

## POWER PURCHASE AGREEMENT

This power purchase agreement is entered into this 25<sup>th</sup> day of April 2017, by and among

Federal Ministry of Power, Works and Housing having its office at Power House, 14 Zambezi Crescent, Maitama District, Abuja Federal Capital Territory, Nigeria (hereinafter referred to as "Buyer") which expression shall where the context so admits include its successors-in-title and assigns) of the first part, and

Abuja Electricity Distribution Company Limited, a company registered under the laws of the Federal Republic of Nigeria and having its registered office at XXX, Nigeria (hereinafter referred to as the "Reserve Buyer" which expression shall where the context so admits include its successors-in-title and assigns) of the second part, and

XXX, company registered under the laws of the Federal Republic of Nigeria and having its registered office at XXX, Nigeria (hereinafter referred to as "Seller" which expression shall where the context so admits include its successors-in-title and assigns) of the third part.

Seller, Buyer, and Reserve Buyer are in this Agreement together referred to as "Parties" and separately as a "Party". Buyer and Reserve Buyer are in this Agreement together referred to as "Buyers".

WHEREAS:

- A. Buyer wishes to buy electricity for consumption by its facilities situate at Power House, 14 Zembezi Crescent, Maitama District, Abuja Federal Capital Territory, Nigeria (the "Site").
- B. Reserve Buyer is licensed by the Nigerian Electricity Regulatory Commission (the "Commission") to buy, distribute and sell electricity.
- C. Seller is desirous of selling electricity to Buyer for its consumption at the Site, and to Reserve Buyer for sale to its customers.
- D. Buyer owns facilities that can be used by Seller to construct and install a solar electric power generation facility to produce electricity (the "Facilities"), and Buyer has a point of load to be supplied by the Seller and the Reserve Buyer own and operate distribution systems within the Site (the "Distribution System") that can be used to deliver electricity to points of consumption within the Site, and to Reserve Buyer's customers through Reserve Buyer's distribution system outside the Site.

- E. Seller wishes to use the Facilities and the Distribution System and additional facilities provided by the Seller, at Seller's cost and expense, to develop, engineer, finance, procure, construct, install, own, operate and maintain a solar electricity generation facility (the "Power Station") to be located at the Site to produce electricity for sale to the Buyer for its consumption at the Site, and to the Reserve Buyer for sale to its customers.
- F. Seller wishes to sell and Buyer and Reserve Buyer wish to purchase electricity produced by the Power Station on and pursuant to the terms and conditions contained herein.

Now therefore, for and in consideration of the premises and mutual covenants contained herein, and intending to be legally bound, the Parties hereby agree as follows:

1. Definitions and Interpretation.

1.1. Unless the context indicates otherwise:

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

1.2. Definitions

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

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

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

"Applicable Law" means: all laws, codes, treaties, ordinances, decrees, statutes, rules, guidelines and regulations (including without limitation the Grid Code, Market Rules

and Metering Code) of the FGN, including any agencies thereof, or any state, local, municipal, regional, or any other duly constituted governmental body, instrumentality, agency in the Federal Republic of Nigeria, each having jurisdiction and lawful authority over the Parties in the performance of obligations herein which a Party is under lawful obligation to comply. Any reference to an Applicable Law shall include all duly constituted statutory and regulatory action on the part of the FGN, including any agencies thereof, or any state, local, municipal, regional, or any other duly constituted governmental body, instrumentality, agency in the Federal Republic of Nigeria gazetted or circulated by public notice by any such government or governmental agency charged by the relevant authority to consolidate, amend or replace such Applicable Law and shall include all rules and regulations duly promulgated or waived thereunder

"Authorization" means any applicable approval, consent, exemption (including waiver), license, order or permit of or duly issued by or from any Relevant Authority required for the due performance by a Party of any covenant or obligation hereunder and includes the Initial Authorizations.

"Availability Event" has the meaning given to that term in Clause 8.6.

"Change in Law" has the meaning given to that term in Clause 12.1.

"Change in Tax" has the meaning given to that term in Clause 12.2.

"Commercial Operations Certificate" has the meaning given to that term in Clause 7.2(d).

"Commercial Operations Date" has the meaning given to that term in Clause 8.1.

"Commercial Operations Due Date" means the date specified in Schedule 3.

"Commission" means Nigerian Electricity Regulatory Commission, a body established under the Act.

"Commissioning" means the undertaking of the Commissioning Procedures on the Power Station.

"Commissioning Period" means the duration of the Commissioning.

"Commissioning Procedures" has the meaning given to that term in Clause 7.1.

"Concession Agreement" means the agreement entered into by Buyer and Seller that authorizes Seller to use or otherwise encumber Buyer Facilities for the purpose of discharging its obligations under this Agreement.

"Confidential Information" has the meaning given to that term in Clause 19.9.1.

"Contract Daytime Capacity" means 1,000 kW.

"Contract Daytime Hours" means between the hours of 07:00 and 19:00.

"Contract Nighttime Capacity means 250 kW.

"Contract Nighttime Hours" means between the hours of 19:00 and 07:00 of the next Day.

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

"Contractor" means any Person engaged by a Party to discharge any of the Party's obligations under this Agreement with respect to the Power Station, the Project, the Site, the Distribution System or the Reserve Buyers distribution system.

"Day" means each period of twenty-four (24) Hours commencing at 00:01 Hours, and "Daily" shall be construed accordingly.

"Delayed Commissioning Event" has the meaning given to that term in Clause 9.1(g).

"Delivered Electrical Energy" means the useful electrical energy as measured by the Metering System, expressed in kWh, generated by the Power Station, and delivered at the Delivery Points for sale to Buyer, from the Commercial Operations Date for the duration of the Term or earlier termination in accordance with this Agreement. For the avoidance of doubt: (i) electrical energy is deemed useful if it conforms to the standards stipulated in the Grid Code and the Market Rules; and (ii) the Delivery Points includes the Grid Delivery Points.

"Delivery Points" means the 11kV points, inclusive of the Grid Delivery Point, that are part of the Distribution System, and more specifically described in Schedule 1, at which the Buyer takes title and custody of the Delivered Electrical Energy from the Seller.

"Distribution System" means the facilities for distributing electricity within the Site and supplying electrical energy to the Grid Delivery Point and to Buyer's points of consumption of electrical energy within the Site.

"Effective Date" means the date of this Agreement.

"Exchange Rate" has the meaning given to that term in Clause 8.9.1.

"Facilities" means facilities more specifically described in Schedule 1 located within the Site, including the Distribution System, rooftops, free ground space, other unencumbered horizontal surfaces, conduits, rights of way that Seller wishes to incorporate into the Power Station or otherwise encumber or make use of to deliver Net Electrical Energy produced by the Power Station to the Buyer and the Reserve Buyer.

"FGN" means the Federal Government of Nigeria.

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

"Finance Parties" means any financial institutions or other persons granting credit, guarantee, hedging or other debt facilities to Seller for the construction, commissioning and operation of the Project.

"Good Industry Practices" means those practices, methods, and procedures conforming to safety and legal requirements that are attained by exercising that degree of skill, diligence, prudence and foresight that would reasonably and ordinarily be expected from a skilled and experienced generator of electricity engaged in the same or a similar type of undertaking or activity under the same or similar circumstances and conditions to those pertaining in Nigeria and satisfying the health, safety, and environmental standards of reputable international electric generation companies. Good Industry Practices are not limited to optimum practices, methods or acts to the exclusion of all others, but rather are a spectrum of possible practices, methods and acts that would reasonably and ordinarily have been expected to accomplish the desired result at reasonable cost consistent with reliability and safety. Such practices, methods and actions shall include (and shall be adjusted if necessary to take account of) the conditions of the Site, and the operations and maintenance guidelines recommended by the manufacturers of the plant, machinery and equipment included in the Power Station, including those guidelines that are required to be followed in order to avoid voiding any warranty of any component of the Power Station. For the avoidance of doubt, in the event of a conflict between Applicable Law and Good Industry Practices, Applicable Law shall prevail.

"Grid Code" means the grid code for the Nigerian electric sector, as approved by the Commission from time to time, and all rules, regulations and procedures established pursuant thereto. (Distribution Code applies to voltage 33kv and below which is applicable in this circumstance)

"Grid Delivery Point" means the 11kV point that is part of the Distribution System, more specifically described in Schedule 1, at which the Reserve Buyer takes title and custody of a portion of the Delivered Electrical Energy.

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

"Hour" means each period of sixty (60) minutes commencing at 00:019, and "Hourly" shall be construed accordingly.

"Independent Engineer" means a suitably qualified Person with requisite skills and experience, appointed by Seller at its own cost and expense, and approved by Buyer and Reserve Buyer, such approval not to be unreasonably withheld, to conduct inspections of the Power Station, the Distribution System and the Reserve Buyer's distribution system in connection with the financing, constructing, installing, testing, and commissioning the Power Station, and to issue independent certifications in respect thereof.

"Initial Authorizations" means the Authorizations set out in Schedule 4.

"kV" means kiloVolts, a unit electrical potential being one thousand (1,000) volts.

"kW" means kiloWatt, a unit of electrical capacity being one thousand (1,000) Watts.

"kWh" means kiloWatt-hour, a unit of electrical energy being one thousand (1,000) Watt-hours.

"Liquidated Damages" has the meaning given to that term in Clause 9.

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

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

"Metering System" has the meaning given to that term in Clause 8.7.

"Minimum Daytime Capacity" means 75% of the Contract Daytime Capacity.  
"Minimum Nighttime Capacity" means 25% of the Contract Nighttime Capacity.

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

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

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

"Metering Code" as developed and implemented by the Commission.

"Naira" or "N" means the currency of the Federal Republic of Nigeria.

"Net Electrical Energy" has the meaning given to that term in Clause 8.3(a).

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

"Parties" has the meaning given to that term in the Recitals.

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

"Power Station" means the solar electricity generating facilities on Seller's side of the Delivery Points, to be constructed for and owned by Seller at or proximate to the Site, whether completed or at any stage of its construction, including without limitation or regard to level of development, land and rights to use of land, engineering and design documents, construction contracts, photovoltaic generating units, auxiliary equipment, all distribution and interconnection facilities on Seller's side of the Delivery Points including the step-up transformer to convert internal plant voltages to 11 kV, metering equipment, control room, water treatment facilities, solid waste disposal facilities, and any residential facilities made available to certain employees of Seller and its Contractors.

"Prohibited Shareholder" means a Person who is proposed to become a shareholder in Seller that is owned or controlled by, or is under the management, in any capacity of, any Person who: (a) has been named on a list of sanctioned persons promulgated by the United Nations Security Council or its committees pursuant to resolutions under Chapter VII of the Charter of the United Nations; (b) has been named on the World Bank's list of ineligible firms (see, [www.worldbank.org/debarr](http://www.worldbank.org/debarr)); (c) that is listed on a list, published by the Federal Government of Nigeria or Central Bank of Nigeria, of individuals or companies prohibited by the Federal Government of Nigeria or any agency thereof (FGN) from involvement in transactions involving the FGN; or (d) in the

reasonable opinion of Buyer or Reserve Buyer, otherwise poses a risk to the reputation of the Project (or any part thereof).

"Project" means the design, development, engineering, procurement, construction, permitting, commissioning, testing, operation and maintenance of the Power Station, and the sale and purchase of Net Electrical Energy and all activities incidental thereto.

"Project Agreement" means this Agreement, the Concession Agreement, or any financing, engineering, procurement or construction agreement entered into by a Party and disclosed to the other Parties for the specific purpose of discharging its obligations under this Agreement.

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

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

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

"Scheduled Maintenance Outage" means a planned interruption of the Power Stations ability to deliver Electrical Energy at the Delivery Points.

"Seller Monthly Report" has the meaning given to that term in Clause 8.5.6.

"Seller Performance Guarantee" means security for Seller's obligation to achieve the Commercial Operations Date (i) by the Required Commercial Operations Date and (ii) with verified capability to generate and deliver at the Delivery Points the Contract Daytime Capacity during Contract Daytime Hours and the Contract Nighttime Capacity during Contract Nighttime Hours.

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

"Site" means the Buyer's premises situate at Power House, 14 Zambezi Crescent, Maitama District, Abuja Federal Capital Territory, Nigeria.

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

"Term" has the meaning given to that term in Clause 14.1.

"Transfer" means a transfer or event requiring consent of the other Party in accordance with Clause 15.

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

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

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

- (a) reference to any publication, statute, rule, regulation, instrument or standard means the same as amended, supplemented or re-enacted from time to time;
- (b) any requirement that an action may or shall be taken within a specified number of Days means that such action may or shall be taken within the number of Days so specified starting at 00:00:00 Hours on the Day on which the requirement to take such action arose and ending at 23:59:59 Hours on the last Day;
- (c) any reference to time shall be to the time in Abuja, Nigeria;
- (d) reference to any amount of money means that amount in Naira, except where indicated otherwise;
- (e) reference to clauses and schedules means reference to Clauses hereof, and schedules to this Agreement;

- (f) headings are inserted for ease of reference only and shall not form part of this Agreement, affect its interpretation or construction or have any legal effect;
- (g) any remedy that provides for the payment of damages by a Party represents a genuine pre-estimate of the likely loss or damage which will be suffered by the Party to whom such damages are payable in consequence of the act or omission of the Party liable to pay such damages and shall not in any way be construed as a penalty;
- (h) any good faith best estimate which is given by a Party when required in accordance with this Agreement is non-binding and given for information only and the Party giving such good faith best estimate shall have no liability to the other Party for any inaccuracy thereof;
- (i) reference to any notice or notification means a notice or notification made in writing or as otherwise expressly provided in this Agreement;

## 2. Representations and Warranties

### 2.1. Each of the Parties represents and warrants to the other Parties that:

2.1.1 It has full corporate power and authority to execute and deliver this Agreement and to perform its obligations hereunder.

### 2.1.2 Its execution, delivery and performance of this Agreement:

- (a) it has been duly authorized by all requisite corporate action, and no other proceedings on its part or any other Person are necessary for such authorization;
- (b) will not violate (i) Applicable Law or any applicable order of any Relevant Authority or (ii) any provision of its memorandum and articles of association; 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 it is a party or by which it or its property is bound, excluding defaults or violations that would not, individually or in the aggregate, have a material adverse effect on its business, properties, financial condition or results of operation, or on its ability to perform its obligations hereunder.

2.1.3 It has duly executed and delivered this Agreement and this Agreement constitutes a legal, valid and binding obligation, enforceable against it in accordance with the terms of the Agreement, subject to Applicable Law.

- 2.1.4 It 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.
- 2.1.5 There is no action, suit, proceeding or investigation pending or, to its knowledge, threatened (a) for its dissolution, or (b) 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.
- 2.1.6 It has:
- (a) carefully examined this Agreement, including the Schedules, thoroughly and become familiar with all their respective terms and provisions;
  - (b) investigated to its satisfaction the Applicable Law and it is satisfied it can perform its obligations under this Agreement in accordance with Applicable Law;
  - (c) the experience, qualifications, and capabilities to perform its obligations hereunder; and
  - (d) made all investigations and inspections that it deems necessary to perform its obligations hereunder, including without limitation investigations and inspections of the Site.

