0.

“Commencement Fee” means the Fixed Entry Fee and discounted fixed annual fee for 5 years.

“Concession” shall have the meaning provided in Clause 3.1.3.

“Concession Area” shall have the meaning provided in schedule 1

“Concession Fees” means the fees payable for the Concession under this Agreement and listed in SCHEDULE 6, namely the:

- (A) Commencement Fee ;
- (B) Annual Fee as payable in accordance with paragraph (b) of Part A of SCHEDULE 6
- (C) Royalty.

“Concession Rights” means the rights of the Concessionaire under this Agreement.

“Concession Term” means as defined in Clause 2.2.1(A).

“Concessionaire” means the Bidder selected through the evaluation process who satisfactorily concludes the Concession Transaction;

“Concessionaire Action or Inaction” means any action or inaction of the Concessionaire, which action or inaction is inconsistent with or would constitute a breach of this Agreement and which action or inaction has a Material Project Effect.

“Concessionaire Debt” means the aggregate principal amount of any Concessionaire indebtedness outstanding plus any amounts of fees, and interest due and payable but unpaid on such outstanding indebtedness and any interest rate swap breakage costs payable to the relevant lender(s) in respect of the above amounts, in each case under the financing arrangements entered into by the Concessionaire with any financial institution/bank on arm’s length terms.

“Concessionaire Default Purchase Price” has the meaning given to it in SCHEDULE 12.

“Concessionaire Event of Default” has the meaning given to it in Clause 15.1.

“Concessionaire Movable Assets” has the means [the movable property of the Concessionaire used by the Concessionaire for the purposes of performing the Operations]

“Conditions Precedents” has the meaning given to it in Clause 0.

“Consents” means the Specified Consents and the Additional Consents.

“Constitution” means the Constitution to be defined as Constitution of the Federal Republic of Nigeria 1999 as Amended.

“Construction Contracts” means the engineering, procurement and construction (EPC) contracts in respect of the construction of the 9MW Oyan Hydro Power Plant.

“Contracts” means the (i) Construction Contracts and (ii) the contracts entered into by the Grantor with respect to the Hydro Property and which are to be transferred, assigned or novated to/for the benefit of the

Concessionaire on the Execution Date, as agreed between the Parties and further described in Part B of SCHEDULE 4.

“Contract Management Team” has the meaning given to it in SCHEDULE 18.

“Contractor” means any Person (including any technical services provider) with whom the Concessionaire contracts in accordance with the terms of this Agreement for the provision of goods or services relating to the design, construction, operation or maintenance of any part of the power Stations.

“Control” for the purpose of this definition means:

- (A) the power (whether directly or indirectly, and whether by the ownership of share capital, the possession of voting power, contract or otherwise) to appoint and/or remove all or such of the members of the board of directors or other governing body of a person as are able to cast a majority of the votes capable of being cast by the members of that board or body on all, or substantially all, matters, or otherwise to control or have the power to control the policies and affairs of that person; and/or
- (B) the holding and/or possession of the beneficial interest in and/or the ability to exercise the voting rights applicable in shares or other securities in any person (whether directly or by means of holding such interests in one or more other persons) which confer in aggregate on the holders thereof 50 per cent or more of the total voting rights exercisable at general meetings of that person on all or substantially all, matters, and **“Controlled”** and **“Controlling”** shall be construed accordingly.

“Data Room” means the electronic and/or physical data room comprising the copies of the documents and other information made available by or on behalf of the Grantor for inspection by or on behalf of the Concessionaire (including the Concessionaire’s advisers) in relation to or connected with the Operations and listed in the Data Room index.

“Day” means a Calendar Day.

“Disclosed information” means:

- (A) any information included in the information Memorandum or the Data Room;
- (B) any documents or correspondence forming part of the Q &A Process; or
- (C) any document or correspondence provided or otherwise communicated at any presentations or meetings between the Grantor, and the Concessionaire and/or their respective advisers.

“Dispute” has the meaning given to it in Clause 16.1.

“Early Termination Purchase Price” means the amount paid following the early termination of the Concession Term by the Grantor to the Concessionaire pursuant Clause 15.4 and to SCHEDULE 12

“Encumbrance” means any claim, charge, mortgage, security, lien, option, equity, of sale, hypothecation or other third-Party rights, retention of title, right of pre-emption, right of first refusal or security interest of any kind.

“Environmental Conditions” means the gaps and unfulfilled requirements identified under the Environmental Impact Study which are set out in

SCHEDULE 17.

“Environmental Impact Study” means a study, conducted in accordance with internationally accepted standards and the Laws of Nigeria, of the impact of the Operations on the environment.

“Electricity Act” means Electricity Act 2023

“Equity” means, at the relevant time, an amount equal to the aggregate of:

- (A) share capital;
- (B) share premium;

(C) amounts due in respect of shareholder loans which are subordinated to Senior Debt (and for the avoidance of doubt Senior Debt, even where held by a shareholder, shall not be included within Equity);

(D) and distributable reserves available for distribution (and which have not been resolved to be distributed),

in each case as stated in the latest audited accounts of the Concessionaire, or such other accounts as shall be expressly agreed in writing by the Grantor and the Concessionaire for the purpose of any calculation of Equity, or in the absence of such agreement, as determined in accordance with the dispute resolution procedure set out in Clause 16.

“Exchange Rate” means the Nigerian Autonomous Foreign Exchange Rate Fixing (NAFEX) rate of exchange of the Naira against any other currency or any other successor benchmark rate.

“Execution Date” is the date that this Agreement is signed by all the Parties to this Agreement.

“Expert” has the meaning given in Clause 18.1.

“External Factor(s)” has the meaning ascribed to it in Part B of SCHEDULE 5.

“FBC” means Full Business Case.

“FEC” means Federal Executive Council.

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

“Fixed Assets” means the immovable property affixed to the Site as further described in Schedule 2.

“Fixed Entry Fee” means the sum paid by the Concessionaire to the Grantor in an amount of USD) to be paid in accordance with Clause 0 **Error! Reference source not found.**, and SCHEDULE 6.

“Force Majeure Event” has the meaning given to it in Clauses 14.1 and 14.2.

“Force Majeure Purchase Price” has the meaning given to it in SCHEDULE 12.

“Foreign Currency” means any currency other than Naira.

“Founding Shareholders” means the shareholders of the Concessionaire at the date of this Agreement.

“Generation Licence” means the generation licence issued to the Concessionaire by NERC in accordance with section 65 of the Electricity Act on or before the Commencement Date.

“Good Design and Engineering and Construction Practices” means in accordance with internationally recognised standards of good practice in operation and maintenance, including where applicable in design, engineering and construction.

“Good Industry Practice” means the exercise of that degree of skill, diligence, care and foresight, which would reasonably and ordinarily be expected from a prudent, skilled and experienced constructor and operator in the same industry engaged in the same or similar circumstance in order to operate and maintain hydroelectric dams, reservoirs and power stations and the assets relating thereto lawfully, safely, efficiently and economically.

“Grantor” means the Bureau of Public Enterprises acting for and on behalf of the Federal Government of Nigeria.

“Grantor Default Purchase Price” has the meaning given to it in SCHEDULE 12

“Grantor Event of Default” has the meaning given to it in Clause 15.2.1.

“Grantor’s Movable Assets” means the movable property of the Grantor used by the Grantor for the purpose of performing the Operations on the Commencement Date.

“Grid Code” means the Grid Code for the Electricity Industry of Nigeria 2007 made pursuant to an Order of NERC dated 18th June 2007 and as amended from time to time.

“Grid Connection Agreement” means the grid connection agreement dated [] between the [Grantor] and TCN governing the terms and conditions of connection of the Power Stations to TCN’s Transmission Network System.

“Handback Steering Committee” means the committee to be set up pursuant to clause 2.2.1(B) and in line with the ICRC PPP Regulations.

“Handback Period” has the meaning provided in Clause 2.2.1(B).

“Handover” means the complete transfer of the Hydro Property and ceding of Operations to the Concessionaire.

“Handover Date” has the meaning ascribed thereto in Clause 2.1(B).

“Hydro Property” means the concessioned assets as precisely detailed in SCHEDULE 3. For the avoidance of doubt, the Hydro Property shall also be deemed to include any Improvements thereon made by the Concessionaire during the Concession Term.

“ICRC” means Infrastructure Concession Regulatory Commission established under the ICRC Act.

“ICRC Act” means the Infrastructure Concession Regulatory Commission Act 2005.

“ICRC Fees” has the meaning ascribed thereto in Clause 9.2.

“ICRC PPP Regulations” ICRC Public Private Partnership Regulations 2014.

“Improvement” means and includes any work or project or enhancement or upgrade or adjustment or addition or alteration to the Hydro Property by the Concessionaire which results in any of the following:

- (i) an increase in the availability, efficiency or reliability of the Power Station,
- (ii) an increase in the name-plate capacity of the Power Station,
- (iii) an improvement in the safety of the Power Station and/or Hydro Property,
- (iv) an improvement complimentary to the capacity of the Power Station and/or Hydro Property,
- (v) the technological advancement or development of the Power Station and/or Hydro Property.

“Improvement Cost Recovery Amount” means the terminal value of any Improvement at the expiry or termination of this Agreement which shall be calculated as set out in SCHEDULE 15;

“Independent Engineer” shall have the meaning set forth in Clause 4.6

“Industry Documents” mean, the requisite Generation Licence issued by Nigerian Electricity Regulatory Commission (NERC), and the Water Licence.

“Information Memorandum” means the information memorandum released on behalf of the Grantor dated 21st March 2024 in relation to the Hydro Property and the business related thereto and the transactions contemplated by this Agreement.

“Initial Budget” means the budget in respect of the Operations of the Concessionaire for the period of five (5) years from the date of this Agreement, as attached in SCHEDULE 13, and as may be revised by the Parties.

“Insurance Policies” has the meaning given to it in Clause 11.1.1

“kw” means kilowatt, a unit of power.

“Lapse of Consent” means any consent:

- (A) that is revoked by the Regulatory Authority which issued it;
- (B) that is not issued, renewed or, having lapsed, is not reissued, within one hundred and eighty (180) days of application by the Concessionaire for that Consent to be issued, renewed or reissued, as the case may be, and as a result the Concessionaire’s ability to perform its obligations under this Agreement is materially and adversely affected;
- (C) that is made subject, subsequent to its grant, upon renewal or otherwise, to any terms or conditions which materially and adversely affects the Concessionaire’s ability to perform its obligations under this Agreement;
- (D) that, in the case of a customs clearance or similar Consent required solely in order to import any item required for the Operations is not issued within twenty-one (21) Business Days of application by the Concessionaire,

except in each of the above circumstances where such circumstance has arisen due to Concessionaire action or inaction, or through the exercise or non-exercise by the FGN, the Grantor, or any Regulatory Authority of its powers under the Laws of Nigeria as contemplated by Clause 6.3.

“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 Regulatory Authority; and

(B) judgements, decrees, injunctions, writs, orders or like actions of any Regulatory Authority, court, arbitrator or other administrative, judicial or quasi-judicial tribunal or agency of competent jurisdiction,

in each case (i) that applies to the Concessionaire or the Operations and (ii) as amended, supplemented, replaced, reinterpreted by a Regulatory Authority or court or otherwise modified from time to time.

“Licences” means the Generation Licence and the Water Licence

“Longstop Date” has the meaning provided to it in Clause o.

“Loss” means any loss, liability, cost (including legal costs and experts’ and consultants’ fees), charge, judgements, expenses, Actions and demands.

“Major Affiliates” means a person or organization officially attached to a larger body

“Market Rules” means the Market Rules for the Electricity Sector of Nigeria dated as amended from time to time.

“Material Adverse Effect” means any of the following occurring after the date of this Agreement, which is either (i) subsisting at the Commencement Date; or (ii) which is likely to be subsisting at the Commencement Date:

(A) damage and/or destruction to the Hydro Property that is caused by a natural or human factor where such damage and/or destruction is of such significance that the Operations are, or are likely to be, halted or unable to be resumed or carried under following the occurrence of such damage and/or destruction; or

(B) theft or disposal of 25% or more of the Hydro Property.

“Material Project Effect” means a material and adverse effect on:

(A) the ability of the Parties or either of them to timeously perform their obligations or exercise their rights under this Agreement; or

(B) the timely execution of the Operations.

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

“Minor Improvement” means upgrading turbine components, implementing better monitoring systems and enhancing maintenance procedures.

“Minimum Performance Targets” means the performance standards as set out in Part A of SCHEDULE 5.

“Minister” means the Honourable Minister of Water Resources, or any other Minister to whom the President of the Federal Republic of Nigeria may from time to time assign the administrative functions in respect of water resources management.

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

“Naira” means the currency that is the legal tender of the Federal Republic of Nigeria.

“Natural Force Majeure Event” has the meaning given to it in Clause 14.3.

“NERC” means the Nigerian Electricity Regulatory Commission.

“Nigerian Electricity Health Standards Manual” means [the Nigerian Electricity Health Standards Manual (Parts 1-5) dated March 2008, as amended and approved by NERC from time to time].

“OBC” means Outline Business Case.

“Operating Year” means each consecutive period of twelve (12) months starting on the Commencement Date of this Agreement.

“Operations” means the Operations and activities described in Clause 3.1.1.

“Oyan Dam” means the water body impended from the Oyan River.

“Oyan Reservoir” means the reservoir situated on the Oyan dam in Ogun State known as the Oyan Reservoir detailed in schedule .1

“Parties” means The Grantor and The Concessionaire.

“Person” means an individual, corporation, partnership, joint venture, trust, unincorporated organisation, Regulatory Authority or any legal entity.

“Performance Bond” has the meaning given to it in clause 2.3(B).

“Political Force Majeure Event” has the meaning given to it in Clause 14.4.

“Post-Acquisition Plan” means the business plan for the Concession, as detailed in SCHEDULE 14, and as may be mutually varied by the Parties from time to time.

“Privatisation Act” means the Public Enterprises (Privatisation and Commercialisation) Act (PEPCA) 1999.

“Power Purchase Agreement” or **“PPA”** means the Power Purchase Agreement relating to the sale of electricity generated from the Power Station, entered into by the Concessionaire and a buyer during the Concession Term.

“Power Station” means the 9MW Oyan hydroelectric Power Station located at Oyan Dam, at Abeokuta North Local Government of Ogun State.

“Preferred Bidder’s Bank Guarantee” means the bank guarantee issued by the Concessionaire’s bank in favour of the Grantor.

“Project” means the Concession of the Power Station under the operation, maintenance, management and transfer arrangements hereunder for a period of 30 years.

“Project Delivery Team” means the team inaugurated by the DG BPE on 27th October, 2021.

