

10.3 Company Representations and Warranties

The Company hereby represents and warrants to the Concessionaire that:

- 10.3.1 The Company is a limited liability company, duly organised and validly existing under the Laws of Nigeria, and has all requisite corporate power and authority to own or lease and operate its properties and to carry on its business as currently conducted.
- 10.3.2 The Company has full corporate power and authority to execute and deliver this Agreement and to perform its obligations hereunder.
- 10.3.3 The execution, delivery and performance of this Agreement by the Company:
 - (A) has been duly authorised by all requisite corporate action on the part of the Company, and no other proceedings on the part of the Company or any other Person are necessary for such authorisation;
 - (B) will not violate (i) the Laws of Nigeria or any applicable order of any Regulatory Authority or (ii) any provision of the Memorandum and Articles of Association of the Company; and
 - (C) will not violate, be in conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any indenture, agreement for borrowed money, bond, note, instrument or other agreement to which the Company is a party or by which the Company or its property is bound, excluding defaults or violations that would not, individually or in the aggregate, have a material adverse effect on its ability to perform its obligations hereunder.
- 10.3.4 This Agreement has been duly executed and delivered by the Company.
- 10.3.5 This Agreement constitutes a legal, valid and binding obligation of the Company, enforceable against it in accordance with its terms, subject to (i) bankruptcy, insolvency, reorganisation, moratorium, or other similar laws now or hereafter in effect relating to creditors' rights and (ii) to general principles of equity.
- 10.3.6 The Company has full legal and beneficial title to the Hydro Property and full legal right and power to lease the Hydro Property to the Concessionaire in accordance with this Agreement.
- 10.3.7 To the best of its knowledge, after reasonable inquiry, no filing or registration with, no notice to and no permit, authorisation, consent or approval of any Person is required for the execution, delivery or performance of this Agreement by the Company, except for the Specified Consents.
- 10.3.8 The Company 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.
- 10.3.9 There is no action, suit, proceeding or investigation pending or, to the Company's knowledge, threatened (i) for the dissolution of the Company, or (ii) against the Company, 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.



10.4 Conduct of the Parties

10.4.1 Each Party covenants that it and the owners, stockholders, officers, directors, employees and agents of it and its Affiliates have not made, offered, or authorised and will not make, offer or authorise, with respect to the matters which are the subject of this Agreement, any payment, gift, promise or anything of value or advantage, whether directly or through any other person or entity, to or for the use or benefit of any public official (being any person holding a legislative, administrative or judicial office, including any person employed by or acting on behalf of a public agency, a public enterprise or a public international organisation) or any political party or political party official or candidate for office, where such payment, gift, promise or advantage would violate:

- (A) the Laws of Nigeria;
- (B) the laws of the country of incorporation of such Party or such Party's ultimate parent company and of the principal place of business of such ultimate parent company;
- (C) the principles described in the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, signed in Paris on 17 December 1997, which entered into force on 15 February 1999, and the Convention's Commentaries; or
- (D) any other relevant conventions, treaties, protocols or regulations.

10.4.2 Each Party covenants and represents that it does not desire and will not request any services, action or inaction by any person or entity which would constitute such violation. Each Party shall promptly (i) respond in reasonable detail to any notice from any other Party reasonably connected with the above stated warranty; and (ii) furnish applicable documentary support for such response upon request from and at the expense of such other Party.

10.4.3 None of the Parties nor any of their Affiliates, nor any of their officers, employees, representatives or agents have either in private business dealings or in dealings with the public or government sector directly or indirectly given, offered or received or agreed (either themselves or in agreement with others) to offer, give or receive any bribe or committed or attempted to commit (either themselves or in agreement with others) any other corrupt act whether in the Federal Republic of Nigeria or elsewhere in the world.

10.4.4 None of the Parties nor any of their Affiliates, nor any of their officers, employees, representatives or agents (in relation to the Operations or in relation to the execution of this Agreement or of any of the Specified Consents (including the Licences) or the Industry Documents) have, whether acting as principal or agent, received, agreed or attempted to receive the proceeds of or profits from a crime or agreed to assist any person to retain the benefits of a crime.

10.4.5 The Parties agree that asset stripping is expressly prohibited for the purposes of this Agreement.

11. CONCESSION FEES

11.1 In consideration for the grant of the Concession, the Concessionaire shall pay the Concession Fees, in the amount and in the manner provided for in Schedule 8.



- 11.2 By not later than the Commencement Date, the Concessionaire shall transfer and pay to BPE the balance of the Commencement Fee, such payments to be made in accordance with Schedule 8:
- 11.2.1 seventy four percent (74%) of the Fixed Entry Fee being an amount of eleven million, one hundred thousand United States Dollars (US\$11,100,000); and
 - 11.2.2 seventy four percent (74%) of the Upfront Annual Fee being an amount of seventy one million, five hundred and twenty four thousand, three hundred and fifty five United States Dollars (US\$ 71,524,355).
- 11.3 By not later than the Commencement Date, the Concessionaire shall transfer and pay to CPCS Transcom International Ltd one percent (1%) of the Commencement Fee, such payment to be made in accordance with Schedule 8:
- 11.3.1 one percent (1%) of the Fixed Entry Fee, being an amount of one hundred and fifty thousand United States Dollars (US\$150,000); and
 - 11.3.2 one percent (1%) of the Upfront Annual Fee, being an amount of nine hundred and sixty six thousand, five hundred and forty five United States Dollars (US\$966,545).
- 11.4 Where the Generation Licence and Water Licence are renewed or extended for a further term beyond fifteen (15) years from the Commencement Date, the amount and payment terms of the Annual Fee that will apply in each Operating Year during the Extension Period will be fixed by BPE on the basis of the annual concession fees prevailing in Nigeria at the start of the Extension Period provided that BPE shall consult with, and take into account all reasonable comments given by, the Concessionaire.
- 11.5 Except as expressly provided for in this Agreement or as the Parties may otherwise agree in writing, all payments must be made in United States Dollars. Any amounts due but not paid thereunder shall bear interest in accordance with Clause 20.17.

12. ENVIRONMENT, HEALTH AND SAFETY

12.1 Safety Procedures

The Concessionaire shall prepare and implement work and operation safety procedures to ensure the health, safety and welfare of its workforce and users of the Power Station and the Site in accordance with the Laws of Nigeria, international conventions, protocols, international agreements to which the Federal Republic of Nigeria is a party and Good Industry Practice and FGN's guidelines that are applicable to all operators in the power sector.

12.2 Security System Safety

- 12.2.1 The Parties acknowledge and agree that NERC shall be responsible for all safety issues connected with the Operations.
- 12.2.2 The Concessionaire shall be responsible for the preparation and implementation of a safety and security system in accordance with the Laws of Nigeria, international conventions, protocols, international agreements to which the Federal Republic of Nigeria is a party and Good Industry Practice for the Site (including without limitation fencing off the Site) which system shall be subject to the Regulatory Authority's prior written approval if required.

12.3 Obligation to Notify

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



- 12.3.1 inform the Company and any Regulatory Authority (if applicable) immediately of the same;
- 12.3.2 take all reasonable measures required for detecting, cleaning and containing such pollution; and
- 12.3.3 provide the Company and any Regulatory Authority with frequent written updates on such measures being taken or remaining to be taken by the Concessionaire.

12.4 Concessionaire Obligation to Remediate

In the event that Waste Material is present in the waters of the River Kaduna or in or on the bottom of Shiroro Reservoir after the Commencement Date, which has originated from the Site, then the Concessionaire shall take immediate action to contain, remove and/or remediate the same in accordance with the Laws of Nigeria, international conventions, protocols, international agreements to which the Federal Republic of Nigeria is a party and Good Industry Practice.

12.5 Obligation to Comply with Environmental Laws

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

12.6 Waste Disposal

- 12.6.1 The Concessionaire shall arrange for the disposal of Waste Material generated from the Site in accordance with the Laws of Nigeria, international conventions, protocols, international agreements to which the Federal Republic of Nigeria is a party and Good Industry Practice. The Concessionaire shall not dump in the River Kaduna or the Shiroro Reservoir any substance other than rainwater without the Company and any Regulatory Authority's prior written consent.
- 12.6.2 Such consent shall be deemed if no objection is raised by the Company or within thirty (30) days of such consents being requested by the Concessionaire.
- 12.6.3 In the event of an environmental emergency emanating from the Site and endangering life or property, the Concessionaire shall take such action as may be reasonable and necessary to prevent, avoid, or mitigate injury, damage, or loss and shall, as soon as possible, report any such incidents, including the Concessionaire's response thereto, to the Company and any Regulatory Authority. If the Concessionaire has not taken reasonable precautions for the safety of the public, its customers or the protection of the Site, and such failure creates an environmental emergency requiring immediate action, then the Company and any Regulatory Authority, with or without notice to the Concessionaire may, but shall be under no obligation to, provide reasonable protection as required to address such emergency. The taking of any such action by the Company and/or any Regulatory Authority, or the Company or any Regulatory Authority's failure to take any action, shall not limit the Concessionaire's liability.
- 12.6.4 The Concessionaire shall reimburse the Company or any Regulatory Authority (if applicable) directly for the performance of any such work or furnishing on the Site of any such equipment in connection with any emergency in an amount equal



to the reasonable costs incurred by the Company and BPE in such performance of work or furnishing of equipment.

13. INSURANCE

13.1 Maintenance of Specified Policies

13.1.1 The Concessionaire, at its sole cost and expense, shall obtain and maintain in effect during the Concession Term such insurance policies and coverage as are required by the Laws of Nigeria, any Consents, Good Industry Practice and Schedule 10 (the "**Insurance Policies**"), provided that such coverage may be changed from time to time with the prior written consent of the Company, which shall not be unreasonably withheld or delayed. Nothing however shall prevent the Concessionaire, at its sole cost and expense, from procuring additional insurance coverage from what is specifically required under this Clause 13.

13.1.2 The Concessionaire shall ensure that where the insurance policies set out in Schedule 10 name the Company and its employees and agents as additional named insured, the Concessionaire shall be free at any time to increase the amounts of insurance above the amounts therein specified, but shall not reduce such amounts without the prior written consent of the Company. The Concessionaire shall not be in breach of its obligations hereunder if and to the extent that any particular insurance is unavailable to it under commercially reasonable terms for reasons other than any negligence or default by the Concessionaire or the condition of the Power Station.

13.1.3 Such consent shall be deemed if no objection is raised by the Company and/or BPE within thirty (30) days of such consents being requested by the Concessionaire.

13.2 Any Insurance Policies placed by the Concessionaire:

13.2.1 must be placed through a competitive process that includes Nigerian insurance companies;

13.2.2 if placed with Nigerian companies where appropriate include reinsurance with reputable indemnities having satisfactory financing standing;

13.2.3 must be with reputable and financially-sound domestic or foreign insurers approved by the Company (such approval not to be unreasonably withheld or delayed);

13.2.4 must take into account the insurable interest of the Company in the Power Station in the manner specified in Schedule 10;

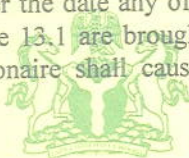
13.2.5 must comply with the rules on asset reinstatement and other rules as laid out in the Schedule 10;

13.2.6 must be on terms approved by the Company (such approval not to be unreasonably withheld or delayed); and

13.2.7 must not contain any exclusion, endorsement or alteration, unless such exclusion, endorsement or alteration is first approved by the Company (such approval not to be unreasonably withheld or delayed) or otherwise detailed in this Agreement.

13.3 Evidence of Coverage

Not later than ten (10) days after the date any of the Insurance Policies required to be in effect in accordance with Clause 13.1 are brought into effect, or renewed in accordance with their terms, the Concessionaire shall cause its insurers or agents to provide the



Company for the Company's review and approval certificates of insurance evidencing the policies and terms specified in this Clause 13 (Insurance) and in Schedule 10 (Minimum Insurance Requirements) to this Agreement. The Concessionaire shall provide the Company with copies of receipts or statements from its insurers evidencing payment of the annual premiums in respect of the insurance coverage and endorsements or that such payments are not overdue. Failure by the Concessionaire to obtain the insurance coverage or certificates of insurance required by this Clause 13 (Insurance) or Schedule 10 (Minimum Insurance Requirements) shall not relieve the Concessionaire of the insurance requirements set out in this Agreement or in Schedule 10 or in any way relieve or limit the Concessionaire's obligations and liabilities under any other provision of this Agreement. If the Concessionaire fails to procure or maintain any insurance required pursuant to this Clause 13 (Insurance) or Schedule 10 (Minimum Insurance Requirements) then the Company has the right to procure such insurance in accordance with the requirements of this Clause 13 at the Concessionaire's expense, provided the Company has given thirty (30) days' prior written notice to the Concessionaire of its intention to exercise such right unless such intention arises from the Concessionaire's non-payment of premiums for existing insurance in which case provided the Company has given at least five (5) days' prior written notice of such intention. If the Concessionaire fails to reimburse the Company for such premiums within seven (7) Business Days of being notified to do so, the Company shall be entitled to exercise any or all of the following remedies (without prejudice to any remedy available to the Company for a Concessionaire Event of Default:

- 13.3.1 set off such premiums against other sums owed by the Company to the Concessionaire, together with interest on such premium at LIBOR plus five percent (5%) per annum calculated from the date such premium became due and payable to the Company to the date such set off is made; or
- 13.3.2 claim payment of such premium by calling on any security together with interest on such premium at LIBOR plus five percent (5%) compounded monthly calculated from the date such amount became due and payable to the Company. To the extent that the Concessionaire's liability for premium exceeds the amount under any security, the Concessionaire shall remain obliged to make direct payments of such premium to the Company.

13.4 Modifications of Insurance Coverage

All Insurance Policies required by this Agreement shall provide that the same shall not be modified or terminated without at least thirty (30) days prior written notice to the Company. If at any time the Concessionaire fails to purchase and maintain in full force and effect any and all insurances required under this Agreement, the Company may, at its sole discretion, purchase and maintain such insurance and all amounts incurred by the Company therefore shall be reimbursed. If the Concessionaire fails to reimburse the Company within thirty (30) days of receipt of a valid invoice confirming the amounts due, the Concessionaire shall also pay the Company interest in accordance with Clause 20.17.

13.5 Application of Insurance Proceeds

- 13.5.1 The Concessionaire shall apply the proceeds of any insurance claim in respect of physical loss or damage to the Power Station as a result of a Force Majeure Event or other event which may be made against insurers pursuant to the insurance maintained pursuant to this Clause 13 towards the remedy of such loss or damage as soon as reasonably possible in accordance with Clause 1.1.2(B) of Schedule 13.
- 13.5.2 Any proceeds of any insurance claim referred to above which remain and are not used towards the remedy of such loss or damage shall, at BPE's option, be either



(i) transferred to BPE or (ii) held on trust for and on behalf of BPE. In which case, upon termination of the Concession Term, the amount of such insurance claim shall be set off against the Transfer Price and reduce the Transfer Price in accordance with Schedule 13.