### 3. Seller's Covenants, Representations and Warranties

#### 3.1. Seller represents and warrants to Buyer and Reserve Buyer that:

- (a) Seller is a company, duly organized and incorporated under the Applicable Law, and has all requisite corporate power and authority to own or lease and operate its properties and to carry on its business as proposed to be conducted under this Agreement.
- (b) No filing or registration with, no notice to and no permit, authorization, consent or approval of any Person is required for the execution, delivery or performance of this Agreement by Seller, except for the Initial Authorizations.
- (c) Seller is not in violation of any Applicable Law or judgment entered by any Relevant Authority, which violations, individually or in the aggregate, would materially affect the performance of any of the obligations under this Agreement by Seller. There are no legal or arbitration proceedings or any proceeding by or

before any Relevant Authority, now pending or (to the best knowledge of Seller) threatened against Seller that, if adversely determined, could reasonably be expected to have a materially adverse effect on the financial condition, operations, prospects or business, as a whole, of Seller, or its ability to perform under this Agreement.

3.2. Seller hereby covenants and agrees with Buyer and Reserve Buyer to:

- (a) in a workmanlike and professional manner, and in accordance with the specifications in Schedule 2 of this Agreement, the Concession Agreement, Applicable Law and Good Industry Practices, finance, construct, install, test, commission, operate and maintain (or cause to be so financed, constructed, installed, tested, commissioned, operated and maintained for Seller's benefit) the Power Station in order for Seller to, from the Commercial Operations Date, make available and deliver Delivered Electrical Energy at the Delivery Points, inclusive of the Grid Delivery Point, in accordance with the terms of this Agreement;
- (b) commencing on the Effective Date and continuing until the Commercial Operations Date, Seller shall provide Buyer and Reserve Buyer monthly written reports reasonably informing Buyer and Reserve Buyer of the progress on the construction of the Power Station. Such monthly reports shall include:
  - (i) a summary of the progress made since the prior report;
  - (ii) the anticipated Commercial Operations Date;
  - (iii) the nature and extent of any circumstances reasonably likely to cause a delay in the Commercial Operations Date.
- (c) grant any access Buyer or Reserve Buyer may reasonably require at reasonable times, upon giving reasonable notice, and at the risk and cost of the Party giving such notice, and complying with Seller's safety rules and procedures, to by itself or its nominees, inspect the Power Station;
- (d) within twenty (20) Days of the Effective Date, nominate the Independent Engineer for the approval of the Buyers;
- (e) from the Commercial Operations Date for the duration of the Term or earlier termination in accordance with this Agreement, operate and maintain the Power Station to have the capability to generate and deliver at the Delivery Points the Contract Daytime Capacity during Contract Daytime Hours and the Contract Nighttime Capacity during Contract Nighttime Hours;

- (f) from the Commercial Operations Date for the duration of the Term or earlier termination in accordance with this Agreement, sell all the Delivered Electrical Energy to Buyer;
- (g) operate and maintain the Power Station in all material respects, in accordance with this Agreement, the Concession Agreement, Good Industry Practices, the Grid and Distribution Code, and Applicable Law;
- (h) at its own cost and expense, from the Execution Date, apply for, procure, diligently pursue and, following receipt, maintain and, where applicable, cause its Contractors and Affiliates to procure and maintain all Authorizations it is required to obtain and thereafter maintain to fulfil its obligations under this Agreement;
- (i) work and cooperate in good faith with Buyers with respect to all of Buyer's and Reserve Buyer's obligations and rights hereunder;
- (j) supply, install, maintain, and replace all auxiliary facilities necessary to interconnect the Power Station to the Distribution System at the Delivery Points, including the Grid Delivery Point;
- (k) no later than 30 days after the Execution Date, execute the Concession Agreement having the terms set forth in Schedule 5;
- (l) no later than 30 days after the Execution Date, deliver the Seller Performance Guarantee to Buyer having the terms and in the sums set forth in Schedule 6 and thereafter continuously maintain the Seller Performance Guarantee (or a replacement thereof) until the Commercial Operations Date.
- (m) At the end of the contract term or useful life term of the power generating capacity, Seller has the obligation to decommission the power generating facility and bear the cost of doing so to the best international practice and in compliance to all relevant laws of Federal Republic of Nigeria without any recourse to the Buyer and the Reserved Buyer.

#### 4. Buyer's Covenants, Representations and Warranties.

##### 4.1. Buyer represents and warrants to Seller and Reserve Buyer that:

- (a) No filing or registration with, no notice to and no permit, authorization, consent or approval of any Person is required for the execution, delivery or performance of this Agreement by Buyer, except for the Initial Authorizations.

- (b) Buyer is not in violation of any Applicable Law or judgment entered by any Relevant Authority, which violations, individually or in the aggregate, would materially affect the performance of any of Buyer's obligations under this Agreement. There are no legal or arbitration proceedings or any proceeding by or before any Relevant Authority, now pending or (to the best knowledge of Buyer) threatened against Buyer that, if adversely determined, could reasonably be expected to have a materially adverse effect on the financial condition, operations, prospects or business, as a whole, of Buyer, or its ability to perform under this Agreement.

4.2. Buyer hereby covenants and agrees with Seller and Reserve Buyer to:

- (a) from the Commercial Operations Date for the duration of the Term or earlier termination in accordance with this Agreement, purchase from Seller all the Delivered Electrical Energy up to the Contract Daytime Capacity during Contract Daytime Hours and up to the Contract Nighttime Capacity during Contract Nighttime Hours;
- (b) from the Commercial Operations Date for the duration of the Term or earlier termination in accordance with this Agreement, deliver, or cause to be delivered at the Grid Delivery Point, and sell to Reserve Buyer, on terms to be agreed between Buyer and Reserve Buyer, any of the Delivered Electrical Energy that is not consumed by the Buyer at the Site, up to the Contract Daytime Capacity during Contract Daytime Hours and up to the Contract Nighttime Capacity during Contract Nighttime Hours;
- (c) from the Commercial Operation Date for the duration of the Term or earlier termination in accordance with this Agreement, offtake at the Grid Delivery Points, and buy from the Reserved Buyer on the terms to be agreed between the Buyer and Reserved Buyer, any electrical energy at any time consumed at points of electricity consumption at the site that exceeds the Delivered Electrical Energy (hereinafter referred to as "Backup Electrical Energy");
- (d) from the Commercial Operations Date for the duration of the Term or earlier termination in accordance with this Agreement, configure, operate and maintain the Distribution System in to:
  - (i) offtake all the Delivered Electrical Energy at the Delivery Points and distribute such electrical to electricity consumption at the Site, and to the Grid Delivery Point; and
  - (ii) offtake any electrical energy supplied by the Reserve Buyer at the Grid Delivery Point, and distribute such electrical energy to all the points of electricity consumption at the Site.

- (e) Operate and maintain the Distribution System in all material respects, in accordance with this Agreement, the Distribution Code, Good Industry Practices and Applicable Law;
- (f) at its own cost and expense, from the Execution Date, apply for, procure, diligently pursue and, following receipt, maintain and, where applicable, cause its Contractors and Affiliates to procure and maintain all Authorizations it is required to obtain and thereafter maintain to fulfil its obligations under this Agreement;
- (g) work and cooperate in good faith with Seller and Reserve Buyer with respect to all of Seller's and Reserve Buyer's obligations and rights hereunder;
- (h) no later than 30 days after the Execution Date, execute the Concession Agreement having the terms set forth in Schedule 5;
- (i) deliver, on or before the Commercial Operations Date, the Buyer Payment Guarantee to Seller having the terms and in the sums set forth in Schedule 7 in a sum that is at least  $180 \text{ days} \times \text{Energy Charge Rate} \times (\text{Contact Daily Capacity} \times 12 + \text{Contract Nighttime Capacity} \times 12)$  (the "initial Payment Security")
- (j) maintain the Buyer Payment Guarantee (or a replacement thereof) for the duration of the Term or earlier termination in accordance with this Agreement in a sum that is at least  $90 \text{ days} \times \text{Energy Charge Rate} \times \text{Contact Daily Capacity} \times 12 + \text{Contract Nighttime Capacity} \times 12$  (the "Minimum Payment Security"), which figure is lower than the Initial Payment Security, but without withdrawing any sums from the Buyer Payment Guarantee except as provided for in this Agreement.

5. Reserve Buyer's Covenants, Representations and Warranties.

5.1. Reserve Buyer represents and warrants to Seller and Buyer that:

- (a) Reserve Buyer is a company, duly organized and incorporated under the Applicable Law, and has all requisite corporate power and authority to own or lease and operate its properties and to carry on its business as proposed to be conducted under this Agreement.
- (b) No filing or registration with, no notice to and no permit, authorization, consent or approval of any Person is required for the execution, delivery or performance of this Agreement by Reserve Buyer, except for the Initial Authorizations.

- (c) Reserve Buyer is not in violation of any Applicable Law or judgment entered by any Relevant Authority, which violations, individually or in the aggregate, would materially affect the performance of any of the obligations of Reserve Buyer under this Agreement. There are no legal or arbitration proceedings or any proceeding by or before any Relevant Authority, now pending or (to the best knowledge of Reserve Buyer) threatened against Reserve Buyer that, if adversely determined, could reasonably be expected to have a materially adverse effect on the financial condition, operations, prospects or business, as a whole, of Reserve Buyer, or its ability to perform under this Agreement.

5.2. Reserve Buyer hereby covenants and agrees with Seller and Buyer to:

- (a) receive at the Distribution Delivery Point, and purchase from Buyer, on terms to be agreed by Buyer and Reserve Buyer, any of the Delivered Electrical Energy that is not consumed by Buyer at the Site, up to the Contract Daytime Capacity during Contract Daytime Hours and up to the Contract Nighttime Capacity during Contract Nighttime Hours;
- (b) configure, operate and maintain the Grid Delivery Point and the Reserve Buyer's distribution system to:
  - (i) offtake at the Grid Delivery Point any portion of the Delivered Electrical Energy that is delivered by the Seller to the Buyer at the Delivery Points, but is not consumed by the Buyer at the Site;
  - (ii) Use its Reasonable Endeavors to deliver at the Grid Delivery Point, and sell to Buyer, on terms to be agreed between Buyer and Reserved Buyer, any electrical energy at any time consumed at points of electricity consumption at the Site that exceeds the Delivered Electrical Energy.
- (c) from the Commercial Operation Date for the duration of the Term or earlier termination in accordance with this Agreement, offtake at the Grid Delivery Points, and buy from the Reserved Buyer on the terms to be agreed between the Buyer and Reserved Buyer, any electrical energy at any time consumed at points of electricity consumption at the site that exceeds the Delivered Electrical Energy
- (d) operate and maintain the Reserve Buyer's distribution system in all material respects, in accordance with this Agreement, the Distribution Code, Good Industry Practices, the Market Rules and Applicable Law;
- (e) at its own cost and expense, from the Execution Date, apply for, procure, diligently pursue and, following receipt, maintain and, where applicable, cause its Contractors and Affiliates to procure and maintain all Authorizations it is required to obtain and thereafter maintain to fulfil its obligations under this Agreement;

- (f) work and cooperate in good faith with Seller and Buyer with respect to all of Seller's and Buyer's obligations and rights hereunder;
- (g) deliver, on or before the Commercial Operations Date, the Reserve Buyer Payment Guarantee to Buyer having the terms and in the sums set forth in Schedule 8 and thereafter continuously maintain the Reserve Buyer Payment Guarantee (or a replacement thereof) for the duration of the Term or earlier termination in accordance with this Agreement.
- (h) At any material time, when there is need to maintain safety and integrity of the rest of its Distribution network facility, deserve the right to disconnect the Seller facility from its Distribution network until such a time when such event has been satisfied to be over and safe to do so.

## 6. Market Rules and Grid Code

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

## 7. Commissioning

### 7.1. Commissioning Procedures

- (a) As soon as reasonably practicable after the Effective Date, but in any event no later than ninety (90) Days before the Commercial Operations Due Date, Seller

shall submit to Buyers draft procedures and tests to demonstrate to the reasonable satisfaction of Buyers that the Power Station complies with the Seller's covenants in Clause 3.2(e) and with standards of performance and safety consistent with the Applicable Law, the Distribution and Metering Codes and Good Industry Practices.

- (b) The draft Commissioning Procedures shall clearly state any actions or facilities the Buyer or Reserve Buyer must provide in order for the Seller to carry out the Commissioning Procedures, and the provision of such actions or facilities shall be at the Seller's expense.
- (c) Seller shall consult with Buyers in respect of the draft Commissioning Procedures and Buyer and Reserve Buyer shall, within ten (10) Days of receipt of the draft Commissioning Procedures, either confirm that it accepts them (in which case they shall be in agreed form) or provide any reasonable comments to Seller. If Seller (acting reasonably) thinks fit, it shall amend the Commissioning Procedures to reflect the comments made by Buyers and the Commissioning Procedures shall be deemed to be in agreed form.

## 7.2. Commercial Operations Certificate

- (a) Subject to agreement to the contrary by the Parties, Seller will give Buyer and Reserve Buyer not less than thirty (30) Days' prior notice of the date it intends to carry out the Commissioning Procedures on the Power Station and the expected duration of the Commissioning Period, and shall give five Days' notice to Buyer and Reserve Buyer of any change in the Commissioning Period that will affect any test Buyer or Reserve Buyer is entitled to witness or accelerate or delay the Commercial Operations Date.
- (b) The Parties shall cooperate with each other during the Commissioning of the Power Station. Where any test is not satisfactorily completed, Seller shall arrange a further test.
- (c) In the event that the Commissioning of the Plant is not successfully completed by the expiration of the Commissioning Period, the Commissioning Period shall be extended until completion of the Commissioning Procedures and Seller shall ensure that the Commissioning is carried out and successfully completed as soon as practicable.

Upon satisfactory completion of the Commissioning Procedures Seller shall procure that the Independent Engineer issues a certificate ("Commercial Operations Certificate") to all Parties, certifying, without material qualification, that (i) Seller has completed the Commissioning Procedures; (ii) that Seller has installed the Power Station consistent with the requirements of the Seller's covenants in Clause 3.2(e) and in compliance with the standards of performance and safety consistent with the Applicable Law, the Grid Code and Good Industry Practices; and (iii) that the Power Station is available for Commercial Operations.

## 8. Commercial Operations

### 8.1. Commercial Operations Date and Commercial Operations Due Date

- (a) The Commercial Operations Date for the Power Station shall occur on the date immediately following the date on which the Independent Engineer has issued the Commercial Operations Certificate.
- (b) Seller shall achieve the Commercial Operations Date on or before the Commercial Operations Due Date stipulated in Schedule 3.

### 8.2. Sale of Electrical Energy during Commissioning Period

- (a) Seller shall notify Buyers of its estimated schedule of the electrical energy in kWh that Seller reasonably expects to be able to make available at the Delivery Points prior to the Commercial Operations Date.
- (b) Buyer, and Reserved Buyer on behalf of Buyer, shall use their Reasonable Endeavors to offtake any such electrical energy delivered at the Delivery Points prior to the Commercial Operations Date.
- (c) Seller may sell electrical energy generated by the Power Station to Buyers prior to the Commercial Operations Date, provided that:
  - (i) Seller has represented to Buyers in writing that such operation and use of the Power Station prior to the Commercial Operations Date is safe, reliable and in accordance with Good Industry Practice, the Grid Code and Market Rules; and

(ii) Buyer, and Reserve Buyer on behalf of Buyer, has confirmed in writing to Seller that it will buy such electrical energy generated by the Power Station prior to the Commercial Operations Date.