“Project Implementation Team” means the Project Implementation Team (PIT), appointed for the preparation of feasibility studies and provision of advisory services to the Grantor.

“Protected Assets” means any defence-related property of the FGN or assets protected by the diplomatic and consular privileges under the

Diplomatic Immunities and Privileges Act, CAP D9 Laws of the Federation of Nigeria 2004, or any analogous legislation.

“Q&A Process” means any information made available by or on behalf of the Grantor in response to questions raised by and on behalf of the Concessionaire in connection with the Concessionaire’s access to the Data Room and the Concessionaire’s due diligence of the Hydro Property and related business.

“Qualifying Shareholder Debt” means the aggregate principal amount of any shareholder indebtedness outstanding plus any amount of fees, and interest due and payable but unpaid on such outstanding indebtedness and any interest rate swap breakage costs payable to the relevant lender(s) in respect of the above amounts, in each case under the financing arrangements entered into by the Shareholder or Affiliate thereof with any third party financial institution/bank on arm’s length terms for the purchase of any share capital.

“Regulatory Authority” means any federal or state legislative authority or any other authority, body or other person, having jurisdiction under the Laws of Nigeria with respect to the Concessionaire or the Operations.

“Relevant Rules” means any of the Grid Code, the Metering Code, the Market Rules, the Nigerian Electricity Health Standards Manual and any other regulation or order made by NERC.

“Restricted Person” means any entity on the Sanctions List.

“Royalty” has the meaning attributed thereto in SCHEDULE 6

“Sanctioning Body” means any one or combination of the following entities:

- (A) the Nigerian Government; or
- (B) the United States government;
- (C) the United Nations;
- (D) the European Union;

- (E) the government of the United Kingdom;
- (F) the respective governmental institutions and agencies of any of the foregoing.

"Sanctions List" means any of the lists of specifically designated nationals or designated persons or entities held by a Sanctioning Body, each as amended, supplemented or substituted from time to time.

"Security Interest" means any mortgage, pledge, lien, charge, assignment, hypothecations or security interest or any other agreement or arrangement having similar effect.

"Senior Debt" means Concessionaire Debt and/or Qualifying Shareholder Debt as the case may be.

"Share Capital" means shares in the capital of the Concessionaire with voting or other right of management and control and securities of the Concessionaire that are convertible into such shares at the option of the holder.

"Shareholder" means any shareholder from time to time of the Concessionaire which is either (i) a Founding Shareholder, or (ii) has acquired shares in the Concessionaire (whether by way of transfer, assignment, allotment or otherwise) in accordance with the terms of this Agreement.

"Shareholder Indebtedness" means any loan or debt financing provided by the Concessionaire's shareholders to the Concessionaire.

"Site" means the site on which the Power Station is constructed as further described in Schedule 1.

"Specified Consents" means the consents, approvals, authorisations, notifications, concessions, acknowledgements, licences, permits or similar items required from any Regulatory Authority for the Operations, specified in Part A of SCHEDULE 4.

"State Entity" means either the Federal Government or the Government of any of the States of the Federal Republic of Nigeria or any person or entity controlled by the Federal Government or of any of the State Governments

of the Federal Republic of Nigeria and **“Control”** for the purpose of this definition means the direct holding and/or the direct possession of the beneficial interest in and/or the ability to exercise the voting rights applicable in shares or other securities in any person or entity which confer in aggregate on the Government of any of the States of the Federal Republic of Nigeria fifty per cent (50%) or more of the total voting rights exercisable at general meetings of that person or entity on substantially all matters;

“TCN” means the Transmission Company of Nigeria responsible for providing electricity transmission services, as defined in the Electricity Act 2023 and the Market Rules or such other authority who becomes responsible for carrying out the functions described under this Definition.

“TCN’s Transmission Network System” means the system consisting (wholly or mainly) of high voltage electric lines owned or operated by TCN and used for the transmission of electricity from one power station to a sub-station or to another power station or between sub-stations or to or from any external sources.

“Term” has the meaning provided in Clause 2.2.

“Terminal Value” has the meaning ascribed thereto in SCHEDULE 15.

“Termination Period” means [a period of ninety (90) days from date of the notice of termination of the Concession Term].

“Transition Period” has the meaning provided in SCHEDULE 10.

“United States Dollars” or **“USD\$”** means the currency that is the legal tender of the United States of America.

“Upfront Annual Fees” means the amount of USD\$ _____ (_____ Dollars) representing the first five (5) Annual Fees discounted at a rate of ten percent (10%) per annum to be paid in accordance with clause 0(A), Clause 9.1 and SCHEDULE 6.

“Waste Materials” means unwanted material left over from the Concessionaire’s manufacturing process, refuse from places of human or animal habitation and shall include hazardous waste being a by-product of

anthropogenic activities that is either ignitable, corrosive, reactive or toxic and that can pose a substantial or potential hazard to human health or the environment when improperly managed.

“Water Licence” means the licence to be issued by the Minister of Water Resources pursuant to the Water Resources Act Cap W2 Laws of the Federation of Nigeria, 2004 in respect of the use and control of waters at the Oyan Reservoir on the Oyan Dam.

[“Wheeling Charge” means [the charge for transportation of electricity generated from the Power Station to the customers]

1.2. Rules of Interpretation

In this agreement, unless the context requires otherwise:

- 1.2.1. the headings are for convenience only and shall not be considered in construing this Agreement;
- 1.2.2. the singular includes the plural and vice versa;
- 1.2.3. references to Articles, Clauses and Schedules are references to articles and Clauses of and schedules to, this agreement;
- 1.2.4. the terms “include” and “including” mean without limitation;
- 1.2.5. where provision is made for the giving of notice, certificate, determination, consent or approval by any person that notice, certificate, determination, consent or approval shall be in writing and words “notified”, “certified”, “determined”, “consents”, or “approved” shall be construed accordingly;
- 1.2.6. reference made to any publication, statute, rule, regulation, instrument or standard means the same as amended, supplemented or re-enacted from time to time; and
- 1.2.7. reference made to any contract or agreement means the same as amended, supplemented or replaced from time to time in accordance with its terms.

2. EFFECTIVE DATE, HANDOVER DATE, COMMENCEMENT DATE AND TERM

2.1. (A) EFFECTIVE DATE

This Agreement shall be effective upon execution by the Parties. During this period, the Concessionaire shall pay the Commencement Fee within fifteen (15) Business Days from the date of the execution of this Agreement.

(B) HANDOVER DATE

The Handover of the Hydro Property shall take place on a day not later than ten (10) Business Days from the date of payment of the Commencement Fee as contemplated in Clause 9.1.1 (the “**Handover Date**”). The Transition Plan as set out in Schedule 10 shall apply from the Handover Date.

2.2. TERM

The duration of this Agreement shall be for Thirty (30) years subject to the terms and conditions as contained in this Agreement.

2.2.1. The term of this Agreement (“**Term**”) begins at the Commencement Date and shall include:

(A) the **Concession Term** which shall be for a period of 30 (Thirty) years beginning from the Commencement Date and ending on the day preceding the 30th anniversary of the Commencement date or such later date pursuant to an extension of the Concession as envisaged under this Agreement; and

(B) the **Hand Back Period** beginning 36 (Thirty-six) months before the expiration of the Term, during which the the Parties shall set-up a Handback Steering Committee which shall work towards the hand back of the Hydro Property as set out in SCHEDULE 11.

2.2.2. Terminal Value and expiration of Concession Term

The Terminal Value of improvement shall be calculated in accordance with Schedule 15 and paid to the Concessionaire within 90 (ninety) Business Days of the expiration of the Concession Term.

2.3. CONDITIONS PRECEDENT AND COMMENCEMENT DATE

The Commencement Date shall occur after handover parties having discharged or fulfilled the following conditions precedents:

- (A) the Industry Documents being entered into by parties thereto;
- (B) the Specified Consents as listed in Schedule 4 being requested and issued in accordance with Clause 6;

- (B) the Concessionaire providing to the Grantor not later than ten (10) Business Days prior to the Longstop Date, a performance bond in favour of the Grantor from a reputable A-rated financial institution acceptable to the Grantor in an amount not less than [USD.....)] in Naira equivalent in the form set out in SCHEDULE 8 (“**Performance Bond**”) such Performance Bond to remain in full force and effect from the Commencement Date to the date of termination of this Agreement (without prejudice to the obligations and liabilities of the issuer of the Performance Bond that have accrued under the Performance Bond prior to the date of termination of this Agreement) and to cover the Concessionaire’s obligations under this Agreement.

2.3.1. Each Party shall use all reasonable endeavours to obtain the satisfaction of the conditions requiring action by such Party under this Clause 2.3.

2.3.2. If

- (A) the Commencement Fee is not paid into the Grantor Account in accordance with SCHEDULE 6, the Concessionaire shall be deemed to have withdrawn its proposal for the concession hereof (“the Proposal”) and the Grantor may terminate this Agreement with immediate effect by notifying the Concessionaire of such termination in writing and upon such notification this Agreement shall terminate except in respect of any rights and liabilities which have accrued before termination.
- (B) any condition other than the payment of the Commencement Fee, [] have not been satisfied by the Party of whom action is required on or before the Longstop Date, then, unless otherwise agreed in writing by the parties the other Party shall have the right to terminate this Agreement fifteen (15) days after the delivery of written notice to the Party of whom action is required, provided

that the appropriate action has not been taken within such period to satisfy the condition.

(C) any condition detailed in Clause 2.3 (A) or (B) has been fulfilled but on the Commencement Date such agreement, consent, approval, licence, bonds or guarantee (as appropriate) ceases to be in full force and effect, then, unless otherwise agreed in writing by the Parties, any Party shall have the right to terminate this agreement provided it has given the other Party at least fifteen (15) days' notice of such intention and appropriate action has not been taken within such period to remedy such defect.

2.3.3. For the avoidance of doubt, where either party fails to discharge a condition, the right to terminate shall accrue to the other Party.

2.3.4. In the event the Agreement is terminated in accordance with Clause 2.3.2, due to the fault of the Grantor or its agent then each Party shall be excused and relieved of all obligations and liabilities under this Agreement save as otherwise specified in Clause 16, and the Grantor shall, within 180 Business Days from the date of termination, reimburse to the Concessionaire any amount paid pursuant to clause 0Error! Reference source not found. together with interest in accordance with Clause 19.18.

2.3.5. In the event the Agreement is terminated in accordance with Clause 2.3.2(B) due to the fault of the Concessionaire, then each Party shall be excused and relieved of all obligations and liabilities under this Agreement save as otherwise specified in clause 15 and the Grantor shall be entitled to an amount equal to five per cent (5%) of the Commencement Fee being USD\$ _____ (_____ Dollars) from the sums paid into the Grantor Account in accordance with Clause 2.3.1Error! Reference source not found. (together with any interest accrued thereon less any related

bank charges, cost and expenses). The balance of the Commencement Fee paid shall be refunded to the Concessionaire.

Notwithstanding any provision to the contrary, upon any notification of termination under this Clause 2.3.5, this Agreement shall terminate except in respect of any rights and liabilities which have accrued before termination. Termination pursuant to this Clause 2.3.5 shall be without prejudice to other legal rights and remedies available to the other Party.

2.3.6 Access to Site

The Concessioned Area where the Concessionaire shall implement the Project on behalf of the Grantor as per the scope of services herein contained has been shown to the Concessionaire by the Grantor and the Concessionaire has gained access to those places and/ or sites where the concession will be carried out.

3. RIGHTS AND OBLIGATIONS

3.1. Concession

In consideration of the covenants and agreements set out in this Agreement and other good and valuable consideration, including but not limited to the Concession Fees, from the Commencement Date and during the Concession Term:

- 3.1.1. The Grantor shall use all reasonable endeavours to provide all reasonable assistance to procure, in accordance with and subject to the terms of the Industry Documents and under this Agreement, the Consents (including the Licenses) that the Concessionaire shall be entitled to:
- (A) operate and maintain the Power Station,
 - (B) generate power at the Site,
 - (C) sell the electricity produced, and
 - (D) provide the Ancillary Services, collectively referred to as the **“Operations”**.

3.1.2. The Grantor confirms that, subject and pursuant to the terms of this Agreement, it shall:

- (A) delegate to the Concessionaire all such powers and authority as are necessary and within its powers for the Concessionaire to perform the Operations;
- (B) lease the Hydro Property, to the Concessionaire and the Concessionaire shall lease such Hydro Property from the Grantor free and clear of all Security interests, subject to the terms and conditions set out in this Agreement;
- (C) assign, transfer or novate to the Concessionaire any Contracts entered into by the Grantor and necessary for the performance of the Operations.

3.1.3. The provisions of, and rights conferred by, this Clause 3.1 in their entirety together with the rights and obligations conferred by this Agreement shall constitute the “**Concession**”.

3.1.4. The Parties acknowledge and agree that their rights and obligations under this Agreement shall be subject to:

- (A) the Laws of Nigeria;
- (B) any Consent; and
- (C) the lawful requirements of any Regulatory Authority; and, in the event of any conflict between the Parties rights and obligations under this Agreement and any of those laws, consents and requirements, those laws, consents and requirements shall prevail and the Parties’ rights and obligations under this Agreement shall be deemed to be modified to the extent required to enable the Parties to comply with such laws, consents and requirements.

4. USE OF HYDRO PROPERTY

4.1. Permitted Use of Hydro Property

The Concessionaire shall only use the Hydro Property to perform the Operations and any activities ancillary thereto and shall not use the Hydro Property for any

other purpose without the Grantor's prior written approval. The Concessionaire shall not conduct any activities within the site other than performance of the Operations. The Concessionaire shall not conduct such permitted use, or allow such permitted use to be conducted, in violation of the Laws of Nigeria or in any manner that would:

- 4.1.1. violate, invalidate or cause a loss of coverage under any insurance in force on or after the Commencement Date with respect to the Hydro Property;
- 4.1.2. cause injury or damage to the Hydro Property (except for reasonable wear and tear) or to the person or property of any Person on the Hydro Property;
- 4.1.3. cause diminution in the value or usefulness of all or any portion of the Hydro Property (except for reasonable wear and tear);
- 4.1.4. create waste in on or about the Site; or
- 4.1.5. constitute a breach of the Industry Documents or the Specified Consents (including the Licences).

