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THIS CONCESSION AGREEMENT is made on this 21st day of February 2013,

BY AND BETWEEN:

BUREAU OF PUBLIC ENTERPRISES ("BPE"), a body established under the Public Enterprises (Privatisation and Commercialisation) Act Cap P38 Laws of the Federation of Nigeria, 2004 ("**the Privatisation Act**") with offices at 11, Osun Crescent, Off Ibrahim Babangida Way, Maitama District, Abuja, Nigeria;

KAINJI HYDRO ELECTRIC PLC, a limited liability company established under the Laws of Nigeria, with its registered office located in Kainji Power Station Complex, Kainji, Niger State, Nigeria (the "**Company**"); and

MAINSTREAM ENERGY SOLUTIONS LIMITED,-, a limited liability company established under the Laws of Nigeria, with its registered office located at 21 Negro Crescent, Wuse II, Abuja, Nigeria (the "**Concessionaire**"),

each a "**Party**" and collectively the "**Parties**".

RECITALS:

- (A) The Company is a limited liability company registered under the laws of Nigeria and licensed pursuant to the provisions of the Electric Power Sector Reform Act 2005 ("**EPSR Act**") to, inter alia, take over as a going concern, the generation, operations and activities of Power Holding Company of Nigeria Plc ("**PHCN**") at the Power Stations and in this respect to acquire, employ and make use of such of PHCN's assets and employees and assume and/or enjoy such of the rights, undertakings, obligations and functions of PHCN that pertain to and/or are incidental to the generation of electricity in accordance with the provisions of the EPSR Act;
- (B) The Company's authorised share capital is five million (5,000,000) Naira divided into ten million (10,000,000) ordinary shares wholly owned by FGN through Ministry of Finance Incorporated ("**MOFI**") and BPE;
- (C) FGN desires and intends to confer on the private sector the operation, restoration and maintenance of hydroelectric power production facilities located on the Kainji Reservoir and Jebba Reservoir in the Federal Republic of Nigeria (the "**Power Stations**") and the related Hydro Property (as hereinafter defined) and NCP and BPE are authorised under the Privatisation Act to undertake the transaction for and on its behalf;
- (D) NCP was established pursuant to the Privatisation Act to, inter alia, approve policies on privatisation and commercialisation and approve guidelines and criteria for valuation of public enterprises to be privatised and was further empowered under section 24 of the EPSR Act to privatise the Company, through the mechanisms it deems most appropriate;
- (E) NCP has determined, in accordance with the provisions of section 24 of the EPSR Act, that the appropriate method to privatise the Company shall be to grant a concession and has authorised BPE, as its secretariat, to implement the concession transaction;
- (F) BPE was established under the Privatisation Act as a body corporate with the power to implement the NCP's privatisation policies, to prepare public enterprises approved by NCP for privatisation and to ensure the success of the privatisation and commercialisation exercise;
- (G) In accordance with the EPSR Act, the Privatisation Act (including the privatisation procedures made there under) and the Infrastructure Concession Regulatory Commission (Establishment Etc) Act of 2005, BPE has solicited tenders for the development, construction, operation and maintenance of the Power Stations and received bids from all interested parties;



- (H) The Concessionaire submitted the most financially competitive bid which is also in accordance with the minimum technical requirements and has therefore been selected to develop, construct, operate and maintain the Power Stations in accordance with the terms of this Agreement;
- (I) The Operations requires the Concessionaire to operate and maintain the existing capacity of the Power Stations, to restore generation capacity at the Power Stations which is currently damaged and to design, construct, operate and maintain new generation capacity and to comply with the performance requirements and standards detailed in this Agreement; and
- (J) The Company is the owner of certain assets relating to or used in connection with the operation of the Power Stations and has agreed to lease the Hydro Property used in connection with the operation of the Power Stations to the Concessionaire for the term of this Agreement.

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

1. DEFINITIONS

1.1 Definitions

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

"**Actions**" means any claims, lawsuits, actions or proceedings.

"**Additional Consents**" means the approvals, consents, authorisations or other requirements not listed in Schedule 6 and which are required from any Regulatory Authority under any Laws of Nigeria by the Concessionaire and for the Contractors in the context of the Operations.

"**Affected Party**" has the meaning given to it Clause 16.1.

"**Affiliate**" means, in relation to any person, any other person directly or indirectly Controlled by, or Controlling of, or under common Control with, that person and, in the case of a trust, any trustee or beneficiary (actual or potential) of that trust and, in the case of an individual, any person connected with him. "**Control**" for the purpose of this definition means:

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

"**Controlled**" and "**Controlling**" shall be construed accordingly.



"**Agreement**" means this concession agreement, together with all Schedules attached hereto, as the same may be amended from time to time.

"**Ancillary Services**" has the meaning assigned to that term in the Grid Code.

"**Ancillary Services Agreement**" means the ancillary services agreement between the Company and TCN in relation to the Power Stations.

"**Annual Fee**" means the amount for each Operating Year as detailed in paragraph b(iii) of Part A of Schedule 8.

"**Applicable Laws**" means all laws, regulations, directives, statutes, subordinate legislation, common law and civil codes of any relevant jurisdiction, all judgements, orders, notices, instructions, decisions and awards of any court or competent authority or tribunal and all codes of practice having force of law, statutory guidance and policy notes.

"**Approved Indebtedness**" has the meaning given to it in Schedule 13.

"**Authorised Representatives**" has the meaning given to it in Clause 18.2.

"**BPE Account**" means the bank account of BPE, details of which are set out in Part B of Schedule 8 (*Payment of Concession Fees*);

"**Bulk Trader**" means Nigeria Bulk Electricity Trading PLC, a company duly incorporated under the laws of the Federal Republic of Nigeria and having its registered office at No. 11 Osun Crescent, Off Ibrahim Babangida Boulevard, Maitama District, P.M.B. 442, Garki, Abuja, Nigeria now operating from the 8th Floor, Bank of Industry Building, Off Herbert Macaulay Way, Central Business District, Abuja (which expression shall where the context so admits include its successors-in- title and assigns).

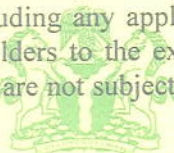
"**Business Day**" means any day of the week other than a Saturday or Sunday, a Federal Government declared public holiday, a Niger State-declared public holiday, or a day on which banks are authorised by law or executive order to be closed in the Federal Republic of Nigeria.

"**Change in Law**" means:

- (A) the adoption, promulgation, bringing into effect, repeal, amendment, reinterpretation, change in application, change in interpretation or modification after the date hereof of any Law of Nigeria, by any Regulatory Authority;
- (B) the imposition of any material condition not required as of the date hereof in connection with the issuance, renewal or modification of any Consent, by any Regulatory Authority; or
- (C) the change or modification of the terms of the Generation Licence or the Water Licence after the date hereof by a Regulatory Authority or the imposition of other obligations imposing a cost on the Concessionaire;

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

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



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credit or adjustment against any other tax liability), duty, licence fee or other revenue-producing measure which is imposed on the Concessionaire.

"**Commencement Date**" shall have the meaning provided in Clause 2.2.

"**Commencement Fee**" means the Fixed Entry Fee and the Upfront Annual Fee.

"**Concession Fees**" means the fees payable for the Concession under this Agreement and listed in Schedule 8, namely the:

- (A) Commencement Fee;
- (B) Annual Fee payable in accordance with paragraph b(iii) of Part A of Schedule 8; and
- (C) Royalty.

"**Concession Term**" means the period from the Commencement Date until the earlier of termination in accordance with Clause 17.3 and the date falling thirty (30) years after the Commencement Date.

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

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

"**Concessionaire Default Purchase Price**" has the meaning given to it in Schedule 13.

"**Concessionaire Event of Default**" has the meaning given to it in Clause 17.1.

"**Concessionaire's Moveable Assets**" has the meaning given to it in Schedule 12.

"**Consents**" means the Specified Consents and the Additional Consents.

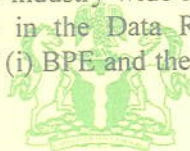
"**Contracts**" means (i) the contracts entered into by the Company and which are to be transferred, assigned and novated to the benefit of the Concessionaire on the Commencement Date, as further described in Schedule 4 and (ii) the Pre-Commencement Date Agreements.