(d) Seller shall invoice Buyer at the Energy Charge Rate, and Buyer shall pay for the electrical energy delivered at the Delivery Points prior to the Commercial Operations Date that Buyer or Reserve Buyer have agreed to offtake and buy.

(e) During construction, testing, commissioning operation and decommission of the Sellers' facility, seller shall pay to the Reserve Buyer all electrical energy consumed on site of the Sellers' facility that is derived from Reserved Buyer's network or facility.

### 8.3. Delivery of Net Electrical Energy

(a) "Net Electrical Energy" means the useful electric energy generated by the Power Station and not stored or used to operate and maintain the Power Station or otherwise consumed within the Power Station by the Seller.

(b) Delivery of Net Electrical Energy shall be at the Delivery Points, which includes the Grid Delivery Point.

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

### 8.4. Dispatch of Net Electrical Energy

#### 8.4.1 Seller

(a) Seller shall from the Commercial Operations Date and at all times during the Term, either directly or through a contractor, operate and maintain the Power Station in accordance with this Agreement, the Concession Agreement, Good Industry Practices, the Distribution and Metering Codes t, the Market Rules and Applicable Law.

(b) The appointment of an operations and maintenance contractor by Seller shall not relieve Seller of any of its obligations or excuse Seller from any obligations under this Agreement, the Concession Agreement, Good Industry Practices, the Grid Code, the Market Rules and Applicable Law regarding the design, construction, installation, Commissioning, insurance, operation, and

maintenance of the Power Station, or any liability whatsoever resulting from a breach of any term or condition of this Agreement.

- (c) From the Commercial Operations Date and at all times during the Term, Seller shall have the right to self-dispatch the Power to the Buyer Station subject to its obligation to make available for delivery to Buyers at the Delivery Points the entire Net Electrical Energy of at least the Contract Daily Capacity for safety and security of its network, Seller shall notify Reserve Buyer at least 1 hour ahead of its intention to pass on power to the Reserve Buyer network at any time of the day. (during Contract Daytime Hours and at least the Contract Nighttime Capacity during Contract Nighttime Hours, and subject to Availability Events, the Grid Code, Good Industry Practices, the Market Rules, and this Clause 8.4.)
- (d) From the Commercial Operations Date and at all times during the Term, Seller may at its sole discretion make Net Electrical Energy in excess of the Contract Daily Capacity available at the Delivery Points between the hours of 07:00 and have the right to self-dispatch the Power Station subject to the requirement to make available to Buyer the entire Net Electrical Energy available for delivery, subject to Availability Events, the Grid Code, Good Industry Practices, the Market Rules, and this Clause 8.4.
- (e) From the Commercial Operations Date for the duration of the Term, Seller shall provide Buyer and Reserve Buyer with a daily notice of its forecast of the available Net Electrical Energy by 09:00 hours on the preceding day.
- (f) Shall at least one month ahead, inform the Buyer and Reserved Buyer of the commencement of its planned outage program for the next 12 months.

#### 8.4.2 Buyer

- (a) Buyer shall from the Commercial Operations Date and at all times during the Term, either directly or through a contractor, operate and maintain the Distribution System and the Delivery Points to offtake Net Electrical Energy and deliver it to points of electricity consumption at the Site, and use its Reasonable Endeavors to consume and procure that the Reserve Buyer offtake the Contract Daily Capacity at any time during Contract Daytime Hours and the Contract Nighttime Capacity at any time during Contract Nighttime Hours.
- (b) Buyer shall have the right to consume at points of electricity consumption at the

Site any amount up to the Contract Daytime Capacity during Contract Daytime Hours and any amount up to the Contract Nighttime Capacity during Contract Nighttime Hours provided that Buyer shall procure that Reserve Buyer offtake a sufficient portion of the Delivered Electrical Energy at the Grid Delivery Point so that the Delivered Electrical Energy is at no time less than the Minimum Daily Capacity during Contract Daytime Hours or the Minimum Nighttime Capacity during Contract Nighttime Hours, failing which Buyer shall compensate Seller in accordance with Clause 8.8.2(c).

- (c) Buyer shall provide Seller and Reserve Buyer with a non-binding estimate of the monthly requirements of Net Electrical Energy of all the points of electricity consumption at the Site on a hour-by-hour basis no later than ten (10) Days prior to the beginning of each Month and provisionally for the following six (6) month.

#### 8.4.3 Reserve Buyer

- (a) Reserve Buyer shall from the Commercial Operations Date and at all times during the Term, either directly or through a contractor, operate and maintain its distribution system and the Network Delivery Point to offtake from the Grid Delivery Point any of the Net Electrical Energy delivered at the Delivery Points that is not delivered to points of electricity consumption at the Site, so that the Delivered Electrical Energy is not less than the Minimum Daytime Capacity at any time during Contract Daytime Hours or less than the Minimum Nighttime Capacity at any time during Contract Nighttime Hours.
- (b) Reserve Buyer shall be deemed to have requested the dispatch to the Grid Delivery Point any portion of the Net Electrical Energy Seller makes available from the Power Station that is not consumed by the Buyer at the points of electricity consumption at the Site, unless Buyer and Seller are otherwise notified.
- (c) For safety or operational reasons, the Reserve Buyer shall refuse to take power from the seller facility on to its network at any time, until such a time when such event has lapse and its network facility is deemed to be safe to take such power from seller.
- (d) Shall notify the Seller at least 1 hour ahead of any outage on its network, and duration of such, that impacts on its ability to receive power from the Seller facility.

#### 8.5. Records and Reports

8.5.1 Each Party shall keep complete and accurate records and all other data required by each of them pursuant to this Agreement, the Concession Agreement, Applicable Law, the Grid Code, the Market Rules, and Good Industry Practices for the purposes of proper administration of this Agreement.

8.5.2 Seller shall maintain an accurate and up-to-date operating log at the Power Station in which Seller shall record:

- (a) operations and maintenance manuals and other technical documentation (including electronic files) for all items of equipment incorporated into the Power Station and set forth in Schedule 2; and
- (b) test results (including electronic files) for tests performed on the Power Station in accordance with the Commissioning Procedure;

- (c) any other significant event related to the operation of the Power Station, and unusual conditions found during inspections.
- 8.5.3 Seller shall maintain an accurate and up-to-date operating log at the Power Station in which Seller shall record, amongst other things:
  - (a) a continuous record of Delivered Electrical Energy as measured by the Metering System, which record shall be made available in real time by remote access to Buyer and Reserve Buyer; and
  - (b) a continuous record of the portion of the Delivered Electrical Energy delivered at the Grid Delivery Point as measured by the Metering System, which record shall be made available in real time by remote access to Buyer and Reserve Buyer; and
  - (c) changes in operating status, Scheduled Maintenance Outages, Unscheduled Outages and Buyer's or Reserve Buyer's dispatch requests and instructions; and
  - (d) circuit breaker trip operations requiring a manual reset, partial deratings of equipment.
- 8.5.4 Records required by this Clause 8.5 shall be available for inspection by Buyer and Reserve Buyer upon reasonable advance Notice, or by remote access in real-time basis as provided for in Clauses 8.5.3(a) and 8.5.3(b).
- 8.5.5 All records required under this Clause 8.5 shall be maintained for a minimum of sixty (60) Months after the creation of such record or data, or such longer period as may be required by the Market Rules, the Grid Code, or Applicable Law. Each Party shall have the right, upon reasonable prior Notice to the other Parties, and at reasonable times during normal office Hours, to examine the records and data of the other Party relating to this Agreement or the operation and dispatch of the Power Station.
- 8.5.6 Seller Monthly Report
  - (a) From the Commercial Operations Date for the duration of the Term, Seller shall provide to Buyer and Reserve Buyer Monthly reports (the "Seller Monthly Reports") that include the information in Clause 8.5.3 no later than ten (10) Days after the end of each Month, with such information and in such form as Buyer and Reserve Buyer shall reasonably request, by electronic mail and hard copy, covering operations of Power Station for the previous Month.

- (b) The Seller Monthly Report shall include non-binding estimates of capacity availability and non-binding requirements for Scheduled Maintenance Outages for each of the following six (6) Months.
- (c) The Seller Monthly Report shall include such other information related to the operation and maintenance of the Power Station that Buyer and Reserve Buyer reasonably request.

8.5.7 Seller shall provide Buyer and Reserve Buyer with a daily notice (the "Seller Daily Notice") containing the information set out in Clause 8.4.1(e).

8.5.8 Buyer shall provide Seller and Reserve Buyer with a monthly notice (the "Buyer Monthly Notice") containing the information set out in Clause 8.4.2(c).

## 8.6. Outages

8.6.1 "Availability Event" means an event listed below or combination of events listed below that is beyond the reasonable control of Seller and is not a result of a Seller Default, the Gross Negligence or Willful Misconduct of Seller, or Seller's failure to comply with any other obligations under this Agreement or the Concession Agreement, and that impairs the capability of the Power Station to deliver the Contract Daytime Capacity during Contract Daytime Hours or the Contract Nighttime Capacity during Contract Nighttime Hours:

- (a) Buyer's or Reserve Buyer's actions or inactions in breach of this Agreement;
- (b) Buyer's or Reserve Buyer's Gross Negligence or Willful Misconduct;
- (c) a Force Majeure Event that has occurred and is continuing;
- (d) any event disturbing or preventing the normal operation or start-up of the Power Station that is beyond the reasonable control of the Seller;
- (e) Buyer's unwillingness, or inability, due to unavailability of, or constraint in the availability of the Distribution System, to offtake Net Electrical Energy at the Delivery Points or to consume Net Electrical Energy at points of consumption within the Site;
- (f) Reserve Buyer's unwillingness, or inability, due to unavailability of, or constraint in the availability of the Reserve Buyer's distribution system, to offtake Net Electrical Energy at Grid Delivery Point;

## 8.6.2 Scheduled Maintenance Outages

- (a) Seller shall be entitled in each Contract Year to Scheduled Maintenance Outages in accordance with this Clause 8.6.2 at its own cost. For the avoidance of doubt, Buyer and Reserve Buyer have no obligation to pay for electrical energy which is not available due to Scheduled Maintenance Outages.
- (b) The schedule for Scheduled Maintenance Outages for each Contract Year shall be established as follows:
  - (i) Not later than ninety (90) Days before the Commercial Operations Date, Seller shall submit to Buyer and Reserve Buyer proposed dates for Scheduled Maintenance Outages during the following Contract Year.
  - (ii) Following the Commercial Operations Date, Seller shall submit no later than ninety (90) Days before each Contract Year to Buyer and Reserve Buyer proposed dates for Scheduled Maintenance Outages during the following Contract Year.
  - (iii) If within twenty (20) Days after receiving Seller's proposed dates, Buyer or Reserve Buyer notifies Seller of alternative dates for Scheduled Maintenance Outages which Buyer or Reserve Buyer prefers, the Parties shall consult and Seller shall use its Reasonable Endeavors to accommodate Buyer or Reserve Buyer alternative dates provided such request complies with Good Industry Practices.
  - (iv) Not less than thirty (30) Days before the start of the relevant Contract Year, Seller shall issue a final schedule for Scheduled Maintenance Outages after consultation under this Clause 8.6.2(b); provided that, where no agreement was reached, the last notified alternative dates provided by Buyer or Reserve Buyer shall prevail.
- (c) The Parties shall cooperate and use their Reasonable Endeavors to accommodate any reasonable request by a Party to reschedule any Scheduled Maintenance Outage provided:
  - (i) such request would not defer maintenance required at a particular time by Good Industry Practices; and

- (ii) the Party requesting a schedule change agrees to compensate the other Parties for any reasonable additional costs and expenses. (AEDC wants deleted).
- (iii) for the avoidance of doubt any of the Parties shall be entitled to reschedule a Scheduled Maintenance Outage(s) without compensating the other Parties if and to the extent that such rescheduling is required for health or safety reasons, to avoid damage (or the threat of imminent damage) to the Power Station or equipment, or if such rescheduling is required by Good Industry Practices.

### 8.6.3 Unscheduled and Forced Outages

- (a) "Unscheduled Outage" means an unforeseen total or partial interruption of the Power Station's capability to deliver the Contract Daily Capacity at the Delivery Points during Contract Daytime Hours or the Contract Nighttime Capacity at the Delivery Points during Contract Nighttime Hours that is the result of:
  - (i) a request by Buyer or Reserve Buyer in accordance with this Agreement;
  - (ii) an Availability Event.
- (b) Seller shall advise Buyer and Reserve Buyer of the need for any Unscheduled Outage, together with the proposed commencement date, in arrears if the interruption was immediate, and estimated duration of the work to be undertaken to restore delivery of Net Electrical Energy at the Delivery Points.
- (c) If the interruption is not immediate, Buyer and Reserve Buyer shall advise Seller of the periods during which such Unscheduled Outage may be undertaken, such periods to reasonably take account of Buyer's requirements for Delivered Electrical Energy and the circumstances and necessity for the Unscheduled Outage.
- (d) Seller shall, as such information becomes available and is updated from time to time, keep Buyer and Reserve Buyer informed as to the estimated duration of the work to be undertaken and the estimated conclusion of the Unscheduled Outage.

### 8.7. Metering System

- 8.7.1 Seller shall at its cost and expense design, in compliance with the Metering Code, procure, install and maintain all meters and metering devices, equipment, electrical circuitry, recording equipment, communications equipment and related equipment

(collectively referred to as the "Metering System") used for measuring, displaying, recording and transmitting the electrical energy, Net Electrical Energy, Delivered Electrical Energy, reactive power, frequency, voltage, power quality and other characteristics of the electricity produced by the Power Station and delivered to the Buyers.

#### 8.7.2 Compliance, Integrity and Accuracy of Metering System

- (a) The specifications, operation and measurement accuracy of the Metering System shall comply with the standards and specifications set out in the Metering Code, and with Applicable Law and Good Industry Practices, and shall be approved by the Buyer and the Reserve Buyer, such approval not to be unreasonably withheld.
- (b) Buyer or Reserved Buyer deserve the right to install their meter(s) and metering system as a check meter in accordance with the Metering Code at the interface point or any such agreed point between the Seller and the Buyer or Reserved Buyer.
- (c) Seller may maintain additional meters for operational purposes that do not conform to the Metering Code.
- (d) Upon request by Buyer or Reserve Buyer on reasonable notice and not more frequently than once a month, Buyer or Reserve Buyer may request an inspection or test of the Metering System as it relates to the Net Electrical Energy or the Delivered Electrical Energy. The actual expense of any inspection or testing will be borne by Buyer or the Reserve Buyer, as the case may be, unless upon such inspection or testing, the Metering System is found to register inaccurately, in which event the expense of the requested inspection or testing will be borne by Seller. If requested by Buyer or Reserve Buyer, Seller will, without charge, provide copies of any inspection or testing reports to Buyer or Reserve Buyer.
- (e) The Parties undertake not to tamper with or otherwise interfere in any way with any part of the Metering System, and shall use reasonable precautions in accordance with Applicable Law, Good Industry Practices, the Market Rules and the Metering Code to ensure that the Metering System is secure and is not tampered with by any other person.
- (f) If, at any time, any Party discovers that any part of the Metering System has been tampered with, or as a result of any other action or inaction such device may be

unfit for the purpose of such device, that Party shall report such event to the other Parties for necessary action.