4.2. Alteration of Hydro Property & Construction Contracts

- 4.2.1. Any Improvement to the Hydro Property other than already agreed by parties, shall be notified to the Grantor in advance together with details of all salient terms and in accordance with the Form in **Error! Reference source not found.**; for its approval, such consent not to be unreasonably withheld or delayed. Such consent shall be deemed given if no objection is raised by the Grantor, within ninety (90) Business Days of such notice being provided by the Concessionaire.
- 4.2.2. The Concessionaire shall not be under obligation to notify the Grantor in respect of regular maintenance or Minor Improvements.
- 4.2.3. Any Improvements or approved alterations made by the Concessionaire to the Hydro Property in place by the date of termination of this Agreement shall be and shall remain the property of the Grantor and any claim for or reimbursement by the Concessionaire for the cost of the

value thereof shall be determined in accordance with SCHEDULE 15. During the Concession Term, the Concessionaire shall have beneficial ownership of the restorations and any Improvement to the Hydro Property and shall recognize these in its statutory accounts for accounting and tax purposes. For the avoidance of doubt and without prejudice to this Clause 4.2.3, ownership of the restorations and any Improvements shall revert to the Grantor and shall form part of the Hydro Property, at the date of termination of this Agreement, subject to the provisions of Clause 16.

4.3. Applicable Standards

The Concessionaire shall ensure that any Improvements and/or alterations made are in compliance with:

- 4.3.1. the Laws of Nigeria;
- 4.3.2. international conventions, protocols and international agreements to which the Federal Republic of Nigeria is a Party (where applicable);
- 4.3.3. Good Industry Practice;
- 4.3.4. the Industry Documents; and
- 4.3.5. the Specified Consents.

4.4. Rights to Monitor and Inspect

- 4.4.1. Without limiting or reducing the Concessionaire's obligations under Clause 4.3 and without prejudice to (i) the rights of ICRC to monitor concessions under the ICRC Act and (ii) NERC to monitor the Operations under the Electricity Act 2023 and the Generation Licence, the Grantor shall through its designated representatives, have the right to inspect any Improvements or alterations during performance of the same and after they have been completed.
- 4.4.2. On completion of any Improvements or alterations, the Concessionaire shall notify the Grantor and any Regulatory Authority (if applicable) in writing that they are in accordance with the plans approved by the Grantor and any Regulatory Authority (if applicable) and comply with the laws of Nigeria; the Grantor shall, through its designated representatives,

have sixty (60) Business Days to inspect such Improvements or alterations and to require such reasonable alterations as are necessary for compliance with the applicable standards in accordance with Clause 4.3.

- 4.4.3. The Concessionaire shall within 60 (Sixty) days of commencement of Operations, install a system compatible with the Monitoring Information System (MIS) software being used by the Grantor, for the purpose of facilitating remote, real-time monitoring of the construction Operations and maintenance by the Grantor.
- 4.4.4. Any inspection by the Grantor pursuant to Clauses 4.4.1 or 4.4.2 shall be undertaken in accordance with the provisions set out in Clause 7.7.

4.5. Maintenance

- 4.5.1. The Concessionaire shall be responsible for the operations and maintenance of the Hydro Property, so that at all times, from the Commencement Date during the Concession Term, the Hydro Property shall meet the requirements set out in this Agreement (including the Minimum Performance Targets).
- 4.5.2. All maintenance work conducted on the Power Station shall be equal or better in quality to the original material and workmanship standard and shall comply with the Laws of Nigeria and Good Industry Practice.
- 4.5.3. The Concessionaire shall obtain and maintain all Consents required for such maintenance work in accordance with the Laws of Nigeria while the Grantor shall use reasonable endeavours to assist the Concessionaire in obtaining same.
- 4.5.4. In the event that any part of the Power Station is significantly damaged, the Concessionaire shall notify the Grantor in writing of the same within three (3) days after the Concessionaire has become aware of such damage.
- 4.5.5. The Concessionaire shall commence the process of repairing such damage within twelve (12) days and shall complete such repair to the

damaged Power Station within a reasonable period to be mutually agreed between the Grantor and the Concessionaire. In the event that the Concessionaire fails to commence the process of repairing within such period, then the Grantor may give notice in writing to the Concessionaire requiring the Concessionaire to commence the process of repairing within seven (7) days.

- 4.5.6. Where the Concessionaire has failed to commence the process of repairing upon expiry of the notice by the Grantor, then the Grantor may offer the repair work for tender and the Parties shall agree on the appointment of a Contractor to perform the repair work. In such instance, the Concessionaire shall be responsible for the cost of the repair and if the Grantor is required to make any payment towards such repair work, the Concessionaire shall reimburse the Grantor its actual costs reasonably incurred together with interest in accordance with Clause 19.18.

4.6 INDEPENDENT ENGINEER

Appointment of Independent Engineer

- 4.6.1 The Grantor and the Concessionaire shall procure that an Independent Engineer is appointed at all times during the Concession Period. In that respect, the Grantor and the Concessionaire agree to enter into the Independent Engineer's Agreement on or prior to the Effective Date. It is acknowledged that the identity of the Independent Engineer may be changed from time to time by agreement between the Parties. The Independent Engineer will report directly to the Grantor and the Concessionaire, and the costs of the Independent Engineer will be paid by the Grantor and the Concessionaire, in the manner set forth in the Independent Engineer's Agreement.
- 4.6.2 Where the Grantor and the Concessionaire fail to agree on the Person to be appointed as Independent Engineer under Clause 4.6, the Grantor and the Concessionaire shall each nominate two Persons who shall each submit a

tender for the position of Independent Engineer. Such tenders shall be evaluated by a committee comprising an equal number of representatives of the Grantor and the Concessionaire. If, following such process, the Grantor and the Concessionaire fail to agree on any aspect of the evaluation process or a Person to be appointed Independent Engineer, the Independent Engineer shall be appointed at the request of either Party by a majority decision of a panel consisting of one independent expert engineer appointed by each of the Grantor and the Concessionaire and an independent engineer expert chosen by the two panel members previously appointed by the Grantor and the Concessionaire.

Duties and functions

- 4.6.2 The Independent Engineer shall discharge its duties and functions substantially in accordance with the terms of reference set forth in the Independent Engineer's Agreement in Annexure 4 hereof.
- 4.6.3 The scope of services of the Independent Engineer shall include but not be limited to review, inspection, verification, testing and certification in accordance with the Independent Engineer's Agreement of each Contractor's work to ensure proper performance and completion in accordance with the terms of this Concession Contract and the relevant Construction Contracts. The scope of services of the Independent Engineer shall also include but not be limited to review, inspection and testing in accordance with the Independent Engineer's Agreement of the Concessionaire's work to ensure the Operation and Maintenance is carried out in accordance with the terms of this Concession Contract and the relevant Operation and Maintenance Contract.

4.6.4 A true copy of all communications sent by the Grantor to the Independent Engineer and by the Independent Engineer to the Grantor shall be sent forthwith by the Independent Engineer to the Concessionaire.

4.6.5 A true copy of all communications sent by the Independent Engineer to the Concessionaire and by the Concessionaire to the Independent Engineer shall be sent forthwith by the Independent Engineer to the Grantor.

4.7 Remuneration

The costs of the Independent Engineer shall be borne by the parties equally in the manner set forth in the Independent Engineer's Agreement.

4.8 Termination of appointment

If either Party has reason to believe that the Independent Engineer is not discharging its duties and functions in a fair, efficient, transparent and diligent manner, it may make a written representation to the other Party and seek termination of the appointment of the Independent Engineer. Upon receipt of such representation, the Parties shall hold a tripartite meeting with the Independent Engineer for an amicable resolution of the Dispute, and if any difference or disagreement between the Party/Parties and the Independent Engineer remains unresolved, the Dispute shall be settled in accordance with the Dispute Resolution Procedure specified in this Agreement. In the event that the appointment of the Independent Engineer is terminated hereunder, the Grantor and the Concessionaire shall appoint another Independent Engineer no later than thirty (30) days, in accordance with Clause 4.6 of this Agreement.

4.7 Dispute resolution

If either Party disputes any advice, instruction, decision, direction or award of the Independent Engineer, or, as the case may be, the assertion or failure to assert

jurisdiction, the Dispute shall be resolved in accordance with the Dispute Resolution Procedure (see Clause 16).

4.8 Peaceful and quiet enjoyment

4.8.1 Subject to the terms and conditions of this Agreement, the Concessionaire shall peacefully and quietly hold, occupy, use and enjoy the Hydro Property.

4.9 Lease of the Hydro Property & Site

4.9.1 Subject to the terms and conditions of this Agreement, and by executing this Agreement, the Grantor hereby grants the Concessionaire a lease, from the Commencement Date, for the Concession Term, of the Grantor's right, title and interest in and to the Hydro Property and the Site.

4.9.2 The Grantor hereby conveys, transfers, assigns and delivers to the Concessionaire, the Hydro Property free and clear of any encumbrances; and the Concessionaire shall enjoy exclusive possession of the Hydro Property and the Site throughout the Concession Term.

4.9.3 The Grantor and the Concessionaire agree to execute any necessary assignment agreements, novation agreements or other instruments of transfer required to implement the lease hereby granted.

4.10 Use of Water

4.10.1 The right to use the water flows of the Oyan Reservoir from the Commencement Date and until the expiry or termination of this Agreement shall be subject to the terms of the award of the Water Licence and all relevant Applicable Laws.

4.10.2 Notwithstanding the foregoing, the Parties expressly acknowledge that:

(A) The Minister shall have the option to manage the timing, quantity of retention and release of all water from the Oyan dam Reservoir; and as such, the Minister shall provide to the Concessionaire an upfront programme and planning schedule per annum setting out the timing, quantities and release

programme for one year period at least thirty (30) days prior to the commencement of the year or as otherwise agreed. between the Parties provided that at all times, the minimum water volume allocated to the Concessionaire shall be sufficient enough to generate energy from the Power Station.

- (B) If in any event, the actual water supply to the Concessionaire in any particular year falls below the volume required to generate energy at average minimum annual capacity ofand the Concessionaire shall not be liable to any liquidated damages for failure to meet the Minimum Performance Target and shall be entitled to adjust downwards subsequent Annual Fees equivalent to the reduction below the minimum annual capacity.
- (C) Where the Hydro Property is affected by any External Factors set out in Part B of Schedule 5 the subsequent Annual Fee shall be pro-rated accordingly to reflect the capacity of the Power Station during the period under consideration.

The FGN, or as applicable, any Regulatory Authority, shall retain all fishing rights and no fishing rights shall be granted or afforded by this Agreement.

5 OPERATIONS

5.1 Operations

5.1.1 The Concessionaire shall at all times conduct the Operations:

- (A) in a safe, efficient, effective and economic manner;
- (B) with due care and skill; and
- (C) in accordance with the Laws of Nigeria, this Agreement, Good Industry Practice, the Relevant Rules, the Specified Consents (including the Licenses) and the terms of the Industry Documents;

5.1.2 The Concessionaire undertakes that it shall at all times comply with and implement the Initial Budget, save that where there is any conflict or inconsistency between such Initial Budget and the matters detailed in Clause 5.1.1, the matters detailed in Clause 5.6.1 shall, unless otherwise agreed or provided, prevail. Provided always, (subject to the consent of

the Grantor being obtained) that nothing in this agreement shall prevent the Concessionaire from benefitting from savings or expending more to achieve the objective of this Agreement, provided that such savings and or expenditure do not compromise the Concessionaire's obligation to operate the Hydro Property efficiently.

- 5.1.3 Without prejudice to the lawful requirements of NERC (including the conditions of any relevant Specified Consent), the Concessionaire undertakes that it shall obtain the Grantor's prior consent in writing (such consent not to be unreasonably withheld) for any annual revision to the then current approved Initial Budget. Any such request shall be made in writing to the Grantor not later than three (3) months after the end of the financial year, attaching the Initial Budget to be revised and setting out full details of the revisions requested and the justification and basis for such request. On receipt of such request, the Grantor may request additional information from the Concessionaire in respect of such revision. Within thirty (30) Business Days of the receipt of the said request or the additional information (as applicable), the Grantor shall inform the Concessionaire of its decision in respect of such revision of the Initial Budget to be revised. Such approval shall be deemed given if no objection is raised by the Grantor, within thirty (30) Business Days of the Concessionaire's request for approval.
- 5.1.4 In the event that the Grantor does not consent to the revision of the Initial Budget as requested by the Concessionaire pursuant to Clause 5.1.3, the Initial Budget shall, subject to the lawful requirements of NERC (including the conditions of any relevant Specified Consent), continue in effect until a further revised Initial Budget is approved by the Grantor.
- 5.1.5 In the event that the Concessionaire fails to achieve the Minimum Performance Targets to generate at an annual average capacity of....., the Concessionaire shall be liable to pay liquidated damages equal to 0.05% per annum of received revenue that would have accrued if the

minimum capacity target had been achieved, for the year , provided that the Concessionaire shall not be liable to pay such liquidated damages (i) where such failure is as a result of a Force Majeure Event, Material Adverse Effect, Material Project Effect or an External Factor; or (ii) until the full load tests have been carried out on the Power Station and the results thereof are made available to the Concessionaire.

5.2 Compliance with the Minimum Performance Targets

5.2.1 The provisions of Part A of SCHEDULE 5 shall apply with respect to:

(A) the operation of the Power Station;

(B) the Minimum Performance Target for the Power Station.

5.3 Duty to cooperate

5.3.1 The Parties shall cooperate in good faith to ensure the smooth and effective transfer of the provision of the Operations from the Grantor to the Concessionaire on the Commencement Date in accordance with SCHEDULE 10.

5.3.2 In performing the Operations, the Concessionaire shall cooperate with NERC, the Grantor, ICRC and any Regulatory Authority (as applicable) so as to enable the Grantor perform its monitoring, supervisory and other duties relating to the Power Station.

5.3.3 The Parties shall set up a Contract Management Team to guide the effective implementation of the Project in accordance with Schedule 18.

5.4 Financing of Operations

5.4.1 The Concessionaire shall be responsible for the planning of the financing of its performance of the Operations provided that any financing arrangements that require debt being incurred by the Concessionaire shall not be secured in a manner that prevents the Concessionaire from handing over the Hydro Property to the Grantor at the termination or expiration of the Concession Term as provided under this Agreement.

5.4.2 Any financing arrangements which would fall within the definition of Approved Indebtedness shall be subject to the prior approval of the Grantor to both the amount of such Senior Debt and the terms and conditions on which such Senior Debt is provided, such approval not to be unreasonably withheld or delayed. The Concessionaire shall notify the Grantor of the proposed amount and terms and conditions of any financing agreements which would fall within the definition of Approved Indebtedness. On receipt of the said notice, the Grantor may request additional information from the Concessionaire in respect of such proposed financing arrangements. Within thirty (30) days of the receipt of the said notice or the additional information (as applicable), the Grantor shall inform the Concessionaire of whether or not it approves such financing arrangements in the amount and on the terms and conditions notified to it. Where the Grantor fails to provide its decision within such thirty (30) days it shall be deemed to have approved the proposed financing arrangement in the amount and on the terms and conditions proposed.