13.6 Endorsements

13.6.1 The Concessionaire shall cause its insurers to provide the following endorsement items in all insurance policies relating to the construction, restoration or improvements to ownership, operation and maintenance by the Concessionaire of the Hydro Property, and any other necessary materials in the Concessionaire's custody:

- (A) the Company and its directors, officers, employees and agents shall be additional insureds under such policies;
- (B) the insurance shall be primary with respect to the interest of the Company and its directors, officers, employees and agents and any other insurance maintained by them is excess and not contributory with such policies; and
- (C) in relation to in its comprehensive or commercial general liability insurance policies and, if applicable, umbrella or excess liability policies, such policies shall include the following cross liability clause:

"Subject to the term of the policy, in the event of claims being made by reason of (i) personal and/or bodily injuries suffered by any employee or employees of one of the insured under this Agreement for which another insured hereunder is or may be liable, or (ii) damage to property belonging to any insured hereunder for which another insured is or may be liable, then this policy shall cover such insured against whom a claim is made or may be made in the same manner as if separate policies have been issued to each insured under this Agreement, except with respect to the limits of insurance."

13.6.2 The Concessionaire shall cause its insurers to provide the endorsement referred to in Clause 13.6.1(C) in its construction/erection all risks and all risks property/machinery insurance policies covering the Hydro Property.

13.6.3 Each of the Company and the Concessionaire shall cause its insurers to waive all rights of subrogation against the other Party and against the other Party's employees and contractors in respect of a claim arising under its insurance policies, unless such claim arises from wilful misconduct or gross negligence of the other Party or of the other Party's employees or contractors.

14. TRAINING AND TECHNOLOGY TRANSFER

14.1 Employment of Nigerians

14.1.1 The Parties recognise that training citizens of the Federal Republic of Nigeria in the design, construction, installation, operation, maintenance and management of the Power Station and maximising technology transfer are central to the interests of the Company, BPE and the FGN in the Operations. Subject to Clause 6.1, the Concessionaire shall therefore employ citizens of the Federal Republic of Nigeria, to the greatest reasonable extent, for the Operations, taking into consideration availability and required skills and train such citizens.

14.1.2 The Concessionaire shall submit reports annually to the Company detailing the progress made toward meeting the objectives set out in Clause 16.1.1.



14.2 Training and Technology Transfer

- 14.2.1 The Concessionaire shall conduct, in the normal course of business, employee training programmes from time to time, including training in each of the skills used in the Operations and training in management for those employees qualified for management training. The training programmes shall from time to time focus both on technical and administrative matters, including contract administration. The cost of such employee training will be a normal cost of business included in operating and maintenance expenses.
- 14.2.2 The Concessionaire shall submit reports annually to the Company describing in detail its employee training programmes, the implementation of such training programmes and the amounts spent on such training programmes.
- 14.2.3 The Concessionaire shall, to the extent reasonable within the conduct of its business, assist in the transfer of technology to the Company; provided, however, that this Clause 14.2.3 shall not obligate the Concessionaire to breach any confidentiality undertaking.

14.3 Nigerian Resources

- 14.3.1 The Concessionaire shall, and shall endeavour to cause its Contractors to give preference to the purchase of Nigerian goods and materials for use in the Operations; provided, however, that such goods and materials are of an acceptable quality and are available on a timely basis in the quantity required, on competitive terms.
- 14.3.2 The Concessionaire shall, and shall endeavour to cause its Contractors to give preference to the employment of Nigerian employees and contractors as far as they are financially and technically competent, possess the necessary skills to perform the work required by the Concessionaire, and such contractors are available on a timely basis and on competitive terms.

15. LIABILITY AND INDEMNIFICATION

15.1 Limitation of Liability

- 15.1.1 Except as specifically provided herein or as applicable, in any relevant Industry Document or Specified Consent and to the extent permitted by the Applicable Laws, subject to Clause 15.9, neither of (i) BPE and the Company nor (ii) the Concessionaire nor any of their respective officers, employees or agents shall be liable to the other in contract, tort, warranty, strict liability, statute or any other legal theory for any (a) loss of profit, loss of revenue, loss of use, loss of contract or loss of goodwill; or (b) any indirect or consequential loss.

15.2 Indemnification

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



- 15.2.2 The Concessionaire shall indemnify BPE against, and hold BPE and its employees harmless from, at all times after the Commencement Date, any and all Losses incurred, suffered, sustained or required to be paid, directly or indirectly, by, or sought to be imposed upon, BPE, or its employees, for personal injury or death to persons or damage to property arising out of any negligent or intentional act or omission by the Concessionaire in connection with this Agreement. Notwithstanding the foregoing, indemnification shall not be required to the extent that BPE is reimbursed pursuant to any policy of insurance.
- 15.2.3 Save as otherwise provided in Clause 2.4, the Company shall indemnify the Concessionaire against, and hold the Concessionaire and its employees harmless from, at all times after the Commencement Date, any and all Losses incurred, suffered, sustained or required to be paid, directly or indirectly, by, or sought to be imposed upon, the Concessionaire or its employees, for any Losses arising out of any acts or omissions prior to the Commencement Date or subsequent to the termination of this Agreement. Notwithstanding the foregoing, indemnification shall not be required to the extent that the Concessionaire is reimbursed pursuant to any policy of insurance.
- 15.2.4 The Concessionaire shall indemnify the Company against, and hold the Company and its employees harmless from, at all times after the Commencement Date, any and all Losses incurred, suffered, sustained or required to be paid, directly or indirectly, by, or sought to be imposed upon, the Company or its employees, for any Losses arising out of any acts or omissions from the Commencement Date and during the term of this Agreement, including in any Losses arising after the termination of this Agreement from any acts or omissions of the Concessionaire prior to such termination. Notwithstanding the foregoing, indemnification shall not be required to the extent that the Company is reimbursed pursuant to any policy of insurance.
- 15.2.5 In the event injury or damage results from the joint or concurrent negligent or intentional acts or omissions of both the Concessionaire and BPE or of both the Concessionaire and the Company, the Parties shall be deemed to be equally liable for such injury or damages unless it is established that the Parties' relative degree of fault is other than 50/50, in which event each Party shall be liable in proportion to its relative degree of fault.
- 15.2.6 The provisions of this Clause 15.2 shall survive for a period of five (5) years following any termination of this Agreement with respect to any acts or omissions or claims for indemnification which occurred or arose prior to such termination.
- 15.2.7 The Concessionaire shall indemnify, defend, and hold harmless the Company and BPE from and against and promptly remove and discharge any such Security Interests which may be placed on the Hydro Property, except those attributable to the acts or the omissions of the Company or BPE.
- 15.3 Assertion of Claims to Exceed Minimum Amount**
- 15.3.1 BPE and the Company shall be solely liable, and the Concessionaire 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, in the aggregate, during the then-current calendar year exceed an amount equal to one hundred thousand United States Dollars



(US\$100,000), in which event the Concessionaire shall be able to recover for all its Losses for such year.

- 15.3.2 For the purposes of this Clause 15.3, a Loss (or claim for indemnification) shall be deemed to arise in the calendar year the event giving rise to such Loss (or claim for indemnification) occurred, or if the event is continuing in more than one (1) calendar year, in the calendar year such event ends.

15.4 Indemnification for Fines and Penalties

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

15.5 Notice of Proceedings

- 15.5.1 Each Party shall promptly notify the other Party of any Loss or proceeding in respect of which such notifying Party is or may be entitled to indemnification pursuant to Clause 15.2. Such notice shall be given as soon as reasonably practicable after the relevant Party becomes aware of the Loss or proceeding and that such Loss or proceeding may give rise to an indemnification, but in any event no later than fourteen (14) days after the receipt by the Party seeking indemnification of notice of the commencement of any action for which indemnity may be sought.

- 15.5.2 The delay or failure of such indemnified Party to provide the notice required pursuant to this Clause 15.5 to the other Party shall not release the other Party from any indemnification obligation which it may have to such indemnified Party except:

- (A) to the extent that such failure or delay materially and adversely affected the indemnifying Party's ability to defend such action or increased the amount of the Loss; and
- (B) that the indemnifying Party shall not be liable for any costs or expenses of the indemnified Party in the defence of the claim, suit, action or proceeding during such period of failure or delay.

15.6 Defence of Claims

- 15.6.1 Upon acknowledging in writing its obligation to indemnify an indemnified Party to the extent required pursuant to this Clause 15, the indemnifying Party shall be entitled, at its option (subject to Clause 15.6.4), to assume and control the defence of such claim, action, suit or proceeding at its expense with counsel of its selection, subject to the prior reasonable approval of the indemnified Party.

- 15.6.2 Unless and until the indemnifying Party acknowledges in writing its obligation to indemnify the indemnified Party to the extent required pursuant to this Clause 15, and assumes control of the defence of a claim, suit, action or proceeding in accordance with Clause 15.6.4, the indemnified Party shall have the right, but not the obligation, to contest, defend and litigate, with counsel of its own selection, any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and the reasonable costs and expenses thereof shall be subject to the indemnification obligations of the indemnifying Party hereunder.



15.6.3 Neither the indemnifying Party nor the indemnified Party shall be entitled to settle or compromise any such claim, action, suit or proceeding without the prior written consent of the other; provided, however, that after agreeing in writing to indemnify the indemnified Party, the indemnifying Party may, subject to Clause 15.6.4, settle or compromise any claim without the approval of the indemnified Party. Except where such consent is unreasonably withheld, if a Party settles or compromises any claim, action, suit or proceeding in respect of which it would otherwise be entitled to be indemnified by the other Party, without the prior written consent of the other Party, the other Party shall be excused from any obligation to indemnify the Party making such settlement or compromise in respect of such settlement or compromise.

15.6.4 Following the acknowledgement of the indemnification and the assumption of the defence by the indemnifying Party pursuant to Clause 15.6.1, the indemnified Party shall have the right to employ its own counsel and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of such indemnified Party, when and as incurred, unless:

- (A) the employment of counsel by such indemnified Party has been authorised in writing by the indemnifying Party;
- (B) the indemnified Party shall have reasonably concluded and specifically notified the indemnifying Party that there may be a conflict of interest between the indemnifying Party and the indemnified Party in the conduct of the defence of such action;
- (C) the indemnifying Party shall not in fact have employed independent counsel reasonably satisfactory to the indemnified Party to assume the defence of such action and shall have been so notified by the indemnified Party; or
- (D) the indemnified Party shall have reasonably concluded and specifically notified the indemnifying Party that there may be specific defences available to it which are different from or additional to those available to the indemnifying Party or that such claim, action, suit or proceeding involves or could have a material adverse effect upon the indemnified Party beyond the scope of this Agreement.

If any of Clause 15.6.4 (B), (C) or (D) are applicable, then counsel for the indemnified Party shall have the right to direct the defence of such claim, action, suit or proceeding on behalf of the indemnified Party and the reasonable fees and disbursements of such counsel shall constitute reimbursable legal or other expenses hereunder.

15.7 Subrogation

Upon payment of any indemnification by a Party pursuant to Clause 15.2, the indemnifying Party, without any further action, shall be subrogated to any and all claims that the indemnified Party may have relating thereto, and such indemnified Party shall at the request and expense of the indemnifying Party co-operate with the indemnifying Party and give at the request and expense of the indemnifying Party such further assurances as are necessary or advisable to enable the indemnifying Party vigorously to pursue such claims.

15.8 Limitation of BPE and the Company's liability

15.8.1 The Concessionaire confirms, covenants and agrees on behalf of itself, its Shareholders and its Related Persons that:



- (A) (i) it is a sophisticated entity; (ii) to the extent it deemed necessary, it was advised by legal counsel, financial advisers and other advisers in connection with this Agreement; (iii) it has conducted its own independent review and evaluation of the Hydro Property and its business; and (iv) in entering into this Agreement it has not relied on any representation, warranty, assurance, covenant, indemnity, undertaking or commitment which is not expressly set out in this Agreement;
 - (B) there are no representations or warranties by or on behalf of either of the Company or BPE, their Affiliates or their representatives in respect of the subject matter of this Agreement (implied or express) except for those expressly set forth in this Agreement;
 - (C) except as otherwise set forth in the warranties in Clause 10.1, 10.3 and 10.4, neither the Company, nor BPE, nor any Affiliate make any representations, warranties, undertakings, covenants or indemnifications as to the accuracy and/or completeness of any of the material contained or referred to in the Disclosed Information or of the other materials provided to the Concessionaire or that the data made available by the BPE and/or the Company to the Concessionaire presents a complete picture of the Hydro Property or includes all information that might be material to the Concessionaire's decision to enter into this Agreement;
 - (D) neither BPE nor the Company, nor any Affiliate make any representations or warranties or indemnifications as to any aspect of the physical state or condition of any of the facilities associated with the Hydro Property, including any property and equipment used in the generation of electricity, nor shall the representations and warranties contained in this Agreement be construed to do so, all of which are, for the avoidance of doubt, to be acquired by the Concessionaire on an "AS IS, WHERE IS, AND WITH ALL FAULTS" basis.
- 15.8.2 BPE and/or the Company shall not be liable in respect of a warranty claim for any Loss to the extent that the facts and circumstances giving rise to the warranty claim are disclosed in the Disclosed Information.
- 15.8.3 In respect of any claim for breach of a BPE warranty or Company warranty (detailed in Clauses 10.1 and 10.3 respectively):
- (A) The Concessionaire shall give written notice to BPE and the Company of that matter or event which gives rise or may give rise to a warranty claim as soon as possible and in any event within ten (10) Business Days after the Concessionaire becomes aware of such matter or event together with all details of such matter or event then known to the Concessionaire provided that failure to give such notice shall not of itself prevent the Concessionaire from bringing the relevant warranty claim, but BPE and the Company shall not be liable to the Concessionaire in respect of such warranty claim to the extent that the amount of it is increased, or is not reduced, as a result of such failure.
 - (B) BPE and the Company shall not be liable for any warranty claims unless the Concessionaire gives written notice containing reasonable details (having regard to the information then known to the Concessionaire) of the warranty claims, including the Concessionaire's estimate (on a without prejudice basis) of the amount of the warranty claims, to BPE and the Company on or before the date being eighteen (18) months from the Commencement Date.