"**Contractor**" means any Person (including the Technical Services Provider) with whom the Concessionaire contracts in accordance with the terms of this Agreement for the provision of goods or services relating to the design, construction, operation or maintenance of any part of the Power Stations.

"**Customs Duties**" means those duties, taxes, charges or import fees imposed by the Laws of Nigeria on goods imported into, or exported from, the Federal Republic of Nigeria.

"**Data Room**" means the electronic and physical data room comprising the copies of the documents and other information made available by or on behalf of BPE or the Company for inspection by or on behalf of the Concessionaire (including the Concessionaire's advisers) in relation to or connected with the operations and listed in the Data Room Index.

"**Data Room Index**" means the industry-wide index and the Company's specific index of the documents made available in the Data Room which index has been signed for identification by or on behalf of (i) BPE and the Company and (ii) the Concessionaire and



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which are attached to this Agreement respectively as Schedule 17 ("Industry Wide Index") and Schedule 18 ("Company Specific Index").

"Disclosed information" means:

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

"Dispute" has the meaning given to it in Clause 18.1.

"Dispute Notice" has the meaning given to it in Clause 18.2.

"Employee" means a person on the payroll of the Company on the Commencement Date and following the Commencement Date.

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

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

"EPSR Act" has the meaning given to it in Recital A.

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

- (A) share capital;
- (B) share premium;
- (C) amounts due in respect of shareholder loans which are subordinated to Senior Debt (and for the avoidance of doubt Senior Debt, even where held by a shareholder, shall not be included within Equity); and
- (D) distributable reserves available for distribution (and which have not been resolved to be distributed),

in each case as stated in the latest audited accounts of the Concessionaire, or such other accounts as shall be expressly agreed in writing by BPE and the Concessionaire for the purpose of any calculation of Equity, or in the absence of such agreement, as determined in accordance with the dispute resolution procedure set out in Clause 18. **"Expert"** has the meaning given to it in Clause 19.1.

"Exchange Rate" has the same meaning as the meaning given to it in the Power Purchase Agreement;

"Extension Period" has the meaning given to it in Clause 17.3.2.

"FGN" means the Government of the Federal Republic of Nigeria.

"FGN Default Purchase Price" has the meaning given to it in Schedule 13.

"FGN Event of Default" has the meaning given to it in Clause 17.2.

"Fixed Assets" means the immoveable property affixed to the Site as further described in Schedule 2.



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"Fixed Entry Fee" means the sum paid by the Concessionaire to BPE in an amount of thirty million United States Dollars (US\$30,000,000) to be paid in two (2) tranches in accordance with Clause 2.2.1(A)(1), Clause 11.2.1 and Schedule 8.

"Force Majeure Event" has the meaning given to it in Clauses 16.1 and 16.2.

"Force Majeure Purchase Price" has the meaning given to it in Schedule 13.

"Foreign Currency" means any currency other than Naira.

"Founding Shareholders" mean the shareholders of the Concessionaire at the date of this Agreement.

"Generation Licence" means the generation licence issued to the Company by NERC in accordance with section 64(3) of the EPSR Act on or before the Commencement Date.

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

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

"Grid Code" means the Grid Code for the Electricity Industry of Nigeria 2007 made pursuant to an Order of NERC dated 18th June 2007.

"Grid Connection Agreement" means the grid connection agreement between the Company and TCN governing the terms and conditions of connection of the Power Stations to TCN's Transmission Network System.

"Hydro Property" means the Site, the Moveable Assets and the Fixed Assets including the dam structure but excluding any property or fixed assets at the Site not required for the performance of the Operations. For avoidance of doubt, the Hydro Property shall also be deemed to include the Restorations and any improvements thereon made by the Concessionaire during the Concession Term.

"ICRC" means Infrastructure Concession Regulatory Commission established under the ICRC Act.

"ICRC Act" means the Infrastructure Concession Regulatory Commission Act 2005.

"Industry Documents" means, the Power Purchase Agreement, the Grid Connection Agreement and the Ancillary Services Agreement.

"Information Memorandum" means the information memorandum released on behalf of BPE and the Company dated September 1, 2012 in relation to the Hydro Property and the business related thereto and the transactions contemplated by this Agreement.

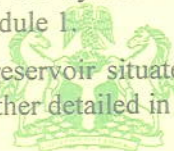
"Initial Budget" means the budget in respect of the Operations of the Concessionaire for the period of five (5) years from the date of this Agreement, as attached at Schedule 14.

"Insurance Policies" has the meaning given to it in Clause 13.1.1.

"Insurance Proceeds" has the meaning given to it in Schedule 13.

"Jebba Power Station" means the hydroelectric power station, located on the Jebba Reservoir further detailed in Schedule 1.

"Jebba Reservoir" means the reservoir situated on the River Niger in Niger State and known as the Jebba Reservoir further detailed in Schedule 2.



"Kainji Power Station" means the hydroelectric power station, located on the Kainji Reservoir further detailed in Schedule 2.

"Kainji Rehabilitation Contract" means the contract for the rehabilitation of Kainji Power Station between PHCN and Hydrochina Huadong/Harbin Electric Machinery Company Consortium (Contract No.: ICB-KRIA) dated 27 June 2011.

"Kainji Reservoir" means the reservoir situated on the River Niger in Niger State and known as the Kainji Reservoir further detailed in Schedule 1.

"kW" means kilowatt, a unit of power.

"Lapse of Consent" means any Consent:

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

except in each of the above circumstances where such circumstance has arisen due to Concessionaire Action or Inaction, or through the exercise by FGN, BPE or any Regulatory Authority of its powers under the Laws of Nigeria as contemplated by Clause 8.3.

"Laws of Nigeria" means:

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

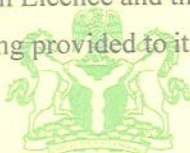
in each case (i) that applies to the Concessionaire or the Operations and (ii) as amended, supplemented, replaced, reinterpreted by a Regulatory Authority or court or otherwise modified from time to time.

"Lenders' Waiting Period" has the meaning provided to it in Clause 17.11.1(A).

"LIBOR" means in relation to the amount and currency of the sum in question, London Interbank Offered Rate interest rate quoted by the British Bankers' Association at teletype page 3750 for a three (3) month period on the London Interbank Market at or about 11.00am on the first Business Day of the period specified hereunder in respect of which interest (or an amount equivalent to interest) is to be calculated.

"Licences" means the Generation Licence and the Water Licence.

"Longstop Date" has the meaning provided to it in Clause 2.2.1.



"Loss" means any loss, liability, cost (including legal costs and experts' and consultants' fees), charge, judgments, expenses, Actions and demands.

"Market Rules" means the Market Rules for the Electricity Sector of Nigeria 2009.

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

- (A) damage and/or destruction to the Hydro Property that is caused by a natural or human factor where such damage and/or destruction is of such significance that the operations are, or are likely to be, halted or unable to be resumed or carried under normal circumstances for a continuous period of ninety (90) days or more following the occurrence of such damage and/or destruction; or
- (B) theft or disposal of 25% or more of the Hydro Property.

"Material Project Effect" means a material and adverse effect on:

- (A) the ability of the Parties or either of them to timely perform their obligations or exercise their rights under this Agreement; or
- (B) the timely execution of the Operations.

"Minimum Capacity Target" shall mean the Kainji Minimum Capacity Target and the Jebba Minimum Capacity Target, each of which have the meanings given to them in paragraph 1 of Part A of Schedule 7 and paragraph 1 of Part B of Schedule 7 respectively.

"Minimum Performance Targets" means the Minimum Capacity Target and Restoration Target as set out in Schedule 7.

"Minister" means the Minister charged with responsibility for matters relating to water resources.

"MOFI" means the Ministry of Finance Incorporated established under Ministry of Finance Incorporated Act CAP M15 Laws of the Federation of Nigeria 2004.

"Moveable Assets" means the moveable property of the Company used by the Company for the purposes of performing the Operations on the Commencement Date.

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

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

"Natural Force Majeure Event" has the meaning given to it in Clause 16.3.

"NCP" means National Council on Privatisation established under the Privatisation Act.

"NERC" means the Nigerian Electricity Regulatory Commission.

"Operating Year" means each consecutive period of twelve (12) months starting on the date of execution of this Agreement.