5.5 Contractors and responsibility

- 5.5.1 The Concessionaire may delegate its responsibility to operate the power station to a Contractor subject to prior approval of the Grantor and any regulatory Authority (if applicable). The provisions of this clause 5.5.1 shall not apply to any delegation by the Concessionaire to its Major Affiliates.
- 5.5.2 The Concessionaire shall at all times remain liable for the performance of its obligations under this Agreement, notwithstanding any delegation to any Contractor.

5.6 Environmental protection, Health, Resettlement, and Safety

- 5.6.1 The Concessionaire shall, prior to the Execution Date submit to the Grantor for verification, an Environmental Impact Study prepared in

accordance with internationally accepted standard and the Laws of Nigeria to establish the effect of the solar component.

- 5.6.2 The Concessionaire shall at all times comply with the terms of the Environmental Impact Study together with the Laws of Nigeria and shall take additional steps, as reasonably necessary or required in accordance with Good design and Engineering and Construction practices and Good industry practice to protect the environment, promote safety and undertake appropriate resettlement measures.
- 5.6.3 The Concessionaire shall promptly notify the Grantor of any environmental accidents or emergencies and shall report periodically, but at least annually, on remediation programmes and emergency response plans for environmental impact from the Operations.
- 5.6.4 In the event of an environmental accident, the Concessionaire shall develop an environmental management plan in accordance with the Laws of Nigeria, and issue a report to the Grantor, at least weekly, assessing the environmental damage and updating the status of the remediation programme until the completion of such remediation.

5.7 Sale of Generated Electricity

Subject to applicable laws and regulations, the Concessionaire pursuant to the rights granted under this Agreement by the Grantor, shall be entitled to enter into Power Purchase Agreements relating to the sale of electricity generated from the Power Station on a bilateral basis with buyers identified by the Concessionaire.

6 PERMITS AND APPROVALS

6.1 Applications by the Concessionaire for consents

- 6.1.1 The Concessionaire shall make or cause to be made to the Relevant Authorities, in time, all applications as required and appropriate (whether initial or renewal applications) for all Specified Consents and Additional

Consents including those consents required at the Commencement Date and shall diligently pursue all such applications.

- 6.1.2 The information supplied in the applications shall be complete and accurate and shall satisfy the substantive and procedural requirements of the applicable Laws of Nigeria applied in a non-discriminatory manner. All applications for consents shall be accompanied by the applicable fee).
- 6.1.3 Subject to the Concessionaire's compliance with Clause 6.1.1 and 6.1.2, the Grantor where applicable shall use best endeavours to assist the Concessionaire in respect of the application for any Specified Consents and Additional Consents that may be required from time to time and shall not directly or indirectly oppose the grant of such consents without written notice to the Concessionaire of valid and reasonable grounds.

6.2 Status of Consent Applications

- 6.2.1 The Concessionaire shall make or cause to be made to the Grantor at least biannually during the term of this Agreement, reports listing its schedule for submitting consent application forms or renewal application forms, the status of any consent applications then outstanding, notification of the grant, renewal or denial of any consent and notifications of any violations of any Consent. Each report shall include copies of all application and notifications discussed in the report. The first section of each report shall also summarise any problems regarding any Consent or Consent application that may affect the Concessionaire's performance under this Agreement.
- 6.2.2 In the event of any Lapse of Consent, the Concessionaire shall submit a report pursuant to this Clause 6.2 within three (3) Business days thereof unless such Lapse of Consent could not reasonably be known to the Concessionaire without notification from the issuing Regulatory Authority, in which case the Concessionaire shall submit a report pursuant to this Clause 6.2 within three (3) Business days of notification.

6.3 Conditions to Consents

Any Regulatory Authority may attach such non- discriminatory terms and conditions to the issuance or renewal of any of the consents as are reasonably required to ensure compliance with the Laws of Nigeria, and the attachment of such terms and conditions shall not in and of itself constitute a breach of this Agreement by the Grantor.

6.4 Liaison

The Concessionaire shall set up a regulatory desk in its offices with the primary responsibility of resolving any regulatory requirement, issue or queries that may arise in connection with any Regulatory Authority in relation to the Hydro Property.

6.5 Support for Obligations

Upon reasonable request by the Concessionaire, the Grantor shall use its reasonable endeavours to support the Concessionaire's performance of its obligations to conduct the Operations, subject to the Concessionaire's continuing compliance with its obligations under this Agreement.

6.6 Support for Consents

6.6.1 Upon request by the Concessionaire, the Grantor where applicable, shall support and use best endeavours to expedite the consideration and granting by the Regulatory Authority of applications by the Concessionaire for the issue or renewal of Consents which are made in accordance with its obligations under Clause 6.1 and 6.2. Such support shall include the provision by the Grantor of advice as to the content of such applications and liaison with and between the Concessionaire and Regulatory Authority as to the progress of such applications.

6.6.2 Notwithstanding clause 6.6.1:

- (A) the Grantor shall be under no obligation to grant or issue or cause the Regulatory Authority to grant or issue a Consent if the applicant has failed to meet any requirement for the grant or issue of such Consent; and

- (B) the Grantor shall be under no obligation to renew or cause the renewal of any Consent which has been revoked by a Regulatory Authority due to failure by the Concessionaire to abide by any material term or condition attached to such consent.

Provided always that the Ministry of Water Resources shall be responsible for the issuance and subsequent renewal of the Water Licence, subject to the Concessionaire's satisfaction of the requirements for any such issuance or renewal.

7 COVENANTS

7.1 Assurance against Discriminatory Action

The Grantor shall not take any discriminatory action which materially and adversely affects the operation or performance of the Concessionaire's obligations or the enjoyment of Concessionaire's rights under this Agreement provided that the foregoing shall not in any way limit or restrict the ability of the Grantor or of any Regulatory Authority to freely agree with or impose upon companies and investors in other power projects, obligations which;

7.1.1 are consistent with FGN's power policy as developed from time to time and do not materially and adversely affect the performance of the Concessionaire's obligation under this Agreement; or

7.1.2 are justified by a relevant factual difference between the Concessionaire or the Operations and the other Grantor or investor and do not materially and adversely affect the performance of these obligations or violate its right under this Agreement.

7.2 Acquisition of Shares or Assets

The Grantor undertakes to the Concessionaire that it will not, and that the Federal Government of Nigeria will not, take or support any action to expropriate, compulsorily acquire or nationalise the Concession Rights, the Concessionaire, any share capital or any assets of the Concessionaire; and a breach of this undertaking shall amount to a Grantor Event of Default.

7.3 Access to Land, Easement and Right of Way

Subject to the applicable Laws of Nigeria, the Concessionaire shall, at its sole cost and expense have the right to negotiate rights of way, easements and other types of access to land, property, facilities and utilities near or adjacent to the Site in order to perform its obligation and benefit from its rights hereunder; and the Grantor shall use its best endeavours to assist the Concessionaire in respect of such rights of way, easement or other type of access to land that may be required from time to time.

7.4 Restriction on Transfer of shares

7.4.1 The Grantor undertakes to the Concessionaire that it shall not, in the exercise of the powers vested in it by law, prevent any non-Nigerian entities from holding shares in the Concessionaire other than where the Federal Government of Nigeria considers that it would be prejudicial to the national security interests of the Federal Republic of Nigeria for such non-Nigeria entities to hold shares in the Concessionaire, it being recognised that the fact that a proposed investor is a non-Nigerian entity shall not in itself be an appropriate reason for such prohibition.

7.4.2 The Concessionaire shall procure that the shareholders take all necessary measures (including negative covenants in any shareholders' agreement relating to the Concessionaire and by inscribing an appropriate legend on any certificates evidencing share capital issued by it) to reflect and procure that:

(A) until the fifth anniversary of the commencement date:

- i. the holding by one or more persons who are not Founding Shareholders of more than forty-nine percent (49%) of the total share capital of the Concessionaire shall require the prior written consent of the Grantor, such consent not to be unreasonably withheld and shall be deemed if no objection is

raised by the Grantor, within thirty (30) Business days of such notice being given by the Concessionaire;

- ii. at least fifty-one percent (51%) of the total Share Capital of the Concessionaire is held by founding shareholders;

B. after the fifth anniversary of the Commencement Date:

- i. the holding by one or more persons who are not Founding Shareholders of more than forty-nine (49%) of the total Share Capital of the Concessionaire shall require the prior written consent of the Grantor, such consent not to be unreasonably withheld, and shall be deemed if no objection is raised by the Grantor, within thirty (30) Business Days of such notice being given by the Concessionaire .

7.4.3 The provision contained in Clause 7.4.2 shall not apply to:

- (A) any transfer of share in the Concessionaire required by any Laws of Nigeria or by the operation of the Laws of Nigeria or by order of a court, tribunal, or government authority or agency with appropriate jurisdiction;
- (B) any transfer of shares in the Concessionaire resulting from creation or enforcement of a security interest in or over any Share Capital in accordance with a security package which shall have been approved in writing by the Grantor;
- (C) any transfer of shares in the Concessionaire between shareholders and Affiliates thereof or between such Affiliates provided that such transferee shall at all times during such period remain an Affiliate of the Shareholder.

7.4.4 The Concessionaire shall give reasonable notice to the Grantor of any proposed transfer of shares in the Concessionaire.

7.4.5 There shall be no transfer to a Restricted Person.

7.5 Restriction on Transfer of Hydro Property & the Site

The Concessionaire shall not sell, charge, grant security over, transfer, encumber or otherwise dispose of the Hydro Property and the Site, whether voluntarily or involuntarily and whether all or in part, save for movable parts of the Hydro Property which are obsolete, no longer in use, dated, demoded, outmoded, outworn, outdated but which are replaced with a part of similar nature and quality.

7.6 Accounts and Reports

- 7.6.1 The Concessionaire shall prepare and maintain registers, books, records and other means of recording information in the quality and quantity required for facilitating efficient management and supervision of the Operations, for providing information to the Grantor, and for informing the public and its customers of the quality and the performance of its Operations.
- 7.6.2 The Concessionaire shall maintain complete and accurate financial records accounting for all transaction relating to the Operations. Financial records and accounts shall be maintained in accordance with applicable international standards, generally accepted accounting principles as agreed to by the Grantor. Such records shall be subject to inspection by the Grantor upon reasonable notice.
- 7.6.3 Beginning on the Commencement Date, the Concessionaire shall prepare and maintain current records of the Power Station in sufficient detail as required by the Grantor, to provide a full understanding of the state of the Operations. Such records shall be comprised of physical drawings, database and calculation sheets along with historical records relating to their constitution, repairs, and maintenance, including all works carried out as replacements, rehabilitation and maintenance.
- 7.6.4 The Concessionaire shall provide the Grantor and any Regulatory Authority (if applicable) with copies of the foregoing records as requested by such person.
- 7.6.5 The Concessionaire shall provide to the Grantor, and any Regulatory Authority (if applicable), any other information as such person may reasonably require, including without limitation:

- (A) prompt notification of accidents within the Power Station causing death or serious injury within 3 (three) days of occurrence of the event;
- (B) prompt notification of incidents causing any pollution or other forms of environmental damage;
- (C) prompt notification of material industrial relations issues;
- (D) prompt notification of material public complaints; and
- (E) notification of additions to and disposal of mechanical equipment and other significant assets no later than seven (7) Business days prior to such disposal.

7.6.6 Within ninety (90) days following the Commencement Date, the Concessionaire shall, at its own cost and expense, make arrangements reasonably satisfactory to the Grantor with respect to the installation and operation of accounting and cost control system, select and contract a firm of reputable independent chartered accountants as external financial auditor to perform a statutory audit. The Grantor may appoint, at its own cost and expense, an independent auditor to undertake the duties of an external auditor including without limitation:

- (A) verification of the standards and quality of the Operations;
- (B) review of the performance of any statutory or contractual obligation of the Concessionaire; and
- (C) Verification of financial records of the Concessionaire.

7.6.7 The Concessionaire shall prepare an annual report which shall include, at a minimum, the following technical and financial information:

- (A) any circumstances having an impact on the financial obligation of the Concessionaire under this agreement;

- (B) numbers and categories of customers, personnel employed, levels of Operations, performance and Operations quality compliance;
- (C) renovation works and repairs carried out or to be carried out;
- (D) exceptional events such as pollution incidents, strikes, etc.;
- (E) emergencies;
- (F) measures, if any taken by Concessionaire during the applicable year with respect to its obligations hereunder related to the protection and preservation of the environment;
- (G) the Operations performed during the applicable year; and
- (H) an audited set of accounts prepared in accordance with generally accepted international accounting principles and practices.

The Concessionaire shall submit such annual report to the Grantor within one hundred and twenty (120) days after the end of each year during the term of this Agreement (or such earlier date as required under the laws of Nigeria). The Parties shall agree upon the format of such annual report and the Concessionaire shall provide any certification requested by the Grantor.

7.6.8 The Concessionaire shall provide the Grantor with such certificates of insurance issued by insurance companies duly approved by the National Insurance Commission (NAICOM) with respect to each type of insurance set out in SCHEDULE 9, which certificates of insurance shall state that such insurance has been obtained and is in full force and effect, that all premiums on such insurance are current, and that such insurance is not subject to cancellation without prior written notice to the Grantor;

7.7 Access and Inspection

- 7.7.1 The Concessionaire shall permit the Grantor, ICRC, NERC, any relevant Regulatory Authority and their respective designated representatives and agents during the Concessionaire's working hours to enter and inspect the Power Station for the purpose of verifying the Concessionaire's compliance with this Agreement and other requirements under the Laws of Nigeria provided that any such visit shall not unreasonably interfere with the Concessionaire's performance of the Operations. The Grantor, any Regulatory Authority, ICRC shall notify the Concessionaire in writing at least five (5) Business days in advance of any inspection, of the names of the individuals to be permitted access and the time and date of such visit.
- 7.7.2 The Concessionaire shall permit the Grantor, ICRC, or any Regulatory Authority and their respective designated representatives and agents without prior notification to enter and inspect the Power Station in the event of a crisis, incident or other untoward position or threat to public, health, environment and safety, provided that any such visit shall not unreasonably interfere with the Concessionaire's performance of its operations.
- 7.7.3 The Concessionaire shall also grant access to the site to the Grantor, ICRC, or any Regulatory Authority and their respective designated representatives on mutually agreed terms for the purpose of fulfilling its obligations under this Agreement provided that any such visit shall not unreasonably interfere with the Concessionaire's performance of its Operations.
- 7.7.4 The Grantor, ICRC, and any Regulatory Authority (if applicable) and their respective designated representative shall have the

right of access through the site to other facilities controlled by such Party or any one of them under circumstances where reasonably, alternative means of access are not available subject to the prior consent of the Concessionaire provided that any person granted such right of way shall follow the rules concerning safety, traffic, security, and other regulations relating to the site and performance of the of the Operations prescribed by the Concessionaire, which rules shall not be discriminatory in application.