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

#### 8.7.3 Metering System Data

- (a) Seller will ensure that Metering System's measurements related to Net Electrical Energy and Delivered Electrical Energy are made available to the Buyer and the Reserve Buyer remotely and in real time, in a form reasonably acceptable to Buyer and Reserve Buyer.
- (b) In addition to the provisions of Clause 8.7.3(a) Seller shall ensure that the Metering System's measurements related to Net Electrical Energy and Delivered Electrical Energy are read daily and the information is provided to Buyer and Reserve Buyer as part of the Seller's Daily Notice, in a form reasonably acceptable to Buyer and Reserve Buyer.

#### 8.7.4 Metering System Failure or Inaccuracy

- (a) In the event that a failure, inaccuracy or defect in any component of the Metering System used for measuring Net Electrical Energy and Delivered Electrical Energy, becomes known to Seller, Seller shall, as soon as reasonably practicable, inform Buyer and Reserve Buyer, and comply with any other reporting requirements of the Metering Code.
- (b) Subject to the Metering Code, Seller shall repair, replace, and/or recalibrate the failed, inaccurate or defective component of their Meter or Metering System at their own cost.
- (c) Subject to the Metering Code, in the event of a failure, inaccuracy or defect in any component of the Metering System that invalidates or prevents the measurement of Delivered Electrical Energy, the Parties shall consult the check Meter for applicable reading and measurement or use Reasonable Endeavors to estimate the Delivered Electrical Energy for the period of such failure, inaccuracy or defect.

#### 8.8. Invoice and Payment

8.8.1 From the Commercial Operations Date for the duration of the Term or earlier termination in accordance with this Agreement:

(a) Buyer shall pay Seller each Month in arrears for each kWh of Delivered Electrical Energy and for any other amount payable by Buyer under this agreement;

(b) Reserve Buyer shall pay Buyer each Month in arrears for each kWh of the portion of the Delivered Electrical Energy not consumed by the Buyer at the points of consumption within the Site, and delivered to Reserve Buyer at the Grid Delivery Point, and for any other amount payable by Reserve Buyer under this agreement;

(c) Reserve Buyer shall pay directly to the Seller for amount of net electrical energy that flows into its network from the Seller's facility.

(d) Seller shall pay Seller each Month in arrears for Liquidated Damages for failure to Deliver Contract Daily Capacity or Contract Nightly Capacity, and for any other amount payable by Reserve Buyer under this agreement;

(e) The Parties agree to use the measurements of the Metering System as reported by the Seller in the Seller Monthly Report as the basis for the calculation and invoicing of payments for Delivered Electrical Energy and any other payments payable under this Agreement.

8.8.2 From the Commercial Operations Date for the duration of the Term, Seller shall provide to Buyer, with a copy to Reserve Buyer, Monthly invoices (the "Monthly Invoices"), by electronic mail and hard copy, no later than ten (10) Days after the end of each Month, with such information and in such form as Buyer shall reasonably request, specifying, amongst other things:

(a) the amount payable by Buyer to Seller for the Month to which the Monthly Invoice applies for the aggregate Net Electrical Energy delivered by Seller to Buyer at the Delivery Points during the Month to which the Monthly Invoice applies (the "Monthly Energy Payment") inclusive of the Monthly Reserve Buyer Energy Charge, computed as follows:

$$\text{MEP} = \text{DEE} \times \text{ECR in Naira}$$

Where:

MEP = Monthly Energy Payment in Naira

DEE = Total Delivered Electrical Energy for the Month to which the Monthly Invoice applies in kWh

ECR = Energy Charge Rate in Naira per kWh

- (b) the amount payable for the Month to which the Monthly Invoice applies for the aggregate Net Electrical Energy delivered by Seller on behalf of the Buyer to Reserve Buyer at the Grid Delivery Point during the Month to which the Monthly Invoice applies (the "Monthly Reserve Buyer Energy Charge"), which is a portion of the Monthly Energy Charge specified in Clause 8.8.2(a), computed as follows:

MRBEC = GDEE x ECR in Naira

Where:

MRBEC = Monthly Reserve Buyer Energy Charge in Naira

GDEE = Portion of Total Delivered Electrical Energy delivered to the Grid Delivery Point for the Month to which the Monthly Invoice applies in kWh

ECR = Energy Charge Rate in Naira per kWh

- (c) the amount payable for the Month to which the Monthly Invoice applies for Backup Electrical Energy in accordance with the Market Rules and other applicable Order(s) as issued by the Commission, delivered by Reserved Buyer to Buyer at the Grid Delivery Point during the Month to which the Monthly Invoice applies (the "Monthly Backup Energy Charge") computed as follows:

MBEC = GDBE X ECR in Naira

Where:

MBEC = Monthly Backup Energy Charge in Naira

GDBE = Grid Delivered Backup Energy delivered to the Grid Delivery Point for the Month to which the Monthly Invoice applies in Kwh

ECR = Energy Charge Rate in Naira per kWh

- (d) the Monthly Minimum Offtake Charge payable by Buyer to Seller made up of Daytime Hourly Minimum Offtake Charge for each hour during Contract Daytime Hours that the Delivered Electrical Energy is less than the Minimum Daytime Capacity x 1 hour, and Nighttime Hourly Minimum Offtake Charge for each hour during Contract Nighttime Hours that the Delivered Electrical Energy is less than the Minimum Nighttime Capacity x 1 hour, calculated on an hour-by-hour basis for the Month of the invoice as follows:

DHMOC = (MDC – M) x ECR in Naira for each hour during Contract Daytime Hours where M is less than MDC

$NHMOC = (MNC - M) \times ECR$  in Naira for each hour during Contract Nighttime Hours where M is less than MNC

Where:

DHMOC = Daytime Hourly Minimum Offtake Charge in Naira

NHMOC = Nighttime Hourly Minimum Offtake Charge in Naira

MDC = Minimum Daytime Capacity in kW

MNC = Minimum Nighttime Capacity in kW

M = Hourly Average Delivered Electrical Energy in kW as measured by the Metering System

ECR = Energy Charge Rate in Naira per kWh

- (e) Liquidated Damages payable by Seller to Buyer and Reserved Buyer for failure to achieve Commercial Operations Date, if any, that are due and payable in accordance with Clause 9.1;
- (f) Liquidated Damages for payable by Seller to Buyer or Reserved Buyer failure to achieve Contract Daytime Capacity or Contract Nighttime Capacity, if any, that are due and payable in accordance with Clause 9.2;
- (g) such supporting information and calculations as may be reasonably necessary to substantiate the amounts claimed in the Monthly Invoice, including the occurrence of any Availability Event claimed by Seller as a basis for the establishment of an Availability Event Energy Payment, in each case specifying the specific Availability Event and the date Seller delivered notice to Buyer of the occurrence of such event.

### 8.8.3 Payment

- (a) Buyer or Reserved Buyer shall pay Seller any undisputed portion of the payments shown in each Monthly Invoice on or before the thirtieth (30th) Business Day following the Day the Monthly Invoice is delivered by Seller to Buyer.
- (b) If Buyer fails to pay Seller any sums due and payable to Seller, Seller shall have the right at its sole discretion to claim such unpaid sums from the Buyer Payment Guarantee, upon expiry of the time within which Buyer is required to make the payment, and Buyer shall replenish the Buyer Payment Guarantee with any sums so drawn from the Buyer Payment Guarantee.

- (c) Reserve Buyer shall pay to Buyer any undisputed portion of the Monthly Reserve Buyer Energy Charge and the Monthly Minimum Offtake Charge, if any, shown in each Monthly Invoice, less any discount computed in accordance with Clause 8.9.3, on or before the thirtieth (30th) Business Day following the Day a copy of the Monthly Invoice is delivered by Seller to Reserve Buyer.
- (d) If Reserve Buyer fails to pay Buyer any sums due and payable to Buyer, Buyer shall have the right at its sole discretion to claim such unpaid sums from the Reserve Buyer Payment Guarantee, upon expiry of the time within which Reserve Buyer is required to make the payment, and Reserve Buyer shall replenish the Reserve Buyer Payment Guarantee with any sums so drawn from the Reserve Buyer Payment Guarantee.
- (e) Each Party shall have the right to set off against any amounts payable by it to the other Parties hereunder any and all amounts then due and payable to it by a Party hereunder. Such rights of setoff shall relate only to amounts payable by the Parties under this Agreement and only to amounts that are then due and payable to and by a Party and not to any amounts which have been disputed by the Party against whom such amounts are claimed in accordance with the terms of this Agreement.

#### 8.8.4 Review

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

- (c) A copy of a notification of an error delivered by Reserve Buyer to Seller shall be deemed to be a notification of an error by Buyer to Seller as provided for in Clause 8.8.4(a).

#### 8.8.5 Disputed Invoice

- (a) Where Buyer disputes an invoice or any portion thereof, it shall declare a Dispute and refer the same for determination in accordance with Clause 17 of this Agreement. If any invoice or any portion thereof is disputed by Buyer, Buyer shall pay the portion of the invoice that is not disputed and withhold the disputed portion until any Dispute in relation thereto is determined in accordance with dispute resolution provisions in Clause 17 of this Agreement.
- (b) Where Reserve Buyer disputes an invoice or any portion thereof, it shall declare a Dispute and refer the same for determination in accordance with Clause 17 of this Agreement. If any invoice or any portion thereof is disputed by Reserve Buyer, Reserve Buyer shall pay the portion of the invoice that is not disputed and withhold the disputed portion until any Dispute in relation thereto is determined in accordance with dispute resolution provisions in Clause 17 of this Agreement.

#### 8.8.6 Interest on Delayed Payment

- (a) Buyer shall pay interest at the Agreed Interest Rate on any unpaid amounts invoiced in Naira and due and payable under this Clause 8.8 from the date payment was due, up to and including the date on which payment is made, except in circumstances where Buyer disputes an invoice or any portion thereof, and any Dispute referred in relation thereto is resolved in its favor (in which case interest shall not apply in respect of the amount that was resolved in Buyer's favor).
- (b) Where Buyer disputes an invoice or any portion thereof and the Dispute referred in relation thereto is resolved in favor of Seller, Buyer shall promptly pay the disputed portion that has been resolved in Seller's favor with interest thereon at the Agreed Interest Rate.
- (c) Reserve Buyer shall pay interest at the Agreed Interest Rate on any unpaid amounts invoiced in Naira and due and payable under this Clause 8.8 from the date payment was due, up to and including the date on which payment is made, except in circumstances where Reserve Buyer disputes an invoice or any portion thereof, and any Dispute referred in relation thereto is resolved in its favor (in which

case interest shall not apply in respect of the amount that was resolved in Reserve Buyer's favor).

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

## 8.9. Prices

8.9.1 The rate for converting US Dollars to Naira (the "Exchange Rate") is the applicable sell rate for the conversion of US Dollars to Naira published by the Central Bank of Nigeria on or prior to the Business Day immediately prior to the date of conversion or the most recent Business Day on which such rate is published if such rate remains applicable, or, if such rate is not published by the Central Bank of Nigeria, the interbank rate published by the Central Bank of Nigeria on the Business Day immediately prior to the date of conversion.

8.9.2 The price (the "Energy Charge Rate") in any Monthly Invoice of the Delivered Electrical Energy sold by Seller shall be the Contract Price stated in Schedule 3 in US Dollars per kWh times the Exchange Rate applicable for the first day of the Month to which the Monthly Invoice applies.

8.9.3 Buyer and Reserve Buyer shall agree, and from time to time update, a discount (the "Reserve Buyer's Discount") to be deducted from the Energy Charge Rate to compute the amount payable to Buyer by Reserve Buyer for the portion of Delivered Electrical Energy delivered to Reserve Buyer at the Grid Delivery Point, as stated in each Monthly Invoice in accordance with Clause 8.8.2(b), and the amount payable to Buyer by Reserve Buyer for the Monthly Minimum Offtake Charge, if any, as stated in each Monthly Invoice in accordance with Clause 8.8.2(c).

## 9. Liquidated Damages

### 9.1. Failure to Achieve Commercial Operations Date

- (a) Seller acknowledges that Buyer will suffer actual damage if Seller fails to achieve the Commercial Operations Date by the Commercial Operations Due Date.
- (b) Buyer shall at its sole discretion, and prior to the Effective Date, assign a risk factor which is a number between one (1) and five(5) (" Project Completion Risk Factor") to Seller.

- (c) In the event of such failure Seller shall pay Liquidated Damages to Buyer for each Day (or any part thereof) of delay at a rate computed according to the following formula:

$PCRF \times 10\% \text{ of ECR} \times (CDC \times 12 + CNC \times 12)$  in Naira per day

Where:

PCRF = Project Completion Risk factor

ECR = Energy Charge Rate in Naira per kWh

CDC = Contract Daytime Capacity in kW

CNC = Contract Nighttime Capacity in kW

provided that the aggregate amount of liquidated damages payable by Seller under this Clause 9.1 shall not exceed the total sum of the Seller Performance Guarantee as set forth in Schedule 6.

- (d) Seller agrees that the Liquidated Damages set forth this Clause 9.1 represent a genuine estimate of the damage Buyer would suffer as a result of Seller's failure to achieve the Commercial Operations Date by the Commercial Operations Due Date and are payable in lieu of actual damages.
- (e) Seller hereby waives, to the extent permitted by Applicable Law, any defense to the validity of Liquidated Damages payable hereunder on the grounds that such liquidated damages are void as penalties or otherwise.
- (f) Buyer shall be entitled to claim such Liquidated Damages from the Seller Performance Guarantee.
- (g) The Commercial Operations Due Date shall be adjusted accordingly for the actual delay of each Delayed Commissioning Event.
- (h) "Delayed Commissioning Event" means a delay or interruption of the development, construction or Commissioning of the Power Station caused by any of the following, except to the extent caused by an action or inaction of Seller in breach of this Agreement or the Concession Agreement:
- (i) Buyer's or Reserve Buyer's actions or inactions in breach of this Agreement delaying, disturbing or preventing normal development, construction or Commissioning of the Power Station, in which case the Commercial

Operations Due Date shall be extended by the number of Days, following Seller's written notice of the breach, during which the breach persists;

(ii) Seller shall pay Reserve Buyer each day of delay in commissioning s20% of total cost incurred by Reserve Buyer in preparing, upgrading and constructing its network to interconnect with Seller facility.

- (iii) Buyer's or Reserve Buyer's Gross Negligence or Buyer's Willful Misconduct delaying, disturbing or preventing normal development, construction or Commissioning of the Power Station, in which case the Commercial Operations Due Date shall be extended by the number of Days, following Seller's written notice of the Negligence or Willful Misconduct, during which the Negligence or Willful Misconduct persists;
- (iv) lack of availability, or constraint in the availability of the Distribution System during the Commissioning Period, in which case the Commercial Operations Due Date shall be extended by the number of Days, following Seller's written notice of the unavailability, during which the Distribution System remains unavailable;
- (v) any event delaying, disturbing or preventing normal development, construction or Commissioning of the Power Station that are beyond the reasonable control of the Seller, in which case the Commercial Operations Due Date shall be extended by the number of Days, following Seller's written notice of the event and Buyer's acceptance of the notice, during which the event persists and remains beyond the reasonable control of the Seller; or
- (vi) a Force Majeure Event delaying, disturbing or preventing normal development, construction or Commissioning of the Power Station, in which case the Commercial Operations Due Date shall be extended by the number of Days, following Seller's written notice of the Force Majeure Event and Buyer's acceptance of the notice, during Force Majeure Event persists.

