



**FEDERAL REPUBLIC OF NIGERIA**

**CONCESSION AGREEMENT**

**BETWEEN**

**FEDERAL MINISTRY OF WATER RESOURCES  
AREA 1, OLD SECRETARIAT  
GARKI - ABUJA**

**AND**

**MABON LIMITED  
NO. 29 SANUSI FAFUWA STREET  
VICTORIA ISLAND  
LAGOS.**

**DATED THIS 4<sup>th</sup> DAY OF JULY 2005**

Legal  
FED. MIN. OF  
RESOURCES  
Date: 11/07/05

CONCESSION AGREEMENT.

*THIS* CONCESSION AGREEMENT is made the 4<sup>th</sup> day of July 2005

*BETWEEN:*

The **Honourable Minister**, Federal Ministry of Water Resources, Old Secretariat, Area 1, P.M. B. 159, Garki – Abuja on behalf of the Upper Benue River Basin Development Authority (UBRBDA) (Development Company), an Authority under the Federal Ministry of Water Resources (established under the River Basin Development Authorities Act Cap 396, Laws of the Federal Republic of Nigeria 1990) with Headquarters at **Mbamba – Fufore Road, P.M.B 2086, Yola Adamawa State, Nigeria** (hereinafter referred to as ‘**the Authority**’) for and on behalf of the Government of the Federal Republic of Nigeria (hereinafter called “**the Employer**”) which expression shall wherein the context so admits shall include his successors in office and assigns of the *ONE PART;*

*AND:*

**Mabon Limited**, a Company incorporated in Nigeria with its registered office at **No. 29 Sanusi Fafunwa Street, Victoria Island, Lagos** (hereinafter referred to as ‘**the Company**’). which expression shall where the context so admits includes its successors in titles and authorized assigns) represented by its **Chairman/CEO ENGR. BONIFACE**

**MADUBUNYI** on the *OTHER PART;*

*ay*



*WHEREAS:*

The Company desires to design, construct, install, operate and maintain a hydro-power generating facility with an aggregate contract capacity of 39 MW at Dadin Kowa Dam in Gombe State pursuant to this Concession granted by the Authority in line with the PPA entered into between the Federal Government of Nigeria and the Company;

*WHEREAS:*

Having inspected the Dam and found it in its present condition as fit and proper for the purposes of H.E.P generation, the Company shall take over same as it is for the purposes of the intended Agreement;

*WHEREAS:*

The Company shall be responsible for the operation and maintenance of the Dam as specified in the operation and maintenance manual for the purpose of Hydro-Electricity generation as stipulated in the PPA;

*AND WHEREAS:*

In the course of operation the Company shall not unduly interfere with other purposes for which the Dam was constructed to wit:

- a) Irrigation;
- b) Water supply;
- c) Fisheries;
- d) Recreation, and;
- e) Flood control.

by



*NOW, THEREFORE:*

In view of the premises and in consideration of the mutual promises, warranties, covenants of the parties intending to be legally bound, the parties hereby agree as follows:

## ARTICLE I

## SECTION 1.1 - INTERPRETATIONS:

In interpreting these Conditions of Contract, singular also means plural, male also means female, and vice-versa. Headings and cross-references between clauses have no significance. Words have their normal meanings under the language of the contract unless specifically defined.

Wherever the following terms appear in this Agreement, including the Annexes, they shall have the meanings stated below:

'Authority' means Upper Benue River Basin Development Authority and its successors in title and assigns.

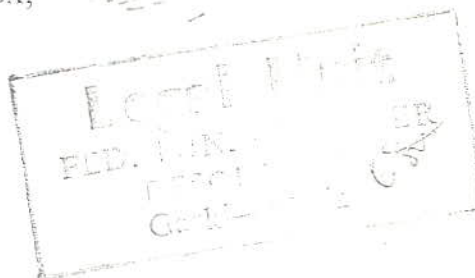
'Company' means **Mabon Limited**, a limited liability company established under the laws of Nigeria, and its successors and authorized assigns.

'Meter' a device measuring the quantity of water from the penstock to the complex.