- 7.7.5 The Concessionaire shall grant access to the site to relevant Regulatory Authorities for the purpose of carrying out any activities which they are legally entitled to carry out on the site pursuant to the Laws of Nigeria.

7.8 Scope of Activities

The Concessionaire agrees that its sole activities shall be with respect to the Operations, and any and all activities incidental thereto, and that it shall not engage in any other activities.

8 REPRESENTATION AND WARRANTIES

8.1 The Grantor's Representations and warranties

The Grantor hereby represents and warrants to the Concessionaire that

- 8.1.1 It has full power and authority to execute and deliver this Agreement.
- 8.1.2 It has full power and authority to perform its obligations hereunder.
- 8.1.3 The execution, delivery and performance of this Agreement by or on behalf of the Grantor:

- (A) has been duly authorised by all requisite action on its part;
- (B) will not violate the Laws of Nigeria.

- 8.1.4 This Agreement has been duly executed and delivered by the Grantor.
- 8.1.5 This Agreement constitutes a legal, valid and binding obligation of the Grantor enforceable against it in accordance with its terms subject to the general principles of equity.
- 8.1.6 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 the Grantor except for such permits, authorisations, consent or approval as have been obtained.
- 8.1.7 The Grantor 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.
- 8.1.8 there is no action, suit, proceeding or investigation pending, or to the Grantor's knowledge, threatened, against it 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.
- 8.1.9 The Concessionaire shall, at its own cost and expense, secure and enhance the security of the Oyan Reservoir structure and its environs.

8.2 Concessionaire Representations and Warranties

The Concessionaire hereby represents and warrants to the Grantor that:

- 8.2.1 The Concessionaire is a limited liability company, duly incorporated and validly existing under the Laws of Nigeria and has all requisite corporate power and authority to own or lease and operate its property and carry on its business as proposed to be conducted.

- 8.2.2 The Concessionaire has full corporate power and authority to execute and deliver this agreement and to perform its obligations hereunder.
- 8.2.3 The execution, delivery and performance of this Agreement by the Concessionaire:
- (A) has been duly authorised by all requisite corporate action on the part of the Concessionaire, and no other proceedings on the part of the Concessionaire or any other Person are necessary for such authorisation;
 - (B) will not violate (i) the Laws of Nigeria or any applicable law of any Regulatory Authority or (ii) any provision of the Memorandum and Articles of Association of the Concessionaire; 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 the Concessionaire is a Party or by which the Concessionaire 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 the Concessionaire, or on its ability to perform its obligations hereunder.
- 8.2.4 This Agreement has been duly executed and delivered by the Concessionaire.
- 8.2.5 This Agreement constitutes a legal, valid and binding obligation of the Concessionaire, 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.

- 8.2.6 To the best of its knowledge, after reasonable inquiry, no filing or registration with, no notice to and no permit, authorisation, consent or approval of any Person is required for the execution, delivery or performance of this Agreement by the Concessionaire, except for the Specified Consents.
- 8.2.7 The Concessionaire 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.
- 8.2.8 there is no action, suit, proceeding or investigation pending or, to the Concessionaire's knowledge, threatened (i) for the dissolution of the Concessionaire, or (ii) against the Concessionaire, which if adversely determined, would have a material adverse effect on its ability to perform its obligations hereunder or validity or enforceability of this agreement.
- 8.2.9 it is not in violation of any Laws of Nigeria or judgment entered by any Regulatory 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 Regulatory Authority, now pending or (to the best knowledge of the Concessionaire) threatened against the Concessionaire 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 the Concessionaire, or its ability to perform under this Agreement.
- 8.2.10 it has:
- (A) carefully examined this Agreement, together with all Annexures and 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 deems necessary to perform its obligations hereunder, including without limitation investigations and inspections of the site.

8.3 Parties' Covenant

8.3.1 Each Party covenants (as is appropriate) that it and the owners, stockholders, officers, directors, employees and agents of it and its affiliate 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 (being 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 official or candidate for office, where such payment, gift , promise or advantage would violate:

(A) The laws of Nigeria;

(B) the principles described in the Convention on Combating Bribery of Foreign Public Officials in International Business

Transactions, signed in Paris on 17 December 1997, which entered into force on 15 February 1999, and the conventions commentaries; or

(C) any other relevant conventions, treaties, protocol or regulations.

- 8.3.2 Each Party covenants and represents that it does not desire and will not request any services, action or inaction by any person or entity, which would constitute such violation. Each Party shall promptly (i) respond in reasonable detail to any notice from any other Party reasonably connected with the above stated warranty; and (ii) furnish applicable documentary support for such response upon request from and at the expense of such other Party.
- 8.3.3 Neither the Concessionaire nor any of its Affiliates, nor any of its officers, employees, representatives or agents have either in private business dealings or in dealing with 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.
- 8.3.4 Neither the Concessionaire 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 or any of the Specified Consents (including the licences) or the industry Documents have, whether acting as principal or agents, 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.

9 CONCESSION FEES

9.1 Payment of Commencement Fee

By not later than the Commencement Date, the Concessionaire shall transfer and pay to the Grantor the total Commencement Fee, such payments to be made as provided in accordance with SCHEDULE 6 as follows:

9.1.1One Hundred percent (100%) of the Commencement Fee being an amount ofUnited States Dollars) in Naira equivalent upon the Execution of the Agreement and after access to the Plant; and

9.2 Payment of Statutory Fees

The Concessionaire shall pay the requisite statutory fees of 2% of EBITDA to the ICRC (the “**ICRC Fees**”).

9.3 Payment of Transaction Management Fee

The Concessionaire shall pay the transaction management fee of 5% of the Commencement Fee to the Grantor.’

9.4 Hypadec Fees in accordance with the Electricity Act.

10 ENVIRONMENT, HEALTH AND SAFETY

10.1 Safety Procedures

The Concessionaire shall prepare and implement work and operation safety procedures to ensure the health, safety and welfare of its workforce and users of the Power Station and the Site in accordance with the Laws of Nigeria, International conventions, protocols, international agreements to which the Federal Republic of Nigeria is a

Party and Good Industry Practice and FGN guidelines that are applicable to all operators in the power sector.

10.2 Security System Safety

The Parties acknowledge and agree that the Concessionaire shall be responsible for all safety issues connected with the operation of the Power Station. The Concessionaire shall prepare and implement a safety and security system in accordance with the laws of Nigeria, international conventions, protocols, international agreements to which the Federal Republic of Nigeria is a Party and Good Industry Practice for the Site (including without limitation to fencing off the Site) which system shall be subject to the Regulatory Authority's prior written approval if required.

10.3 Obligation to Notify

In the event that pollution occurs that may affect the Site, the Concessionaire shall:

- inform the Grantor and Regulatory Authority (if applicable) immediately of the same;
- 10.3.1 take all reasonable measure require for detecting, cleaning and containing such pollution; and
- 10.3.2 provide the Grantor and any Regulatory Authority with frequent written updates on such measures being taken or to be taken by the Concessionaire.

10.4 Concessionaire Obligation to Remediate

In the event that waste material is present in the waters of the Oyan Dam or at the bottom of the Oyan Reservoir after the Commencement Date, which has originated from the Hydro Property, then the Concessionaire shall take immediate action to contain, remove and/or remediate the same in accordance with the Laws of Nigeria, international conventions,

protocols, international agreements to which the Federal Republic of Nigeria is a Party and Good Industry Practice.

10.5 Obligation to Comply with Environmental Laws

The Concessionaire shall comply with Laws of Nigeria concerning the protection of the environment and shall take adequate steps to prevent and control the pollution of the air, land, water and sea by oil, chemicals, emissions, hazardous waste, effluent solid and other wastes on the Site as required by such Laws of Nigeria. The Concessionaire shall consult with the relevant Regulatory Authorities in taking such steps. The Concessionaire shall cooperate with the Grantor and any Regulatory Authority in achieving compliance with international environmental conventions to which Nigeria is a Party.

10.6 Waste Disposal

- 10.6.1 The Concessionaire shall arrange for the disposal of waste material generated from the Site in accordance with the Laws of Nigeria, international conventions, protocols, international agreements to which the Federal Republic of Nigeria is a Party and Good Industry Practice. The Concessionaire shall not dump in the Oyan Dam any substance other than rainwater without the Grantor and any Regulatory Authority's prior written consent.
- 10.6.2 Such consent shall be deemed given if no objection is raised by the Grantor or such Regulatory Authority within thirty (30) Business days of such consents being requested by the Concessionaire.
- 10.6.3 In the event of an environmental emergency emanating from the site and endangering life or property resulting from Clause 10.6.1, the Concessionaire shall take such action as may be reasonable and necessary to prevent, avoid, or mitigate injury, damage, or loss and shall, as soon as possible, report any such incidents, including the Concessionaire's response thereto, to the Grantor

and the relevant Regulatory Authority. If the Concessionaire has not taken reasonable precautions for the safety of the public in line with Clause 11.6.1 above, its customers or the protection of the Site, and such failure creates an environmental emergency requiring immediate action, then the Grantor and the relevant Regulatory Authority, with or without notice to the Concessionaire may, but shall be under no obligation to provide reasonable protection as required to address such emergency. The taking of any such action by the Grantor and/ or such Regulatory Authority, or the Grantor or such Regulatory Authority's failure to take any action, shall not limit the Concessionaire's liability.

- 10.6.4 The Concessionaire shall reimburse the Grantor or any Regulatory Authority (if applicable) directly for the performance of any such work or furnishing on the site of any such equipment in connection with any emergency in an amount equal to the reasonable costs incurred by the Grantor in such performance of work or furnishing of equipment.

11 INSURANCE

11.1 Insurance Policies and Coverage

- 11.1.1 The Concessionaire, at its sole cost and expense, shall obtain and maintain in effect during the Concession Term such insurance policies and coverage as are required by the Laws of Nigeria, any consents, Good Industry Practice detailed in SCHEDULE 9 (the “**Insurance Policies**”), provided that such coverage may be changed from time to time with the prior written consent of the Grantor, which shall not be unreasonably withheld or delayed. Such consent shall be deemed given if no objection is raised by the Grantor, within thirty (30) Business days of such notice being given by the Concessionaire. Nothing however shall prevent the Concessionaire, at its sole cost and expense, from procuring

additional insurance coverage from what is specifically required under this Clause 11.

- 11.1.2 The Concessionaire shall ensure that where the insurance policies set out in SCHEDULE 9 name the Grantor and its agents as additional named insured, the Concessionaire shall be free at any time to increase the amount of insurance above the amount therein specified, but shall not reduce such amounts without the prior written consent of the Grantor; which consent shall not be unreasonably withheld, delayed or conditioned. Such consent shall be deemed given if no objection is raised by the Grantor, within thirty (30) Business days of such notice being given by the Concessionaire.

11.2 Insurance policies placed by the Concessionaire

Any insurance policies placed by the Concessionaire:

- 11.2.1 if placed with Nigerian companies where appropriate, it should include reinsurance with reputable insurance companies having satisfactory financial standing;
- 11.2.2 must be procured from reputable and financially-sound insurance companies in accordance with Laws of Nigeria.
- 11.2.3 must take into account the insurable interest of the Grantor in the Power Station in the manner specified in SCHEDULE 9;
- 11.2.4 must comply with the rules on asset reinstatement and other rules as laid out in SCHEDULE 9.

11.3 Application of Insurance Proceeds

- 11.3.1 The Concessionaire shall apply the proceeds of any insurance claim in respect of physical loss or damage to the Power Station as a result of a Force Majeure Event or other events which may be made against insurers pursuant to the insurance maintained

pursuant to this Clause 11 towards the remedy of such loss or damage as soon as reasonably possible.

- 11.3.2 Any proceeds of any insurance claim referred to above which remain and are not used towards the remedy of such loss or damage shall, at the Grantor's option, be either (i) transferred to the Grantor or (ii) held on trust for and on behalf of the Grantor. In which case, upon the termination of the Concession Term, the amount of such insurance claim shall be set off against the Transfer Price and reduced Transfer Price in accordance with clause 16 and schedule 12 of this Agreement.

11.4 Modification of Insurance Coverage

All insurance policies required by the Agreement shall not be modified without at least thirty 30 Business days prior written notice to the Grantor.

12 TRAINING AND TECHNOLOGY TRANSFER

12.1 Employment of Nigerians

- 12.1.1 The parties recognise that training citizens of the Federal Republic of Nigeria in the design, construction, installation, operations, maintenance and management of the Power Station and maximising technology transfer are central to the interests of the Grantor in the Operations. To the extent possible under Relevant Laws, the Concessionaire shall therefore give full preference to employment of citizens of the Federal Republic of Nigeria and undertakes with regards to the employment of foreign nationals that where there are qualified Nigerians available preference shall be given to the employment of Nigerians.
- 12.1.2 The Concessionaire shall conduct, in the normal course of business, employee training programmes from time to time, including training in each of the skills used in the Operations and training in management for those employees qualified for management training. The training programme shall from time-to-time focus both on technical and administrative matters, including contract administration.

- 12.1.3 The Concessionaire shall submit reports annually to the Grantor detailing the progress made toward meeting the objectives set out in Clauses 12.1.1 and 12.1.2.

13 LIABILITY AND INDEMNIFICATION

13.1 Indemnification

- 13.1.1 The Grantor shall indemnify the Concessionaire against, and hold the Concessionaire and its officers, directors and any employees harmless from, (at all times after the Commencement Date), any and all losses incurred, suffered, sustained or required to be paid, directly or indirectly, by or sought to be imposed upon, the Concessionaire or its officers, directors and employees, for personal injury or death to persons or damage to property arising out of any negligent or intentional act or omission by the Grantor in connection with this Agreement. Notwithstanding the forgoing, indemnification shall not be required to the extent that the Concessionaire is reimbursed pursuant to any policy of insurance.
- 13.1.2 The Concessionaire shall indemnify the Grantor against and hold the Grantor and its employees harmless from, at all times after the Commencement Date, any, and all losses incurred, suffered, sustained or required to be paid, directly or indirectly, by, or sought to be imposed upon, the Grantor, or its employees, for personal injury or death to persons or damage to property arising out of any negligent or intentional act or omission by the Concessionaire in connection with this Agreement. Notwithstanding the forgoing, indemnification shall not be required to the extent that the Grantor is reimbursed pursuant to any policy of insurance.