## 9.2. Failure to Deliver Contract Daily Capacity or Contract Nightly Capacity

- (a) Seller acknowledges that Buyer will suffer actual damage if, from the Commercial Operations Date, the Power Station fails to deliver any electrical energy at the Delivery Points, or the Buyer at any instant demands and the Power Station as constructed and installed does not deliver at the Delivery Points the Contract

Daytime Capacity during Contract Daytime Hours and the Contract Nighttime Capacity during Contract Nighttime Hours.

- (b) In the event of such failure, that is to say in the event that for a specified period of time the Metering System records that the energy delivered at the Delivery Points is less than the Contract Daily Capacity during Contract Daytime Hours and the Contract Nighttime Capacity during Contract Nighttime Hours and at the same time the Delivered Electrical Energy is not sufficient to satisfy the requirements of all points of electricity consumption at the Site, Seller shall pay Liquidated Damages to Buyer for each Hour (or any part thereof) of the deficiency at a rate computed according to the following formula:

ECR x (CDC – M) in Naira per hour during Contract Daytime Hours

ECR x (CNC – M) in Naira per hour during Contract Nighttime Hours

Where:

ECR = Energy Charge Rate in Naira per kWh

CDC = Contract Daytime Capacity in kW

CNC = Contract Nighttime Capacity in Kw (Replace with Available Capacity AEDC)

M = Measured Maximum Output at the Delivery Points in kW

- (c) Seller agrees that the Liquidated Damages set forth in this Clause 9.2 represent a genuine estimate of the damage Buyer would suffer as a result of the Power Station's failure to deliver the Contract Daytime Capacity and the Contract Nighttime Capacity and are payable in lieu of actual damages.
- (d) Seller hereby waives, to the extent permitted by Applicable Law, any defense to the validity of Liquidated Damages payable hereunder on the grounds that such liquidated damages are void as penalties or otherwise.
- (e) If Seller fails to pay such Liquidated Damages within thirty (30) days of Buyer's invoice Buyer shall be entitled to deduct such liquidated damages from future Energy Payments until the liquidated damages amount is paid in full.

## 10. Insurance

### 10.1. Required Insurance

- (a) Seller shall, at its own cost and expense, obtain and maintain insurance coverage of the nature and in the minimum amounts set forth in Schedule 9 of this Agreement; provided, however, that such minimum amounts may be changed from time to time with the written consent of Buyer, which consent shall not be unreasonably withheld.
- (b) Seller shall name Buyer as an additional insured under each such policy.
- (c) Seller shall not be in breach of its obligations hereunder if and to the extent that any particular risk is or becomes uninsurable or the cost of such insurance becomes commercially unreasonable for reasons other than any negligence or default by, or the financial condition of, Seller.

10.2. Additional Insurance

- (a) In addition to the coverages set forth in Schedule 9, each Party shall obtain any additional coverages required by Applicable Law and/or as the Party deems necessary for the effective fulfilment of its obligations herein at its own expense.
- (b) Each Party shall be free to obtain any additional insurance coverages beyond the forgoing at its own expense.

10.3. Use of Insurance Proceeds. Seller shall apply the proceeds of any insurance claim in respect of physical loss or damage to the Power Station or the Facilities made against the insurers pursuant to the construction and erection all risks, all risks, and machinery breakdown policies maintained pursuant to Clauses 10.1 and 10.2(a) towards repair of the Power Station and the Facilities or recovery of the loss or damage as soon as is reasonably possible.

10.4. Certificates of Insurance. Prior to the Commercial Operations Date, and thereafter prior to any renewal, amendment or replacement thereof, Seller shall cause its insurers or agents to provide Buyer and Reserved Buyer with certificates of insurance evidencing the insurers' commitments to issue (or renew or amend, as applicable) the policies and endorsements required under Clauses 10.1 and 10.2(a). In addition, at least once annually, not less than ninety (90) prior to the expiration of any then outstanding insurance policies, Seller shall provide to Buyer and Reserved Buyer evidence of the continuing maintenance of the insurance policies required under Clauses 10.1 and 10.2(a), including (as applicable) certificates of insurance, binders evidencing commitments to issue or renew insurance policies and evidence of the payment of premiums then due and payable thereunder), together with a certificate of Seller

certifying that such insurance policies are (or will be when required) in full force and effect and are in compliance with the requirements of this Agreement and that all premiums then due and payable with respect to such policies have been paid.

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

10.6. Finance Parties' Interests. Each of Parties recognizes and agrees that the insurances in respect of the Project will be secured in favor of the Finance Parties and that the interests of the Finance Parties will be noted on the insurance policies.

## 11. Taxes

### 11.1. Liability for Taxes

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

(b) If a Party has a legal responsibility to collect any Tax directly from another Party for payment to the appropriate taxing authorities, such as value added tax (VAT), the portion of any payment representing such Tax shall be separately stated in the invoice.

### 11.2. Proof of Payment

(a) Parties shall fulfil any withholding and tax retention obligations imposed by Applicable Law.

(b) If a Party is required to withhold Tax from payments to another Party as required by Applicable Law, the Party withholding such Tax shall, upon request from the other Party, provide a withholding tax receipt or other evidence of withholding and payment as required by the applicable tax jurisdiction.

### 11.3. Tax Indemnity

(a) Each Party agrees to defend, indemnify in full and hold the other Party harmless from liability to any Relevant Authority resulting from failure of the Indemnifying Party or Indemnifying Party's employees' failure to make timely payment of, or

timely filings with respect to, any obligations to pay Taxes incurred in respect of any payments under this Agreement.

- (b) Such indemnities shall include all penalties and interest imposed in addition to the Taxes due as a result of Indemnifying Party's or Indemnifying Party's employees' failure to comply with reporting, filing, payment or procedural requirements to discharge its tax obligations.
- (c) Following a Change in Tax, each Party shall be liable for and shall indemnify the other Party for any incremental withholding Tax imposed by Relevant Authority on payments in excess of amounts initially withheld under Clause 11.2 above, provided that any amount indemnified by Seller shall be included in the calculation of compensation payable as a result of the Change in Tax.

## 12. Consequences of Change in Law and Change in Taxes

### 12.1. "Change in Law" means at any time after the Execution Date:

- (a) the adoption, promulgation, bringing into effect, repeal, amendment, reinterpretation, change in application, or modification of any Applicable Law, by any Relevant Authority, except any changes in the Distribution and Metering Codes that impose obligations on Seller consistent with Seller's obligations under the Connection Agreement;
- (b) the imposition of any material condition not required as of the Execution Date in connection with the issuance, renewal or modification of any Authorization by any Relevant Authority;
- (c) the change or modification of any Authorization by a Relevant Authority or the imposition of other obligations imposing a cost on Seller; or
- (d) the change or modification of the Energy Charge Rate, or related terms and conditions after the initial approval by the Commission of the Energy Charge Rate, other than (i) a change or modification resulting from an application for a change or modification by the Party seeking relief for the resulting Change in Law, (ii) where the Party seeking relief for the Change in Law has consented to or approved the change or modification to the Energy Charge Rate, or (iii) a change required to be made to reflect changes in the Energy Charge Rate or related terms and conditions by the terms of this Agreement, which, in case of any of the above, causes an increase or reduction in costs or an increase or reduction in revenue, or

a delay in, or shortening of, schedule as a consequence of a change in a requirement for the design, construction, financing, operation or maintenance of the Power Station to one that is more or less restrictive than the most restrictive requirements (a) in effect as of the Execution Date, (b) specified in any approved applications, or other documents filed in connection with such applications, for any Authorization, or (c) agreed to by Seller or Buyer, but in all cases, excluding a Change in Tax; or

(e) makes unenforceable, invalid or void any material obligation of Buyer, Reserve Buyer or Seller; or makes it unlawful for Buyer, Reserve Buyer or Seller to make or receive any payment, to perform any material obligation or to enjoy or enforce any material right under this Agreement.

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

(a) causes Seller to incur any Tax in excess of those Seller would have incurred under any Applicable Law in effect as of the Execution Date; or

(b) results in a reduction in the amount of any Tax that Seller would have incurred under any Applicable Law in effect as of the Execution Date.

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

(a) increases or will increase the cost to, or decreases or will decrease the cost to, or on behalf of, Seller of carrying out the Project, including the cost of constructing, modifying, repairing, operating and maintaining and financing the Power Station (including any increase or decrease in the cost of any Contractor and any capital expenditure), in an amount that is demonstrably material to the satisfaction of the Parties; or

- (b) increases or will increase, or decreases or will decrease the gross revenue earned by, or on behalf of, Seller in respect of the Project, in an amount that is demonstrably material to the satisfaction of the Parties;

(together a "Relevant Change"), then Seller shall be entitled to receive compensation from Buyer, or Buyer shall be entitled to a reduction in the Energy Charge Rate, the Contract Daily Capacity, the Contract Nighttime Capacity, the Minimum Daily Capacity or the Minimum Nighttime Capacity in such amounts as are necessary to place Seller in the same economic position as it would have been in but for the occurrence of such Change(s) in Law or Change(s) in Tax.

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

- (a) the increase or decrease in any costs or expenses (including any operational, administrative or compliance costs) to be incurred by Seller as a result of the Relevant Change;
- (b) the cost or savings (including on-going financing costs (if any)) of any capital items installed or upgraded or made unnecessary or of any modifications to the Power Station or otherwise made as a result of the Relevant Change;
- (c) the change (if any) in the risk profile of the Project or of the risks being accepted by Seller;
- (d) the useful life of any capital items installed or upgraded as a result of the Relevant Change; and
- (e) the effect of the Relevant Change on the future revenues and returns of the Project.

12.5. The Parties shall attempt to agree the amount payable to Seller and whether it is to be paid by way of a lump sum, a change to the Energy Charge Rate, the Contract Daily Capacity, the Contract Nighttime Capacity, the Minimum Daily Capacity or the

Minimum Nighttime Capacity or otherwise (in the event of an increase in costs) or the reduction to the Energy Charge Rate, the Contract Daily Capacity, the Contract Nighttime Capacity, the Minimum Daily Capacity or the Minimum Nighttime Capacity (in the event of a reduction in costs); and if within thirty (30) Days of submission of such notice pursuant to Clause 12.4, the Parties are unable to reach agreement on the amount of compensation payable or the manner in which it is payable, the matter (including any dispute as to whether a Relevant Change has occurred) shall be referred to an Expert for determination in accordance with Clause 17.6.

12.6. Any adjustment to the Energy Charge Rate, the Contract Daily Capacity, the Contract Nighttime Capacity, the Minimum Daily Capacity or the Minimum Nighttime Capacity or other changes or payments under this Agreement pursuant to this Clause 12 shall be effective as of the effective date of the Relevant Change.

### 13. Liability and Indemnification

#### 13.1. Limitation of Liability

13.1.1 Except as expressly provided in this Agreement, no Party shall be liable to the other Parties in contract, tort, warranty, strict liability or any other legal theory for any indirect, consequential, incidental, punitive or exemplary damages, loss of use, loss of contract, loss of opportunity or loss of profit. In respect of a breach of the provisions of this Agreement, neither Party shall have any liability to the other Parties save as expressly stated in this Agreement; provided, however, that this provision is not intended to constitute a waiver of any rights of one Party against the other Parties with regard to matters unrelated to this Agreement.

13.1.2 Notwithstanding Clause 13.1.1 or Clause 13.6, each Party shall be liable to the other Parties for any loss or damage arising by virtue of Gross Negligence or Willful Misconduct.

13.1.3 Clause 13.1.1, Clause 13.6, and Clause 13.7 shall not apply in respect of the payment of any amounts payable as a result of a Change in Law or Change in Tax. Amounts that may be due under this Agreement as a result of or following termination of this Agreement shall be included in Clause 13.1.1, Clause 13.6 and Clause 13.7 unless otherwise stated herein or in any separate agreement between the Parties.

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

### 13.3. Mutual Indemnifications

13.3.1 Subject to Clause 13.6, Buyer shall indemnify Reserve Buyer and Seller against, and hold indemnify Reserve Buyer and Seller harmless from, at all times after the date hereof, any and all losses, and any and all actions, claims and demands in respect of such losses, incurred, suffered, sustained, or required to be paid, directly or indirectly, by, or sought to be imposed upon, Reserve Buyer or Seller for personal injury or death to persons or damage to property arising out of the negligent or intentional acts or omissions of Buyer in connection with this Agreement or relating to electrical energy at and after delivery at the Delivery Points excluding the Grid Delivery Point.

13.3.2 Subject to Clause 13.6, Reserve Buyer shall indemnify Buyer and Seller against, and hold Buyer and Seller harmless from, at all times after the date hereof, any and all losses, and any and all actions, claims and demands in respect of such losses, incurred, suffered, sustained, or required to be paid, directly or indirectly, by, or sought to be imposed upon, Buyer or Seller for personal injury or death to persons or damage to property arising out of the negligent or intentional acts or omissions of Reserve Buyer in connection with this Agreement or relating to electrical energy at and after delivery at the Grid Delivery Point.

13.3.3 Subject to Clause 13.6, Seller shall indemnify Buyer and Reserve Buyer against, and hold Buyer and Reserve harmless from, at all times after the date hereof, any and all losses, and any and all actions, claims and demands in respect of such losses, incurred, suffered, sustained, or required to be paid, directly or indirectly, by, or sought to be imposed upon, Buyer or Reserve for personal injury or death to persons or damage to property arising out of the negligent or intentional acts or omissions of Seller or breach of representations and warranties by Seller in connection with this Agreement or relating to electrical energy on Seller's side of the Delivery Points.

13.4. Notice of Claims. Each Party shall promptly notify the other Party of any loss, claim, action, demand or proceeding in respect of which it is or may be entitled to indemnification under Clause 13.3. Such notice shall be given as soon as reasonably practicable after the relevant Party becomes aware of the loss, claim, action, demand or proceeding. Failure to give such notice in a timely fashion shall not affect the Indemnified Party's rights to indemnification hereunder except to the extent that the Indemnifying Party is materially prejudiced thereby

### 13.5. Defense of Claims

13.5.1 The Indemnifying Party shall be entitled, at its option, to assume and control the defense of such claim, action, suit or proceeding at its expense with legal advisers of its selection

reasonably satisfactory to the Indemnified Parties, provided it gives prompt Notice of its intention to do so to the Indemnified Parties.