- 15.8.4 Each Party agrees that it shall not be entitled to recover damages or obtain payment, reimbursement, restitution or indemnity from the other Parties more than once in respect of any one Loss connected with this Agreement regardless of whether more than one claim under or in connection with this Agreement arises in respect of it or to the extent that any Loss suffered or incurred by BPE, the Company or the Concessionaire has already been made good by the relevant Party or is properly compensated pursuant to any Industry Document.
- 15.8.5 Nothing in this Agreement affects, restricts or limits the general obligation at law of each of the Parties to mitigate any Loss which it may suffer or incur as a consequence of any breach of this Agreement or in relation to any other matter, event or circumstance which gives rise to a claim under or in connection with this Agreement.
- 15.8.6 This Clause 15 applies notwithstanding any other provision of this Agreement to the contrary and shall not cease to have effect as a consequence of any rescission or termination of any other provisions of this Agreement.

15.9 **Extent of limitations**

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

16. **FORCE MAJEURE**

- 16.1 A "**Force Majeure Event**" shall mean any event or circumstance or combination of events or circumstances beyond the reasonable control of the Party affected by it (the "**Affected Party**") but only to the extent that:
- 16.1.1 such circumstance, event or condition, despite the exercise of diligence, cannot be prevented, reasonably anticipated, avoided or overcome by the Affected Party;
- 16.1.2 such circumstance, event or condition prevents the performance by the Affected Party of its obligations under or pursuant to this Agreement (save for payment obligations);
- 16.1.3 where such event or circumstance, or combination of events or circumstances arises as a result of the occurrence of a force majeure event under an Industry Document (as defined in such Industry Document), it renders the Affected Party wholly or partially unable to carry out its obligations under this Agreement;
- 16.1.4 the Affected Party has taken all reasonable precautions, due care and measures to prevent, avoid or overcome the effect of such circumstance, event or condition on its ability to perform its obligations under this Agreement and to mitigate its consequences;
- 16.1.5 such circumstance, event or condition is not the direct or indirect result of a breach or failure by the Affected Party to perform any of its obligations under this Agreement, any of the Industry Documents or either of the Licences; and
- 16.1.6 such circumstance, event or condition has occurred without fault or negligence on the part of the Affected Party.
- 16.2 A "**Force Majeure Event**" may be a "**Natural Force Majeure Event**" or "**Political Force Majeure Event**" but only to the extent that event satisfies the requirements of Clause 16.1.



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

- 16.3.1 lightning, fire, earthquake, flood, cyclone, tornado or other natural disaster or act of God;
- 16.3.2 epidemic or plague;
- 16.3.3 accident, explosion or chemical contamination; and
- 16.3.4 strikes (other than strikes of a political nature) or works to rule (other than solely by employees of the Affected Party).

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

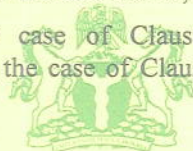
- 16.4.1 acts of war (whether declared or not), invasion, armed conflict, act of foreign enemy or blockade in each case occurring within the Federal Republic of Nigeria or involving the Federal Republic of Nigeria;
- 16.4.2 acts of rebellion, riot, civil commotion, strikes of a political nature, act or campaign of terrorism, or sabotage of a political nature, in each case occurring within the Federal Republic of Nigeria;
- 16.4.3 acts of expropriation and/or nationalisation of the Hydro Property;
- 16.4.4 any boycott of a political nature, or sanctions or embargo imposed on or in respect of the Federal Republic of Nigeria which has a material adverse impact on the Operations contemplated by this Agreement;
- 16.4.5 any action or failure to act by a Regulatory Authority that results in any Consent:
 - (A) ceasing to remain in full force and effect; or
 - (B) not being issued or renewed in a timely manner upon due application having been made by the Affected Party,

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

16.4.6 any Change in Law or Change in Tax that:

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

provided that, in the case of Clause 16.4.6(A), BPE has provided the Concessionaire and, in the case of Clauses 16.4.6(B), 16.4.6(C) and 16.4.6(D),



the Concessionaire has provided BPE with at least sixty (60) days' notice of the occurrence of such Change in Law or Change in Tax and the Parties have not been able to reach agreement within such period on a solution to alleviate the adverse consequences of such Change in Law or Change in Tax referred to in Clause 16.4.6(A), (B), (C) or (D).

- 16.5 Notwithstanding that a Force Majeure Event may otherwise exist, the provisions of this Clause shall not excuse:
- 16.5.1 failure to make a payment of money in accordance with the Party's obligations under this Agreement;
 - 16.5.2 any failure by the Concessionaire or its Contractors to obtain or maintain any Consent due to negligence or default by the Concessionaire or such Contractor;
 - 16.5.3 any failure to take into account prevailing site conditions;
 - 16.5.4 any failure by a Contractor which results in the failure or inability of the Concessionaire to perform its obligations under this Agreement where the cause of such failure by the Contractor would not constitute a Force Majeure Event pursuant to this Agreement;
 - 16.5.5 late performance by the Concessionaire or any Contractor caused by the failure of the Concessionaire or such Contractor to engage qualified subcontractors and suppliers or to hire an adequate number of personnel or labour;
 - 16.5.6 late delivery of equipment, machinery, works or materials caused by negligent acts or omissions on the part of the Concessionaire or any Contractor;
 - 16.5.7 inability to obtain or maintain adequate funding;
 - 16.5.8 mechanical or electrical breakdown or failure of equipment, machinery or works owned or operated by any Party due to the manner in which the equipment, machinery or works have been operated or maintained; and
 - 16.5.9 delays resulting from reasonably foreseeable unfavourable weather conditions or other similar reasonably foreseeable adverse conditions.
- 16.6 If the Affected Party desires to invoke a Force Majeure Event as a cause for relief or failure in performance of any of its obligations under this Agreement (other than payment of money), it shall:
- 16.6.1 as soon as reasonably practicable and, in any event, no later than ten (10) days following the occurrence of a Force Majeure Event, give notice to the other Party of the circumstance, event or condition which it alleges constitutes the Force Majeure Event and an estimate of its likely duration. If the Affected Party does not deliver such notice in accordance with the terms hereof, such Affected Party shall not be entitled to invoke the benefits of this Clause 16;
 - 16.6.2 within ten (10) days of the date of a notice issued pursuant to Clause 20.18, provide to the other Parties a report concerning the Force Majeure Event and its effects, including particulars and reasonable proof of the circumstance, event or condition, a general description of the obligations likely to be affected, an estimate of its likely duration and a statement of the actions to be taken in order to comply with its obligations under this Clause 16; and
 - 16.6.3 from time to time at reasonable intervals and upon any reasonable request from either of the other Parties, provide updates as to the matters set out in Clause 16.6.2.



- 16.7 The Affected Party shall:
- 16.7.1 make all reasonable endeavours to prevent and reduce to a minimum and mitigate the effect of any delay, loss or damage occasioned by any Force Majeure Event, including recourse to alternate sources of services, equipment and materials; and
 - 16.7.2 as soon as reasonably possible, and in accordance with Good Industry Practice, ensure the resumption of normal performance of this Agreement after the cessation of any Force Majeure Event or its effects and shall otherwise perform its obligations under this Agreement to the extent not excused under this Clause 16.
- 16.8 The Affected Party shall not be liable for any delay or failure in performing its obligations under this Agreement due to a Force Majeure Event, provided that no relief shall be granted to the Affected Party pursuant to this Clause to the extent that such failure or delay:
- 16.8.1 would have nevertheless been experienced by the Affected Party had the Force Majeure Event not occurred; or
 - 16.8.2 was caused by the failure of the Affected Party to comply with its obligations under Clause 16.7.1.
- 16.9 Notwithstanding anything herein to the contrary, in the event of the occurrence of:
- 16.9.1 a Political Force Majeure Event in which that event or the effects thereof continue for a period exceeding six (6) months; or
 - 16.9.2 a series of related Political Force Majeure Events in which such events or the effects thereof continue in the aggregate for a period that exceeds six (6) months during any year,
- and such Political Force Majeure Events prevent the Affected Party from being able to perform its material obligations or enjoy the material rights conferred on it under this Agreement, the Concessionaire shall have the option to terminate the Concession Term after such six (6) months' period.
- 16.10 If a Party is unable to perform any of its material obligations under this Agreement as a result of a Natural Force Majeure Event for a period exceeding six (6) months or it notifies the other Parties prior to the expiry of such six (6) month period that it will be unable to resume performance within such period, the Concessionaire shall have the option to terminate the Concession Term after such six (6) months' period in accordance with Clause 17.3.

17. EVENTS OF DEFAULT; TERMINATION

17.1 Concessionaire Events of Default

Each of the following events shall be an event of default by the Concessionaire (each, a "Concessionaire Event of Default") which if not cured within the time permitted (if any), shall give rise to the right of BPE to terminate the Concession Term pursuant to Clause 17.3; provided, however, that no such event shall become a Concessionaire Event of Default if it results substantially from (i) a breach by the Company or BPE of the provisions of this Agreement or a FGN Event of Default hereunder, (ii) the occurrence of a Force Majeure Event, or (iii) any combination thereof:

17.1.1 the occurrence of:

- (A) any breach of any of the payment obligations imposed on the Concessionaire pursuant to Clause 11 that is not remedied within fifteen (15) days after notice



from BPE or the Company giving reasonable details of the breach by the Concessionaire and demanding remedy thereof;

- (B) a Performance Default as provided in paragraph 6 of Schedule 7;
- (C) the termination of the Technical Services Agreement for any reason during the first five (5) years after the date of this Agreement where the Concessionaire has failed to enter into another technical services agreement on the terms and conditions as approved by BPE in writing (not to be unreasonably withheld or delayed) with a replacement technical services provider which is acceptable to BPE (acting reasonably) within three (3) months of such termination; or
- (D) any other material breach by the Concessionaire of any covenant or agreement in this Agreement (which shall include without limitation non-compliance with the terms of the Post-Acquisition Plan and/or Initial Budget) that is not remedied within sixty (60) days after notice from BPE or the Company giving reasonable details of the breach by the Concessionaire and demanding remedy thereof;

17.1.2 the occurrence of any of the following events (except where such event occurs directly as part of the enforcement of an Encumbrance by a lender providing Approved Indebtedness to the Concessionaire and/or a Shareholder, as the case may be, provided the fact and terms of such Encumbrance have been expressly approved by BPE as part of the relevant Approved Indebtedness):

- (A) the passing of a resolution by the shareholders of the Concessionaire for the winding up of the Concessionaire except in the case of a solvent restructuring;
- (B) the voluntary filing by the Concessionaire of a petition of bankruptcy, moratorium, or other similar relief;
- (C) the passing of a resolution for the bankruptcy, insolvency, winding up, liquidation or other similar proceeding relating to the Concessionaire;
- (D) the appointment of a liquidator, custodian or similar person in a proceeding for the winding up of the Concessionaire, which appointment has not been stayed or set aside within sixty (60) days of such appointment;
- (E) the making by a Regulatory Authority of an order for the winding up or otherwise confirming the bankruptcy or insolvency of the Concessionaire, which order has not been set aside or stayed within sixty (60) days of such making; and
- (F) the Concessionaire entering into any agreement of merger, consolidation or amalgamation with any entity not previously approved by BPE and the Company; or

17.1.3 the termination of any of the Industry Documents or the revocation or termination of the Generation Licence or the Water Licence as a result of a default, omission or breach by the Concessionaire; or

17.1.4 any act or omission by or attributable to the Concessionaire which would constitute an event of default giving rise to a right of termination under the terms of the relevant Industry Document, but BPE and the counterparty of such Industry Document have agreed an intention to (a) retain such Industry Document in force and (b) novate such Industry Document in favour of the Company and invoke the transfer and termination provisions detailed in Clause 17 of this Agreement.



17.2 FGN Events of Default

Each of the following events shall constitute a "FGN Event of Default" which, if not cured within the time permitted (if any), shall give rise to the right of the Concessionaire to terminate the Concession Term pursuant to Clause 17.3; provided, however, that no such event shall become a FGN Event of Default if it results substantially from (i) a breach by the Concessionaire of this Agreement (or any Schedule thereto), or (ii) the occurrence of a Force Majeure Event other than a Political Force Majeure Event:

- 17.2.1 the occurrence of any material breach by the Company or BPE of any material covenant or agreement in this Agreement that is not remedied within sixty (60) days after notice from the Concessionaire to BPE and the Company giving reasonable details of the breach and demanding remedy thereof;
- 17.2.2 the occurrence of any material breach by FGN, BPE or any counterparty to an Industry Document (provided such counterparty is controlled by a State Entity) of any material covenant or agreement in an Industry Document that is not remedied within ninety (90) days after notice from the Concessionaire to BPE, the Company and (if applicable) to the relevant counterparty to the Industry Document giving reasonable details of the breach and demanding remedy thereof;
- 17.2.3 the expropriation, nationalisation or compulsory acquisition by a Regulatory Authority of any constituent element of the Hydro Property or the Operations, provided such element is of a nature such that its expropriation, nationalisation or compulsory acquisition will materially affect the performance by the Concessionaire of its obligations under this Agreement or the exercise of its rights;
- 17.2.4 the termination of any of the Industry Documents or the revocation or termination of the Generation Licence or the Water Licence on each case as a result of a default, omission or breach by the Company, FGN or BPE or any counterparty to an Industry Document or the Licences provided that such counterparty is controlled by a State Entity.

17.3 Terminating the Concession Term

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

- 17.3.1 the mutual agreement of the Parties;
- 17.3.2 where the Generation Licence and Water Licence are not renewed or extended for a further term beyond fifteen (15) years from the Commencement Date;
- 17.3.3 service of a notice by the Company or BPE on the Concessionaire following a Concessionaire Event of Default;
- 17.3.4 service of a notice by the Concessionaire on the Company and BPE following a FGN Event of Default;
- 17.3.5 service of a notice by the Concessionaire on the Company and BPE, exercising the Concessionaire's option to terminate pursuant to Clause 16.9 due to a prolonged Political Force Majeure Event; or
- 17.3.6 service of a notice by the Concessionaire on BPE and the Company, exercising the Concessionaire's option to terminate pursuant to Clause 16.10 due to a prolonged Natural Force Majeure Event.



17.4 Transfer Price

Following termination of the Concession Term and no later than the end of the Termination Period, BPE shall (save as otherwise provided in Clause 17.11), subject to the Concessionaire's compliance with its obligations on termination (including but not limited to the provisions of Clause 5 of Schedule 12) pay the compensation due and payable in accordance with the provisions of this Clause 17.4.

17.4.1 If the termination is due to a Concessionaire Event of Default:

- (A) the Concessionaire shall cease to have any rights in or entitlement to and shall convey, transfer, assign and deliver to the Company, free and clear of any Encumbrances, the Concessionaire's right, title and interest in and to the Hydro Property, the Concessionaire's Moveable Assets and any relevant spare parts and consumables accompanied by any necessary bills of sale, assignment agreements, novation agreements or other instruments of transfer reasonably requested by the Company; and
- (B) BPE shall pay the Concessionaire Default Purchase Price as set out in Schedule 13.