"Operations" means the operations and activities described in Clause 3.1.1.

"Party" means any of the signatories to this Agreement and their permitted successors or assigns.

"Performance Default" has the meaning given in paragraph 1 of Schedule 7.

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

"PHCN" means the Power Holding Company of Nigeria Plc.

"Political Force Majeure Event" has the meaning given to it in Clause 16.4.



"Post-Acquisition Plan" means the business plan for the Company for the period of five (5) years from the date of this Agreement, as attached at Schedule 15, as varied by the Concessionaire under the terms of this Agreement.

"Power Purchase Agreement" or **"PPA"** means the power purchase agreement relating to the sale of electricity generated from the Power Stations, entered into by the Company and Nigeria Bulk Electricity Trading Plc in the Federal Republic of Nigeria as novated in favour of the Concessionaire or such other power purchase agreement as entered into by the Concessionaire during the Concession Term.

"Power Stations" means the Kainji Power Station and Jebba Power Station.

"Pre-Commencement Date Contracts" means (i) any contracts executed between 1 January 2012 and signature; and (ii) any contracts for the refurbishment and rehabilitation of the Hydro Property entered into by BPE or the Company between the date of signature of this Agreement and the Commencement Date, provided such contract has been notified to and approved by the Concessionaire (such consent not to be unreasonably withheld or delayed).

"Pre-Commencement Date Refurbishment Costs" means the costs and expenditure incurred by the Company and/or BPE in the refurbishment and rehabilitation of the Hydro Property pursuant to the Pre-Commencement Date Contracts from 1 January 2012 until Commencement Date as determined pursuant to Clause 2.4.

"Preferred Bidder's Bank Guarantee" means the bank guarantee issued by the Concessionaire's bank in favour of BPE.

"Privatisation Act" means the Public Enterprises (Privatisation and Commercialisation) Act Cap P38 Laws of the Federation of Nigeria 2004.

"Protected Assets" means any defence-related property of FGN or assets protected by the diplomatic and consular privileges under the Diplomatic Immunities and Privileges Act, CAP D9 Laws of the Federation of Nigeria 2004, or any analogous legislation.

"Q&A Process" means any information made available by or on behalf of BPE and/or the Company in response to questions raised by and on behalf of the Concessionaire in connection with the Concessionaire's access to the Data Room and the Concessionaire's due diligence of the Hydro Property and related business.

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

"Refurbishment Costs Notice" has the meaning given to it in Clause 2.4.1.

"Regulatory Authority" means (i) any department, authority, instrumentality, agency or any other relevant entity from which a Consent is to be obtained from time to time; or (ii) any federal or state legislative authority or any other authority, body or other person, including ICRC and NERC, having jurisdiction under the Laws of Nigeria with respect to the Concessionaire or the Operations.

"Reinstatement Costs" has the meaning given to it in Schedule 12.

"Related Agreements" has the meaning given to it in Clause 18.8.



"Related Person" means, in relation to any person, an Affiliate or (as the case may be) any of its holding companies or subsidiaries of its holding companies from time to time.

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

"Restorations" means the work carried out in accordance with Schedule 7 to achieve the Restoration Target.

"Restoration Target" means the Kainji Rehabilitation Target and the Jebba Rehabilitation Target, each of which has the meaning given to it in paragraph 1 of Part A of Schedule 7 and paragraph 1 of Part B of Schedule 7 respectively.

"Retention Amount" has the meaning given to it in Clause 17.10.

"Royalty" has the meaning attributed thereto in Schedule 8.

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

"Selected Employee" means an individual to whom the Concessionaire has made an offer of employment pursuant to Schedule 5, which offer has been accepted.

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

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

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

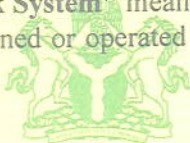
"Site" means the site on which the Power Stations are constructed plus certain adjoining land, as further described in Schedule 1.

"Specified Consents" means all consents, approvals, authorisations, notifications, concessions, acknowledgements, Licences, licences, permits or similar items required to be obtained by the Concessionaire from any Regulatory Authority for the Operations, specified in Schedule 6.

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

"TCN" means the Transmission Company of Nigeria responsible for providing Electricity transmission services, system operations and market operations as defined in sub-clause 25(b) of the EPSR Act 2005 and the Market Rules.

"TCN's Transmission Network System" means the system consisting (wholly or mainly) of high voltage electric lines owned or operated by TCN and used for the transmission of



electricity from one power station to a sub-station or to another power station or between sub-stations or to or from any external source.

"Technical Services Agreement" means an agreement dated 16 July 2012 entered into between the Concessionaire and the Technical Services Provider, a copy of which has been annexed in Schedule 16.

"Technical Services Provider" means RusHydro International AG, an existing company under the laws of Switzerland, having its corporate and registered office at Via Nassa, 42, 6900 Lugano, Switzerland.

"Term" has the meaning provided in Clause 2.1.

"Termination Period" has the meaning provided in Clause 2.1.1(C).

"Total Capital" means, from time to time, an amount equal to Equity plus Senior Debt.

"Transfer Price" means the amount paid following termination of the Concession Term by BPE to the Concessionaire pursuant to Clause 17.4 and Schedule 13.

"Transition Period" has the meaning provided in Schedule 11.

"UNCITRAL Rules" has the meaning has the meaning given to it in Clause 18.3.

"United States Dollars" or **"US\$"** means the currency that is the legal tender of the United States of America.

"Upfront Annual Fee" means the amount being two hundred and seven million eight hundred and seventy thousand United States Dollars (US\$207,870,000) or the equivalent amount in Naira representing the first five (5) Annual Fees discounted at a rate of ten percent (10%) per annum to be paid upfront in two (2) tranches in accordance with Clause 2.2.1(A)(2), Clause 11.2.2 and Schedule 8.

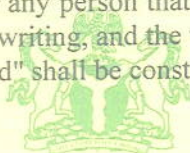
"Waste Material" means unwanted material left over from a manufacturing process or refuse from places of human or animal habitation and shall include hazardous waste being a by-product of anthropogenic activities that is either ignitable, corrosive, reactive or toxic and that can pose a substantial or potential hazard to human health or the environment when improperly managed.

"Water Licence" means the licence to be issued by the Minister of Water Resources pursuant to the Water Resources Act Cap W2 Laws of the Federation of Nigeria, 2004 in respect of the use and control of waters at the Kainji Reservoir and Jebba Reservoir on the River Niger.

1.2 Rules of Interpretation

In this Agreement, unless the context requires otherwise:

- 1.2.1 the headings are for convenience only and shall not be considered in construing this Agreement;
- 1.2.2 the singular includes the plural and vice versa;
- 1.2.3 references to Articles, Clauses and Schedules are references to articles and Clauses of, and schedules to, this Agreement;
- 1.2.4 the terms "include" and "including" mean without limitation;
- 1.2.5 where provision is made for the giving of notice, certificate, determination, consent or approval by any person that notice, certificate, determination, consent or approval shall be in writing, and the words "notified", "certified," "determined" "consents" or "approved" shall be construed accordingly;



- 1.2.6 reference made to any publication, statute, rule, regulation, instrument or standard means the same as amended, supplemented or re-enacted from time to time; and
- 1.2.7 reference made to any contract or agreement means the same as amended, supplemented or replaced from time to time in accordance with its terms.

2. COMMENCEMENT DATE AND TERM

2.1 Term

2.1.1 The term ("**Term**") of this Agreement comprises three phases:

- (A) a transitional period commencing on the date of signature until the Commencement Date, during which Clauses 1, 2, 7, 8, 10, 11, 15, 16, 18 and 19 together with the relevant Schedules, including Schedule 11 (Transition Plan) shall take effect;
- (B) the Concession Term, during which all provisions shall be in full force and effect; and
- (C) a Termination Period (as hereinafter defined) during which the Concessionaire shall re-transfer the Hydro Property and the Parties shall co-operate to ensure a smooth transfer of Operations from the Concessionaire back to the Company.

2.2 Conditions Precedent

2.2.1 The Commencement Date shall occur on the date being ten (10) days after the last of the following conditions has been discharged but subject to such date occurring on or before six (6) months from the date of execution of this Agreement (or such later date as the Parties may agree) (the "**Longstop Date**").