- 13.5.2 Unless and until the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Parties and assumes control of the defense of a claim, suit, action or proceeding in accordance with Clause 13.6, the Indemnified Parties shall have the right, but not the obligation, to contest, defend and litigate, with legal advisers of its own selection, any claim, action, suit or proceeding by any third party alleged or asserted against the Indemnified Parties in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and the reasonable costs thereof shall be subject to the indemnification obligations of the Indemnifying Party hereunder.
- 13.5.3 Upon assumption by the Indemnifying Party of the control of the defense of a claim, suit, action or proceeding, the Indemnifying Party shall reimburse the Indemnified Parties for the reasonable costs and expenses of the Indemnified Parties in the defense of the claim, suit, action or proceeding prior to the Indemnifying Party's acknowledgement of the indemnification and assumption of the defense.
- 13.5.4 Following the acknowledgement of the indemnification and the assumption of the defense by the Indemnifying Party, the Indemnified Parties shall have the right to employ its own legal advisers and such legal advisers may participate in such claim, suit, action or proceeding, but the fees and expenses of such legal advisers shall be at the expense of such Indemnified Parties, when and as incurred, unless (i) the employment of legal advisers by such Indemnified Parties has been authorized in writing by the Indemnifying Party, (ii) the Indemnified Parties shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Parties in the conduct of the defense of such action, (iii) the Indemnifying Party shall not in fact have employed independent legal advisers reasonably satisfactory to the Indemnified Parties to assume the defense of such action and shall have been so notified by the Indemnified Party, or (iv) the Indemnified Parties shall have reasonably concluded and specifically notified the Indemnifying Party either that there may be specific defenses available to it that are different from or additional to those available to the Indemnifying Party. If clauses (ii), (iii) or (iv) of the preceding sentence shall be applicable, then legal advisers for the Indemnified Party shall have the right to direct the defense of such claim, action, suit or proceeding on behalf of the Indemnified Parties and the reasonable fees and disbursements of such legal advisers shall constitute legal or other expenses, subject to the indemnification obligations of the Indemnifying Party.

- 13.6. Limitation on Indemnification. Each Party shall be solely liable, and shall not be entitled to assert any claim for indemnification under this Agreement for any loss that would otherwise be the subject of indemnification under this Agreement until all losses of such Party arising during the current Contract Year exceed the Minimum Indemnification Amount. For purposes of this Clause 12, a loss (or claim for indemnification) shall be deemed to arise in the Year during which the event giving rise to the loss (or claim for indemnification) occurred or, in the case where the event is continuing in more than one Contract Year, in the Contract Year during which the event ends, provided that a Party shall not be obliged to refrain from making a claim under this Clause 13.6 (where it is otherwise entitled to do so) at the end of a given Contract Year ("Year End") by reason of the fact that the event in question ("Relevant Event") is still continuing, and provided further that in the event that such Party does make such a claim at the Year End it shall continue to be able to claim in relation to all remaining losses arising from the Relevant Event regardless of when they occur.
- 13.7. Fines and Penalties. Any fines or other penalties incurred by a Party for non-compliance with Applicable Law or Authorizations shall not be reimbursed by the other Parties but shall be the sole responsibility of the fined or penalized Party except where the noncompliance is caused by the negligence or intentional act or omission of, or breach of this Agreement by, another Party.
- 13.8. No Fine or Penalty. For the avoidance of doubt, Buyer acknowledges and agrees that the payment of amounts to Seller following a termination of this Agreement or any amount payable under or pursuant to Clause 13.3 shall not in any way consist or be deemed to be the payment by Buyer of a fine or a penalty that has been incurred by Seller or which Seller is responsible for.
- 13.9. Allocation of Liability. In the event that any loss results from the joint or concurrent negligent or intentional acts or omissions of the Parties, each Party shall be liable under this indemnification in proportion to its relative degree of fault.
14. Default & Termination
- 14.1. This Agreement shall become effective on the Effective Date and continue in force and effect, valid and binding for the duration of the period commencing on the Commercial Operations Date and expiring on the last day of the tenth (10th) Contract Year unless earlier terminated or shortened pursuant hereto (which period is referred to as the "Term").

14.2. If any of the parties decide to terminate, withdraw or default on this Agreement from the Effective Date, such party shall pay the other Parties full cost plus prevailing NIBOR rate of what they have expended so far on the project to date of termination, withdraw or default from this Agreement.

14.3. Extension

- (a) The Parties may by mutual agreement extend the Term in increments of five (5), upon application by the Seller for such extension at any time prior to the expiry of the Term but after the fifth (5<sup>th</sup>) Contract Year.
- (b) Upon such mutual agreement to extend the Term, Seller and Buyer shall similarly extend the Term of the Concession Agreement.

14.4. Termination

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

- (a) the mutual agreement of all the Parties to terminate the Agreement;
- (b) the delivery of a Termination Notice by Buyer pursuant to Clause 14.5 following a Seller Default;
- (c) the delivery of a Termination Notice by Seller pursuant to Clause 14.6 following a Buyer Default;
- (d) the delivery of a Termination Notice by Seller pursuant to Clause 14.9 following an Expropriation;
- (e) the delivery of a Termination Notice by Buyer pursuant to Clause 16.10.2 following the delivery by Seller of a Restoration Report and an election by Buyer not to authorize Seller to proceed with the implementation of the Restoration;
- (f) the delivery of a Termination Notice by either Party pursuant to Clause 16.8 following the occurrence of a Prolonged Force Majeure Event;
- (g) the delivery of a Termination Notice by either Party pursuant to Clause 16.9

following the occurrence of a Local Political Force Majeure Event or a Change in Law;  
or

- (h) The expiration or earlier termination of this Agreement (as provided in Clause 14.4.1) shall be without prejudice to any rights, obligations, and remedies arising out of or in connection with this Agreement, which have vested, matured or accrued the other Parties before the date of the expiration or termination.

14.5. Seller Default. Each of the following shall be a "Seller Default" which, if not cured within the time permitted (if any) under this Agreement, shall give rise to the right on the part of Buyer to terminate this Agreement pursuant to Clause 14.1, provided, however, that no such event shall become a Seller Default if it results from: (i) a breach by Buyer of this Agreement; (ii) a Buyer Default; (iii) the occurrence of a Force Majeure Event; (iv) the occurrence of an Availability Event; or (v) the occurrence of a Delayed Commissioning Event:

- (a) a breach by Seller of any of its obligations other than those referred to elsewhere in this Clause 14.5 which adversely affects the performance of its material obligations under this Agreement which continues for thirty (30) Days which has not been cured during a cure period of thirty (30) Days from receipt of a Cure Notice, or if such failure cannot be remedied within such thirty day (30) cure period but is susceptible of remedy within a longer period, such thirty (30) day period shall be extended for up to an additional sixty (60) days so long as: (i) Seller has commenced action reasonably planned to remedy such default and continues diligently to pursue such action; and (ii) such default could not reasonably be expected to have a material adverse effect on Buyer during such extended cure period;
- (b) a series of breaches by Seller of any of its obligations other than those referred to elsewhere in this Clause 14.5 which adversely affects the performance of its material obligations under this Agreement which continues for an aggregate of ninety (90) Days in any year, for which there shall be no Cure Period;
- (c) any Acts of Insolvency in respect of Seller;
- (d) a breach by Seller of the provisions of Clause 15 (Transfers) occurs;
- (e) failure by Seller to achieve Commercial Operations Date before or on the Commercial Operations Due Date and inability of Buyer to draw on the Seller Performance Guarantee as provided for in Clause 9.1;

- (f) a breach by Seller of its obligation to obtain and maintain the insurances required under Clauses 10.1 and 10.2(a) of this Agreement which has not been cured during a Cure Period of thirty (30) Days from receipt of a Cure Notice;
- (g) any statement, representation, or warranty made by Seller herein or in any certificate or other contract delivered or made under or pursuant to this Agreement proving to have been incorrect in any material respect, when made or when deemed to have been made, which inaccuracy has a material adverse effect on the ability of a Party to perform its obligations under this Agreement which has not been cured during a cure period of thirty (30) Days from receipt of a Cure Notice (or if such inaccuracy cannot be remedied within such thirty day (30) cure period but is susceptible of remedy within a longer period, such thirty (30) day period shall be extended for up to an additional sixty (60) days so long as: (i) Seller has commenced action reasonably planned to remedy such default and continues diligently to pursue such action; and (ii) such default could not reasonably be expected to have a material adverse effect on Seller during such extended cure period;
- (h) revocation, cancellation, or withdrawal of this Agreement by Seller as a result of breach of any terms and/or conditions imposed by any Authorization that has a material adverse effect on the ability of a Party to perform its obligations under this Agreement; or
- (i) Abandonment for a continuous period of thirty (30) Days or more which has not been cured during a cure period of thirty (30) Days from receipt of a Cure Notice;
- (j) termination of the Concession Agreement as a result of breach or default by Seller;
- (k) failure by Seller to obtain or maintain any Authorization required under Applicable Law or by a Relevant Authority in order for it to perform its material obligations pursuant to this Agreement if such failure is: (i) not a Lapse of Authorization; and (ii) has not been cured during a cure period of sixty (60) Days from receipt of a Cure Notice (or such longer period for reinstatement permitted by Applicable Law);
- (l) Seller's default in paying any undisputed sum of money due and owing within thirty (30) Days from the date when such sum was first due and demanded;

- (m) Seller's failure to deliver or maintain the Seller Performance Guarantee which has not been cured during a Cure Period of thirty (30) Days from receipt of a Cure Notice;

14.6. Buyer Default. Each of the following shall be a "Buyer Default", which, if not cured within the time permitted (if any) under this Agreement, shall give rise to the right on the part of Seller to terminate this Agreement pursuant to Clause 14.1, provided, however, that no such event shall become a Buyer Default if it results from: (i) a breach by Seller of this Agreement; (ii) a Seller Default; or (iii) the occurrence of a Force Majeure Event:

- (a) a breach by Buyer or Reserve Buyer of any of their obligations other than those referred to elsewhere in this Clause 14.6 which adversely affects the performance of Buyer's material obligations under this Agreement which continues for thirty (30) Days which has not been cured during a Cure Period of thirty (30) Days from receipt of a Cure Notice (or if such failure cannot be remedied within such thirty day (30) cure period but is susceptible of remedy within a longer period, such thirty (30) day period shall be extended for up to an additional sixty (60) days so long as: (i) Buyer has commenced action reasonably planned to remedy such default and continues diligently to pursue such action; and (ii) such default could not reasonably be expected to have a material adverse effect on Seller during such extended cure period;
- (b) a series of breaches by Buyer or Reserve Buyer of any of their obligations other than those referred to elsewhere in this Clause 14.6 which adversely affects the performance of Buyer's material obligations under this Agreement which continues for an aggregate of ninety (90) Days in any year, for which there shall be no Cure Period;
- (c) any failure by Buyer to pay to Seller any undisputed sum of money due and owing within thirty (30) Days from the date when such sum was first due and demanded, provided, however, that no such failure to pay shall constitute a Buyer Default in the event that Seller receives the sum of money due and owing by drawing on the Buyer Payment Guarantee;
- (d) any statement, representation or warranty made by Buyer herein or in any certificate or contract delivered or made under or pursuant to this Agreement proving to have been incorrect in any material respect, when made or when deemed to have been made, which inaccuracy has significant effect on the ability of either Party to perform its obligations under this Agreement which has not

been cured during a Cure Period of thirty (30) Days from receipt of a Cure Notice (or if such inaccuracy cannot be remedied within such thirty day (30) cure period but is susceptible of remedy within a longer period, such thirty (30) day period shall be extended for up to an additional sixty (60) days so long as: (i) Buyer has commenced action reasonably planned to remedy such default and continues diligently to pursue such action; and (ii) such default could not reasonably be expected to have a material adverse effect on Seller during such extended cure period;

- (e) revocation, cancellation or withdrawal of this Agreement by Buyer or of any Authorization applicable to Buyer that, in the case of such Authorization, has a material adverse effect on the ability of a Party to perform its obligations under this Agreement if such failure is not been cured during a cure period of sixty (60) Days from receipt of a Cure Notice (or such longer period for reinstatement permitted by Applicable Law);
- (f) delay in the Commercial Operations Date occurring beyond the Commercial Operations Due Date due to breach of Buyer's obligations;
- (g) any Acts of Insolvency in respect of Buyer;
- (h) the transfer by Buyer of this Agreement, or of any of the rights or obligations of Buyer under this Agreement, except as permitted by Clause 15; and
- (i) failure to deliver or maintain Buyer Payment Guarantee, or a replacement thereof, for a continuous period of thirty (30) Days or more following the delivery of notice of such failure from Seller to Buyer; provided, that such thirty (30) day period shall be extended to ninety (90) days in the event that:
  - (i) the issuer of such Buyer Payment Guarantee fails to continue to meet the criteria for an Acceptable Commercial Bank, and the Buyer Payment Guarantee from such issuer continues to be available to be drawn during such ninety (90) day period; or
  - (j) the Acceptable Confirming Bank fails to continue to meet the criteria for an Acceptable Commercial Bank, and the Buyer Payment Security from such confirming bank continues to be available to be drawn during such ninety (90) day period.

- 14.7.1 Upon the occurrence of a Seller Default or Buyer Default that provides for a cure period in Clause 14.5 or 14.6, the non-defaulting Party may serve a notice (a "Cure Notice") on the defaulting Party in accordance with Clause 14.7.2. A Buyer Default or Seller Default for which there is a cure period in Clause 14.5 or 14.6 shall not be a basis for Termination until a Cure Notice has been served on the defaulting Party and the cure period has expired.
- 14.7.2 The Cure Notice must specify:
- (a) the type and nature of Default that has occurred, giving reasonable details; and
  - (b) confirming the cure period (if any) provided in Clause 14.5 or 14.6, as the case may be.
- 14.7.3 If the defaulting Party either rectifies the Default within the cure period specified in the Cure Notice, or proposes a rectification program and deadline that the non-defaulting Party consents to and implements the program, in accordance with its terms, the Cure Notice shall be deemed to be revoked and this Agreement will continue.
- 14.7.4 The non-defaulting Party may extend the cure period referred to in the Cure Notice or agree changes to the rectification program at any time by notice in writing to the defaulting Party.
- 14.8 If a defaulting Party fails to implement any rectification program in accordance with its terms or to cure the Default within the time period specified in the Cure Notice, the non-defaulting Party may terminate this Agreement by delivering a Termination Notice to the defaulting Party.
- 14.9 In the event of an Expropriation of the Power Station, Seller shall have the right to terminate this Agreement by delivering a Termination Notice to Buyer.
- 14.10 In the event Seller is required to deliver a Restoration Report pursuant to Clause 16.10, and Buyer determines not to authorize Seller to proceed with the implementation of the Restoration pursuant to Clause 16.10.2, then Buyer shall deliver a Termination Notice to Seller at the time Buyer determines not to authorize Seller to proceed with the implementation of the Restoration.
- 14.11 Remedies Upon Termination

14.11.1 Each Party agrees that the sole remedies of Buyer, Reserve Buyer or Seller upon termination of this Agreement upon expiration of its term or pursuant to this Clause 14 shall be the right to payment of amounts accrued and owing under this Agreement.

14.11.2 Upon payment in full of the amounts referred to in Clause 14.11.1, each Party shall:

- (a) be deemed to have released and forever discharged, all and/or any actions, claims, rights, demands and set-offs, whether or not then known to the Parties or to the law, and whether in law or equity, that it had, may have or thereafter can, shall or may have against the other Parties arising out of or connection with this Agreement; and
- (b) not to sue, commence, voluntarily aid in any way, prosecute or cause to be commenced or prosecuted against any other Party any action, suit or other proceeding concerning this Agreement.