17.4.2 If the termination is due to a FGN Event of Default or Political Force Majeure Event:

- (A) the Concessionaire shall cease to have any rights in or entitlement to and shall convey, transfer, assign and deliver to the Company, free and clear of any Encumbrances, the Concessionaire's right, title and interest in and to the Hydro Property, the Concessionaire's Moveable Assets and any relevant spare parts and consumables accompanied by any necessary bills of sale, assignment agreements, novation agreements or other instruments of transfer reasonably requested by the Company; and
- (B) BPE shall pay the FGN Default Purchase Price as set out in Schedule 13.

17.4.3 If the termination is due to effluxion of time, the Concessionaire shall cease to have any rights in or entitlement to and shall convey, transfer, assign and deliver to the Company, free and clear of any Encumbrances, the Concessionaire's right, title and interest in and to the Hydro Property, the Concessionaire's Moveable Assets and any relevant spare parts and consumables for nil consideration, accompanied by any necessary bills of sale, assignment agreements, novation agreements or other instruments of transfer reasonably requested by the Company.

17.4.4 If termination is due to a Force Majeure Event (other than a Political Force Majeure Event) then:

- (A) the Concessionaire shall cease to have any rights in or entitlement to and shall convey, transfer, assign and deliver to the Company, free and clear of any Encumbrances, the Concessionaire's right, title and interest in and to the Hydro Property, the Concessionaire's Moveable Assets and any relevant spare parts and consumables accompanied by any necessary bills of sale, assignment agreements, novation agreements or other instruments of transfer reasonably requested by the Company; and
- (B) BPE shall pay the Force Majeure Purchase Price as set out in Schedule 13.

17.4.5 To the extent that any sums are due and owing by the Concessionaire under an Industry Document to a Regulatory Authority or the Bulk Trader, BPE shall have the right (acting in its sole discretion) to reduce the amount payable to the



Concessionaire pursuant to Clause 17.4 by such amount, in which case BPE shall apply such amount as is withheld towards the satisfaction of such debt under the Industry Document. For the avoidance of doubt, where BPE does not elect to exercise such withholding right towards full satisfaction of any such debt, the Concessionaire shall remain fully liable for the payment of such sum pursuant to such Industry Document and the non-exercise of such withholding right shall not be construed as a waiver or other release or forbearance of such debt.

- 17.4.6 In making any payments pursuant to this Clause 17.4, BPE shall comply with the terms of any direct agreement entered into with any lender, as further detailed in Clause 17.11.

17.5 Other Remedies

The exercise of the right of a Party to terminate the Concession Term, as provided herein, does not preclude such Party from exercising other remedies that are provided herein or are available at law, including the right to claim in damages or under any of the indemnities pursuant to Clause 15. Notwithstanding the cause for termination of the Concession Term, termination of the Concession Term shall be without prejudice to any antecedent liability and such termination shall not affect the rights and obligations of the Parties existing before termination in respect of such liability. Remedies are cumulative, and the exercise of, or failure to exercise, one or more remedy by a Party shall not limit or preclude the exercise of, or constitute a waiver of, other remedies by such Party. Termination of the Concession Term shall be without prejudice to any additional termination obligations and continuity of service.

17.6 Termination of the Concession Term

The Parties agree that upon termination of the Concession Term, they will cooperate to ensure an effective handover of operations and smooth transition of the Operations from the Concessionaire to the Company in accordance with Schedule 12.

17.7 Deliberate Default or Political Force Majeure Event

Neither BPE nor the Company shall be entitled to exercise its rights to terminate the Concession Term and/or this Agreement or to purchase the Power Station pursuant to this Clause 17 following a Force Majeure Event or an Event of Default if the Concessionaire can demonstrate that such event was instigated by BPE or the Company primarily so as to procure such purchase.

17.8 Obligation Upon Termination of the Term

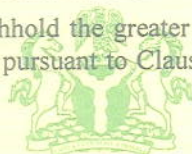
Upon the termination of the Termination Period of this Agreement, the Parties shall have no further obligations or liabilities hereunder except for obligations or liabilities that arose prior to or arise upon such expiration or termination and obligations or liabilities that expressly survive such expiration or termination pursuant to this Agreement including, but not limited to the indemnities provided in Clause 15.

17.9 Power of Attorney

The Concessionaire shall on or prior to the Commencement Date, grant to each of BPE and the Company a power of attorney in the agreed form to do all acts as required to effect the transfer of the Hydro Property to the Company in accordance with this Agreement upon the termination of the Concession Term.

17.10 Withholding pending Expert determination

BPE shall have the right to withhold the greater of (i) twenty five percent (25%) of any sums due to the Concessionaire pursuant to Clause 17.4 or (ii) twenty-five million United



States Dollars (US\$25,000,000) (the "**Retention Amount**") pending the outcome of the condition survey detailed in Clause 3 of Schedule 12. BPE shall be entitled to set off the amount of any Reinstatement Costs from any sums payable pursuant to Clause 17.4. For the avoidance of doubt, in the event that the Reinstatement Costs are greater than the Retention Amount, the Company shall remain liable for payment to BPE of any such excess.

17.11 Lender's waiting period

17.11.1 The Parties hereby agree to acknowledge that pursuant to the terms of a direct agreement entered into by the lender(s) and BPE in connection with any Approved Indebtedness:

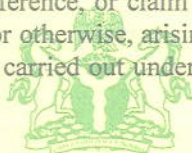
- (A) BPE shall have the right to defer the payment of any Approved Indebtedness for a period of one (1) year following service of a termination notice pursuant to Clause 17.3.3, 17.3.4, 17.3.5 or 17.3.6 (the period between the date of the termination notice and the date of payment by BPE being the "**Lenders' Waiting Period**").
- (B) Where BPE exercises the right detailed in Clause 17.11.1(A), BPE shall during the Lenders' Waiting Period, continue to service any loan repayment obligations under the relevant financing agreements and the lender(s) agree not to accelerate the terms of its loan, take any steps to enforce any security or to otherwise apply more onerous terms (whether in relation to the interest rate or otherwise) than those which applied to the Concessionaire prior to the service of the notice detailed in Clause 17.11.1(A).
- (C) During the Lenders' Waiting Period, BPE and the lender shall co-operate with a view to the possible substitution of the borrower under the relevant financing agreements by a new third party concessionaire. Subject always to the credit assessment of such proposed new concessionaire and such other terms as reasonably required by the lender(s), including the provision of any required security, the lender(s) shall consider offering such new concessionaire the right to step into the terms of the financing agreements previously entered into by the Concessionaire.

17.11.2 The Parties agree that if BPE exercises its rights to request a Lenders' Waiting Period, the time period for any payments of sums detailed in Clause 17.11.1(A) and Schedule 13 shall be deferred during the term of the Lenders' Waiting Period and (i) the Concessionaire shall proceed with the transfers and other obligations detailed in Clause 17.4, notwithstanding that such payment is deferred, and (ii) any delay in such payment (provided such delay is in accordance with the terms of the direct agreement) shall not constitute a breach by BPE or the Company of its obligations under this Agreement.

17.11.3 The direct agreement shall provide, inter alia, for the release of all security and encumbrances affecting any of the Hydro Property upon payment of the Transfer Price and the Concessionaire acknowledges that payments made by BPE to the lender shall constitute a proper and valid discharge of BPE's payment obligations under this Agreement.

18. RESOLUTION OF DISPUTES

18.1 "**Dispute**" means any dispute, difference, or claim of any kind or type, whether based on contract, tort, statute, regulation, or otherwise, arising out of, relating to, or connected with this Agreement, or the operations carried out under this Agreement, including any dispute



concerning the existence, validity, interpretation, performance, breach, or termination of this Agreement, but shall not include any dispute, difference or claim which is referred to an Expert pursuant to Clause 19.

- 18.2 Any Party alleging the existence of a Dispute shall give written notice of the Dispute to the other Party setting out the material particulars of the Dispute (a "**Dispute Notice**"). Within ten (10) days of the service of a Dispute Notice one director or other senior representative of each Party with authority to settle the Dispute shall meet to seek to resolve the dispute (the "**Authorised Representatives**"). If within thirty (30) days of service of the Dispute Notice (or within such longer period of time as the Parties may agree), no meeting has taken place or the Dispute has not been resolved, either Party shall be entitled to refer the Dispute to arbitration in accordance with Clause 18.3.
- 18.3 Without prejudice to Clauses 18.10 and 19, any Dispute which is not resolved in accordance with Clause 18.2 shall be finally settled by arbitration in accordance with the Arbitration Rules set out in the 1st Schedule to the Arbitration and Conciliation Act, 2004 (the "**Arbitration Rules**"). Such Dispute shall be submitted to arbitration at the request of a Party upon written notice to that effect to the other Party or Parties, as applicable, in accordance with the Arbitration Rules.
- 18.4 The number of arbitrators shall be three (3). The arbitral tribunal shall be composed of three arbitrators appointed as follows:
- 18.4.1 each Party shall nominate one (1) arbitrator, and the two (2) arbitrators so appointed shall appoint a third arbitrator who shall act as president of the tribunal;
- 18.4.2 if either Party fails to nominate an arbitrator within thirty (30) days of receiving written notice of a request for arbitration and the nomination of an arbitrator by the other Party, such arbitrator shall at the request of that Party be appointed by the President for the time being of the Chartered Institute of Arbitrators (Nigeria Branch); and
- 18.4.3 if the two (2) arbitrators to be nominated by the Parties fail to agree upon a third arbitrator within thirty (30) days of the appointment of the second arbitrator, the third arbitrator shall be appointed by the President for the time being of the Chartered Institute of Arbitrators (Nigeria Branch) at the written request of either Party.
- 18.5 If there are multiple claimants and/or multiple respondents, all claimants and/or all respondents shall attempt to agree upon their respective appointment(s). If there are multiple claimants and they fail to make a joint appointment of an arbitrator in their notice of arbitration, an arbitrator shall be appointed on their behalf by the President for the time being of the Chartered Institute of Arbitrators (Nigeria Branch). If there are multiple respondents and they fail to appoint an arbitrator within thirty (30) days from the date of service of the notice of arbitration on them, an arbitrator shall be appointed on their behalf by the President for the time being of the Chartered Institute of Arbitrators (Nigeria Branch). In such circumstances, any existing appointment of the arbitrator chosen by the Party or Parties on the other side of the proposed arbitration shall be unaffected. The two arbitrators nominated by the Parties (or by the President for the time being of the Chartered Institute of Arbitrators (Nigeria Branch)) shall within thirty (30) days of the appointment of the second arbitrator agree upon a third arbitrator who shall act as chairman of the tribunal. If no agreement is reached within thirty (30) days of the appointment of the second arbitrator, the President for the time being of the Chartered Institute of Arbitrators (Nigeria Branch) shall appoint a third arbitrator to act as chairman of the tribunal.



- 18.6 No provision in the Arbitration Rules will apply insofar as it renders any individual ineligible for appointment as arbitrator on the grounds of nationality.
- 18.7 The place of the arbitration shall be Lagos, Nigeria. The language to be used in the arbitral proceedings shall be English.
- 18.8 The Parties undertake as a general principle to keep confidential all awards and orders in the arbitration, as well as all materials created for the purpose of the arbitration and documents produced by another Party in the arbitration not otherwise in the public domain, save and to the extent that a disclosure may be required of a Party by legal duty, to protect or pursue a legal right or to enforce or challenge an award in bona fide legal proceedings before a state court or other judicial authority. This undertaking also applies to the arbitrators, the secretary of the arbitral tribunal if any and any experts appointed in the arbitration.

Related disputes

- 18.9 If more than one (1) arbitration is commenced under this Agreement and under any Industry Document having the same arbitration provisions as this Agreement ("**Related Agreements**") and any Party contends that two (2) or more arbitrations commenced under the Related Agreements are substantially related and/or involve the same parties and that the issues should be heard in one proceeding, the arbitral tribunal appointed in the first-filed of such proceedings shall have the power to determine whether, in the interests of justice and efficiency, the whole or part of the matters at issue should be consolidated before that arbitral tribunal upon such terms or conditions as the arbitral tribunal thinks fit. The Parties expressly accept that any dispute which may be referred to arbitration under this Agreement may accordingly be disposed of in the same arbitration proceedings as any other dispute arising under another Related Agreement, even in the presence of parties other than the Parties to this Agreement. The Parties hereby waive any right to object to the validity and/or enforceability of an arbitral award rendered by an arbitral tribunal appointed pursuant to a Related Agreement on the basis that such award was made in arbitral proceedings which were consolidated under this Clause 18.9 or in accordance with an equivalent provision under another Related Agreement.

Interim relief in the Courts of Nigeria

- 18.10 Notwithstanding Clause 18.3, this Clause 18 is without prejudice to a Party's right to seek interim relief against another Party through the Nigerian courts to protect its rights and interests, or to enforce the obligations of the other Party or an arbitral award made pursuant to arbitration proceedings brought under this Agreement (or, in the case of proceedings to which Clause 18.9 applies, a Related Agreement).

19. EXPERT DETERMINATION

- 19.1 For any matters to be referred to an Expert under Clauses 2.4.2, 17.10, Clause 1(1) of Schedule 10, Clause 7 of Schedule 11 and Clause 3 of Schedule 12, (i) BPE and the Company, and (ii) the Concessionaire agree that such determination shall be conducted expeditiously by a person, body or organisation of international reputation to be appointed by mutual consent or in absence of agreement by the International Chamber of Commerce (the "**Expert**") and shall not be subject to the dispute resolution procedure detailed in Clause 18.
- 19.2 The Expert shall have demonstrated technical or professional expertise in the area to which such determination relates and shall not be an agent, employee, or contractor or a former agent, employee or contractor of any Party.



- 19.3 The Parties are entitled to make submissions to the Expert including oral submissions and shall provide (or procure that others provide) the Expert with such assistance and documents relating to the Hydro Property and the Operations as the Expert reasonably requires for the purpose of reaching a decision, subject to any confidentiality provisions and to the Expert agreeing to give such confidentiality undertakings as BPE, the Company and the Concessionaire may reasonably require.
- 19.4 Unless otherwise agreed, the Expert shall prepare a written decision and give notice (including a copy) of the decision to (i) BPE and the Company, and (ii) the Concessionaire within a maximum of three (3) months of the matter being referred to the Expert.
- 19.5 The Expert shall be deemed to act as an expert and not as an arbitrator and, save in the case of fraud or manifest error, its determination shall be final and binding on all concerned.
- 19.6 The costs of engaging an Expert shall unless otherwise provided, be borne (i) fifty percent (50%) by BPE and the Company and (ii) fifty percent (50%) by the Concessionaire.