- (A) the Concessionaire transferring to the BPE Account the Commencement Fee as follows:
 - (1) twenty five per cent (25%) of the Fixed Entry Fee being an amount of seven million, five hundred thousand United States Dollars (US\$7,500,000) or the equivalent amount in Naira; and
 - (2) twenty five per cent (25%) of the Upfront Annual Fee being an amount of fifty one million, nine hundred and sixty seven thousand, five hundred United States Dollars (US\$ 51,967,000) or the equivalent amount in Naira,within fifteen (15) Business Days from the date of execution of this Agreement, such payment to be made in accordance with Schedule 8;
- (B) the Industry Documents being entered into by the parties thereto;
- (C) the Specified Consents (excluding the Generation Licence) as listed in Schedule 6 being requested and issued in accordance with Clause 8;
- (D) NERC consenting to the transfer of the Generation Licence from the Company to the Concessionaire, subject only to the occurrence of the Commencement Date;
- (E) the Concessionaire providing to BPE not later than ten (10) Business Days prior to the Longstop Date, a performance bond in favour of BPE from a reputable A-rated financial institution acceptable to BPE in an amount not less than fifteen million United States Dollars (US\$15,000,000) in the form set out in Schedule 9, such performance bond to remain in full force and effect from the Commencement Date to the date of termination of this Agreement

(without prejudice to the obligations and liabilities of the issuer of the performance bond that have accrued under the performance bond prior to the date of termination of this Agreement) and to cover the Concessionaire's performance obligations under this Agreement and in accordance with the terms of the Kainji Rehabilitation Contract;

2.2.2 Each Party shall use all reasonable endeavours to obtain the satisfaction of the conditions requiring action by such Party under this Clause 2.2.

2.2.3 If:

(A) the Commencement Fee is not paid into BPE Account in accordance with Clause 2.2.1 and Schedule 8, the Concessionaire shall be deemed to have withdrawn its proposal for the concession hereof ("the Proposal") and BPE may terminate this Agreement with immediate effect by notifying the Concessionaire of such termination in writing (without limiting BPE's right to claim liquidated damages under Clause 2.2.6) and upon such notification this Agreement shall terminate except in respect of any rights and liabilities which have accrued before termination. Termination pursuant to this Clause 2.2.3 shall be without prejudice to other legal rights and remedies available to BPE and or the Company;

(B) any condition, other than the Payment of the Commencement Fee detailed in Clause 2.2.1(A), has not been satisfied by the Party of whom action is required on or before the Longstop Date, then, unless otherwise agreed in writing by the Parties, the other Party shall have the right to terminate this Agreement fifteen (15) days after the delivery of written notice to the Party of whom action is required, provided that the appropriate action has not been taken within such period to satisfy the condition. For the avoidance of doubt where either BPE or the Company fail to discharge a condition, the right to terminate shall accrue to the Company; or

(C) any condition detailed in Clause 2.2.1(C), (D) or (E) has been fulfilled but on the relevant Commencement Date such agreement, consent, approval, licence, bond or guarantee (as appropriate) ceases to be in full force and effect, then, unless otherwise agreed in writing by the Parties, any Party shall have the right to terminate this Agreement provided it has given the other Parties at least fifteen (15) days' notice of such intention and appropriate action has not been taken within such period to remedy such defect.

2.2.4 If it becomes sufficiently clear that any condition detailed in Clause 2.2.1(B), (C), (D) or (E) will not or cannot be fulfilled by the Party of whom action is required by or at any time before the Longstop Date then the Concessionaire (if the Party on whom action is required is BPE or the Company) or BPE (if the Party on whom action is required is the Concessionaire) shall have the right to terminate this Agreement fifteen (15) days after the delivery of written notice to the Party of whom action is required.

2.2.5 In the event the Agreement is terminated due to the fault of the Company or BPE, then each Party shall be excused and relieved of all obligations and liabilities under this Agreement save as otherwise specified in Clause 17, and BPE shall reimburse any amount paid in accordance with Clause 2.2.1(A) to the Concessionaire.

2.2.6 In the event the Agreement is terminated in accordance with Clauses 2.2.3 or 2.2.4 due to the fault of the Concessionaire, then each Party shall be excused and



relieved of all obligations and liabilities under this Agreement save as otherwise specified in Clause 17, and BPE shall be entitled to liquidated damages and to retain:

- (A) an amount equal to five per cent (5%) of the Fixed Entry Fee being an amount of one million, five hundred thousand United States Dollars (US\$1,500,000) or the equivalent amount in Naira; and
- (B) an amount equal to five per cent (5%) of the Upfront Annual Fee being an amount of ten million, three hundred and ninety three thousand, five hundred United States Dollars (US\$10,393,500) or the equivalent amount in Naira

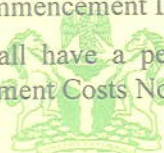
from the sums paid into the BPE Account in accordance with Clause 2.2.1(A) (together with any interest accrued thereon less any related bank charges, costs and expenses) or draw on the Preferred Bidder's Bank Guarantee for a similar amount in case of the Purchaser's withdrawal of the Proposal. Where the Commencement Fee has been paid before the termination, the remainder of the sums standing to the credit of the BPE Account following such transfer and the deduction of all costs and expenses shall be refunded to the Concessionaire within sixty (60) days. The Parties agree that the retention or the draw on the Preferred Bidder's Bank Guarantee by BPE of the amounts and the non-repayment of such amounts to the Concessionaire under this Clause 2.2.6 represents a genuine pre-estimate of BPE, and the Company's loss for the termination of this Agreement due to the fault of the Concessionaire. The Concessionaire hereby waives, to the extent permitted by the Laws of Nigeria and any other applicable laws, any defence as to the validity of any liquidated damages in this Agreement on the ground that such liquidated damages are void as penalties or otherwise.

2.3 Transition Period

- 2.3.1 In order to ensure the successful transfer and handover of Operations to the Concessionaire, the Parties agree from the date of execution of this Agreement to comply with the provisions of the Transition Plan in Schedule 11.
- 2.3.2 Where a Material Adverse Effect occurs on or after the date of this Agreement and before the Commencement Date, the Concessionaire shall have a right, subject to the Commencement Date having occurred, to bring a claim for damages for its Loss suffered as a direct result of the occurrence of the Material Adverse Effect.
- 2.3.3 If, at any time prior to the Commencement Date, the Concessionaire or BPE becomes aware of any fact, matter, event or circumstance which does or which might reasonably be expected to constitute a Material Adverse Effect, it shall promptly notify the other Parties in writing giving relevant details of the relevant fact, matter, event or circumstance.

2.4 Pre-Commencement Date Refurbishment

- 2.4.1 Within twenty (20) Business Days of the Commencement Date, BPE shall send the Concessionaire a notice (the "**Refurbishment Costs Notice**") accompanied by all reasonable supporting particulars, detailing the Pre-Commencement Date Refurbishment Costs which the Company and/or FGN have incurred from 1 January 2012 to the Commencement Date in respect of the Hydro Property.
- 2.4.2 The Concessionaire shall have a period of twenty (20) Business Days from receipt of the Refurbishment Costs Notice to notify BPE whether it objects to any



of the items detailed therein. If the Concessionaire fails to raise any objection within such period, the amount detailed in the Refurbishment Costs Notice shall be deemed to be agreed and binding on the Parties. Either of BPE or the Concessionaire may refer any disputed items to an Expert for determination pursuant to Clause 18.1. The amount of the Pre-Commencement Date Refurbishment Costs, as agreed (whether deemed or express) or as determined by the Expert (if applicable) shall be paid within twenty (20) Business Days of such agreement (or determination, if applicable). For the avoidance of doubt, where only certain items are disputed, the Concessionaire shall pay the agreed items notwithstanding that the disputed items may have been referred to an Expert for determination.

3. BASIC RIGHTS AND OBLIGATIONS

3.1 Concession

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

3.1.1 each of BPE and the Company shall use their respective endeavours and provide all reasonable assistance to procure that, in accordance with and subject to the terms of the Industry Documents, the Specified Consents (including the Licences) and this Agreement the Concessionaire shall be entitled to:

- (A) operate and maintain the Power Stations;
- (B) design and conduct the Restorations;
- (C) generate power at the Site;
- (D) sell the electricity produced; and
- (E) to provide the Ancillary Services,

and collectively referred to as the "**Operations**".