- 13.1.3 The Grantor shall indemnify and hold the Concessionaire and its officers, directors and any employees harmless, at all times after the Commencement Date, from any and all losses incurred, suffered or threatened in respect of all third-party claims, debts, liabilities incurred prior to the Commencement Date or future claims from the host communities arising from social issues, compensation or privileges relating to the construction of the dam.
- 13.1.4 The provision of this Clause 13.1 shall survive for a period of five (5) years following any termination of this Agreement with respect to any acts or omissions or claims for indemnification which occurred or arose prior to such termination.
- 13.1.5 The Concessionaire shall indemnify and defend the Grantor from and against and promptly remove and discharge any such security interest which may be placed on the Hydro Property, except those attributed to the acts or the omissions of the Grantor.

13.2 Indemnification for Fines and Penalties

Any fines or other penalties incurred by a Party (other than fines or penalties due to the negligence or intentional acts or omission of another Party) for non-compliance with the Laws of Nigeria or any applicable consent, permit, licence or approval shall not be reimbursed by any Party but shall be the sole responsibility of the non-complying Party.

13.3 Notice of Proceedings

- 13.3.1 Each Party shall promptly notify the other Party of any loss or proceeding in respect of which such notifying Party is or may be entitled to indemnification pursuant to Clause 13.2. Such notice shall be given as soon as reasonably practicable after the relevant

Party becomes aware of the loss or proceeding and that such loss or proceeding may give rise to an indemnification, but in any event no later than thirty (30) days after the receipt by the Party seeking indemnification of notice of the commencement any action for which indemnity may be sought.

13.3.2 The delay or failure of such indemnified Party to provide the notice required pursuant to this Clause 13.3 to the other Party shall not release the other Party from any indemnification obligation which it may have to such indemnified Party except:

(A) To the extent that such failure or delay materially and adversely affected the indemnifying Party's ability to defend such action or increased the amount of the loss; and

(B) that the indemnifying Party shall not be liable for any cost or expenses of the indemnified Party in the defence of the claim suit, action or proceeding during such period of failure or delay.

13.4 Defence of Claims

13.4.1 Upon acknowledging in writing its obligation to indemnify an indemnified Party to the extent required pursuant to this clause 13, the indemnifying Party shall be entitled, at its option (subject to Clause 13.6.4), to assume and control the defence of such claim, action, suit or proceeding at its expense with counsel of its choice,

13.4.2 Unless and until the indemnifying Party acknowledges in writing its obligation to indemnify the indemnified Party to the extent required pursuant to this Clause 13, and assumes control of the defence of the claim, suit, action or proceeding in accordance with clause 13.6.4, 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 such 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 and expenses thereof shall be subject to the indemnification obligations of the indemnifying Party hereunder.

13.4.3 Neither the indemnifying Party nor the indemnified Party shall be entitled to settle or compromise any such claim, action, suit or proceeding without the prior written consent of the other; provided however, that after agreeing in writing to indemnify the indemnified Party, the indemnifying Party may, subject to Clause 13.6.4 settle or compromise any claim without the approval of the indemnified Party. Except where such consent is unreasonably withheld, where a Party settles or compromises any claim, action, suit or proceeding in respect of which it would otherwise be entitled to be indemnified by the other Party, without the prior written consent of the other Party, the other Party shall be excused from any obligation to indemnify the Party making such settlement or compromise in respect of such settlement or compromise.

13.4.4 Following the acknowledgement of the indemnification and assumption of the defence by the indemnifying Party pursuant to Clause 13.4.1, the indemnified Party shall have the right to employ its own counsel and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of such indemnified Party, when and as incurred, unless:

(A) the employment of counsel by such indemnified Party has been authorised in writing by the indemnifying Party;

- (B) the indemnified Party shall have reasonably concluded and specifically notified the indemnifying Party 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;
- (C) 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
- (D) the indemnified Party shall have reasonably concluded and specifically notified the indemnifying Party that there may be specific defences available to it which 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 the indemnified Party beyond the scope of this Agreement.

13.4.5 If any of Clause 13.4.4 (B), (C) or (D) are applicable, the 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 disbursement of such counsel shall constitute reimbursable legal or other expenses hereunder.

13.5 Subrogation

Upon payment of any indemnification by a Party pursuant to Clause 13.2, the indemnifying Party, without any further action, shall be subrogated to any and all claims that the indemnified Party may have relating thereto, and such indemnified Party shall at the request and expense of the indemnifying Party co-operate with the indemnifying Party and give

at the request and expense of the indemnifying Party such further assurances as are necessary or advisable to enable the indemnifying Party to vigorously pursue such claims.

13.6 Limitation of the Grantor's liability

13.6.1 The Concessionaire confirms, covenants and agrees on behalf of itself and its shareholders that;

(A)

- i. it is a competent entity;
- ii. to the extent it deemed necessary, it was advised by legal counsel, financial advisers and other advisers in connection with this Agreement;
- iii. it has conducted its own independent review and evaluation of the Hydro Property, to the extent possible (considering that the Plant was not operational); and
- iv. in entering into this Agreement, it has not relied on any representation, warranty, assurance, covenant indemnity, undertaking or commitment which is not expressly set out in this Agreement;

(B) there is no representation or warranty by or on behalf of the Grantor or its representatives in respect of the subject matter of this Agreement (implied or express);

(C) the Grantor does not make any representations or warranties or indemnifications as to any aspect of the physical state or condition of any of the facilities associated with the Hydro Property, including any property and equipment used in the generation of electricity , nor shall the representations or warranties contained in the Agreement be construed to do so, all of

which are, for the avoidance of doubt, to be acquired by the Concessionaire on an “AS IS, WHERE IS, AND WITH ALL FAULTS” basis.

13.6.2 The Grantor shall not be liable in respect of a warranty claim for any loss to the extent that the facts and circumstances giving rise to the warranty claim are disclosed in the disclosed information.

13.6.3 in respect of any claim for breach of a Grantor warranty (detailed in Clauses 8.1 and 8.3 respectively):

(A) the Concessionaire shall give written notice to the Grantor of that matter or event which gave rise or may give rise to a warranty claim as soon as possible and in any event within ten (10) Business Days after the Concessionaire becomes aware of such matter or event together with all details of such matters or event then known to the Concessionaire provided that failure to give such notice shall not of itself prevent the Concessionaire from bringing the relevant warranty claim, but the Grantor shall not be liable to the Concessionaire in respect of such warranty claim to the extent that the amount of it is increased, or is not reduced, as a result of such failure.

(B) The Grantor shall not be liable for any warranty claims unless the Concessionaire gives written notice containing reasonable details (having regard to the information known to the Concessionaire) of the warranty claims, including the Concessionaire’s estimate (on without prejudice basis) of the amount of the warranty claims, to the Grantor on or before the date being eighteen (18) months from the Commencement Date.

- 13.6.4 Each Party agrees that it shall not be entitled to recover damages or obtain payment, reimbursement, restitution or indemnity from the other Party more than once in respect of any one loss connected with this Agreement regardless of whether more than one claim under or in connection with this Agreement arises in respect of it or to the extent that any loss suffered or incurred by, the Grantor or the Concessionaire has already being made good by the relevant Party or is properly compensated pursuant to any industry Document.
- 13.6.5 Nothing in this Agreement affects, restricts or limits the general obligation at law of each of the Parties to mitigate any loss which it may suffer or incur as a consequence of any breach of this agreement or in relation to any other matter, event or circumstance which gives rise to a claim under or in connection with this Agreement.

13.7 Extent of Limitation

Nothing in this Agreement shall exclude or limit the liability of a Party for fraud or fraudulent misrepresentation or for death or personal injury resulting from such Party's negligence or that of any of its officers, employees or agents.

14 FORCE MAJEURE

14.1 Definition of Force Majeure Event

A **"Force Majeure Event"** shall mean any event or circumstance or combination of events or circumstances beyond the reasonable control of the Party affected by it (the **"Affected Party"**) but only to the extent that:

- 14.1.1 such circumstance, event or condition, despite the exercise of diligence, cannot be prevented, reasonably anticipated, avoided or overcome by the Affected Party;

- 14.1.2 such circumstance, event or condition prevents the performance by the Affected Party of its obligations (save for payment obligations due or accrued and outstanding before the onset of the Force Majeure Event);
- 14.1.3 where such event or circumstance, or combination of events or circumstances arises as a result of occurrence of a force majeure event under an Industry Document (as defined in such Industry Document), it renders the Affected Party wholly or partially unable to carry out its obligation under this Agreements;
- 14.1.4 the Affected Party has taken all reasonable precautions, due care and measures to prevent, avoid or overcome the effect of such circumstance, event or condition on its ability to perform its obligations under this Agreement and to mitigate its consequences;
- 14.1.5 such circumstance, event or condition is not the direct or indirect result of a breach of failure by the Affected Party to perform any of its obligations under this Agreements, any of the Industry Documents or either of the licences; and
- 14.1.6 such circumstances, event or condition has occurred without fault or negligence on the part of the Affected Party.

14.2 Types of Force Majeure Event

A “**Force Majeure Event**” may be a “**Natural Force Majeure Event**” or “**Political Force Majeure Event**” but only to the extent that the event satisfies the requirements of this Clause 14.

14.3 Natural Force Majeure Event

A “**Natural Force Majeure Event**” is an event resulting from the Natural causes and includes, but is not limited to, the following events:

- 14.3.1 Lightning, fire, earthquake, flood, cyclone, drought, tornado or other natural disaster or act of God ;
- 14.3.2 Pandemic, epidemic or plague;
- 14.3.3 accident, explosion or chemical contamination; and
- 14.3.4 where the actual water supply to the Power Station falls below the volume required to generate energy, caused by natural events not man made.

14.4 Political Force Majeure Event

A “**Political Force Majeure Event**” is an event not resulting from natural causes and includes, but is not limited to, the following events:

- 14.4.1 acts of war (whether declared or not), invasion, armed conflict, act of foreign enemy or blockade in each case occurring within the Federal Republic of Nigeria or involving the Federal Republic of Nigeria;
- 14.4.2 acts of rebellion, riot, civil commotion, strikes of a political nature, act or campaign of terrorism (including kidnapping), or sabotage of a political nature, in each case occurring within the Federal Republic of Nigeria;
- 14.4.3 strikes or works to rule (other than solely by employees of the Affected Party).
- 14.4.4 any boycott of a political nature, sanctions or embargo imposed on or in respect of the Federal Republic of Nigeria which has a material adverse impact on the Operations contemplated by this Agreement;
- 14.4.5 any action or failure to act by a Regulatory Authority that results in any Consent:
 - (A) ceasing to remain in full force and effect; or
 - (B) not being issued or renewed in a timely manner upon due application having been made by the Affected Party,

Provided that the lawful exercise of any rights of a Regulatory Authority in terminating or not renewing for cause shall not constitute a Political Force Majeure Event: and

14.4.6 [Any change in Law or change in Tax that:

- (A) makes unenforceable, invalid or void any material obligation of the Federal Government of Nigeria under this Agreement; or
- (B) makes it unlawful for the Concessionaire to make or receive any material payment, to perform any material obligation or to enjoy or enforce any material right under any consent or this Agreement, or
- (C) places material restrictions or material limitations on the ability of the Concessionaire to repatriate any dividends (or distribution of capital) to its shareholder(s), which restrictions or limitations remain in place for more than one hundred and eighty (180) days without an arrangement being provided to exempt the Concessionaire from all such restrictions or limitations, or
- (D) causes the Concessionaire to incur for itself, any tax, withholding obligation, duty, licence fee or similar revenue producing fee which materially in excess of those the Concessionaire would have incurred under the laws of Nigeria in effect as of the date hereof;

Provided that, in the case of Clause 14.4.6(A), the Grantor has provided the Concessionaire and, in the case of Clauses 14.4.6 (B), (C) and (D), the Concessionaire has provided the Grantor with at least (60) days' notice of the occurrence of such Change in Law or Change in Tax and the Parties have not been able to reach agreement within such period on a solution to alleviate the adverse consequences of such Change in Law or Change in Tax referred to in clause 14.4.6 (A), (B), (C) or (D).

14.5 Events excluded from Force Majeure Events

Notwithstanding that a Force Majeure Event may otherwise exist, the provisions of this Clause shall not excuse:

- 14.5.1 failure to make a payment of money in accordance with the Party's obligations under this Agreement if the money was already due or accrued and outstanding before the onset of the Force Majeure Event;
- 14.5.2 any failure by either Party or its agent to obtain or maintain any Consent due to negligence or default by the Concessionaire or such Contractor;
- 14.5.3 any failure to take into account prevailing site conditions;
- 14.5.4 any failure by a Contractor which results in the failure or inability of the Concessionaire to perform its obligations under this Agreement where the cause of such failure by the Contractor would not constitute a Force Majeure Event pursuant to this Agreement;
- 14.5.5 late performance by the Concessionaire or any Contractor caused by the failure of the Concessionaire or such Contractor to engage qualified subcontractors and suppliers or to hire an adequate number of personnel or labour;
- 14.5.6 late delivery of equipment, machinery, works or materials caused by negligent acts or omissions on the part of the Concessionaire or any Contractor;
- 14.5.7 inability to obtain or maintain adequate funding; and
- 14.5.8 mechanical or electrical breakdown or failure of equipment, machinery or works owned or operated by any Party due to the manner in which the equipment, machinery or works have been operated or maintained.

14.6 Notification of Force Majeure Event

if the Affected Party desires to invoke a Force Majeure Event as a cause for relief or failure in performance of any of its obligations under this Agreement (other than payment of money), it shall;

- 14.6.1 as soon as reasonably practicable and, in any event, no later than ten (10) days following the occurrence of a Force Majeure Event, give notice to the other Party of the circumstance, event or condition which it alleges constitutes the Force Majeure Event and an estimate of its likely duration. If the Affected Party does not deliver such notice in accordance with the terms hereof, such Affected Party shall not be entitled to invoke the benefits of this clause 15;
- 14.6.2 Within ten (10) days of the date of a notice issued pursuant to Clause 19.19 , provide to the other Party a report concerning the Force Majeure Event and its effects, including particulars and reasonable proof of the circumstance, event or condition, a general description of the obligations likely to be affected, an estimate of its likely duration and statement of the actions to be taken in order to comply with its obligations under this clause 14; and
- 14.6.3 from time to time at reasonable intervals and upon any reasonable request from either of the other Parties, provide updates as to the matters set out in Clause 14.6.2.

14.7 Obligations of Affected Party

The Affected Party shall:

- 14.7.1 Make all reasonable endeavours to prevent and reduce to a minimum and mitigate the effect of any delay, loss or damage occasioned by any Force Majeure Event, including recourse to alternate sources of services, equipment and materials; and
- 14.7.2 as soon as reasonably possible, and in accordance with Good Industry Practice, ensure the resumption of normal performance of its Agreement after the cessation of any Force Majeure Event

or its effects and shall otherwise perform its obligations under this Agreement to the extent not excused under this Clause 14.