15. Transfers

15.1. Transfer of Ownership Interests

- (a) Seller may, subject to Clause 15.3, with notice to Buyer and Reserve Buyer transfer any legal or beneficial interest in Seller.
- (b) Seller shall not transfer this Agreement or any of the rights or obligations hereunder without the prior written consent of Buyer and Reserve Buyer (such consent not to be unreasonably withheld).

15.2. Transfer of the Agreement.

15.2.1 Buyer shall not transfer this Agreement or any of the rights or obligations hereunder unless and until the following requirements are satisfied:

- (a) the transferee expressly undertakes in an instrument reasonably satisfactory to Reserve Buyer and Seller to perform the obligations of Buyer under this Agreement and obtains any necessary Authorizations for the Transfer;
- (b) Buyer has obtained Reserve Buyer's and Seller's written consent (such consent not to be unreasonably withheld).
- (c) the transferee is a single entity that has the financial, technical and legal capacity to enter into and perform Buyer's obligations under this Agreement in form and substance satisfactory to Reserve Buyer and Seller,

(d) provided that nothing in this Clause 15 shall prohibit Buyer from novating this Agreement, with the written consent of Reserve Buyer and Seller and pursuant to Section 26(1)(d) of the Act, to a distribution company or eligible customer upon the declaration by the Minister for Power that a more competitive market be initiated in accordance with Section 26(1)(a) of the Act.

15.2.2 Reserve Buyer shall not transfer this Agreement or any of the rights or obligations hereunder unless and until the following requirements are satisfied:

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

(b) Reserve Buyer has obtained Buyer's and Seller's written consent (such consent not to be unreasonably withheld).

(c) the transferee is a single entity that has the financial, technical and legal capacity to enter into and perform Reserve Buyer's obligations under this Agreement in form and substance satisfactory to Buyer and Seller,

(d) provided that nothing in this Clause 15 shall prohibit Buyer from novating this Agreement, with the written consent of Reserve Buyer and Seller and pursuant to Section 26(1)(d) of the Act, to a distribution company or eligible customer upon the declaration by the Minister for Power that a more competitive market be initiated in accordance with Section 26(1)(a) of the Act.

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

15.4. Nothing in this Clause 15 shall prohibit a Party from assigning or transferring its rights under this Agreement as part of a security package in a bona fide financing transaction with any lender or other institution providing financing for the Project.

16. Force Majeure

16.1. Definition of Force Majeure Event

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

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

16.1.2 Force Majeure Event shall include Local Political Force Majeure Events, Foreign Political Force Majeure Events, and Natural Force Majeure Events, as each is defined in this Clause 16.1, but only to the extent that an event satisfies the requirements in Clause 16.1.1.

16.1.3 "Local Political Force Majeure Event" means any of the following events that occur inside or directly involve Nigeria:

- (a) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, civil commotion, or act of terrorism;
- (b) any act of sabotage against the Plant that:
  - (i) is not carried out by an employee, or agent or Affiliate of Seller or an employee, Contractor, or agent or Affiliate of any of Seller's Contractors, or Affiliates (unless the act constitutes a Political Force Majeure Event under 16.1.3(a)); and
  - (ii) could not have been prevented through the use of reasonable security measures by Seller or the Seller's agents, Affiliates, or Contractors;

- (c) strikes, go-slows or works to rule which are widespread or nationwide, of a political nature but excluding any such matters involving only the workforce of the claiming Party, its Contractors, its sub-contractors or suppliers;
- (d) the issuance or making of either any:
  - (i) order, injunction, direction or instruction having the force of law issued by any Relevant Authority, or
  - (ii) any declaration pursuant to a statutory instrument,
  - (iii) in either case in respect of archaeological or paleontological remains discovered on or under the Site;
- (e) any Change in Law or Change in Tax that has not been fully compensated for under Clause 12.1 and:
  - (i) makes unenforceable, invalid or void any material obligation of Buyer; or
  - (ii) makes it unlawful for Seller to make or receive any payment, to perform any obligation or to enjoy or enforce any material right under this Agreement; or
  - (iii) places material restrictions or limitations on the ability of Seller to meet its financing obligations for the Project or to repatriate any dividends (or distributions of capital) to its shareholders which restrictions or limitations remain in place more than one hundred eighty (180) Days without an arrangement being provided to exempt Seller from all such restrictions or limitations,

provided that in each case Seller has provided Buyer with at least sixty (60) Days' notice of the occurrence of such Change in Law or Change in Tax and its intention to invoke the termination provisions and the Parties have not been able to reach agreement within such period;
- (f) radioactive contamination or ionizing radiation originating from a source inside Nigeria to the extent it exceeds applicable standards;
- (g) the occurrence of an event that is analogous with a Local Political Force Majeure Event under the Concession Agreement or any financing or construction agreement entered into by a Party to discharge its obligations under this Agreement;

(h) Lapse of Authorization.

16.1.4 "Foreign Political Force Majeure Event" means any of the following events that occur outside Nigeria and do not directly involve Nigeria:

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

16.1.5 "Natural Force Majeure Event" means any of the following natural events:

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

16.1.6 "Force Majeure Event" shall expressly not include the following conditions:

- (a) normal wear and tear or inherent flaws in materials and equipment or breakdowns of equipment;

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

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

16.2. Subject to Clause 16.3, a claiming Party shall be relieved from the duty to perform its obligations under this Agreement (other than an obligation to make a payment when due and payable) and any liability for failure to perform such obligations, in whole or in part, under this Agreement to the extent such non-performance is caused by the occurrence of a Force Majeure Event.

### 16.3. Payment During Force Majeure Event

16.3.1 Buyer shall not be obliged to pay Energy Payments and Availability Event Payments during a Force Majeure Event other than as set out in this Clause 16.3.

16.3.2 Reserve Buyer shall not be obliged to pay Reserve Buyer Energy Charges and Reserve Buyer Availability Event Payments during a Force Majeure Event other than as set out in this Clause 16.3.

16.3.3 If a Local Political Force Majeure Event affects the ability of Seller to make available the Contract Daytime Capacity or the Contract Nighttime Capacity:

- (a) Buyer shall continue to make Monthly Energy Payments in respect of any Delivered Electrical Energy;

- (b) Buyer shall continue to make any Monthly Availability Event Payments due and payable;
- (c) Reserve Buyer shall continue to make any Monthly Reserve Buyer Energy Payments due and payable in respect of any portion of the Delivered Electrical Energy delivered at the Grid Delivery Point; and
- (d) Reserve Buyer shall continue to make any Monthly Grid Availability Event Payments due and payable.

16.3.4 If a Force Majeure Event does not affect the ability of Seller to make available Contract Daytime Capacity or the Contract Nighttime Capacity, but affects the ability of Buyer to accept Net Electrical Energy at the Delivery Point:

- (a) Buyer shall continue to make Monthly Energy Payments in respect of any Delivered Electrical Energy;
- (b) Buyer shall continue to make any Monthly Availability Event Payments due and payable;
- (c) Reserve Buyer shall continue to make any Monthly Reserve Buyer Energy Payments due and payable in respect of any portion of the Delivered Electrical Energy delivered at the Grid Delivery Point; and
- (d) Reserve Buyer shall continue to make any Monthly Grid Availability Event Payments due and payable.

16.3.5 If a Foreign Political Force Majeure Event or Natural Force Majeure Event affects the ability of Seller to make available the Contract Daytime Capacity or the Contract Nighttime Capacity:

- (a) Buyer shall continue to make Monthly Energy Payments in respect of any Delivered Electrical Energy;
- (b) Reserve Buyer shall continue to make any Monthly Reserve Buyer Energy Payments due and payable in respect of any portion of the Delivered Electrical Energy delivered at the Grid Delivery Point; and

16.4. Notification Obligations

- 16.4.1 The Party affected by a Force Majeure Event shall give Notice to the other Parties of any event constituting a Force Majeure Event as soon as reasonably practicable after the Party first learns of the Force Majeure Event. Any Notice shall include particulars of the event constituting a Force Majeure Event, of its effects on the Party claiming relief and the remedial measures proposed, including estimated time to restore the situation, if appropriate. The Party affected by a Force Majeure Event shall give the other Parties regular reports on the progress of those remedial measures and such other information as the other Parties may reasonably request.
- 16.4.2 The Party affected by a Force Majeure Event shall give Notice to the other Parties of (i) the cessation of the relevant event constituting a Force Majeure Event, and (ii) the cessation of the effects of such event constituting a Force Majeure Event, and (iii) any requested extension of time as soon as reasonably practicable after becoming aware of each of (i), (ii), and (iii) above.
- 16.5. Responsibilities of the Parties. The claiming Party shall, as soon as practicable after the commencement of the Force Majeure Event, use Reasonable Endeavors to expeditiously remedy and mitigate the Force Majeure Event causing the failure and to minimize the interruption of performance of its affected obligations, provided that: (i) a claiming Party shall not be required to settle any labor dispute or industrial or public disturbance, except in such manner as it shall in its own judgment consider acceptable; and (ii) a claiming Party shall not be required to incur any extraordinary costs or to act other than as a Reasonable and Prudent Operator. If a claiming Party's facilities have been damaged or destroyed, then such claiming Party shall apply any proceeds of insurance coverages required under Clause 10.1 in respect of such loss or damage in accordance with the provisions of Clause 10.
- 16.6. Delay Caused by Force Majeure Event. A Party shall not be responsible or liable for or deemed in breach hereof because of any failure or delay in complying with its obligations (other than an obligation to make a payment when due) due solely to one or more Force Majeure Events or its or their effects or by any combination thereof, and, upon the request of the affected Party, the periods allowed or dates required for the performance by Parties of such obligations, including each Key Defined Milestones, shall be extended on a day-for-day basis; provided that, no relief shall be granted to the Party claiming Force Majeure Event pursuant to this Clause 16.6 to the extent that such failure or delay would have nevertheless been experienced by that Party had such Force Majeure Event not occurred. Other than for breaches of this Agreement by the Party not claiming Force Majeure Event, and without prejudice to the rights of the Party claiming Force Majeure Event to indemnification under this Agreement, the Party not claiming

Force Majeure Event shall not bear any liability for any loss or expense suffered by the Party claiming Force Majeure Event as a result of a Force Majeure Event.

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

16.8. Prolonged Force Majeure Events. Upon the occurrence of:

(a) a Force Majeure Event (including a Local Political Force Majeure Event) and the continuation of such Force Majeure Event for a period of one hundred eighty (180) Days or more from the date of the occurrence of such Force Majeure Event;

(b) a series of related Force Majeure Events (including Local Political Force Majeure Events) and the continuation in the aggregate of such Force Majeure Events for a period of one hundred eighty (180) Days or more during any Contract Year,

(each such occurrence, a "Prolonged Force Majeure Event"), then any of the Parties shall have the right, but not the obligation, to terminate this Agreement by delivering a Termination Notice to the other Parties; provided that, such right of termination shall not apply during the implementation of a Restoration in accordance with Clause 16.11 or after completion of the Restoration. Whether a Restoration is being implemented and whether it has been completed will be initially determined in the reasonable discretion of the Party giving the Termination Notice and any dispute will be governed by Clause 17.

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

16.9.1 In the event that a Local Political Force Majeure Event or Change in Law that renders it illegal, unlawful or impractical for: (i) a Party to continue to perform material obligations or enjoy material rights under this Agreement; or (ii) for a Restoration to be implemented, any of the Parties shall have the right to terminate this Agreement by delivering a Termination Notice within thirty (30) Days of the Parties becoming aware of the occurrence of the Local Political Force Majeure Event or Change in Law.

16.9.2 In the event that a Local Political Force Majeure Event or Change in Law that renders it illegal, unlawful or impractical for a Party to continue to perform material obligations or enjoy material rights under this Agreement, and the Parties agree that the Restoration is not economically or commercially viable (taking into account, among other things: (i) the total cost of the Restoration, (ii) the Seller's ability, following the Restoration, to earn a reasonable for discharging its obligations under this Agreement), any of the Parties shall have the right to terminate this Agreement by delivering a Termination Notice within thirty (30) Days of the agreement by the Parties that the cost of the Restoration is not economically or commercially viable;

16.9.3 In the event that the Parties do not terminate this Agreement pursuant to this Clause 16.9, then Clause 16.10 shall continue to apply.

16.10. Restoration Following a Local Political Force Majeure Event or Change in Law. In the event that a Local Political Force Majeure Event results in uninsured material damage to the Power Station, or that compliance by Seller with a Change in Law requires a material modification or a material capital addition (each such repair, material modification or capital addition referred to herein as a "Restoration") to the Power Station (unless Seller has been compensated by Buyer for the cost of such material modification or repair pursuant to Clause 12, in which case, Clause 12 shall apply to such modification or repair), Seller use its Reasonable Endeavors to procure, as soon as practicable, from an independent Expert, reasonably acceptable to Buyer and Reserve Buyer, a written comprehensive report (the "Restoration Report") containing estimates of:

- (a) the projected Restoration costs (the "Restoration Cost Estimate");
- (b) the activities and the period reasonably required to complete the Restoration, (which period shall be referred to herein as the "Restoration Period"), including a reasonable period to arrange any required financing for the Restoration; and
- (c) the compensation, and its justification, in lump sum or increment of the Energy Charge Rate proposed by the Seller to undertake the Restoration, and justification.

16.10.2 Buyer, in consultation with Reserve Buyer, acting reasonably and in good faith, shall have the right to determine whether to proceed with Restoration or to terminate this Agreement, and Buyer shall, within thirty (30) Days of the issuance of the Restoration Report, either:

(a) deliver a Termination Notice to Seller and Reserve Buyer; or (b) authorize

Seller to proceed with the Restoration.

16.11. Following Buyer's to authorization to Seller to proceed with a Restoration, Seller shall proceed in good faith and use commercially Reasonable Endeavors to secure financing for the cost of Restoration on terms satisfactory to Buyer. If Seller is unable to obtain binding commitments for such financing within three hundred (300) Days of receipt of Buyer's notice authorizing Seller to proceed with Restoration, then unless Buyer commits to provide financing for the Restoration within the next sixty (60) Days, and obtains such financing within an additional two hundred forty (240) Days, the failure to secure financing shall be treated as an election by Buyer to terminate this Agreement pursuant to Clause 16.10.2.

16.12. Payments During the Implementation of a Restoration. For the avoidance of doubt, Buyer and Reserve Buyer shall make the payments to Seller and Buyer respectively referred to in Clause 16.3 from the occurrence of the Local Political Force Majeure Event referred to in Clause 16.9 until re-commencement of full Commercial Operations of the Power Station following the completion of the Restoration or termination of this Agreement.

## 17. Choice of Law and Dispute Resolution

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

### 17.2. Informal Dispute Resolution

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

17.2.2 For a period of not less than thirty (30) Days from delivery of a Notice of a Dispute, the Parties shall attempt in good faith to settle the Dispute by negotiations among the designated or authorized representatives of each Party. In the event that the Parties are unable to reach an agreement within thirty (30) Days, or such longer period as they may agree, then either Party may refer the Dispute to arbitration which Dispute shall be determined and settled in accordance with Clause 17.3. Upon agreement of the Parties, the Parties may appoint an impartial expert to review and give the Parties an advisory opinion on any technical, commercial, accounting, metering, or other issue (or

combination of issues) in dispute, in such time and at the sole or agreed joint cost of either or both Parties.