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

- (A) delegate to the Concessionaire all such powers and authority as are necessary and within its powers for the Concessionaire to perform the Operations;
- (B) lease the Hydro Property, to the Concessionaire and the Concessionaire shall lease such Hydro Property from the Company free and clear of all Security Interests, subject to the terms and conditions set out in this Agreement;
- (C) transfer the employment of the Selected Employees in accordance with Schedule 5; and
- (D) assign, transfer and novate to the Concessionaire any Contracts entered into by the Company and necessary for the performance of the Operations.

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

3.1.4 BPE, acting under the instructions of NCP, confirms the grant of the Concession to the Concessionaire subject and pursuant to the terms of this Agreement.

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



- (A) the Laws of Nigeria;
- (B) any Consent; and
- (C) the lawful requirements of any Regulatory Authority;

and, in the event of any conflict between the Parties' rights and obligations under this Agreement and any of those laws, consents and requirements, those laws, consents and requirements shall prevail and the Parties' rights and obligations under this Agreement shall be deemed to be modified to the extent required to enable the Parties to comply with such laws, consents and requirements.

4. USE OF HYDRO PROPERTY

4.1 Permitted use of Hydro Property

The Concessionaire shall only use the Hydro Property to perform the Operations and any activities ancillary thereto, and shall not use the Hydro Property for any other purpose without the Company's prior written approval. The Concessionaire shall not conduct any activities within the Site other than the performance of the Operations. The Concessionaire shall not conduct such permitted use, or allow such permitted use to be conducted, in violation of the Laws of Nigeria or in any manner that would:

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

4.2 Alteration of Hydro Property

4.2.1 The Concessionaire shall furnish to the Company and the Regulatory Authority (if applicable) the following no later than sixty (60) days after the Commencement Date:

- (A) the plans and drawings for the Restoration works;
- (B) the names and addresses of the proposed Contractors for such Restoration works; and
- (C) such other documentation as may be reasonably requested by the Company or any Regulatory Authority in relation to the Restoration works.

4.2.2 For the avoidance of doubt, the Restorations and any improvements shall form part of the Hydro Property.

4.2.3 Any improvements or approved alterations made by the Concessionaire to the Hydro Property which cannot be removed by the Concessionaire by the date of termination of this Agreement shall be and shall remain the property of the Company and any claim for or reimbursement by the Concessionaire for the cost of the value thereof shall be determined in accordance with the provisions of Clause 18.



4.3 Construction Contracts

- 4.3.1 Any improvements or alterations to the Hydro Property shall be notified to the Company in advance together with details of all salient terms, for its approval, such consent not to be unreasonably withheld or delayed.
- 4.3.2 Such consent shall be deemed if no objection is raised by the Company, within thirty (30) days of such terms being provided by the Concessionaire.

4.4 Applicable Standards

The Concessionaire shall ensure that the Restorations made and any other improvements and/or alterations made are in compliance with:

- 4.4.1 the Laws of Nigeria;
- 4.4.2 international conventions, protocols and international agreements to which the Federal Republic of Nigeria is a party;
- 4.4.3 Good Industry Practice;
- 4.4.4 the Industry Documents; and
- 4.4.5 the Specified Consents (including the Licences).

4.5 Rights to Monitor and Inspect

- 4.5.1 Without limiting or reducing the Concessionaire's obligations under Clause 4.4 and without prejudice to (i) the rights of ICRC to monitor concessions under the ICRC Act and (ii) NERC to monitor the Operations under the EPSR Act and the Generation Licence, the Company and BPE shall through their respective designated representatives, have the right to inspect the Restorations and any other improvements or alterations during performance of the same and after they have been completed.
- 4.5.2 On completion of each of the Restorations and any other improvements or alterations, the Concessionaire shall notify the Company/BPE and any Regulatory Authority (if applicable) in writing that they are in accordance with the plans approved by the Company, BPE and any Regulatory Authority (if applicable) and comply with the Laws of Nigeria; the Company/BPE shall, through their respective designated representatives, have sixty (60) days to inspect such Restorations or any other improvements or alterations and to require such reasonable alterations as are necessary for compliance with the applicable standards in accordance with Clause 4.4.
- 4.5.3 Any inspection by the Company/BPE pursuant to Clauses 4.5.1 or 4.5.2 shall be undertaken in accordance with the provisions set out in Clause 9.7.

4.6 Maintenance

- 4.6.1 The Concessionaire shall be responsible for the maintenance of the Hydro Property including the associated navigational locks so that at all times from the Commencement Date and during the Concession Term, the Hydro Property shall meet the requirements set out in this Agreement (including the Minimum Performance Targets).
- 4.6.2 All maintenance work conducted on the Power Stations shall be equal or better in quality to the original material and workmanship standard and shall comply with the Laws of Nigeria and Good Industry Practice.



- 4.6.3 The Concessionaire shall obtain and maintain all Consents required for such maintenance work in accordance with the Laws of Nigeria.
- 4.6.4 Save in relation to damage which shall be the object of the Restoration, in the event that any part of the Power Stations is damaged, the Concessionaire shall notify the Company in writing of the same within three (3) days after the Concessionaire has become aware of such damage.
- 4.6.5 The Concessionaire shall commence the process of repairing such damage within twelve (12) days and shall complete such repair to the damaged Power Station within a reasonable period to be mutually agreed between the Company and the Concessionaire. In the event that the Concessionaire fails to commence the process of repairing within such period, then the Company may give notice in writing to the Concessionaire requiring the Concessionaire to commence the process of repairing within twelve (12) days.
- 4.6.6 If the Concessionaire has failed to commence the process of repairing upon expiry of the notice by the Company, then the Company may offer the repair work for tender and the Parties shall agree the appointment of a contractor to perform the repair work. In such instance, the Concessionaire shall be responsible for the cost of the repair and if the Company is required to make any payment towards such repair work, the Concessionaire shall reimburse the Company its actual costs reasonably incurred together with interest in accordance with Clause 20.17.

4.7 **Peaceful and quiet enjoyment**

- 4.7.1 To the extent that the Concessionaire complies with the terms and conditions of this Agreement, the Concessionaire shall peacefully and quietly hold, occupy, use and enjoy the Hydro Property.
- 4.7.2 In the event that the Concessionaire suffers any claims, causes of action, damages, or losses which may accrue and arise from the acts or omissions of any employee, official or agent of the Company having a right of use over the Site prior to the Commencement Date, the Company shall indemnify, defend, and hold harmless the Concessionaire from and against any such claims.

5. **HYDRO PROPERTY**

5.1 **Lease of the Hydro Property**

- 5.1.1 Subject to the terms and conditions of this Agreement, and by executing this Agreement, the Company hereby grants the Concessionaire a lease, from the Commencement Date, for the Concession Term, of the Company's right, title and interest in and to the Hydro Property.
- 5.1.2 If necessary, the Company and the Concessionaire agree to execute any necessary assignment agreements, novation agreements or other instruments of transfer required to implement the lease.

5.2 **Use of Water**

- 5.2.1 The right to use the water flows of the River Niger at the Kainji Reservoir and Jebba Reservoir from the Commencement Date and until the expiry or termination of this Agreement shall be subject to the terms of the award of the Water Licence and all relevant Applicable Laws including but not limited to the Water Resources Act Cap W2 Laws of the Federation of Nigeria, 2004.



5.2.2 Notwithstanding the foregoing, the Concessionaire expressly acknowledges that:

- (A) the Minister shall retain the option to manage the timing, quantity of retention and release of all water from the Kainji Reservoir and Jebba Reservoir including for irrigation purposes and in such circumstances, the Minister, shall provide to the Concessionaire an upfront programme and planning schedule setting out the timing, quantities and release programme for each ten (10) day period at least ten (10) days prior to such period or as otherwise agreed between the Parties;
- (B) FGN, or as applicable, any Regulatory Authority, shall retain all fishing rights and no fishing rights shall be afforded by this Agreement;
- (C) In the event that (i) the Concessionaire elects not to build or commission further units or power plants at the site, or (ii) following a Minister, or as applicable, any Regulatory Authority, request, the Concessionaire elects not to build additional power plants or units at the Kainji Reservoir and Jebba Reservoir on the basis of such proposal, then FGN, or as applicable, any Regulatory Authority, shall have the right to build, commission and/or concession such additional power plants, units and facilities.