14.8 Liability of Affected Party

Subject to Clause 14.5, the Affected Party shall not be liable for any delay or failure in performing its obligations under this Agreement due to a Force Majeure Event, and provided that no relief shall be granted to the Affected Party pursuant to this clause to the extent that such failure or delay:

- 14.8.1 would have nevertheless been experienced by the Affected Party had the Force Majeure Event not occurred; or
- 14.8.2 was caused by the failure of the Affected Party to comply with its obligations under Clause 14.7.1.

14.9 Option to terminate in event of Political Force Majeure Event

Notwithstanding anything herein to the contrary, in the event of the occurrence of:

- 14.9.1 a Political Force Majeure Event in which that event or the effects thereof continue for a period exceeding six (6) months; or
- 14.9.2 a series of related Political Force Majeure Events in which such event or the effects thereof continue in the aggregate for a period more than six (6) months during any year, And such Political Force Majeure Events prevent the Affected Party from being able to perform its material obligations or enjoy the material rights conferred on it under this Agreement, either of the Parties shall have the option to terminate the Concession Term after such six (6) month's period.

14.10 Option to terminate in event of Natural Force Majeure Event

If a Party is unable to perform any of its material obligations under this Agreement as a result of a Natural Force Majeure Event for a period exceeding six (6) months or it notifies the other party prior to the expiration of such six (6) month period that it will be unable to resume performance within such period, the other Party shall have the option to terminate.

Provided always that upon the occurrence of any event; outside the Power Station or within the Power Station due to the action or inaction of the Grantor which results in the Power Plant being shut-down or constrained for more than 15 days, the Concessionaire shall be entitled to not pay the Annual Concession Fee for the period of its inability to generate or constraint in generating power and the Concession Term shall also be extended on a day-for-day basis.

15 EVENTS OF DEFAULT AND TERMINATION OF AGREEMENT

15.1 Concessionaire Events of Default

Each of the following events shall be an event of default by the Concessionaire (each, a “**Concessionaire Event of Default**”) which if not cured within the time permitted, shall give rise to the right of the Grantor to terminate the Concession Term pursuant to Clause 15.3; provided however, that no such event shall become a Concessionaire Event of Default if it results substantially from:

- (A) a breach by the Grantor or an agent of the Grantor of the provisions of this Agreement;
- (B) the occurrence of a Force Majeure event;
- (C) External Factors; or
- (D) any combination thereof:

15.1.1 The occurrence of:

- (A) any breach of any of the payment obligations imposed on the Concessionaire pursuant to Clause 10 that is not remedied within ninety (90) Business Days after notice from the Grantor giving reasonable details of the breach by the Concessionaire and demanding remedy thereof;
- (B) a Performance Default of the Minimum Performance Targets as provided in SCHEDULE 5 continuing for six months;
- (C) Any other material breach by the Concessionaire of any covenant or agreement in this Agreement (which shall include without limitation non-compliance with the terms of the post-Acquisition plan and/or initial Budget as provided in Clause 5.1.2, 5.1.3, and 5.1.4) that is not remedied within ninety (90) Business Days after notice from the Grantor giving reasonable details of the breach by the Concessionaire and demanding remedy thereof;

15.1.2 the occurrence of any of the following events:

- (A) the passing of a resolution by the shareholders of the Concessionaire for the winding up of the Concessionaire except in the case of a solvent restructuring;
- (B) the voluntary filing by the Concessionaire of a petition of bankruptcy or other similar relief;
- (D) the passing of a resolution for the bankruptcy, insolvency, winding up, liquidation or other similar proceeding relating to the Concessionaire;
- (E) the appointment of a liquidator, custodian or similar person in a proceeding for the winding up of the Concessionaire, which appointment has not been stayed

or set aside within ninety (90) Business Days of such appointment;

(F) the making by a Regulatory Authority of an order for the winding up otherwise confirming the bankruptcy or insolvency of the Concessionaire, which order has not been set aside or stayed within ninety (90) Business Days of such making; and

(G) the Concessionaire entering into any agreement of merger, consolidation or amalgamation with any entity not previously approved by the Grantor; or

15.1.3 the termination of any of the Industry Documents or the revocation or termination of the Generation Licence as a result of a default, omission or breach by the Concessionaire. Provided that this Clause 15.1.3 shall not take effect as a Concessionaire Event of Default where the Concessionaire files an appeal for the reinstatement of the revoked or terminated licence and such appeal is pending; or

15.1.4 any act or omission attributable to the Concessionaire which would constitute an event of default giving rise to a right of termination under the terms of the relevant Industry Document, subject to Clause 15.1.3.

15.2 Grantor Events of Default

15.2.1 Each of the following events shall constitute a “**Grantor Event of Default**” which, if not cured within the time permitted (if any), shall give rise to the right of the Concessionaire to terminate the Concession Term pursuant to Clause 15.3; provided, however, that no such event shall become a Grantor Event of Default if it results substantially from:

(A) a breach by the Concessionaire of this Agreement (or any Schedule thereto), or

- (B) the occurrence of a Force Majeure Event other than a Political Force Majeure;
- 15.2.2 the occurrence of any material breach by the Grantor of any material covenant or agreement in this Agreement that is not remedied within ninety (90) Business Days after notice from the Concessionaire to the Grantor giving reasonable details of the breach and demanding remedy thereof;
- 15.2.3 the occurrence of any material breach by a State Entity or any counterparty to an Industry Document (provided such counterparty is controlled by a State Entity) of any material covenant or agreement in an Industry Document, not remedied within ninety (90) Business days after the notice from the Concessionaire to the Grantor and (if applicable) to the relevant counterparty to the Industry Document giving reasonable details of the breach and demanding remedy thereof;
- 15.2.4 A breach of Clause 7.2;
- 15.2.5 the termination of any of the Industry Documents or the revocation or termination of the Generation Licence or Water Licence in each case as a result of a default, omission or breach by the Grantor or an agent of the Grantor, or any counterparty to an Industry Document or the Licences, provided that such counterparty is controlled by a State Entity;

15.3 Termination of the Concession Term

The Concession Term shall be terminated by any of the following events:

- 15.3.1 the mutual agreement of the parties;
- 15.3.2 where the Generation Licence and Water Licence are not renewed or extended for a continuing period of Ninety (90) Business Days after expiry as may be required/necessary to cover the entirety of the Concession Term;

- 15.3.3 service of a notice of termination further to Clause 16.1 by the Grantor on the Concessionaire following a Concessionaire Event of Default which if capable of remedy and has not been cured within the time permitted;
- 15.3.4 service of a notice of termination further to Clause 15.2 by the Concessionaire on the Grantor following a Grantor Event of Default which if capable of remedy has not been cured within the time permitted;
- 15.3.5 service of a notice by the Concessionaire on the Grantor, exercising the Concessionaire's option to terminate pursuant to Clause 14.9 due to a prolonged Political Force Majeure Event; or
- 15.3.6 service of a notice by either Party on other Party, exercising that Party's option to terminate pursuant to clause 14.10 due to a prolonged Natural Force Majeure Event.

15.4 Early Termination Purchase Price

Following termination of the Concession Term and no later than the end of the Termination Period, the Grantor shall (save as otherwise provided in Clause 15.1), subject to the Concessionaire's compliance with its obligations on termination, pay the compensation due and payable in accordance with provisions of this Clause 15.4.

15.4.1 if the termination is due to a Concessionaire Event of Default:

- (A) the Concessionaire shall cease to have any rights in or entitlement to and shall convey, transfer, assign and deliver to the Grantor, free and clear of any Encumbrances, the Concessionaire's right, title and interest in and to the Hydro Property, the Concessionaire's movable Assets and any relevant spare parts and consumables accompanied by any necessary bills of sale, assignment agreements, novation agreements or other

instruments of transfer reasonably requested by the Grantor; and

- (B) the Grantor shall pay to the Concessionaire the Concessionaire Default Purchase Price as set out in SCHEDULE 12.

15.4.2 if the termination is due to a Grantor Event of Default

- (A) the Concessionaire shall cease to have any rights in or entitlement to and shall convey, transfer, assign and deliver to the Grantor, free and clear of any Encumbrances, the Concessionaire's right, title and interest in and to the Hydro Property, the Concessionaire Movable Assets and relevant spare parts and consumables accompanied by any necessary bills of sale, assignment agreement, novation agreements or other instruments of transfer reasonably requested by the Grantor; and

- (B) The Grantor shall pay the Concessionaire the Grantor Default Purchase Price as set out in SCHEDULE 12.

15.4.3 if the termination is due to effluxion of time, the Concessionaire shall cease to have any rights in or entitlement to and shall convey, transfer, assign and deliver to the Grantor, free and clear of any encumbrances, the Concessionaire's right, title and interest in and to the Hydro Property, the Concessionaire Movable Assets and any relevant spare parts and consumable and the Grantor shall pay to the Concessionaire a consideration as determined by the Parties or failing agreement between the Parties, the Expert as being fair market value for the Concessionaire's Moveable Assets The Concessionaire shall sign all necessary bills of sale, assignment agreements, novation agreements or other instrument of transfer reasonably requested by the Grantor.

15.4.4 If termination is due to a Force Majeure Event then;

(A) the Concessionaire shall cease to have any rights in or entitlement to and shall convey, transfer, assign, and deliver to the Grantor, free and clear of any encumbrances, the Concessionaire's right, title and interest in and to the Hydro Property, the Concessionaire's Movable Assets any relevant spare parts and consumables accompanied by any necessary bills of sales, assignment agreement, novation agreements or other instruments of transfer reasonably requested by the Grantor; and

(B) the Grantor shall pay the Concessionaire the Force Majeure Purchase Price as set out in SCHEDULE 12.

15.4.5 To the extent that any sums are due and owing by the Concessionaire under an Industry Document in this Agreement to a Regulatory Authority the Grantor shall have the right (acting in its sole discretion) to reduce the amount payable to the Concessionaire pursuant to Clause 16.4.4(B) by such amount. In which case the Grantor shall apply such amount as is withheld towards the satisfaction of such debt under the Industry Document. For the avoidance of doubt, where the Grantor does not elect to exercise such withholding right towards full satisfaction of any such debt, the Concessionaire remains fully liable for the payment of such sum pursuant to such Industry Document and the non- exercise of such withholding right shall not be construed as a waiver or other release or forbearance of such debt.

15.5 Other Remedies

The exercise of the right of a Party to terminate the Concession Term, as provided herein, does not preclude such Party from exercising other remedies that are provided herein or are available at law, including the right to claim in damages or under any of the indemnities pursuant to Clause 13. Notwithstanding the cause for the termination on the Concession Term, termination of the Concession Term shall be without prejudice to any antecedent liability and such termination shall not affect the rights and obligations of the Parties existing before termination in respect of such liability. Remedies are cumulative, and the exercise of, or failure to exercise, one or more remedy by a Party shall not limit or preclude the exercise of, or constitute a waiver of other remedies by such Party. Termination of the Concession Term shall be without prejudice to any additional termination obligations and continuity of service. The Parties agree that upon termination of the Concession Term, they will cooperate to ensure an effective handover of operations and smooth transition of the Operations from the Concessionaire to the Grantor in accordance with SCHEDULE 11.

15.6 Obligation Upon Termination of The Term

Upon the termination period of this Agreement, the Parties shall have no further obligations or liabilities hereunder except for obligations or liabilities that arose prior to or arise upon such expiration or termination, and obligations or liabilities that expressly survive such expiration or termination pursuant to this Agreement including, but not limited to the indemnities provided in Clause 13.

16 ARBITRATION AND DISPUTE RESOLUTION

16.1 Definition of Dispute

“Dispute” means any dispute, difference, 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.

16.2 Amicable Settlement

If any Dispute arises, then the Party alleging the existence of a Dispute shall give written notice of the Dispute to the other Party setting out the material particulars of the Dispute (a **“Dispute Notice”**). Within 10 days of service of a Dispute Notice, one director or other senior representative of each Party with authority to settle the Dispute (the **“Authorised Representatives”**) shall meet to seek to resolve the Dispute. If within 90 (Ninety) days of service of the Dispute Notice (or within such longer period of time as the Parties may agree), no meeting has taken place or the Dispute has not been resolved, either Party shall be entitled to refer the Dispute to arbitration in accordance with Clause 16.4.

16.3 Assistance of Expert

The Parties may, in appropriate cases, agree to refer the matter to an Expert appointed by them. The Parties agree to abide by the decision of the Expert. The cost of engaging the Expert shall be shared equally.

16.4 Arbitration

In the event that Parties are unable to reach an amicable settlement in respect of a Dispute through negotiation, mediation and conciliation within 90 (ninety) days from the date of the service of the Dispute Notice, such Dispute shall, at the request of either Party, be submitted

to the Regional Centre for International Commercial Arbitration, Lagos, for resolution in accordance with its Rules.

16.5 Appointment of Arbitrators

Each Party shall appoint one arbitrator and the two thus appointed shall appoint the third to preside over the proceedings, provided however that- (i) if a Party fails to appoint an arbitrator within thirty (30) days of receipt of request to do so by the other Party; or (ii) if the two arbitrators fail to agree on the third arbitrator within thirty (30) days of their appointments, the appointment shall be made by the Regional Centre for International Commercial Arbitration, Lagos on the application of any Party.

16.6 Seat and Place of Arbitration

The seat and place of Arbitration shall be Lagos, Nigeria.

16.7 Language of Arbitration

The language to be used in the arbitral proceedings shall be English.

16.8 Related disputes

If more than one (1) arbitration is commenced under this Agreement having the same arbitration provisions as this Agreement ("**Related Agreements**") and any Party contends that two (2) or more arbitrations commenced under the Related Agreements are substantially related and/or involve the same parties and that the issues should be heard in one proceeding, the arbitral 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 arbitral tribunal upon such terms or conditions as the arbitral 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.

16.9 Fees and Expenses

The fees and expenses of the arbitrators and all other expenses of the arbitration shall be borne and paid by the respective Parties subject to determination by the Arbitrators. The arbitrators may provide in the arbitral award for reimbursement to the successful Party of its costs and expenses in bringing or defending the arbitration claim, including legal fees and expenses incurred by the Party.

16.10 Performance during Arbitration

Pending a decision on the Dispute submitted to arbitration, Parties shall continue to perform their obligations under this Agreement without prejudice to a final adjustment in accordance with the arbitral award.