## ARTICLE II

## SECTION 2.1 - INSTALLATIONS OF FACILITIES:

The Company shall procure and install all necessary facilities for the generation of H.E.P. in the complex;



**SECTION 2.2 - OPERATIONS AND MAINTENANCE OF THE COMPLEX:**

The Company shall operate and maintain the complex in accordance with the operating procedures;

**SECTION 2.3 - OPERATIONS AND MAINTENANCE OF THE DAM:**

The Company shall at all times during the continuance of this Agreement operate and maintain the dam as specified in the operation and maintenance manual of the dam, which shall be supplied by the Authority;

**SECTION 2.4 - MAINTENANCE OF OPERATING RECORDS:**

Each party shall keep complete and accurate records and all other data required by each of them for the purposes of proper administration of the Concession Agreement.

**SECTION 2.5 - EMPLOYMENT OF QUALIFIED PERSONNEL:**

The Company shall employ personnel who are qualified and trained, and who have experience as necessary and appropriate for operating, maintaining and monitoring the complex and for coordinating operations of the complex with other components of the dam ensuring that other purposes for which the dam is constructed are not unduly jeopardised;

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**SECTION 2.6 - PAYMENT OF RENTS:**

Except otherwise exempted, the Company shall pay all rents of other facilities it so desires to use as residential or office accommodation in the Authority's housing estate;

**SECTION 2.7 - AVOIDANCE OF DAMAGE TO ROADS:**

The Company shall use every reasonable means to prevent any of the roads or bridges communicating with or on the route to the site from being damaged or injured by any traffic of, or any of the sub-contractors and, in particular, shall select routes, choose and use vehicles and restrict and distribute loads so that any such extraordinary traffic as will inevitably arise from the moving of materials, plants, Company's equipments of temporary works from and to site shall be limited, as far as reasonably possible, and so that no unnecessary damage or injury may be occasioned to such roads and bridges.

**SECTION 2.8 - COST OF REPAIRING DAMAGES:-**

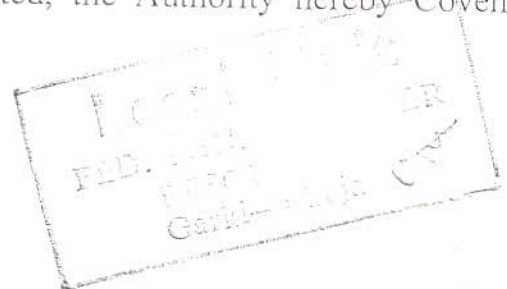
The Company at its own cost shall repair all damages referred to in Clause 2.7.

**ARTICLE III**

**SECTION 3.0 - OBLIGATIONS OF THE AUTHORITY.**

In consideration of the payments to be made by the Company to the Authority as hereunder stated, the Authority hereby Covenants with the Company to:

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- a) observe and perform the provisions and stipulations contained in this Agreement;
- b) supply water to the Company according to the tenor therein described for the purpose therein mentioned in so far as the Company meets its obligations in this Agreement, and will supply and keep in repair a meter for indicating the quantity of water supplied;
- c) use its best endeavors to prevent any act or omission whereby the water in the reservoir or the streams may be lowered thereby preventing the Company getting adequate quantity for the generation of H.E.P;
- d) permit the Company in observing and performing the provisions and stipulations contained in this Concession Agreement peaceably to enjoy the rights and privileges aforementioned during the said term without any interruption; and not necessarily interrupting the concurrent rights of the Authority.

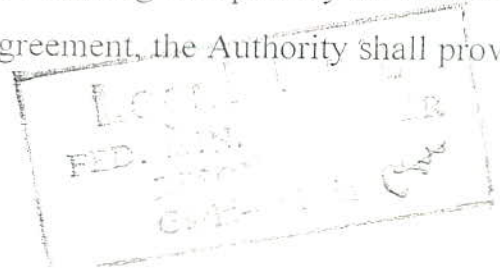
**SECTION 3.1 - LIMIT OF OBLIGATION TO REPAIR.**

The Authority shall not be liable for any repairs or routine maintenance of the dam during subsistence of this Concession Agreement; the Company shall undertake all repairs. In case of major repairs undertaken by the Company, the cost would be compensated as per schedule to this Agreement.