6. TRANSFER OF EMPLOYEES AND CONTRACTS

6.1 Employees

The Concessionaire shall, within six (6) months from the Commencement Date diligently consider which of the Employees it requires in its Operations and will offer employment to the Selected Employees in accordance with the provisions of Schedule 5.

6.2 Contracts

- 6.2.1 Subject to the terms and conditions of this Agreement, upon the Commencement Date, the Company shall assign, transfer and novate (as applicable) the Contracts to the Concessionaire, and the Concessionaire shall accept such assignment, transfer and novation from the Company.
- 6.2.2 Notwithstanding the provisions of Clause 6.2.1 above, to the extent that the terms of any such Contracts prohibit such transfer or require the consent or approval of a third party, the Parties shall determine whether to seek such consent or otherwise implement a back-to-back arrangement so as to pass through all rights, obligations and liabilities to the Concessionaire.

7. OPERATIONS

7.1 Operations

7.1.1 The Concessionaire shall at all times conduct the Operations:

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

in order to increase the available capacity of the Power Stations so as to achieve at least the Minimum Performance Targets.

7.1.2 The Concessionaire undertakes that it shall at all times comply with and implement the Initial Budget and Post-Acquisition Plan, save that where there is

any conflict or inconsistency between such Post-Acquisition Plan and/or Initial Budget and the matters detailed in Clause 7.1.1 or 3.1.5, the matters detailed in Clause 7.1.1 or 3.1.5 (as applicable) shall, unless otherwise agreed or provided, prevail.

7.1.3 Without prejudice to the lawful requirements of NERC (including the conditions of any relevant Specified Consent), the Concessionaire undertakes that it shall for a period of five (5) years from the Commencement Date, obtain BPE's prior consent in writing (such consent not to be unreasonably withheld) for any annual revision to the then current approved Initial Budget and/ or Post-Acquisition Plan. Any such request shall be made in writing to BPE no later than three (3) months prior to the end of the then current financial year, attaching the Initial Budget and/or Post-Acquisition Plan to be revised and setting out full details of the revisions requested and the justification and basis for such request. On receipt of such request, BPE may request additional information from the Concessionaire in respect of such revision. Within thirty (30) days of the receipt of the said request or the additional information (as applicable), BPE shall inform the Concessionaire of its decision in respect of such revision of the Initial Budget and/or Post-Acquisition Plan to be revised.

7.1.4 In the event that BPE does not consent to the revision of the Initial Budget and/or the Post-Acquisition Plan as requested by the Concessionaire pursuant to Clause 7.1.3, the then current Initial Budget and/or Post-Acquisition Plan (as applicable) shall, subject to the lawful requirements of NERC (including the conditions of any relevant Specified Consent), continue in effect until a further revised Initial Budget and/or the Post-Acquisition Plan is approved by BPE.

7.2 **Compliance with the Minimum Performance Targets**

7.2.1 The provisions of Schedule 7 shall apply with respect to:

- (A) the operation of the Power Stations;
- (B) the Minimum Capacity Target for each Power Station; and
- (C) the Restoration Target for each Power Station.

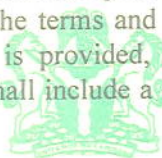
7.3 **Duty to cooperate**

7.3.1 The Parties shall cooperate in good faith to ensure the smooth and effective transfer of the provision of the Operations from the Company to the Concessionaire on the Commencement Date in accordance with Schedule 11.

7.3.2 In performing the Operations, the Concessionaire shall cooperate with the Company, BPE, the Bulk Trader and any Regulatory Authority (as applicable) so as to enable the Company and BPE to perform their monitoring, supervisory and other duties relating to the Power Stations.

7.4 **Financing of Operations**

7.4.1 Without prejudice to the lawful requirement of NERC (including the conditions of any relevant Specified Consent), the Concessionaire shall be responsible for the planning of the financing of its performance of the Operations. Any financing arrangements which would fall within the definition of Approved Indebtedness in Schedule 13 shall be subject to the prior approval of the BPE to both the amount of such Senior Debt and the terms and conditions (including as to security) on which such Senior Debt is provided, such approval not to be unreasonably withheld or delayed and shall include a direct agreement between the lender and



BPE which reflects, inter alia, the terms of Clause 17.11 of this Agreement. The Concessionaire shall notify BPE of the proposed amount and terms and conditions of any financing agreements which it wants to be treated as Approved Indebtedness. On receipt of the said notice, BPE may request additional information from the Concessionaire in respect of such proposed financing arrangements. Within thirty (30) days of the receipt of the said notice or the additional information (as applicable), BPE shall inform the Concessionaire of whether or not it approves such financing arrangements in the amount and on the terms and conditions notified to it. Where BPE fails to provide its decision within such thirty (30) days it shall be deemed to have approved the proposed financing arrangement in the amount and on the terms and conditions proposed. Approved Indebtedness as at the date of this Agreement is set out in Schedule 3. The Concessionaire may use this Agreement as security for obtaining finance in respect of the Operations. For the avoidance of doubt, no security shall be created over the Hydro Property which would prevent the Concessionaire from complying with its obligation upon termination or expiry of the Concession Term to transfer, convey or assign the Hydro Property to the Company free and clear of all Encumbrances.

- 7.4.2 The Concessionaire undertakes to ensure that the Equity in the Total Capital of the Concessionaire shall be: (i) not less than thirty percent (30%) on the Commencement Date; and (ii) not less than twenty five percent (25%) at any time thereafter during the first five (5) years of the Commencement Date.

7.5 Contractors and responsibility

- 7.5.1 The Concessionaire may delegate its responsibilities to conduct the Restorations and any improvements to one or more Contractors.
- 7.5.2 The Concessionaire may delegate its responsibility to operate and maintain the Power Stations to a Contractor subject to prior approval of BPE and any Regulatory Authority (if applicable).
- 7.5.3 The Parties acknowledge that the Concessionaire has entered into the Technical Services Agreement with the Technical Services Provider. The Concessionaire undertakes to ensure that the Technical Services Provider performs the Technical Services Agreement in a manner which enables the Concessionaire to comply with its obligations under this Agreement. The Concessionaire shall not permit any material variation or amendment of the terms of the Technical Services Agreement or the services provided thereunder nor any further delegation, sub-contracting or assignment by the Technical Services Provider of its functions, rights and obligations under the Technical Services Agreement without the prior approval of BPE.
- 7.5.4 Any BPE consent or approval required under this Clause 7.5 shall be deemed if no objection is raised by BPE within thirty (30) days of such approval or consents being requested by the Concessionaire.
- 7.5.5 The Concessionaire shall at all times remain liable for the performance of its obligations under this Agreement, notwithstanding any delegation to any Contractor.

7.6 Environmental Protection, Health, Resettlement, and Safety

- 7.6.1 BPE shall, prior to the Commencement Date submit to the Concessionaire an Environmental Impact Study prepared in accordance with internationally accepted standards and the Laws of Nigeria.

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

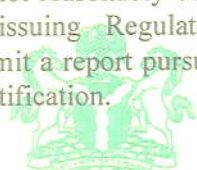
8. PERMITS AND APPROVALS

8.1 Applications by the Concessionaire for Consents

- 8.1.1 The Concessionaire shall make or cause to be made to the Relevant Authorities, in a timely fashion, all applications as required and appropriate (whether initial or renewal applications) for all Specified Consents and Additional Consents including those consents required at the Commencement Date, and shall diligently pursue all such applications.
- 8.1.2 The information supplied in the applications shall be complete and accurate and shall satisfy the substantive and procedural requirements of the applicable Laws of Nigeria applied in a non-discriminatory manner. All applications for Consents shall be accompanied by the applicable fee.
- 8.1.3 Subject to the Concessionaire's compliance with Clauses 8.1.1 and 8.1.2, the Company and BPE where applicable shall provide all reasonable assistance to the Concessionaire in respect of the application for any Specified Consents and Additional Consents that may be required from time to time and shall not directly or indirectly oppose the grant of such consents without valid grounds.