20. MISCELLANEOUS

20.1 Expenses of the Parties

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

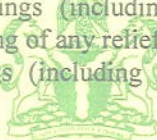
20.2 Right to Specific Performance; Waivers

In the event either (i) the Concessionaire or (ii) BPE or the Company, fails to perform its obligations hereunder after the satisfaction of all conditions precedent thereto, the other Party/Parties shall have the right to request specific performance of the obligation not performed. Either Party shall have the right to waive the Party in breach's compliance with a condition precedent and, if all of the other conditions precedent that the Party in breach must comply with hereunder have been satisfied, the other Party shall have the right to require specific performance of this Agreement.

20.3 Waiver of Sovereign Immunity

20.3.1 BPE and the Company each unconditionally and irrevocably agree that the execution, delivery and performance by it of this Agreement constitute a private and commercial act. In addition to the foregoing, BPE and the Company each unconditionally and irrevocably agree that:

- (A) should any proceeding (including any arbitration proceeding) be brought against it or its assets in relation to this Agreement or any transaction contemplated by this Agreement, no immunity from such proceedings shall be claimed by or on behalf of itself or with respect to its assets (other than the Protected Assets);
- (B) it waives any right of immunity that it or any of its assets (other than the Protected Assets) now has or may acquire in the future in any jurisdiction in connection with any such proceedings; and
- (C) it consents generally in respect of the enforcement of any judgment against it in any such proceedings (including any arbitration proceedings) in any jurisdiction to the giving of any relief or the issue of any process in connection with such proceedings (including the making, enforcement or execution



against or in respect of any assets whatsoever (other than the Protected Assets) irrespective of their use or intended use).

- 20.3.2 The Concessionaire hereby irrevocably waives any and all rights it may have to enforce any judgment or claim against the Protected Assets with respect to any claim against BPE or the Company under this Agreement or any transaction contemplated by this Agreement.

20.4 Further Assurances

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

20.5 Choice of Law

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

20.6 Entire Agreement

This Agreement and the Preferred Bidder's Bank Guarantee are intended by the both (i) the Concessionaire and (ii) BPE and the Company as the final expression of their agreement and are intended also as a complete and exhaustive statement of their agreement with respect to the subject matter contained herein and supersede any previous agreements or understandings between the Parties or their Affiliates

20.7 Amendments

This Agreement can be amended only by written agreement between the Parties, or where the relevant obligation or provision expressly concerns only two (2) of the Parties hereto, with the consent of both such Parties.

20.8 Waiver

- 20.8.1 No waiver by either (i) the Concessionaire or (ii) BPE or the Company of any default by the other Party/Parties in the performance of any of the provisions of this Agreement:

- (A) shall operate or be construed as a waiver of any other or further default or defaults whether of a like or different character; or
- (B) shall be effective unless in writing duly executed by a duly authorised representative of such Party.

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

20.9 Confidentiality

- 20.9.1 Each of (i) the Concessionaire and (ii) BPE and the Company together with each of their respective employees, undertakes that, subject to Clause 20.9.2, unless the prior written consent of the other Party(ies), shall first have been obtained, such Party shall, and shall procure that its officers, employees, advisers, agents and consultants shall, keep confidential and shall not by failure to exercise due care or otherwise by any act or omission disclose to any person whosoever, or use



or exploit commercially for its or their own purposes, any of the Confidential Information of the other Party(ies).

For the purposes of this Clause 20.9.1, "**Confidential Information**" means the contents of this Agreement, any Industry Document and also includes:

- (A) (in relation to the obligations of BPE and the Company) any information received or held by BPE and the Company (or any of its officers, employees, advisers, agents and consultants) of whatever nature concerning the business, finances, assets, liabilities, dealings, transactions, customers, sub-contractors, suppliers, processes or affairs of the Concessionaire; and
- (B) (in relation to the obligations of the Concessionaire) any information received or held by the Concessionaire (or any of its officers, employees, advisers, agents and consultants) of whatever nature concerning the assets, processes or affairs relating to the Company, BPE, the Hydro Property and the Operations,

which any Party may from time to time receive or obtain (verbally or in writing or in disk or electronic form) from the other Party(ies) as a result of negotiating, entering into or performing its obligations pursuant to this Agreement, any Industry Document or either of the Licences.

Permitted Disclosure

20.9.2 The consent referred to in Clause 20.9.1 shall not be required for disclosure by a Party of any Confidential Information:

- (A) to its employees, agents, officers and professional advisers, in each case, to the extent required to enable such Party to carry out its obligations under this Agreement, any Industry Document or the Licences and who shall in each case be made aware by such Party of its obligations under this Agreement and shall be required by such Party to observe the same restrictions on the use of the relevant information as are contained in Clause 20.9.1;
- (B) subject to compliance with Clause 20.9.3, professional advisors and to prospective lenders or investors in such Party, to succeeding entities, to prospective transferees and assignees and their professional advisors that, in each case, have agreed to be bound by these confidentiality provisions;
- (C) to the extent required by Laws of Nigeria (or any other applicable laws) to which such Party is or may become subject or pursuant to any order of court or competent tribunal;
- (D) to the extent that the relevant Confidential Information is in the public domain otherwise than by breach of this Agreement by such Party;
- (E) which is disclosed to such Party by a third party who is not in breach of any undertaking or duty as to confidentiality whether express or implied;
- (F) where the information is independently developed after the Commencement Date;
- (G) which that Party can prove that it lawfully possessed prior to obtaining it from another Party; or
- (H) as may be otherwise provided in or required pursuant to any Industry Document or either of the Licences.



Required disclosure

20.9.3 If a Party becomes required, in the circumstances contemplated by Clause 20.9.2(B), to disclose any information such Party shall (save to the extent prohibited by law) give to the other Parties such notice as is practical in the circumstances of such disclosure and shall co-operate with the other Parties, having due regard to the other Parties' views, and take such steps as the other Parties may reasonably require in order to enable it to mitigate the effects of, or avoid the requirements for, any such disclosure.

Termination of Agreement

20.9.4 On termination of the Concession Term, both (i) the Concessionaire and (ii) BPE or the Company shall have the option to require the other Party/Parties holding any Confidential Information obtained pursuant to this Agreement from the requesting Party to return or destroy all such Confidential Information.

20.9.5 The provisions of this Clause 20.9.5 shall survive for a period of five (5) years from the termination of this Agreement.

20.10 Counterparts

This Agreement may be executed in three (3) or more counterparts, all of which will be considered one (1) and the same Agreement and each of which will be deemed an original.

20.11 Severability

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

20.12 Assignment and Security

Neither (i) the Concessionaire nor (ii) BPE or the Company may assign its interest in this Agreement without the prior approval of the other Party/Parties (such approval not to be unreasonably withheld), provided that the Concessionaire may assign this Agreement by way of security for the purpose of obtaining finance in respect of the Operations in accordance with Clause 7.4.1.

20.13 Relationship of the Parties

20.13.1 This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between (i) the Concessionaire and (ii) BPE or the Company or to impose any partnership obligation or liability upon any Party. No Party shall have any right, power, or authority to enter into any agreement or undertaking for, to act on behalf of, to act as or be an agent or representative of, or to otherwise bind, the other Parties.

20.13.2 Nothing in this Agreement shall be interpreted or construed to create an association, joint venture, or partnership between BPE and the Company or to impose joint and several liability between them for any obligations under this Agreement.

20.14 No Third Parties

This Agreement is intended solely for the benefit of the Parties and nothing in this Agreement shall be construed to create any duty to, standard of care with reference to, or



any liability to, or confer any right of suit or action on any Person not a Party to this Agreement.

20.15 Language

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

20.16 Consents

Unless otherwise provided herein, whenever a consent or approval is required by either (i) the Concessionaire or (ii) BPE or the Company from the other Party/Parties, such consent or approval shall not be unreasonably withheld or delayed..

20.17 Interest

Any amounts due but not paid in accordance with this Agreement shall bear interest at the prevailing rate of LIBOR plus five percent (5%) compounded annually.

20.18 Notices

20.18.1 The Concessionaire undertakes and agrees to send a copy of any notice provided or received under any of the Industry Documents or in respect of the Licences to BPE at the time such notice is sent or received in accordance with the terms of the relevant Industry Document or Licence (as applicable).

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

- (A) sent by email to the relevant email address to the addressee which is specified in Clause 20.18.3; or
- (B) delivered by hand or sent by pre-paid recorded delivery, recognised international courier service, registered post or first class pre-paid post (airmail if overseas) to the address of the addressee which is specified in Clause 20.18.3,

and shall be marked for the attention of the person so specified (in each case subject to any further notice delivered from time to time in accordance with the provisions of Clause 20.18.6).

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

(A) BPE

Address: No. 11 Osun Crescent, Off Ibrahim Babangida Boulevard
Maitama District, P.M.B. 442
Garki, Abuja, Nigeria

Telephone: (234 - 9) 4604400

Email:

Attention: Mr. Benjamin Dikki
Acting Director General



(B) *The Company*

Address: Shiroro Power Station Complex, Shiroro, Niger State

Telephone:

Email:

Attention:

(C) *The Concessionaire*

Address: 1 Rima Street, Maitama, Abuja

Telephone: (+234) 8033022804

Email: oopeters@hotmail.com

Attention: Eng (Dr) Olubunmi Peters

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

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

20.18.5 Any notice received or deemed to be received in accordance with Clause 20.18.4 above on a day which is not a Business Day or after 5.00p.m. on any Business Day according to local time in the place of receipt, shall be deemed to be received on the next Business Day.

20.18.6 A Party may notify the other Parties in writing if the relevant address specified in Clause 20.18.3 is no longer appropriate for the service of notices in accordance with this Clause 20.18.

21. PAYMENT FREE OF DEDUCTION


All sums payable under this Agreement shall be paid free and clear of all deductions or withholdings whatsoever save only as may be required by the Laws of Nigeria and without abatement or set-off (whether equitable or otherwise) save only as otherwise provided herein.



IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and delivered as a deed as of the date first above written.

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


.....
MR. BENJAMIN DIKKI
Acting Director-General



.....
MR. JOSEPH UJOMU
Ag. General Counsel


.....
The Common Seal of **SHIRORO HYDRO POWER PLC**
was hereunto affixed in the presence of


.....
DIRECTOR


.....
SECRETARY

The Common Seal of **NORTH SOUTH POWER COMPANY LIMITED**
was hereunto affixed in the presence of


.....
Mallam Ibrahim Aliyu
Chairman


.....
Engr. Olubunmi Peters
Executive Vice Chairman



BUREAU OF PUBLIC ENTERPRISES

SCHEDULE 1
MAP OF RELEVANT CONCESSION AREA



[Handwritten signature]

SCHEDULE 2
THE FIXED ASSETS

The Fixed Assets to be leased to the Concessionaire pursuant to this Agreement shall be as follows:

Shiroro EGC – Plant & Machinery

S/No	DESCRIPTION OF ASSET	QTY	ASSET YEAR
	Turbine and Governors		
1.	Hydraulic Turbines: 155MW	4 No	1989
2.	Draft Tube Depression System	4 No	1989
	Governor System		
3.	Digital Governor Controller	4 No	2008
4.	Governor Hydraulic Actuator	4 No	1989
5.	Governor air compressors (Ingersoll Rand): 70 Bar, 7T4	3 No	1989
	Generator and Excitation System:		
6.	Synchronous Generator and Accessories: 16kV, 176,500kVA, pf: 0.85	4 No	1989
7.	Static Excitation System: 421V, 1643A	4 No	1989
	Generator-Transformer and Accessories		
8.	Generator-Transformer and Accessories: 200MVA, 15.2/330kV	4 No	1989
9.	Transformer Oil Purifiers	2 No	1989
	Control and Relay Boards:		
10.	Unit Control Boards	4 No	1989
11.	Control Desks	1 No	1989
12.	Main Instrument Board	1 No	1989
	Switch Gear and Motor Control Centres		
13.	Unit Motor Control Centres: 11/0.415kV, 750KVA; Unit substation 750KVA	4 No	1989
14.	Critical Motor Control Centres: 415V	2 No	1989
15.	Auxiliary Motor Control Centers: 415V	2 No	1989
	DC Equipment		
16.	Battery Chargers: (2 x 12.5kVA and 1 x 18kVA)	3 No	1989
17.	Battery Bank: 1,000Ah, 110V	2 No	2006
18.	DC Distribution Boards: 110V	2 No	1989
19.	Station Inverter: 2kVA, 230V	2 No	1989
	Black Start Gen-sets		
20.	630kVA, 415V, 876A, pf: 0.8, 50Hz	1 No	1989
21.	1250kVA, 400V, 1804A, pf: 0.8, 50Hz	1 No	2012
	Gates and Hoists		
22.	Power House Overhead Cranes: 210 Tons	2 No	1989
23.	Power Intake Gantry Crane: 100 Tons	1 No	1989
24.	Draft Tube Gantry Crane: 30 Tons	1 No	1989
25.	Power Intake Gates and Controls	4 No	1989
26.	Bulk Head Gate Complete with Stems	1 Set	1989
27.	Spillway Radial Gates and Controls	4 No	1989
28.	Draft Tube Gates (A & B)	4 Sets	1989
	Plant Auxiliaries		
29.	Power House Potable Water Treatment Plant	1 No	1989
30.	Sewage Treatment Plant	1 No	1989



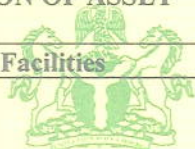
31.	Lubricating Oil Treatment Plant	1 No	1989
	DESCRIPTION OF ASSET	QTY	ASSET YEAR
32.	Chlorination Plant	1 No	1989
33.	Unit Unwatering Pumps: 75kW	4 No	2012
34.	Station Drainage Pumps: 22kW	2 No	1989
35.	Flood Control Pumps: 55kW	2 No	2008
36.	Station Service Air Compressors: (1 x 0.69MPa and 1 x 10 Bar)	2 No	2012
	HVAC System		
37.	Power House Chiller plant	1 No	2011
38.	Admin Block Chiller Plant	2 No	2013
39.	Refrigerating Units	3 No	2012
40.	Air handling Units	8 No	2012
41.	Industrial Packaged Units	16 No	2012
42.	Industrial Exhaust Fans	3 No	1989
	Fire Protection System		
43.	Generator CO ₂ Fire Protection System	1 No	1989
44.	Fire Alarm System	1 No	2010
45.	Mercedes Benz Fire Truck (1518/48)	1 No	2011
46.	Mercedes Benz Fire Truck (1935)	1 No	1990
48.	First Striker	1 No	2002
49.	Fire Hydrant System	1 No	1989
50.	Transformer Deluge System	4 No	1989
	Domestic Water Supply System		
51.	Mount Zumba Water Transfer Pumps and Controls: 75kW	3 Sets	2011
52.	Upper Culligan Water Treatment Plant	1 No	1981
53.	Lower Culligan Water Treatment Plant	1 No	1981
54.	Treated Water Storage Tank (Reinforced Concrete): 200,000 Gallons	1 No	2013
55.	Treated Water Storage Tank (Braithwaite): 200,000 Gallons	1 No	1981
56.	Mechanical Machine Shop	1 No	1989
57.	Electrical Machine Shop	1 No	1989
58.	Welding Workshop	1 No	1992
	Communication Equipment		
59.	Paging system	1 No	1989
60.	Intercom System	1 No	1989
61.	Internet Facility	1 No	2010
	Material Handling Equipment		
62.	Fork Lift: 5 Tons	1 No	2011
63.	Fork Lift: 3 Tons	1 No	2011
64.	Mercedes Benz 2031 Actross Self-Loader Truck: 8.5 Tons	1 No	2011
65.	Mercedes Benz 1518/48 Goods Truck	1 No	2011
66.	Steyr Crane Lorry : 3 Tons	1 No	1989
67.	Tractor	1 No	2011
	Reservoir Management Equipment		
68.	12 – Seater Work Boat, with 2 x 40hp Yamaha Engine	1 No	1989
69.	6 – Seater Work Boat, with 1 x 40hp Yamaha Engine	1 No	1995
	DESCRIPTION OF ASSET	QTY	ASSET YEAR
70.	5 – Seater Aluminum Crest Liner	1 No	2010