**SECTION 3.2 - METER**

For the purposes of ascertaining the quantity of water supplied to the Company under this agreement, the Authority shall provide and fix an

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efficient meter. The Company's representative may be present during the reading and recording of the water released. The meter shall not be removed or in any way disturbed, tempered with or interfered with except by an official of the Authority. An official of the Authority shall take the record by the Meter of the quantity of water supplied. Should any doubt arise on either side as to the correctness of the Meter register of the water supplied, the Authority may at the written request of the Company remove and test the Meter. Should the Meter prove on test to register not more than three percent (3%) above or below correct registration the Meter shall be deemed to be efficient and no adjustment of the quantity of water charged for according to the actual registration shall be made.

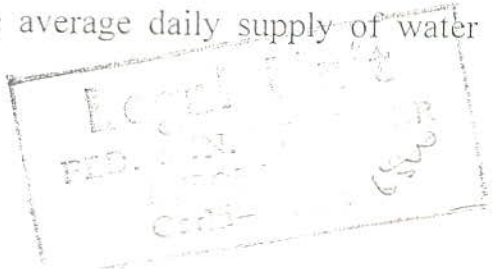
**SECTION 3.3 - WATER RATES PAYABLE.**

The Company shall pay to the Authority 8k/m<sup>3</sup> for the water supplied as ascertained by the said meter from the day on which the said meter shall have been fixed and commercial operations commenced.

**SECTION 3.4 - CALCULATIONS AND PAYMENT OF SUMS DUE FOR WATER.**

The sums due from the Company to the Authority on account of the water supplied as aforesaid shall be paid by the Company to the Authority on the 1<sup>st</sup> day of JAN and the 1<sup>st</sup> day of JULY in each year and the amount thereof shall be calculated and determined on the basis of the average daily supply of water to the Company

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during the six months immediately preceding those dates respectively as registered by the said meter.

**SECTION 3.5 - DISPUTE AS TO AMOUNT OF WATER SUPPLIED.**

The register of the said meter shall be prima facie evidence of the quantity of water supplied by the Authority to the Company through such meter. In the event of any difference or dispute arising between the Company and the Authority as to the sufficiency or accuracy of or state of repair or condition of the said meter or as to the quantity of water supplied through such meter, such difference or dispute shall be referred to and settled and determined by the Coordinating Committee.

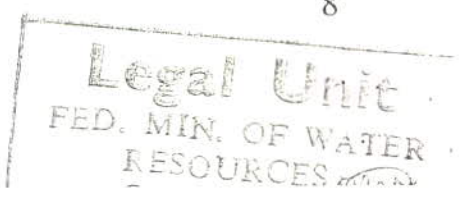
**SECTION 3.6 - ERRORS OF MEASUREMENT OF SUPPLY.**

In the event of the said meter being found to register erroneously such erroneous registration shall be deemed to have arisen in the then preceding last [half] year unless it is proved to have arisen during the then current [half] year. The amount of the allowance be made to or of the surcharge to be made upon the Company by the Authority shall be paid by or to the Company to or by the Authority (as the case may be) within one month such amount shall have been determined.

**SECTION 3.7 - FAIR/REASONABLE CHARGE IF METER OUT OF ORDER.**

If at any time the said meter shall cease to register correctly or shall at any time be removed for the purpose of repair, renewal or for any other reason then until the said meter shall be repaired the

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other reason then until the said meter shall be repaired the Coordinating Committee shall make a fair and reasonable estimate of the quantity of water supplied and the quantity so estimated shall be final and be considered as having been registered by the meter and shall be paid for by the Company.

**SECTION 3.8 - POWER TO CUT OFF SUPPLY**

3.8 If any sum due in respect of water supplied to the Company by the Authority is not paid within one month after a demand there for, the Authority may cut off supply of water to the Complex and recover the sum due from the Company together with the expenses reasonably incurred by the Authority in cutting off the supply either summarily or as a civil debt or as a simple contract debt in any court of competent jurisdiction **PROVIDED** that if before the expiration of the said one month's notice in writing is given to the Company that there is a dispute as to the amount due in respect of the water rate or as to the liability to pay the rate the Authority shall not cut off the supply of water until the dispute has on the application of either party been settled by the Coordinating Committee.