8.2 Status of Consent Applications

- 8.2.1 The Concessionaire shall make or cause to be made to the Company at least quarterly during the term of this Agreement, reports listing its schedule for submitting Consent application forms or renewal application forms, the status of any Consent applications then outstanding, notifications of the grant, renewal or denial of any Consent and notifications of any violations of any Consent. Each report shall include copies of all applications and notifications discussed in the report. The first section of each report shall also summarise any problems regarding any Consent or Consent application that may affect the Concessionaire's performance under this Agreement.
- 8.2.2 In the event of any Lapse of Consent, the Concessionaire shall submit a report pursuant to this Clause 8.2 within three (3) Business Days thereof unless such Lapse of Consent could not reasonably be known to the Concessionaire without notification from the issuing Regulatory Authority, in which case the Concessionaire shall submit a report pursuant to this Clause 8.2 within three (3) Business Days of such notification.



8.3 Conditions to Consents

Any Regulatory Authority may attach such non-discriminatory terms and conditions to the issuance or renewal of any of the Consents as are reasonably required to ensure compliance with the Laws of Nigeria, and the attachment of such terms or the Company and conditions shall not in and of itself constitute a breach of this Agreement by BPE, a Force Majeure Event under Clause 16 (unless such attachment constitutes a Change in Law), or a FGN Event of Default under Clause 17.2.

8.4 Liaison

8.4.1 The Concessionaire shall appoint at least one (1) member of its staff to be available to the Relevant Authorities to consult on and expedite the resolution of any problem or issue that may arise relating to any Regulatory Authority.

8.4.2 The Company shall appoint one (1) senior employee and two (2) alternate senior employees who shall act as liaison between the Concessionaire and each Regulatory Authority that has obligations to the Concessionaire under this Agreement or any of the Consents and who shall be charged with providing reasonable assistance to the Concessionaire in expediting resolution of any problem or issue that may arise relating to that Regulatory Authority.

8.5 Support for Obligations

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

8.6 Support to Obtain Consents

8.6.1 Upon request by the Concessionaire, the Company, and BPE where applicable, shall support and use all reasonable endeavours to expedite the consideration and the granting by the Regulatory Authority of applications by the Concessionaire for the issue or renewal of Consents which are made in accordance with its obligations under Clauses 8.1 and 8.2. Such support shall include the provision by the Company or BPE of advice as to the content of such applications and liaison with and between the Concessionaire and the Regulatory Authority as to the progress of such applications.

8.6.2 Notwithstanding Clause 8.6.1:

- (A) the Company, and BPE shall be under no obligation to grant or issue or cause the Regulatory Authority to grant or issue a Consent if the applicant has failed to meet any requirements for the grant or issue of such Consent; and
- (B) the Company, and BPE shall be under no obligation to renew or cause the renewal of any Consent which has been revoked by a Regulatory Authority due to a failure by the Person to whom the relevant Consent had been issued to abide by any material term or condition attached to such Consent.

9. COVENANTS

9.1 Assurance against Discriminatory Action

The Company, and BPE shall not take any discriminatory action which materially and adversely affects the Operations or the performance of the Concessionaire's obligations or the enjoyment of the Concessionaire's rights under this Agreement provided that the foregoing shall not in any way limit or restrict the ability of BPE or of any Regulatory

Authority to freely to agree with or impose upon companies and investors in other power projects, obligations which:

- 9.1.1 are consistent with FGN's power policy, as developed from time to time and do not materially and adversely affect the performance of the Concessionaire's obligations under this Agreement; or
- 9.1.2 are justified by a relevant factual difference between the Concessionaire or the Operations and the other company or investor and do not materially and adversely affect the performance of the Concessionaire's obligations or violate its rights under this Agreement.

9.2 Acquisition of Shares or Assets

Subject to the Laws of Nigeria, the Company and BPE undertake to the Concessionaire that neither of them will take or support any action to expropriate, compulsorily acquire or nationalise the Concession, the Hydro Property, the Concessionaire, any Share Capital or any assets of the Concessionaire.

9.3 Access

Subject to the applicable Laws of Nigeria and any relevant third party consents, the Concessionaire shall have the right to negotiate rights of way, easements and other types of access to land, property, facilities and utilities near or adjacent to the Site in order to perform its obligations and benefit from its rights hereunder.

9.4 Restriction on Transfer of Shares

9.4.1 BPE and the Company undertake to the Concessionaire that each shall not, in the exercise of the powers vested in it by law, prevent any non-Nigerian entities from holding shares in the Concessionaire other than where FGN considers in its sole discretion that it would be prejudicial to the national security interests of the Federal Republic of Nigeria for such non-Nigerian entities to hold shares in the Concessionaire, it being recognised that the fact that a proposed investor is a non-Nigerian entity shall not in and of itself be an appropriate reason for such prohibition.

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

(A) until the fifth anniversary of the Commencement Date:

- (1) twenty per cent (20%) of the total Share Capital of the Concessionaire may be held by one or more Persons who are not Founding Shareholders;
- (2) the holding by one or more Persons who are not Founding Shareholders of more than twenty per cent (20%) but less than forty-nine per cent (49%) of the total Share Capital of the Concessionaire shall require the prior written consent of BPE, such consent not to be unreasonably withheld;
- (3) at least fifty-one per cent (51%) of the total Share Capital of the Concessionaire is held by the Founding Shareholders;

(B) after the fifth anniversary of the Commencement Date:



- (1) twenty per cent (20%) of the total Share Capital of the Concessionaire may be held by one or more Persons who are not Founding Shareholders;
- (2) the holding by one or more Persons who are not Founding Shareholders of more than twenty per cent (20%) of the total Share Capital of the Concessionaire shall require the prior written consent of BPE, such consent not to be unreasonably withheld.

9.4.3 The provisions contained in Clause 9.4.2 shall not apply to:

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

9.4.4 The Concessionaire shall provide a copy of any shareholders' agreement relating to it to BPE and the Company and shall notify BPE and the Company of any amendments to such shareholders' agreement.

9.4.5 The Concessionaire shall give notice to BPE and the Company of any proposed transfer of shares in the Concessionaire or in the parent company of the Concessionaire.

9.5 **Restriction on Transfer of Assets**

Save as provided in Clause 7.4, the Concessionaire shall not sell, charge, grant security over, transfer, encumber or otherwise dispose of any rights in any Hydro Property whether voluntarily or involuntarily and whether all or in part without the prior written consent of the Company and BPE.

9.6 **Accounts and Reports**

9.6.1 The Concessionaire shall prepare and maintain registers, books, records and other means of recording information in the quality and quantity required for facilitating efficient management and supervision of the Operations, for providing information to the Company, and for informing the public and its customers of the quality and performance of its operations.

9.6.2 The Concessionaire shall maintain complete and accurate records in United States Dollars (and, to the extent required by the Laws of Nigeria or by the board of directors of the Concessionaire, in Naira) accounting for all transactions relating to the Operations. Financial records and accounts shall be maintained in accordance with applicable international generally accepted accounting principles as agreed to by the Company. Such records shall be subject to inspection by the Company upon reasonable notice.

9.6.3 Beginning on the Commencement Date, the Concessionaire shall prepare and maintain current records of the Power Stations in sufficient detail as required by the Company, to provide a full understanding of the state of the Operations. Such records shall be comprised of physical drawings, databases and calculation sheets along with historical records relating to their constitution, repairs, and

maintenance, including all works carried out as replacements, rehabilitation and maintenance.