17 Waiver of Sovereign Immunity Clause

The Grantor hereby irrevocably and unconditionally agrees that to the extent that it may be entitled in any jurisdiction to claim for itself or any of its property or assets immunity (sovereign or otherwise) in respect of its obligations under this Agreement, from services of process, jurisdiction, suit, or proceeding, judgment execution, attachment prior to judgment, in aid of execution of judgment or otherwise or legal process or to assets immunity of that kind(whether or not claimed), it hereby irrevocably agrees not to claim and irrevocably waives that immunity to the fullest extent permitted by the laws of that jurisdiction, subject to the indemnification contained below in accordance with the Federal Government of Nigeria Circular, Reference Number SGF/OP/1/S.3/X/1737 dated 11th August 2014 to wit: Provided that consular, diplomatic, public buildings such as Nigeria National Petroleum Corporation Ltd (NNPCL) Central Bank of Nigeria (CBN) and National Sovereign Investment Authority etc., established by acts of parliament as separate legal entities of the Government of Nigeria (distinct from property intended for use for commercial purposes) and military assets overseas belonging to the Government of the Federal Republic of Nigeria (protected assets) shall in all cases be exempted from a legal process or foreign proceedings for the enforcement or execution of judgment, arbitration award, asset forfeiture, or fines.

18 EXPERT DETERMINATION

18.1 Reference to Expert

For any matter to be referred to an Expert under this Agreement, the Grantor and the Concessionaire agree that such determination shall be conducted expeditiously by an independent and impartial person, body or organisation of international reputation to be appointed by mutual consent or in absence of agreement, by the relevant Nigerian professional body (the “**Expert**”).

18.2 Qualification of Expert

The expert shall have demonstrated technical or professional expertise in the area to which such determination relates and shall not be an agent, employee, or Contractor or a former agent, employee, or Contractor of any Party.

18.3 Submissions to Expert

The Parties are entitled to make submissions to the Expert including oral submission and shall provide (or procure that others provide) the Expert with such assistance and documents relating to the Hydro Property and the Operations as the Expert reasonably requires for the purpose of reaching a decision, subject to any confidentiality provisions and to the Expert agreeing to give such confidentiality undertakings as, the Grantor and the Concessionaire may reasonably require.

18.4 Notice of Decision of Expert

Unless otherwise agreed, the Expert shall prepare a written decision and give notice (including a copy) of the decision to the Grantor, and the Concessionaire within a maximum of three (3) months of the matter being referred to the Expert.

18.5 Expert Not Arbitrator

In the event that any dispute, difference, or claim is referred to an Expert, such Expert shall be deemed to act as an Expert and not as an arbitrator, and, save in the case of fraud or manifest error, its determination shall be final and binding on all concerned.

18.6 Cost of Engaging Expert

The cost of engaging an Expert shall unless otherwise provided, be borne fifty percent (50%) by the Grantor and fifty percent (50%) by the Concessionaire.

19 MISCELLANEOUS

19.1 Expenses of the Parties

All expenses incurred by or on behalf of either the Concessionaire or the Grantor including all fees and expenses of agents, representatives, counsel and accountants employed by such Party in connection with the preparation of this Agreement and the consummation of the transactions contemplated by this Agreement, shall be borne solely by the Party who shall have incurred such expenses, and the other Party shall have no liability in respect thereof, except as otherwise agreed.

19.2 Further Assurances

Where it shall be necessary and proper after the execution hereof to execute any additional documents or take further action to effectuate the intent of this Agreement, the Parties agree to take such action.

19.3 Applicable Law

This agreement and any dispute (or any dispute referred to an Expert) arising out of or in connection with it or its subject matter, existence, negotiation, validity, termination or enforceability (including non-contractual disputes or claims) shall be governed by and construed in accordance with the Laws of Nigeria.

19.4 Entire Agreement

This Agreement is intended by the Parties as the final expression of their Agreement and is intended also as a complete and exhaustive statement of their Agreement with respect to the subject matter contained herein and supersede any previous Agreements or understandings between the Parties or their Affiliates.

19.5 Amendments

This agreement shall not be amended except with the express written consent of all the Parties to the Agreement.

19.6 Waiver

19.6.1 No waiver by either the Concessionaire or the Grantor of any default by either Party in the performance of any of the provisions of this Agreement:

(A) shall operate or be construed as a waiver of any other or further defaults whether of a like or different character; or

(B) Shall be effective unless in writing duly executed by a duly authorised representative of such Party.

19.6.2 Neither the failure by a Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement nor time or other indulgence granted by one (1) Party to the other Party shall act as a waiver of such breach nor as an acceptance of any variation, or as the relinquishment of any such right or any other right hereunder.

19.7 Confidentiality

19.7.1 Each of;

(A) the Concessionaire; and

(B) the Grantor together with each of their respective employees;

undertakes that, subject to Clause 19.8 unless the prior written consent of the other Party shall first have been obtained, such Party shall procure that its officers, employees, adviser, agents and consultants shall, keep confidential and shall not by failure to exercise due care or otherwise by any act or omission disclose to any person whatsoever, or use or exploit commercially for its or their own purposes, any of the confidential information of the other Party.

19.7.2 For the purpose of this Clause 19.7, “**Confidential information**” means the contents of this Agreement, any Industry Document and also includes:

(A) (in relation to the obligation of the Grantor) any information received or held by the Grantor (or any of its officers, employees, advisers, agents and consultants) of whatever nature concerning the business, finances, assets, liabilities, dealings, transactions, customers, sub-Contractors, suppliers, processes or affair of the Concessionaire : and

(B) (in relation to the obligations of the Concessionaire) any information received or held by the Concessionaire (or any of its officers, employees, advisers, agents and consultants) of whatever nature concerning the assets, processes, or affairs, relating to the Grantor, and the Hydro Power Station and the Operations,

which any Party may from time to time receive or obtain (verbally or in writing or in disk or electronic form) from the

other Party as a result of negotiating, entering into, performing its obligations pursuant to this Agreement, any Industry Document or either or licences.

19.8 Permitted disclosure

19.8.1 The consent referred to in Clause 19.7.1 shall not be required for disclosure by a Party of any Confidential Information:

- (A) to its employees, agents, officer, and professional advisers, in each case to the extent required to enable such Party to carry out its obligations under this Agreement, any Industry Document or the licences and who shall in each case be made aware by such Party of its obligations under this Agreement and shall be required by such Party to observe the same restrictions on the use of relevant information as are contained in Clause 19.7.1;
- (B) Subject to compliance with Clause 19.9, professional advisors and to prospective lenders or investors in such Party, to succeeding entities, to prospective transferees and assignees and their professional advisors that, in each case, have agreed to be bound by these confidentiality provisions;
- (C) to the extent required by the laws of Nigeria (or any other applicable laws) to which such Party is or may become subject or pursuant to any order of court or competent tribunal;
- (D) to the extent that the relevant Confidential Information is in the public domain otherwise than by breach of this Agreement by such Party;

- which is disclosed to such Party by a third Party who is not in breach of any undertaking or duty as to confidentiality whether express or implied;
- (E) where the information is independently developed after the Commencement Date;
 - (F) which that Party can prove that it lawfully possessed prior to obtaining it from another Party; or
 - (G) as may be otherwise provided in or required pursuant to any Industry Document or either of the licences.

19.9 Required disclosure

- 19.9.1 Where a Party is required, in the circumstance contemplated by Clause 19.8.1 (B), to disclose any information such Party shall (save to the extent prohibited by law) give to other party such notice as its practical in the circumstances of such disclosure and shall co-operate with the other party, having due regard to the other party's views, and take such steps as the other party may reasonably require in order to enable it mitigate the effects of, or avoid the requirements for any, such disclosure.

19.10 Termination of Agreement

- 19.10.1 On termination of the Concession Term, both the Concessionaire and the Grantor shall have the option to require the other Party holding any confidential information obtained pursuant to this Agreement from the requesting Party to return or destroy all such Confidential Information.
- 19.10.2 The provisions of Clause 19.7 shall survive for a period of five (5) years from the termination of this Agreement.

19.11 Counterpart

This Agreement may be executed in two (2) or more counterparts, all of which will be considered one (1) and the same Agreement and each of which will be deemed an original.

19.12 Severability

Where any term or provision of this Agreement is held by a court or other authority of competent jurisdiction to be invalid, void, unenforceable or against the public policy, the rest of this Agreement will remain in full force and effect and will in no way be adversely affected; provided, however, that the severance of such term or provision does not render the performance of a Party's material obligations impracticable or impossible.

19.13 Assignment and Security

- 19.13.1 Neither the Concessionaire nor the Grantor shall assign its interest in this Agreement without the prior approval of the other Party (such approval not to be unreasonably withheld). Provided that the Concessionaire may assign this Agreement by way of security to Approved Lenders for the purpose of obtaining financing in respect of the Operations in accordance with Clause 5.4.
- 19.13.2 Neither Party shall assign this Agreement in whole or in part without the prior approval of the ICRC.

19.14 Relationship of the Parties

This agreement shall not be interpreted or construed to create an Agency, association, joint venture, or partnership between the Concessionaire and the Grantor or to impose any partnership obligation or liability upon any Party. No Party shall have any right, power or authority to enter any agreement or undertaking for, to act

on behalf of, to act as or be an agent or representative of, or otherwise bind, the other party.

19.15 No third Parties

This Agreement is intended solely for the benefit of the Parties and nothing in this Agreement shall be construed to create any duty to, standard of care with reference to, or any liability to, or confer any right of suit or action on any Person not a Party to this Agreement.

19.16 Language

The language for the purpose of administering and interpreting this Agreement shall be English.

19.17 Consents

Whenever a consent or approval is required by either the Concessionaire or the Grantor from the other Party, such consent or approval shall not be unreasonably withheld or delayed.

Provided always that any consent or approval sought by the Concessionaire from the Grantor in respect of this Agreement and or connected with the performance of the Concessionaire's obligations or duties, shall be deemed granted if no objection is raised by the Grantor within 30 (thirty) days of such request; subject to the provisions of Clause 4.2.2.

19.18 Interest

Any amounts due but not paid in accordance with this Agreement shall bear interest at the Agreed Interest Rate.

19.19 Notices

19.19.1 the Concessionaire undertakes and agrees to send a copy of any notice provided or received under any Industry Documents or in respect of the licences to the Grantor at the time such notice is sent or received in accordance with the

terms of the relevant Industry Document or licence (as applicable).

19.19.2 any notice (including any approval, consent, objection or other communication) in connection with this Agreement must be in writing and signed by or on behalf of the Party giving it and shall be:

- (A) sent by email to the relevant email address to the addressee which is specified in Clause 19.19.3; or
- (B) delivered by hand or sent by pre-paid recorded delivery, recognised international courier service, registered post or first class pre-paid post (airmail if overseas) to the address of the addressee which is specified in Clause 19.19.3, and shall be marked for the attention of the person so specified (in each case subject to any further notice delivered from time to time in accordance with the provisions of Clause 19.19.6).

19.19.3 the relevant details of each Party at the date of this Agreement are:

(A) The Grantor

Address: 11, Osun Crescent, Off IBB Way, Maitama, Abuja

Email: Aaokoh@bpe.gov.ng

Attention: Alexander A. Okoh, Director General

(B) The Concessionaire

19.19.4 In the absence of evidence of earlier receipt, any notice shall take effect from that time that it is deemed to be received:

- (A) in the case of hand delivery, upon delivery at that address; or
- (B) in the case of a letter sent by registered mail, pre-paid recorded delivery, recognised international courier service of first class pre-paid post, on the third (3rd) day after the posting or, if posted to or from a place outside Nigeria, the seventh(7th) day after posting; and
- (C) in the case of email, in the absence of a delivery error message at the expiration of twenty-four (24) hours after the time it was sent.

19.19.5 Any notice received or deemed to be received in accordance with Clause 19.19.4 above on a day which is not a Business Day or after 5.00 p.m. on any Business Day according to local time in the place of receipt, it shall be deemed to be received on the next working Day.

19.19.6 A Party may notify the other party in writing if the relevant address specified in Clause 19.19.3 is no longer appropriate for the service of notices in accordance with this Clause 19.19.

20 PAYMENT FREE OF DEDUCTION

Subject to Clause **Error! Reference source not found.** and other provisions of this Agreement, all sums payable under this Agreement shall be paid free and clear of all deductions or withholdings whatsoever save only as may be required by the Laws of Nigeria and without abatement or set-off (whether equitable or otherwise).

IN WITNESS WHEREOF, the parties to this Agreement have here unto set their hands and seals the date and year first above written.

The Common Seal of the
BUREAU OF PUBLIC ENTERPRISES
was hereunto affixed in presence of

[Name]
DIRECTOR GENERAL

[Name]
**HEAD, LEGAL SERVICES &
COUNCIL SECRETARIAT**

The Common Seal of the **[NAME OF CONCESSIONAIRE]**
was hereunto affixed in the presence of

[Name]
DIRECTOR

[Name]
SECRETARY

ANNEXURE A:

Letter of Engagement by the Grantor granted by the Technical Evaluation Committee of the Grantor vide its letter Ref. _____ dated _____.

ANNEXURE B:

Letter of award of the Concession contract to the Concessionaire for the Rehabilitation, Operation, Finance, Maintenance and Management services of the facility by the Grantor vide its letter Ref. _____ dated _____.

ANNEXURE C:

Concessionaire Letter of Acceptance of the award of the Concession
Contract dated _____.

SCHEDULE 1

MAP OF RELEVANT CONCESSION AREA

TABLE 1: COORDINATES OF CPs (“Corner Points”)

SCHEDULE 2
FIXED ASSETS

SCHEDULE 3
THE HYDRO PROPERTY

SCHEDULE 4 CONSENTS AND CONTRACTS

PART A: SPECIFIED CONSENTS

The specified consents for the purpose of this Agreement shall include:

1. Generation Licence; and
2. Issuance to the Concessionaire of a Water Licence

PART B: CONTRACTS

SCHEDULE 5
MINIMUM PERFORMANCE TARGETS

SCHEDULE 6
PAYMENT OF CONCESSION FEES

SCHEDULE 7
BPE TRANSACTION MANAGEMENT FEE AND ICRC SERVICE FEE

The BPE transaction management fee is 5% of the Commencement fee

The ICRC regulatory fee is 2% of EBITDA

SCHEDULE 8
FORM OF CONCESSIONAIRE’S PERFORMANCE BOND

SCHEDULE 9
INSURANCE POLICY

**SCHEDULE 10
TRANSITION PLAN**

1.

SCHEDULE 11

TERMS OF REFERENCE OF THE HANDBACK STEERING COMMITTEE

SCHEDULE 12
EARLY TERMINATION PURCHASE PRICE [TO BE NEGOTIATED]

SCHEDULE 13
INITIAL BUDGET

SCHEDULE 14
POST-ACQUISITION BUSINESS PLAN

SCHEDULE 15

TERMINAL VALUE OF IMPROVEMENTS

SCHEDULE 16
IMPROVEMENT NOTIFICATION FORM

SCHEDULE 17
Environmental Conditions

SCHEDULE 18
CONTRACT MANAGEMENT TEAM