**SECTION 3.9 - REVIEW OF WATER RATE**

The Company agrees to take the supply subject to review of the agreed rate from time to time **PROVIDED** that the first review shall be affected after Twelve (12) years from the commencement of the Concession Agreement. If however the Company that finds it necessary to increase its tariffs within the said twelve (12) years, the water rate shall be reviewed pro-rata.



**SECTION 3.10 - WASTE.**

The Company shall be responsible for all water after it has passed through the meter and shall pay therefore under this Agreement notwithstanding any loss by evaporation, leakage waste, or misuse.

**SECTION 3.11 - DETERMINATIONS.**

This Agreement shall subsist until the determination of the Power Purchase Agreement, or default by either party.

**SECTION 3.12 - TRANSFER OF POWER COMPLEX**

Upon determination of the PPA for whatever reason, the Company shall transfer the complex to the Employer in accordance with Build Operate and Transfer Agreement that shall be signed by the parties (Employer and The Company) hereinafter called the "B.O.T".

**SECTION 3.13 - NOTICES**

Any notice to be given to the Company under the terms of this Agreement shall be served by sending the same by registered post to or leaving the same at the Company's site office at Dadin Kowa.

**SECTION 3.14 - AMENDMENT**

Any amendment to this Agreement shall be agreed to in writing by both parties

**SECTION 3.15 - FORCE MAJEURE**

3.15.1 Any delay in or failure of performance of this Agreement by either party shall not constitute default by such party nor give rise to payment of claims for damages against it if and to the extent that such party delay or failure of performance is caused be Force Majeure such as but not limited to,

Stamp: FEDERAL BUREAU OF INVESTIGATION  
U.S. DEPARTMENT OF JUSTICE  
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[Signature]

acts of god, acts of war, acts of GOVERNMENT, revolution or fire, floods, earthquake or other causes similar to those enumerated herein which could not have been reasonably foreseen and guarded against and which by exercise of reasonable care and diligence the party is unable to prevent.

3.15.2 Difficulties in obtaining tools and materials and lack of working personnel shall not be considered as Force Majeure except where they are consequences of the event stated in 3.15. 1 above.

3.15.3. If either party is prevented from or delayed in performing any of its obligations under this Agreement by reason of Force Majeure such party shall without delay notify in writing the other party the circumstances constituting Force Majeure.

3.15.4. Upon receiving such notice both parties shall reach as Agreement as to the desirability of the granting of extension of time or termination of contract or any other appropriate remedy to the situation.

**SECTION 3.16 - ARBITRATION.**

In case any dispute or differences shall arise between the parties either during the progress of or after the completion of the Works as to the construction of this as to any matter or thing of whatever nature arising there under or in connection therewith then either party shall give to the other notice in writing of such dispute or differences, and such dispute or differences shall be and is hereby referred to the arbitration which shall be administered by the Centre for International Commercial Arbitration Lagos



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under the applicable Arbitration Rules in the Schedule to the Arbitration and Conciliation Act, Chapter 19 Laws of the federation on Nigeria (LFN) 1990.

**SECTION 3.16 - GOVERNING LAW**

This Agreement shall be governed by the laws of the Federal Republic of Nigeria and shall in all respects be construed, read and interpreted in accordance with Laws and Regulations of the Federal Republic of Nigeria.

IN WITNESS whereof the party of the one part set his hand and seal and the party of the other has caused its common seal to be herewith affixed the day and year above written

**SIGNED, SEALED AND DELIVERED BY:**



**ALHAJI MUHTARI SHEHU  
SHAGARI  
HONOURABLE MINISTER  
OF WATER RESOURCES**

FOR AND ON BEHALF OF  
THE GOVERNMENT OF THE  
FEDERAL REPUBLIC OF  
NIGERIA

In presence of:

a. Permanent Secretary

Name: ENG. M. N. GUNDIJI MAI

Occupation: CIVIL - SERVANT

Address: FIRWA - ABUJA

Signature: [Signature]

b. Managing Director

Name: ALIYU A. JABA

Occupation: CIVIL SERVANT

Address: UBRBA - ZOLA

Signature: [Signature]

The Common Seal of the **MABON LIMITED** is hereunto affixed in the presence of:

[Signature]  
CHAIRMAN / CEO

[Signature]  
COMPANY SECRETARY

[Stamp]