71.	5 – Seater Inflatable Dinghies	2 No	2011
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Shiroro EGC – Land & Building

S/No	LOCATION	DESCRIPTION OF ASSET	QTY	ASSET YEAR
1.	Shiroro	Power Plant Land Coverage	34 km ²	1979
2.	Dam Site	Rock-Filled, Concrete-Faced Dam: 115m High, 700m Long	1 No	1984
3.	Dam Site	Rim Dyke (A & B)	2 No	1984
4.	Dam Site	Reservoir: 320 km ² , 7b m ³	1 No	1984
5.	Power House	Power House building	1 No	1984
6.	Power House	Admin and Control Building	1 No	1984
7.	Power House	HVAC / Rewinding Workshop	1 No	1992
8.	Power House	Generator Workshop	1 No	1992
9.	Power House	Spraying Workshop	1 No	1992
10.	Power House	Staff Canteen	1 No	1992
11.	Power House	Fire Service / Safety Office	1 No	1992
12.	Power House	Power House Store	1 No	1992
13.	Power House	Main Store	1 No	1980
14.	Power House	Fuel Dump	1 No	1980
15.	Power House	CEO's Office Complex	1 No	2008
		Residential Quarters – Chas T Main Camp		
16.	Chas T Main Camp	3 – Bedroom Apartments	34 No	1981
17.	Chas T Main Camp	2 – Bedroom Apartments	26 No	1981
18.	Chas T Main Camp	1 – Bedroom Quartet	27 No	1981
19.	Chas T Main Camp	Boys' Quarters	10 No	1981
20.	Chas T Main Camp	Twin Guest Chalets	10 No	1981
21.	Chas T Main Camp	Guest Lounge	1 No	1981
22.	Chas T Main Camp	Twin 1 – Bedroom	1 No	2005
		Residential Quarters – Senior Camp		
23.	Senior Camp	3 – Bedroom Apartments	5 No	1980
24.	Senior Camp	Twin 2 – Bedroom Apartments	19 No	1980
25.	Senior Camp	1 – Bedroom Apartments	14 No	1980
		Residential Quarters – Employers' Camp		
26.	Employers' Camp	3 – Bedroom Apartments	12 No	1980
27.	Employers' Camp	2 – Bedroom Apartments	29 No	1980
		Residential Quarters – Junior Camp		
28.	Junior Camp	DSK Block	37 No	1980
29.	Junior Camp	DTL Block	12 No	1980
30.	Junior Camp	Hospital Block	4 No	1998
		Hospital		
31.		45 – Bed Hospital, with Operating Theater, Maternity and X – Ray Unit	1 No	1981
		School		
32.		Edward Adeleye Nursery / Primary School	1 No	1984
33.		PHCN Secondary School	1 No	2005
S/No	LOCATION	DESCRIPTION OF ASSET	QTY	ASSET YEAR
		Recreational Facilities		



34.	Chas T. Main	Community Center, with Swimming Pool, and Lawn Tennis Court	1 No	1981
35.		18 – Hole Golf Course	1 No	1981
36.		Golf Club	1 No	1981
37.	Senior Camp	CEI Mess, with Swimming Pool, Basket Ball, Lawn Tennis and Squash Courts.	1 No	1981
		Electrical Distribution Network		
38.	Shiroro	11/0.415kV Distribution Network	18 km	1980
39.		11/0.415kV Substations (100 – 200kVA)	31 No	1980



SCHEDULE 3
APPROVED FINANCING PACKAGE

Bidder to Provide



BUREAU OF PUBLIC ENTERPRISES

21

SCHEDULE 4

THE CONTRACTS

The Contracts to be transferred, assigned and novated to the Concessionaire pursuant to this Agreement shall be as follows:



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SCHEDULE 5
THE EMPLOYEES

- 1.1 Within thirty (30) days of the date of execution of this Agreement, the Company will provide a list of all Employees currently working at the Shiroro Power Station together with details of their service contracts, remuneration and any collective bargaining or trade union arrangements.
- 1.2 Prior to the Commencement Date, the Concessionaire will diligently consider which of these Employees it wishes to take on, it being understood that so far as is reasonable, the Concessionaire should endeavour to retain as many of the current Employees as possible bearing in mind its own commercial and business requirements.
- 1.3 The Concessionaire will offer employment to the Selected Employees from the Commencement Date and, subject to the acceptance of such Selected Employees, the Company and Concessionaire will make best efforts in ensuring a smooth transition of such Selected Employees from the Company's employment to that of the Concessionaire.
- 1.4 The Concessionaire shall procure that for a period of six (6) months following the Commencement Date, it will provide to each of the Selected Employees a total compensation and benefits package that is no less favourable in aggregate per employee than the total compensation and benefits package payable to the Employees prior to the Commencement Date.
- 1.5 The Concessionaire undertakes that if, at any time within six (6) months of the Commencement Date, it terminates or gives notice to terminate the employment of any Selected Employee by reason of redundancy or as part of a collective dismissal or in connection with a decision to reduce the workforce or restructure its business, the Concessionaire shall procure that each such Selected Employee shall receive redundancy or severance payments and advice and assistance that are, in each case, no less favourable to the Selected Employee than those that would have been offered to that Selected Employee immediately prior to the Commencement Date, save for any payments that have been made to such Employee by the Company in the course of the disengagement of the employment of such Employee from the employment of the Company.
- 1.6 The Concessionaire shall not between the date of this Agreement and the Commencement Date, contact any employee, officer or director of the Company with a view to direct, influence or control the management, conduct or operation of all or any part of the Power Station.
- 1.7 The Company shall consult with the Concessionaire prior to informing or consulting its Employees regarding the transfer of the operation of the Power Station prior to the Commencement Date and shall take due account of the Concessionaire's views in this regard.



SCHEDULE 6

SPECIFIED CONSENTS

The Specified Consents for the purpose of this Agreement shall include:

1. approval of the Agreement by the National Council on Privatisation;
2. approval of the Agreement by Federal Executive Council; and
3. issuance to the Concessionaire of a Water Licence from the Minister of Water Resources to permit use of water from the river course for hydro-electric purposes.



SCHEDULE 7
MINIMUM PERFORMANCE CRITERIA
Shiroro Power Station

1. DEFINITIONS

- 1.1 In this Schedule, the following words and expressions shall have the following meanings:
- "Available Capacity"** shall mean the Available Capacity of the Power Station expressed in MW, as determined by the most recent (at the relevant time) Capacity Test under the Power Purchase Agreement;
- "Capacity Test"** has the meaning given to that term in the Power Purchase Agreement;
- "Shiroro Minimum Capacity Target"** has the meaning given in paragraph 2.2.4;
- "Shiroro Rehabilitation Target"** has the meaning given in paragraph 5.1;
- "Shiroro Rehabilitation Target Date"** shall mean the fifth anniversary of the Commencement Date or such later date to which such date is extended in accordance with paragraphs 5.5 and/or 5.6 to 5.10;
- "Shiroro Target Date"** shall mean the fifth anniversary of the Commencement Date or such later date to which such date is extended in accordance with paragraphs 4.1 and/or 4.2 to 4.6;
- "LD Calculation Date"** has the meaning given in paragraph 3.1; and
- "Performance Default"** has the meaning given in paragraph 6.1.
- 1.2 Unless the context otherwise expressly requires, words and expressions which are defined elsewhere in this Agreement shall have the same meaning when used in this Schedule.

2. TARGET

- 2.1 The available capacity at the Shiroro Power Station as at the date of this Agreement is 600MW.
- 2.2 The Concessionaire shall operate, maintain and refurbish or repower or replace or expand the Shiroro Power Station:
- 2.2.1 in accordance with this Agreement;
- 2.2.2 in accordance with the Post-Acquisition Plan;
- 2.2.3 in such a way as to increase the available capacity of the Shiroro Power Station; and
- 2.2.4 so that the Available Capacity on the Shiroro Target Date is equal to or greater than 600MW (the **"Shiroro Minimum Capacity Target"**).
- 2.3 The Company shall promptly notify BPE in writing of the results of any Capacity Test carried out pursuant to the Power Purchase Agreement.

3. LIQUIDATED DAMAGES

- 3.1 Subject to paragraph 3.7, and with effect from the Shiroro Target Date, where on the Shiroro Target Date or any anniversary of the Shiroro Target Date (in either case being the **"LD Calculation Date"**) the Available Capacity is less than the Shiroro Minimum Capacity Target, the Concessionaire shall pay to BPE as liquidated damages an amount calculated in accordance with the following formula in respect of each month in the year between that LD Calculation Date and the next following LD Calculation Date:



(Shiroro Minimum Capacity Target (MW) – Available Capacity (MW)) x US\$350 x 365

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- 3.2 Where a further Capacity Test takes place during any year in which the Concessionaire is paying liquidated damages to BPE in accordance with paragraph 3.1, the Concessionaire may apply to BPE to recalculate the liquidated damages for the remainder of the relevant year on the basis of the new Capacity Test, and BPE shall not unreasonably withhold its consent to such recalculation.
- 3.3 Where the Available Capacity indicated by a further Capacity Test achieves or exceeds the Shiroro Minimum Capacity Target, the Concessionaire shall be entitled to request that BPE cancel its obligation to make liquidated damages payments for the remainder of that year, and BPE shall not unreasonably withhold its consent to such cancellation.
- 3.4 Any liquidated damages payable by the Concessionaire to BPE pursuant to paragraph 3.1 as recalculated, where relevant, pursuant to paragraph 3.2 shall be payable by the Concessionaire within fifteen (15) days of the month – end to which the liquidated damages relate.
- 3.5 Any amount of liquidated damages not paid when due shall bear interest in accordance with Clause 20.17 of this Agreement.
- 3.6 Any recalculation or cancellation of liquidated damage payments pursuant to paragraph 3.2 or 3.3:
- 3.6.1 shall take effect from the date of the further Capacity Test; and
- 3.6.2 shall be without prejudice to any payment obligations of the Concessionaire which had accrued as at the date of the further Capacity Test.
- 3.7 In relation to the Concessionaire's obligations to pay liquidated damages pursuant to paragraph 3.1:
- 3.7.1 no liquidated damages shall accrue to the extent that the Concessionaire's failure to achieve the Shiroro Minimum Capacity Target is directly attributable to a Force Majeure Event, an FGN Event of Default or where the failure to reach the Shiroro Minimum Capacity Target is due solely to the water levels or flows at the Shiroro Reservoir, provided such water flows or levels are not attributable to any act or omission of the Concessionaire; and
- 3.7.2 the amount of liquidated damages shall be reduced by the amount of any fines or penalties paid to any Regulatory Authority by the Concessionaire pursuant to any relevant Industry Document in the relevant year in respect of such failure to achieve the Shiroro Minimum Capacity Target (and in the event that this reduces the liquidated damages to zero or below no liquidated damages shall be payable in respect of that year).
- 3.8 Without prejudice to the other rights and remedies under this Agreement, the Parties agree that the payment of liquidated damages pursuant to paragraph 3.1 represents an accurate pre-estimate of the Loss which the Company and BPE would suffer as a result of the failure to achieve the Shiroro Minimum Capacity Target and is in lieu of actual damages for Loss arising from failure to achieve the Shiroro Minimum Capacity Target. The Concessionaire hereby waives, to the extent permitted by the Laws of Nigeria, any defence as to the validity of such liquidated damages on the ground that such liquidated damages are void as penalties or otherwise.



4. EXTENSIONS

Force Majeure Extension

- 4.1 If the Concessionaire is hindered, prevented or delayed in carrying out any works or maintenance which are required in order to satisfy the Shiroro Minimum Capacity Target by the Shiroro Target Date:

4.1.1 by a Force Majeure Event; or

4.1.2 due solely to the water levels or flows at the Shiroro Reservoir, provided such water flows or levels are not attributable to any act or omission of the Concessionaire,

for a period of thirty (30) days or longer, then the Shiroro Target Date shall be extended to such later date as is fair and reasonable to reflect such hindrance, prevention or delay.

General Extension

- 4.2 If, prior to the Shiroro Target Date, the Concessionaire considers that the Available Capacity will be less than the Shiroro Minimum Capacity Target on the Shiroro Target Date, the Concessionaire may request in writing no later than sixty (60) days prior to the Shiroro Target Date that BPE provide a one-year extension to the Shiroro Target Date to allow the Concessionaire to continue working towards achieving the Shiroro Minimum Capacity Target.
- 4.3 A request made by the Concessionaire in accordance with paragraph 4.2 shall be accompanied by documentation which demonstrates why it is reasonable to expect that the Company will meet the Shiroro Minimum Capacity Target by the end of the one-year extension if the extension is granted.
- 4.4 BPE shall provide the Concessionaire with written notice of whether or not it consents to the proposed one-year extension (and, where consent is withheld, the reasons why BPE will not provide its consent) no later than thirty (30) days after the Concessionaire requests the extension. BPE shall not unreasonably withhold, condition or delay its consent to the proposed one-year extension.
- 4.5 If BPE does not provide the written notice required by paragraph 4.4 within such thirty (30) days it shall be deemed to have granted the proposed one (1) year extension.
- 4.6 If BPE notifies the Concessionaire in accordance with paragraph 4.4 that it will not grant the one-year extension to the Shiroro Target Date, then the Concessionaire and BPE shall meet as soon as is reasonably practicable thereafter to determine what the Concessionaire needs to do in order to satisfy BPE (acting reasonably) that a one (1) year extension should enable the Concessionaire to achieve the Shiroro Minimum Capacity Target.