### 17.3. Arbitration of Disputes

17.3.1 In the event of any dispute, question, difference or controversy arising out of, concerning of or in connection with this contract or as to the interpretation of any of the provisions thereof or the validity or invalidity of the performance under it which cannot be settled by mutual negotiation between the parties, such dispute shall finally be settled through Arbitration by submitting to the Regional Centre for Arbitration, Lagos for arbitration or adjudication in accordance with the Arbitration Rules contained in the schedule to the Arbitration and Conciliation Act CAP A18 Laws of the Federation of Nigeria(LFN) 2004. The arbitration proceedings shall be conducted, and the award shall be rendered, in the English language.

17.3.2 Any arbitral tribunal to be appointed for the resolution of Disputes under this Agreement shall consist of three (3) arbitrators. The three arbitrators will be appointed by the Regional Centre for Arbitration (the "Centre"). No arbitrator may (i) be a present or former employee or agent of, or consultant or counsel to either Party or any Affiliate of either Party or (ii) be in any way closely connected with the Project or (iii) have any interest in the outcome of the proceeding.

17.3.3 The seat of the arbitration proceedings shall be Lagos, Nigeria.

17.3.4 In determining the rights of the Parties under the applicable contracts, the arbitral tribunal shall apply the law governing the applicable contracts, including Clauses 17.1 and 17.3.1 hereof.

17.3.5 Any arbitral award issued under this Clause 17.3 shall be final and binding upon the parties to the Dispute, and each Party undertakes to comply with and to carry out any arbitral award rendered in a Dispute to which it is a party, fully and without delay.

17.3.6 Without prejudice to Clause 17.3.5 of this Agreement and Article 34(6) of the Rules, the Parties expressly agree that any rights of appeal that may not be waived by a Party shall be exercisable by a Party only: (i) after the award has been fully implemented under this Clause 17.3; or (ii) if such Party must pay an amount under such award, after such Party has either paid such amount to the other Party or has deposited the amount of the award with the tribunal or a court of competent jurisdiction.

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

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

17.4. Interim Relief & Enforcement of Arbitral Awards. Notwithstanding Clause 17.3, this Clause 17.4 is without prejudice to any right of a Party granted by law to apply to the courts of Nigeria or any other courts of competent jurisdiction to:

- (a) seek interim or conservatory relief against another Party in support of arbitration proceedings; or
- (b) seek relief against another Party to enforce the agreement to submit any Dispute to arbitration pursuant to this Agreement; or
- (c) enforce an arbitral award made in arbitration proceedings brought pursuant to this Agreement or, in the case of proceedings to which Clause 17.5 below applies, any Related Agreement (as defined in Clause 17.5 below).

17.5. Disputes under Project Agreements

17.5.1 In circumstances in which: (i) proceedings have already been commenced under a Project Agreement (in each case, an "Existing Dispute"), (ii) a Party contends that two or more arbitrations commenced under this Agreement and a Project Agreement are substantially related and involve substantially related issues and that the issues should be heard in one proceeding, then the first tribunal to be constituted under the terms of this Agreement or under a Project Agreement providing for:

- (a) arbitration under the Rules of Arbitration and Conciliation Act CAP A18 Laws of the Federation of Nigeria (LFN) 2004;
- (b) before an arbitral tribunal composed of three (3) arbitrators who are to be appointed by the Regional Centre for Arbitration; and
- (c) the arbitral tribunal constituted thereunder to be seated in Lagos, Nigeria,

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

17.5.2 The Parties expressly accept that in the event of consolidation in accordance with this Clause 17.5 any Dispute that may be referred to arbitration under this Agreement may be disposed of in the same arbitration proceedings as any other dispute arising under a Project Agreement, even in the presence of parties other than the Parties to this Agreement.

#### 17.6. Expert Determination

17.6.1 In the event that the Parties are unable to resolve any Dispute pursuant to Clause 17.2, and the amount to be claimed by either Party is equal to or less than **three million USDollars (US\$1,000,000)**, then the Dispute shall be settled by an expert determination in accordance with the provisions of this Clause 17.6 ("Expert Determination").

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

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

17.6.4 The Expert shall, within seven (7) Days of such appointment, give written notice to the Parties of the time and place of a preliminary conference ("Preliminary Conference") to be held in accordance with Clause 17.6.6, which the Parties shall attend.

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

17.6.6 At the Preliminary Conference, the Parties and the Expert shall discuss and agree on the issues in Dispute, or formulate a procedure by which those issues can be clarified and agreed; plan and agree on the determination process including a timetable for provision of submissions, documents and any other evidentiary material; make arrangements for

confidentiality agreements to be signed by all persons taking part in the determination process, make such other planning and administrative arrangements as may be required in relation to the determination process, including in respect of the terms of appointment of the Expert.

- 17.6.7 The Expert shall adopt procedures suitable to the circumstances of the particular case, avoiding unnecessary delay and expense, so as to provide an expeditious cost effective and fair means of determining the Dispute. The Expert shall be independent of, and act fairly and impartially as between the Parties, giving each party a reasonable opportunity of putting its case and dealing with that of the other Party, and a reasonable opportunity to make submissions on the conduct of the determination process.
- 17.6.8 The Parties shall continue to perform their contractual obligations notwithstanding the existence of the determination process.
- 17.6.9 As soon as reasonably practicable after receiving the submissions and evidentiary material from the Parties, the Expert shall determine the Dispute between the Parties and notify such determination in writing to the Parties and the Expert's determination shall contain a statement of reasons in such form as the Expert considers reasonably appropriate, having regard to the amount and complexity of the Dispute. The Expert's determination may include for the payment of interest on any monetary sum determined, in such amount as the Expert considers reasonable, in view of the cap in Clause 17.6.1.
- 17.6.10 Unless otherwise agreed in writing by the Parties or in the face of manifest error or fraud, the determination of the Dispute by the Expert shall be final and binding on the Parties.
- 17.6.11 All costs of the Expert Determination and all fees payable to the Expert shall be borne by the Party who refers the Dispute to Expert Determination where the Dispute is determined in favor of the other Party. Both Parties shall bear the cost of the Expert Determination where the Dispute is determined in favor of the Party that referred it to Expert Determination.

## 18. Notices

- 18.1. Except as otherwise expressly provided in this Agreement, all notices, communications, or other contacts that are required or permitted to be given or made under this Agreement ("Notices") shall be in English, in writing, and addressed for the attention of the person indicated in this Clause 18.1 (or such other person as a Party shall nominate in a Notice given in accordance with this Clause 18.1 from time to time).

(a) Federal Ministry of Power, Works and Housing  
For the attention of: XXXX  
Address: Power House, 14 Zambezi Crescent, Maitama District, Abuja Federal  
Capital Territory, Nigeria  
Telephone: XXXX  
Email: XXXX

(b) Abuja Electricity Distribution Company Limited  
For the attention of: XXXX  
Address: XXXXX  
Telephone: XXXX  
Email: XXXX

(c) Seller  
For the attention of: XXXX  
Address: XXXXX  
Telephone: XXXX  
Email: XXXXX

18.2. Any such notice shall be delivered personally, as evidenced by the corresponding seal or receipt or acknowledgement signed by the recipient Party, or sent by reputable express courier or by facsimile or email (provided the sender has evidence of successful transmission) and shall be addressed as stipulated in Clause 18.1.

18.3. All notices shall be deemed delivered:

- (a) when presented personally,
- (b) when transmitted by facsimile or email to the receiving Party's facsimile number and receipt of confirmation of a successful transmission, or to an email address specified above upon confirmation of receipt electronically or telephonically, or
- (c) five (5) Day(s) after being delivered to the courier for express delivery, addressed to the receiving Party, at the address indicated in in Clause 18.1 (or such other address as such Party may have specified by written Notice).

19. Miscellaneous Provisions

- 19.1. Amendment. The Parties shall not vary, add to, supplement, cancel, replace, or novate this Agreement except by mutual consent evidenced by an instrument in writing signed by the authorized representatives of the Parties and with the prior consent and approval of the Commission, provided that each Party may update its notice information in Clause 18.1 by written Notice to the other Parties.
- 19.2. Third Parties. This Agreement is intended for the benefit of the Parties hereto. Nothing in this Agreement shall be construed to create any duty or any liability to or any right of suit or action, to any person not a Party to this Agreement.
- 19.3. No Implied Waiver. The failure or delay of either Party to enforce at any time any of the provisions of this Agreement, or to require at any time performance by the other Parties of any provision hereof, shall neither be construed to be a waiver of such provisions nor affect the validity of this Agreement or any part hereof or the right of such Party thereafter to enforce each and every such provision. Any waiver under and for the purposes of this Agreement shall be in writing.
- 19.4. Relationship of the Parties. The Parties enter into this Agreement as independent entities. Nothing herein shall be interpreted or construed as creating an association, joint venture, partnership or agency between the Parties or as imposing any partnership obligation or liability upon any of the Parties. None of the Parties shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, any other Party. Nothing in this Agreement shall be construed as creating any relationship between the Parties other than that of independent sale and purchase of capacity and electricity generated at the Power Station. Except as otherwise set forth herein, the Parties do not intend to create any rights, or grant any remedies to, any third party beneficiary of this Agreement.
- 19.5. Conflict of Interest. Each Party shall avoid any conflict of interest between its own interests (including the interests of Affiliates) and the interests of the other Parties in dealing with suppliers, customers and all other organizations or individuals doing or seeking to do business with the Parties in connection with activities contemplated under this Agreement. The provisions of this Clause 19.5 shall not apply to:
- (a) a Party's performance which is in accordance with the Applicable Law or policies of any Relevant Authority; or
  - (b) a Party's acquisition of products or services from an Affiliate, or the sale thereof to an Affiliate, made in accordance with this Agreement.

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

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

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

19.8. **Warranty. The Seller shall give assurance of 24 months warranty of its installation to Buyer and Reserved Buyer.....**

19.9. Confidentiality

19.9.1 The terms and conditions of this Agreement and all information disclosed pursuant to or in connection with this Agreement (including information disclosed in contemplation of this Agreement) shall be treated as confidential until five (5) years after the expiry of this Agreement (such terms and conditions and any such information being herein called "Confidential Information") and none of the Parties shall use such Confidential Information for any purpose other than solely in connection with the Project, without the express written consent of the Party that disclosed the Confidential Information.

19.9.2 For the purposes of this Clause 19.9, the term Confidential Information shall not include information which:

- (a) at the time of disclosure or at any time thereafter is in, or becomes part of, the public domain other than through a breach of this Clause 19.9;
- (b) the Party receiving the information can prove it was already known to it, or was independently acquired or developed by it without being in breach of its obligations under this Clause 19.9;

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

19.9.3 Except as provided in Clause 19.9.2, such Confidential Information shall not be disclosed in whole or in part by any Party receiving the same to any third Parties without the prior written consent of the Party that disclosed the Confidential Information, such consent not to be unreasonably withheld or delayed.

19.9.4 Exceptions to Confidentiality. Notwithstanding the provisions of Clause 19.9.3, in the circumstances set out below no Party shall be required to obtain the prior consent of the Party that disclosed the Confidential Information and each Party is hereby authorized to disclose such Confidential Information:

- (a) to directors and employees of such Party and of its Affiliates to the extent required for the proper performance of their work in connection with this Agreement provided that such Party shall use Reasonable Endeavors to ensure that such directors and employees keep the Confidential Information confidential on the same terms as are provided in this Clause 19.9 and disclosure or use of the Confidential Information by any such directors and employees in contravention of such terms shall be deemed to be an unauthorized disclosure or use by the Party disclosing the same to such directors and employees;
- (b) to any consultants, insurers, banks or financial institutions (and their advisers) from whom such Party is seeking or obtaining finance, insurance or consulting services in connection with the Project but only to the extent reasonably necessary, or to third parties engaged by or on behalf of such Party but only to the extent required for the proper performance of their work for the purpose or purposes incidental to or arising out of this Agreement provided that the proposed recipients of such information shall be required by a Party providing information to undertake to such Party to keep such information confidential on the same terms as are provided in this Clause 19.9 and provided further that the Party providing information shall use Reasonable Endeavors to secure compliance with such undertaking;
- (c) to the extent such Party is required by law to make a disclosure to any government department or any governmental or regulator agency having jurisdiction over such Party;

- (d) to the extent required by any Applicable Law, rules and regulations of any recognized stock exchange or to the extent required by any process having the force of law in connection with any judicial, arbitral or administrative proceedings; and
  - (e) to an expert appointed pursuant to Clause 17.6 provided that such expert agrees to be bound to confidentiality provisions substantially the same as those contained in this Clause 19.8.
- 19.10. Severability. If one or more provisions contained in this Agreement are held or found to be invalid, illegal, or unenforceable in any respect, the provision(s) shall be given effect to the extent permitted by law and the invalidity, illegality, or unenforceability of any provisions shall not affect the validity of the remaining provisions of this Agreement.
- 19.11. Headings. The headings and subheadings in this Agreement are inserted for convenience of reference only and will not be used in interpreting or construing the provisions of this Agreement.
- 19.12. No Consequential Damages. In no event shall a Party be liable to any other Party, or any third party, for any lost profits, incidental, consequential, punitive, special or indirect damages arising out of or in connection with the Confidential Information or this Agreement, even if advised as to the possibility of such damages, regardless of whether the claim for such damages is based in contract, tort, negligence, strict liability or otherwise.
- 19.13. Counterparts. This Agreement may be executed in counterparts, all of which shall be considered one and the same Agreement and each of which will be deemed an original.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement in the manner hereinafter appearing, the day, month and year first above written.

THE COMMON SEAL OF THE WITHIN NAMED ABUJA ELECTRICITY DISTRIBUTION COMPANY LIMITED WAS HEREUNTO AFFIXED IN THE PRESENCE OF:

\_\_\_\_\_  
Authorized Signatory  
Name: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
Authorized Signatory  
Name: \_\_\_\_\_  
Date: \_\_\_\_\_

THE COMMON SEAL OF THE WITHIN NAMED X WAS HEREUNTO AFFIXED IN THE PRESENCE OF:

\_\_\_\_\_  
Authorized Signatory  
Name: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
Authorized Signatory  
Name: \_\_\_\_\_  
Date: \_\_\_\_\_

THE COMMON SEAL OF THE WITHIN NAMED FEDERAL MINISTRY OF POWER, WORKS AND HOUSING WAS HEREUNTO AFFIXED IN THE PRESENCE OF:

\_\_\_\_\_  
Authorized Signatory  
Name: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
Authorized Signatory  
Name: \_\_\_\_\_  
Date: \_\_\_\_\_

Schedule 1 – Buyer's Facilities, Requirements and Distribution System

Schedule 2 – Seller's Technical Specifications

Schedule 3 – Energy Charge Rate and Commercial Operations Due Date

Schedule 4 – Authorizations

Schedule 5 – Concession Agreement

Schedule 6 – Seller Performance Guarantee

Schedule 7 – Buyer Payment Guarantee

Schedule 8 – Reserve Buyer Payment Guarantee

Schedule 9 – Insurance Coverage