5. MAINTENANCE AND RESTORATION

Rehabilitation Target

- 5.1 By the Shiroro Rehabilitation Target Date, the Concessionaire shall at its own cost carry out such repair, refurbishment, rehabilitation or replacement works to the portions of the Hydro Property which relate to the Shiroro Power Station as are reasonably required to ensure that the Shiroro Power Station is designed to achieve and capable of achieving safe and efficient operation and an Available Capacity equal to or greater than the Shiroro Minimum Capacity Target, subject to availability of water, for a period of twenty (20) years without any additional capital investment other than such routine maintenance, repair and renewal as would reasonably be expected, in accordance with Good Design and



Engineering and Construction Practices, in relation to the relevant assets (the "Shiroro Rehabilitation Target").

Rehabilitation to be assessed by engineer

- 5.2 Sixty (60) days prior to the Shiroro Rehabilitation Target Date, the Parties shall appoint an independent engineer who shall certify to the Parties whether the Shiroro Rehabilitation Target will be achieved by the Shiroro Rehabilitation Target Date. The independent engineer shall deliver its opinion as to whether or not the Shiroro Rehabilitation Target has been achieved no later than thirty (30) days prior to the Rehabilitation Target Date.
- 5.3 The identity of and detailed terms of reference for the engineer shall be agreed between the Parties (or in the absence of agreement determined in accordance with Clause 22).
- 5.4 Any fees payable to the engineer shall be borne by the Concessionaire.

FM Extension

- 5.5 If the Concessionaire is hindered, prevented or delayed in carrying out any works which are required in order to satisfy the Shiroro Rehabilitation Target by the Shiroro Rehabilitation Target Date by a Force Majeure Event which extends for a period of thirty (30) days or longer, then the Shiroro Rehabilitation Target Date shall be extended to such later date as is fair and reasonable to reflect such hindrance, prevention or delay.

General Extension

- 5.6 If the Concessionaire considers that the Shiroro Rehabilitation Target will not have been achieved by the Shiroro Rehabilitation Target Date, the Concessionaire shall request in writing no later than ninety (90) days prior to, the Shiroro Rehabilitation Target Date that BPE provide a one-year extension to the Shiroro Rehabilitation Target Date to allow the Concessionaire to continue working towards achieving the Shiroro Rehabilitation Target.
- 5.7 A request made by the Concessionaire in accordance with paragraph 5.6 shall be accompanied by documentation which demonstrates why it is reasonable to expect that the Concessionaire will achieve the Shiroro Rehabilitation Target by end of the one-year extension if the extension is granted.
- 5.8 BPE shall provide the Concessionaire with written notice of whether or not it consents to the proposed one-year extension (and, where consent is withheld, the reasons why BPE will not provide its consent) no later than thirty (30) days after the Concessionaire requests the extension. BPE shall not unreasonably withhold, condition or delay its consent to the proposed one-year extension.
- 5.9 If BPE does not provide the written notice required by paragraph 8 within such thirty (30) days it shall be deemed to have granted the proposed one (1) year extension.
- 5.10 If BPE notifies the Concessionaire in accordance with paragraph 5.8 that it will not grant the one-year extension to the Shiroro Rehabilitation Target Date, then the Concessionaire and BPE shall meet as soon as is reasonably practicable thereafter to determine what the Concessionaire needs to do in order to satisfy BPE (acting reasonably) that a one (1) year extension should enable the Concessionaire to achieve the Shiroro Rehabilitation Target.

6. EVENTS OF DEFAULT

- 6.1 If:
- 6.1.1 on the Shiroro Target Date the Available Capacity is less than the Shiroro Minimum Capacity Target;



- 6.1.2 on any anniversary of Shiroro Target Date the Available Capacity is less than ninety-five per cent (95%) of the Shiroro Minimum Capacity Target; or
- 6.1.3 the opinion of the independent engineer appointed in accordance with paragraph 5.2 is that the Concessionaire will not achieve the Shiroro Rehabilitation Target by the Shiroro Rehabilitation Target Date,

then a "**Performance Default**" shall have occurred unless the failure to achieve the Shiroro Minimum Capacity Target in the case of paragraph 6.1.1, or to exceed ninety-five per cent (95%) of the Shiroro Minimum Capacity Target in the case of paragraph 6.1.2, or to achieve the Shiroro Rehabilitation Target in the case of paragraph 6.1.3, is attributable directly to a Force Majeure Event or a FGN Event of Default, and the provisions of Clause 17 of this Agreement shall apply.



SCHEDULE 8

Redacted



the Company additionally agree to procure from the Concessionaire, if need be, the payment to CPCS of the aforesaid one per cent (1%) of the Upfront Annual Fee);

- (c) The payments referred to in paragraphs (a) and (b) of Part A of this Schedule 8 constitute the full payment of the Commencement Fee.

Redacted

- (e) Five per cent (5%) of the Concessionaire's pre-tax gross sales revenue over the previous month as a monthly royalty ("Royalty"). The Royalty shall be payable in arrears on the first Business Day of the following month with the first payment being due on the first Business Day of the month following the Commencement Date.

PART B – PAYMENT

All amounts payable under this Agreement shall be made by means of bank transfer to the relevant Party's bank account no later than 15.00 hours on the due date for payment, as follows (or such other bank account as the receiving Party shall, not less than five (5) Business Days before the date that payment is due, have specified by giving notice to the other Parties for the purpose of that payment):



Redacted



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Redacted



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SCHEDULE 9
FORM OF CONCESSIONAIRE'S PERFORMANCE BOND

(To be issued by [a Financial Institution approved by BPE])
[Address])

THIS PERFORMANCE BOND in favour of Bureau of Public Enterprises of 11 Osun Crescent, Maitama, Abuja, Nigeria ("BPE"), and its successors and assignees, is executed on this ____ day of _____, 2013 by [name of the Financial Institution], having its principal office at [address of the Financial Institution] (hereinafter referred to as "**Performance Bond Issuer**," which expression shall include its successors and assigns).

WHEREAS:

- A. Pursuant to Clause 2.2.1(E) of the Concession Agreement dated [insert date of Execution Date], between Shiroro Hydro Electric Plc, BPE and [insert the name of the Concessionaire] (the "**Concessionaire**"), (the "**Concession Agreement**"), the Concessionaire is required to provide BPE with an unconditional and irrevocable performance bond as security for the due and punctual performance of its obligations under the Concession Agreement.
- B. At the request of the Concessionaire and for valid consideration the Performance Bond Issuer has agreed to provide this unconditional and irrevocable performance bond (the "**Performance Bond**").

NOW THEREFORE THIS DEED WITNESSES AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

- 1.1 Unless the subject or context otherwise requires, words defined in the Concession Agreement shall have the same meanings when used in this Deed.
- 1.2 "**Party**" or "**Parties**" means BPE and the Performance Bond Issuer.
- 1.3 References to an agreement, deed or document, including this Performance Bond shall (subject to the terms and conditions of this Performance Bond) be construed as references to such agreement, deed or document as may be amended, varied, supplemented, modified, superseded, replaced or novated from time to time.

2. PERFORMANCE GUARANTEE

- 2.1 The Performance Bond Issuer unconditionally and irrevocably guarantees to BPE the proper, complete and punctual performance by the Concessionaire of all of its performance obligations under or in respect of the Concession Agreement, including, the payment of moneys due and payable by the Concessionaire thereunder (the "**Concessionaire's Obligations**").
- 2.2 The Performance Bond Issuer undertakes to BPE that it shall, without any objection, protest, opposition or recourse, pay to BPE any amount claimed by it under this Performance Bond, within five (5) calendar days of receipt of a written demand from BPE, calling upon it to pay the said amount and stating that the Concessionaire has failed to perform any or all of the Concessionaire's Obligations.



2.3 The obligation of the Performance Bond Issuer to make any payment under this Performance Bond is subject to and conditional upon the presentation of a claim to the Performance Bond Issuer at its principal office (as set out above) made in writing and signed by the Director General of BPE.

2.4 The Performance Bond Issuer shall have no obligation to inquire into the veracity of any demand so made by BPE, and shall moreover abstain from so inquiring, and shall pay the sums specified in the demand notwithstanding any direction to the contrary given or any dispute whatsoever raised by the Concessionaire or any other person.

Primary obligor

2.5 Without prejudice to the rights of BPE against the Concessionaire, the Performance Bond Issuer shall be a primary obligor and shall be deemed a principal debtor in respect of its obligations under the Performance Bond.

2.6 Rights of first recourse

The Performance Bond Issuer's obligations under this paragraph 2 shall be in addition to any rights BPE may have under any other agreement or security in relation to the Concession Agreement or the Concessionaire's Obligations. BPE may enforce its rights against the Performance Bond Issuer first without having recourse to any other such agreement or security or exercising any rights or remedies against the Concessionaire.

2.7 Discharge

Notwithstanding any composition, release, arrangement or waiver effected by BPE with the Concessionaire, the Performance Bond Issuer's liability under this Performance Bond shall be discharged only by performance, payment and/or discharge by the Performance Bond Issuer to BPE in full in accordance with the provisions of this paragraph 2.

3. PAYMENT

Payment under paragraph 2 above shall be effected by wire transfer and the funds deposited in:

[Account to be nominated by BPE.]

4. WAIVER OF DEFENCES

4.1 The obligations of the Performance Bond Issuer under this Performance Bond will not be affected by an act, omission, matter or thing which, but for this paragraph 4, would reduce, release or prejudice any of its obligations under this Performance Bond (without limitation and whether or not known to it or BPE) including:

- 4.1.1 any termination, alteration, amendment, variation or supplement to any provision of the Concession Agreement;
- 4.1.2 any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Concessionaire or any other person;
- 4.1.3 the granting by BPE of any time, indulgence, concession, consent or waiver granted to, or any concession or arrangement made with the Concessionaire or any other person (whether expressly or by conduct);
- 4.1.4 the granting of any other bond, security or guarantee now or hereafter held by BPE for all or any part of the Concessionaire's Obligations;
- 4.1.5 the release or waiver of any such bond, security or guarantee referred to in sub-paragraph 4.1.4 above;



- 4.1.6 any claim or enforcement of payment from the Concessionaire or any other person;
- 4.1.7 any delay or forbearance by BPE in exercising its rights or remedies under this Performance Bond, or the enforcement or absence of enforcement of this Performance Bond;
- 4.1.8 the insolvency, liquidation, winding-up or administration of (or the appointment of an administrator or receiver of) or the amalgamation, reconstruction, reorganisation, change in status, function, control or ownership of the Concessionaire or the Performance Bond Issuer;
- 4.1.9 the illegality, invalidity, unenforceability or frustration of any of the Concessionaire's Obligation(s) for any reason, or any defect in any provision of, the Concession Agreement or any other security given in relation to the Concessionaire's Obligations;
- 4.1.10 any present or future law or regulations purporting to reduce or prejudice any of the Concessionaire's Obligations; and
- 4.1.11 anything that BPE may do, or omit or neglect to do which, but for this provision, might exonerate, discharge, reduce or extinguish the liability of the Performance Bond Issuer under this Performance Bond.

5. REINSTATEMENT

- 5.1 If any payment by the Performance Bond Issuer or any discharge given by BPE (whether in respect of the Concessionaire's Obligations or the obligations of the Performance Bond Issuer or any security for those obligations or otherwise) is avoided or reduced as a result of insolvency or any similar event:
 - 5.1.1 the liability of the Performance Bond Issuer shall continue as if the payment, discharge, avoidance or reduction had not occurred; and
 - 5.1.2 BPE shall be entitled to recover the value or amount of that security or payment from the Performance Bond Issuer, as if the payment, discharge, avoidance or reduction had not occurred.

6. ADDITIONAL SECURITY

This Performance Bond is in addition to and is not in any way prejudiced by any other security now or subsequently held by BPE.

7. REPRESENTATIONS AND WARRANTIES

- 7.1 The Performance Bond Issuer represents and warrants in favour of BPE that:
 - 7.1.1 it is duly formed and validly existing under the laws of its jurisdiction of formation;
 - 7.1.2 it has the power to enter into, perform, deliver, and has taken all necessary action to authorise the entry into, performance and delivery of, this Performance Bond;
 - 7.1.3 this Performance Bond constitutes, subject to any general principles of law limiting its obligations, its legal, binding and enforceable obligations; and
 - 7.1.4 the undersigned is duly authorised to execute this Performance Bond on behalf of the Performance Bond Issuer.



8. **PAYMENTS FREE OF DEDUCTIONS**

All sums payable under this Agreement shall be paid free and clear of all deductions or withholdings whatsoever save only as may be required by the Laws of Nigeria and without abatement or set-off (whether equitable or otherwise).

9. **TERM**

This Performance Bond shall be irrevocable and shall remain in full force and effect until all of the Concessionaire's Obligations have been satisfied or performed in full.

10. **ENFORCEMENT**

This Performance Bond may be enforced without taking any proceedings or demanding upon, enforcing or exhausting any right or remedy against the Concessionaire or any other person, or taking any action to enforce any other security, bond or guarantee held by BPE or making or filing any claim in a bankruptcy, liquidation, administration or insolvency of the Concessionaire or any person. BPE's rights hereunder are in addition to and not exclusive of those provided by law, in the Concession Agreement or in any other document, instrument or agreement executed in connection with the Concession Agreement.

11. **ASSIGNMENT**

Neither BPE nor the Performance Bond Issuer may assign its interest in this Performance Bond without the prior written approval of the other Party (such approval not to be unreasonably withheld).

12. **GOVERNING LAW AND DISPUTE RESOLUTION**

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

IN WITNESS WHEREOF THE [NAME OF THE FINANCIAL INSTITUTION] HAS ISSUED THIS PERFORMANCE BOND AS A DEED ON THE DAY, MONTH AND YEAR FIRST HEREINABOVE WRITTEN.

SIGNED AND DELIVERED by [name of the Financial Institution], by the hand of [name of signing officer] its [title of the signing officer] and authorised official.



SCHEDULE 10
INSURANCE POLICIES

1. The Concessionaire shall purchase and maintain, at its expense, insurance for cover against the following:
 - (1) the Concessionaire's general liability arising out of this Agreement to a level not less than an amount to be prescribed by BPE (after consulting with the Concessionaire) no later than thirty (30) days prior to the Commencement Date per occurrence and in the aggregate, where applicable (the Concessionaire may challenge before the Expert the reasonableness of the amounts prescribed by BPE under this paragraph);
 - (2) accidents, injury or death occasioned to persons lawfully within the Site arising out of the Operations or any such other liabilities that may be occasioned to such persons as a result of the Concessionaire carrying out and/or performing its obligations under this Agreement;
 - (3) risks arising from deficiencies or failure to dispose of Waste Materials and other property or hazards;
 - (4) all risks property/machinery insurance including loss, damage or destruction to the permanent structures, buildings, equipment, improvements and other such fixtures owned by the Company and found within the Site;
 - (5) any other risks compulsorily provided for by the Laws of Nigeria or the rules and regulations governing the Operations such as motor insurance on any vehicle;
 - (6) public liability insurance;
 - (7) construction/erection all risks insurance for all rehabilitation, restoration and improvement works;
 - (8) operational all risks insurance;
 - (9) employee/workmen's compensation insurance;
 - (10) marine cargo insurance in respect of loss or damage in transport to the Site; and
 - (11) any risks required to be insured under the terms of the PPA.
2. The proceeds from such property insurance cover shall be utilised to repair or reconstruct the Hydro Property damaged or destroyed with the end view of having them restored to their condition immediately prior to the event which occasioned the loss or damage. In no case shall the insured amount limit the responsibilities of the Concessionaire under this Agreement.
3. The following policies shall name the Company as co-insured:
 - (1) Operational all risks insurance;
 - (2) All risks property/machine insurance; and
 - (3) Construction/erection all risks insurance.



SCHEDULE 11
TRANSITION PLAN

1. DEFINITIONS

- 1.1 The following additional terms shall have the meanings specified in this paragraph when capitalised and used in this Schedule:

"**Company Operations**" means the operations performed by the Company at the Site utilising the Fixed Assets and the Moveable Assets prior to the Execution Date;

"**Transition Period**" means the period from the execution of the Agreement to the date of the Commencement Date.

2. INTRODUCTION

- 2.1 This Transition Plan sets out the rights and obligations of the Company and the Concessionaire during the Transition Period.
- 2.2 The Transition Period is critical for a successful transfer of the Hydro Property and the subsequent conduct of the Operations. The Transition Committee shall ensure that during the Transition Period, the Parties shall follow and comply with the provisions of this Schedule 11.
- 2.3 It is important that the Company and Concessionaire work closely together towards the common goal of a successful transfer of the Site from Company to Concessionaire in accordance with the provisions of this Agreement and the commencement of the Operations by the Concessionaire on the Commencement Date.

3. TRANSITION COMMITTEE

The Company and the Concessionaire shall each appoint four (4) representatives to form a Transition Committee who shall be responsible for overseeing the implementation of the provisions of the Transition Plan during the Transition Period. The Transition Committee shall be chaired by a representative appointed by the Company. The Transition Committee shall consult with the Relevant Authorities where necessary in order to comply with Laws of Nigeria and the provisions of this Agreement.

4. THE HYDRO COMPANY OPERATIONS

- 4.1 Throughout the Transition Period:
- 4.1.1 the Company shall continue the Company Operations subject to the provisions of this Transition Plan;
- 4.1.2 the Parties shall ensure smooth continuation and performance of the Company Operations; and
- 4.1.3 the Parties also agree to minimise disruption to the Company Operations.

5. ACCESS RIGHT

During the Transition Period, the Company shall grant to the Concessionaire and its employees and Contractors the right to access the Site, subject to all rights reserved by the Company under the terms of all rules and regulations promulgated from time to time with respect thereto, provided that such access shall not unreasonably interfere with the use of the Site by other occupants or users of the Site. Such right of access shall be used to ensure the transfer of know-how in relation to the operation and maintenance of the Power Station from the Company to the Concessionaire.



6. INSURANCE

- 6.1 The Concessionaire shall maintain, at its expense, during the Transition Period insurance cover against the following:
- 6.1.1 the Concessionaire's general liability to a level of not less than one hundred million United States Dollars (US\$100,000,000);
 - 6.1.2 accidents, injury or death occasioned to persons lawfully within the Site arising out of its acts or omissions or such other liabilities that may be occasioned to such persons as a result of the Concessionaire carrying out and/or performing in accordance with the provisions of this Transition Plan;
 - 6.1.3 loss, damage or destruction to the Minimum Performance Target equipment and any improvements found within the Site; and
 - 6.1.4 all other risks compulsorily provided for by the Laws of Nigeria or the rules and regulations governing the Concessionaire.
- 6.2 The Parties shall provide each other with copies of all such insurance policies and shall have the right to review and approve the same, such approval not to be unreasonably withheld.

7. SURVEYS

- 7.1 As soon as possible following the date of this Agreement, the Parties shall appoint an Expert to conduct a survey of the Hydro Property. If, as a result of such survey, the Expert reports that the Hydro Property or any material part thereof is not present upon the Site then, the Company shall, at its own cost, charge and expense, take all reasonable steps to replace such items before the Commencement Date. For the avoidance of doubt, the survey to be conducted under this paragraph 7.1 shall be solely for the purpose of ascertaining the Hydro Property present upon the Site and NOT for determining the physical state or condition of the Hydro Property or any part thereof nor shall it be construed to do so. The Hydro Property is leased by the Concessionaire under this Agreement on an "**AS IS, WHERE IS, AND WITH ALL FAULTS**" basis and save as expressly set out in this Agreement excludes any warranty, condition or other undertaking implied at law or by custom, usage or course of dealing.
- 7.2 During the Transition Period, the Company and the Concessionaire shall perform civil engineering investigations of the infrastructure of the Site including:
- 7.3 The Company and the Concessionaire shall also perform such other surveys as agreed and deemed necessary by the Parties based on Good Industry Practice.
- 7.4 If not already commenced, as soon as possible after the start of the Transition Period BPE shall undertake any environmental impact assessments required for the purposes of Laws of Nigeria in order to allow the Concessionaire to progress with the Restorations and any improvements in accordance with the Minimum Performance Targets. The Company shall provide the Concessionaire with all assistance possible in order to allow the Concessionaire to obtain the environmental impact permits required in order to develop the Site in accordance with the Minimum Performance Targets and to perform the Operations.

8. THE COMMENCEMENT DATE

- 8.1 On the Commencement Date the Concessionaire shall commence Operations and the Company shall:
- 8.1.1 vacate the Site which shall include the redeployment of all of the Company's Employees;



- 8.1.2 surrender peaceful possession of the Fixed Assets in good working condition in accordance with this Agreement (excluding reasonable wear and tear) to the Concessionaire;
- 8.1.3 cease Company Operations;
- 8.1.4 hand over to the Concessionaire all documents including as built drawings, manuals and records relating to operation and maintenance of the Hydro Property; and
- 8.1.5 lease to the Concessionaire, the Hydro Property.



SCHEDULE 12

TERMINATION PLAN

1. DEFINITIONS

- 1.1 The following additional terms shall have the meanings specified in this Clause when capitalised and used in this Schedule:

"**Concessionaire Moveable Assets**" means the moveable property of the Concessionaire used by the Concessionaire for the purposes of performing the Operations on termination of this Agreement, other than the Moveable Assets (or any replacement of the Moveable Assets made during the term of this Agreement whether pursuant to the Minimum Performance Targets or otherwise); and

"**Termination Period**" means the period from the termination of the Concession Term and ending on the date being ninety (90) days after such termination.

2. THE TERMINATION PLAN

- 2.1 The Parties agree that this Termination Plan shall apply during the Termination Period.
- 2.2 Notwithstanding paragraph 2.1, the Concessionaire shall ensure smooth continuation and provision of the Operations throughout the Termination Period. The Parties agree to minimise disruption to the Operations performed by the Concessionaire.

3. CONDITION SURVEY

- 3.1 On termination of this Agreement, the Parties shall appoint an Expert to conduct a (i) condition survey of the Hydro Property and (ii) to provide a valuation of the cost to restore the Hydro Property to the condition it would have been in had it been duly operated and maintained in accordance with this Agreement and to replace any Hydro Property which is no longer available at the Site (the "**Reinstatement Costs**").
- 3.2 If, as a result of such condition survey, the Expert reports that the Hydro Property or any part thereof has not been operated and maintained in accordance with the requirements under this Agreement (normal wear and tear excepted) or are not present at the Site the Concessionaire shall, at its own cost, charge and expense, take all necessary steps to put the same to good working condition or replace such missing items on or before expiry of the Termination Period.
- 3.3 If the Concessionaire fails to restore the Hydro Property to a good working condition within such period or replace such missing items, the Concessionaire shall pay BPE the Reinstatement Costs.

4. THE HYDRO PROPERTY

- 4.1 The Concessionaire shall, not later than fifteen (15) days after the date of termination of Concession Term, provide the Company with inventories of:
- 4.1.1 the relevant Hydro Property Moveable Assets; and
- 4.1.2 the spare parts and consumables,
- which it used in the context of the Operations.
- 4.2 The Company shall advise the Concessionaire in writing of any spare parts or consumables that it does not require the Concessionaire to transfer to it.



5. **TERMINATION DATE**

5.1 Upon the termination of the Termination Period the Concessionaire shall:

- 5.1.1 vacate the Site;
- 5.1.2 surrender peaceful possession of the Hydro Property, the Concessionaire Moveable Assets and spare parts which the Company has elected to take pursuant to paragraph 4.2 in a good working condition in accordance with Good Industry Practice (excluding reasonable wear and tear) to the Company;
- 5.1.3 hand over to the Company all documents including as built drawings, manuals and records relating to operation and maintenance of the Hydro Property;
- 5.1.4 transfer or cause to be transferred to the Company any agreements relating to the Hydro Property which are:
 - (A) valid and subsisting;
 - (B) capable of being transferred to the Company;
 - (C) that the Company has chosen to take over, and cancel or cause to be cancelled such agreements not to be transferred to the Company; and
 - (D) execute such documents and deeds as the Company may require to confirm or give effect to this Clause;
- 5.1.5 convey, transfer, assign and deliver to the Company, free and clear of any Encumbrances, the Concessionaire's right, title and interest in and to the Hydro Property, and spare parts which the Company has elected to take pursuant to paragraph 4.2 above accompanied by any necessary supporting documents reasonably requested by the Company; and
- 5.1.6 assign, transfer and novate to the Company the Contracts and any contracts entered into in relation to the Operations and which the Company has requested to be assigned, transferred and novated to its benefit.

6. **COOPERATION**

The Concessionaire shall use its best efforts and act in good faith to cooperate with the Company or any new lessee that the Company may notify the Concessionaire of in writing on or before the date of termination of the Concession Term to take over responsibility from the Concessionaire to perform the Operations on or after the date of termination of this Agreement. Such cooperation required of the Concessionaire shall include, without limitation, the provision of all relevant documentation and information held or used by the Concessionaire relating to the Hydro Property, the Concessionaire Moveable Assets and spare parts which the Company has elected to take pursuant to paragraph 4.2 and the Operations (including manuals, records, data, etc.).



SCHEDULE 13
TRANSFER PRICE

1. CALCULATION OF THE TRANSFER PRICES

1.1 Concessionaire Default Purchase Price

1.1.1 The Concessionaire Default Purchase Price shall be the sum total of the following:

- (A) the Approved Indebtedness;
but reduced by the following amounts:
- (B) any Relevant Insurance Proceeds; and
- (C) any amount held by the Concessionaire in any bank account of the Concessionaire or any other cash or cash equivalent or investment of the Concessionaire, in each case that has not yet been used to reduce its indebtedness as mentioned in paragraph 1.1.1(A) above.

1.2 FGN Default Purchase Price

1.2.1 The FGN Default Purchase Price shall be the sum total of the following:

- (A) the Approved Indebtedness;
- (B) demobilisation and sub-contractor breakage costs arising as a result of the termination of this Agreement; and
- (C) equity invested by the shareholders of the Concessionaire or any other cash or cash equivalent or investment of the Concessionaire multiplied by $(1+R)^t$ where R= twenty percent (20%) and t= 5 years (or the remainder of the term of the Concession if shorter),

but reduced by the following amounts:

- (D) any Relevant Insurance Proceeds and insurance proceeds which would have been available but for a Concessionaire default;
- (E) any amount held by the Concessionaire in any bank account of the Concessionaire, in each case that has not yet been used to reduce its indebtedness as mentioned in paragraph 1.2.1 (A) above; and
- (F) estimated cost of any major maintenance schedule to be completed prior to termination of this Agreement but yet to be performed under any relevant Contracts, up to a maximum amount of the sum of the items detailed in paragraphs 1.2.1 (B) and (C) above.

1.3 Force Majeure Purchase Price

1.3.1 The Force Majeure Purchase Price shall be the sum total of the following:

- (A) the Approved Indebtedness;
- (B) demobilisation costs arising as a result of the termination of this Agreement; and
- (C) equity invested by the shareholders of the Concessionaire or any other cash or cash equivalent or investment of the Concessionaire multiplied by $(1+R)^t$ where R= twenty percent (20%) and t=1 year (or the remainder of the term of the Concession if shorter),

but reduced by the following amounts:



- (D) any Relevant Insurance Proceeds and insurance proceeds which would have been available but for a Concessionaire default;
- (E) any amount held by the Concessionaire in any bank account of the Concessionaire, in each case that has not yet been used to reduce its indebtedness as mentioned in paragraph 1.3.1 (A) above; and
- (F) estimated cost of any major maintenance schedule to be completed prior to termination of this Agreement but yet to be performed under any relevant Contracts , up to a maximum amount of the sum of the items detailed in paragraphs 1.3.1 (B) and (C) above.

1.4 Definitions

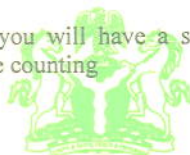
For the purposes of this Schedule 13:

1.4.1 **"Approved Indebtedness"** means the Senior Debt under any financing arrangements which have been:

- (A) approved by BPE (i) by their inclusion in the Initial Budget and/or Post-Acquisition Plan, (ii) as set out in Schedule 3 or (iii) pursuant to the terms of Clause 7.4.1; and
- (B) entered into for the purposes of financing no more than 70% of: (a) the payment of the Concession Fees (other than the Commencement Fee), and/or (b) Restorations and any improvements or maintenance required under or pursuant to this Agreement.

1.4.2 **"Relevant Insurance Proceeds"** means any insurance proceeds available to the Concessionaire and either (i) not required to be applied towards the repair and restoration of the Power Stations pursuant to Clause 13.5 of this Agreement, or (ii) required to be applied towards the repair and restoration of the Power Stations pursuant to Clause 13.5 of this Agreement and not so applied (or otherwise already paid to BPE) as at the date of termination of the Concession Term¹

¹ Note to Concessionaire: to the extent you will have a separate insurance proceeds account, then this definition will be adapted to avoid double counting



SCHEDULE 14
INITIAL BUDGET



SCHEDULE 15
POST-ACQUISITION PLAN



SCHEDULE 17
INDUSTRY WIDE INDEX



SCHEDULE 18
COMPANY SPECIFIC INDEX