- 9.6.4 The Concessionaire shall provide the Company and any Regulatory Authority (if applicable) with copies of the foregoing records as requested by such person.
- 9.6.5 The Concessionaire shall provide to the Company, and any Regulatory Authority (if applicable), any other information as such person may reasonably require, including without limitation:
- (A) prompt notification of accidents within the Power Stations causing death or serious injury;
 - (B) prompt notification of incidents causing any pollution or other forms of environmental damage;
 - (C) prompt notification of material industrial relations issues;
 - (D) prompt notification of material public complaints; and
 - (E) notification of additions to and disposals of mechanical equipment and other significant assets no later than seven (7) Business Days prior to such disposal.
- 9.6.6 The Concessionaire shall, at its own cost and expense, make arrangements reasonably satisfactory to the Company with respect to the installation and operation of an accounting and cost control system and for the appointment as auditors of a firm of independent chartered accountants reasonably acceptable to the Company.
- 9.6.7 Within ninety (90) days following the Commencement Date, the Concessionaire shall, at its own cost and expense, select and contract an independent external financial auditor to perform a statutory audit. The Company and/or BPE may appoint, at its own cost and expense, an independent auditor to undertake the duties of an external auditor including without limitation:
- (A) verification of the standards and quality of the Operations;
 - (B) review of the performance of any statutory or contractual obligation of the Concessionaire; and
 - (C) verification of financial records of the Concessionaire.
- 9.6.8 The Concessionaire shall prepare an annual report which shall include, at a minimum, the following technical and financial information:
- (A) any circumstances having an impact on the financial obligations of the Concessionaire under this Agreement;
 - (B) numbers and categories of customers, of personnel employed, levels of operations, performance and operations quality compliance;
 - (C) renovation works and repairs carried out or to be carried out;
 - (D) exceptional events such as pollution incidents, strikes, etc.;
 - (E) emergencies;
 - (F) measures, if any, taken by the Concessionaire during the applicable year with respect to its obligations hereunder related to the protection and preservation of the environment;
 - (G) the operations performed during the applicable year; and



(H) an audited set of accounts prepared in accordance with generally accepted international accounting principles and practices.

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

9.6.10 The Concessionaire shall provide the Company with such certificates of insurance with respect to each type of insurance set out in Schedule 10, which certificates of insurance shall state that such insurance has been obtained and is in full force and effect, that all premiums on such insurance are current, and that such insurance is not subject to cancellation' without prior written notice to the Company;

9.7 Access and inspection

9.7.1 The Concessionaire shall permit the Company, ICRC, NERC, any Regulatory Authority and their respective designated representatives and agents during the Concessionaire's working hours to enter and inspect the Power Stations for the purpose of verifying the Concessionaire's compliance with this Agreement and any other requirements under the Laws of Nigeria provided that any such visit shall not unreasonably interfere with the Concessionaire's performance of the Operations. The Company, any Regulatory Authority, ICRC or NERC shall notify the Concessionaire in writing at least five (5) Business Days in advance of any inspection of the names of the individuals to be permitted access and the time and date of such visit.

9.7.2 The Concessionaire shall permit the Company, ICRC, NERC, any Regulatory Authority and their respective designated representatives and agents without prior notification to enter and inspect the Power Stations in the event of a crisis, incident or other untoward position or threat to public, health, environment and safety, provided that any such visit shall not unreasonably interfere with the Concessionaire's performance of the Operations.

9.7.3 The Concessionaire shall also grant access to the Site to the Company, ICRC, NERC, any Regulatory Authority and their respective designated representatives on mutually agreed terms for the purpose of fulfilling its obligations under this Agreement provided that any such visit shall not unreasonably interfere with the Concessionaire's performance of the Operations.

9.7.4 The Company, ICRC, NERC and any Regulatory Authority (if applicable) and their respective designated representatives shall have the right of access through the Site to other facilities controlled by such party or any one of them under circumstances where reasonable, alternative means of access are not available subject to the prior consent of the Concessionaire provided that any Person granted such right of way shall follow the rules concerning safety, traffic, security and other regulations relating to the Site and the performance of the Operations prescribed by the Concessionaire, which rules shall not be discriminatory in application.

9.7.5 The Concessionaire shall grant access to the Site to Relevant Authorities for the purpose of carrying out any activities which they are legally entitled to carry out on the Site pursuant to the Laws of Nigeria.



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9.8 Scope of Activities

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

- 9.8.1 engage in any other activities; or
- 9.8.2 form any subsidiaries engaged in the business of the Company or otherwise purchase or subscribe to any equity or other interest entitled to (whether immediately or upon conversion) voting or other rights of management or control in any other company, in each case without the prior written consent of the Company and BPE.

10. REPRESENTATIONS AND WARRANTIES

10.1 BPE Representations and Warranties

BPE hereby represents and warrants to the Concessionaire that:

- 10.1.1 BPE has full power and authority to execute and deliver this Agreement.
- 10.1.2 BPE has full power and authority to perform its obligations hereunder.
- 10.1.3 The execution, delivery and performance of this Agreement by or on behalf of BPE:
 - (A) has been duly authorised by all requisite action on the part of BPE; and
 - (B) will not violate the Laws of Nigeria.
- 10.1.4 This Agreement has been duly executed and delivered by BPE.
- 10.1.5 This Agreement constitutes a legal, valid and binding obligation of BPE, enforceable against it in accordance with its terms subject to general principles of equity.
- 10.1.6 No filing or registration with, no notice to and no permit, authorisation, consent or approval of any Person is required for the execution, delivery or performance of this Agreement by BPE except for such permits, authorisations, consents or approvals as have been obtained.
- 10.1.7 BPE 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.
- 10.1.8 There is no action, suit, proceeding or investigation pending, or to BPE's knowledge, threatened, against it which, if adversely determined, would have a material adverse effect on its ability to perform its obligations hereunder or the validity or enforceability of this Agreement.

10.2 Concessionaire Representations and Warranties

The Concessionaire hereby represents and warrants to BPE and the Company that:

- 10.2.1 The Concessionaire is a limited liability company, duly organised and validly existing under the Laws of Nigeria, and has all requisite corporate power and authority to own or lease and operate its properties and to carry on its business as proposed to be conducted.
- 10.2.2 The Concessionaire has full corporate power and authority to execute and deliver this Agreement and to perform its obligations hereunder.



- 10.2.3 The execution, delivery and performance of this Agreement by the Concessionaire:
- (A) has been duly authorised by all requisite corporate action on the part of the Concessionaire, and no other proceedings on the part of the Concessionaire or any other Person are necessary for such authorisation;
 - (B) will not violate (i) the Laws of Nigeria or any applicable order of any Regulatory Authority or (ii) any provision of the memorandum and articles of association of the Concessionaire; and
 - (C) will not violate, be in conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any indenture, agreement for borrowed money, bond, note, instrument or other agreement to which the Concessionaire is a party or by which the Concessionaire or its property is bound, excluding defaults or violations that would not, individually or in the aggregate, have a material adverse effect on the business, properties, financial condition or results of operation of the Concessionaire, or on its ability to perform its obligations hereunder.
- 10.2.4 This Agreement has been duly executed and delivered by the Concessionaire.
- 10.2.5 This Agreement constitutes a legal, valid and binding obligation of the Concessionaire, enforceable against it in accordance with its terms, subject to (i) bankruptcy, insolvency, reorganisation, moratorium, or other similar laws now or hereafter in effect relating to creditors' rights and (ii) to general principles of equity.
- 10.2.6 To the best of its knowledge, after reasonable inquiry, no filing or registration with, no notice to and no permit, authorisation, consent or approval of any Person is required for the execution, delivery or performance of this Agreement by the Concessionaire, except for the Specified Consents.
- 10.2.7 The Concessionaire is not in default under any agreement or instrument of any nature whatsoever to which it is a party or by which it is bound in any manner that would have a material adverse effect on its ability to perform its obligations hereunder or the validity or enforceability of this Agreement.
- 10.2.8 There is no action, suit, proceeding or investigation pending or, to the Concessionaire's knowledge, threatened (i) for the dissolution of the Concessionaire, or (ii) against the Concessionaire, which, if adversely determined, would have a material adverse effect on its ability to perform its obligations hereunder or the validity or enforceability of this Agreement.
- 10.2.9 It is not in violation of any Laws of Nigeria or judgment entered by any Regulatory Authority, which violations, individually or in the aggregate, would affect its performance of any obligations under this Agreement. There are no legal or arbitration proceedings or any proceeding by or before any Regulatory Authority, now pending or (to the best knowledge of the Concessionaire) threatened against the Concessionaire that, if adversely determined, could reasonably be expected to have an adverse effect on the financial condition, operations, prospects or business, as a whole, of the Concessionaire, or its ability to perform under this Agreement.



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10.2.10 It has:

- (A) carefully examined this Agreement, together with all Schedules attached hereto, thoroughly and become familiar with all their respective terms and provisions;
- (B) investigated to its satisfaction the Laws of Nigeria and it can perform its obligations hereunder in accordance therewith;
- (C) the experience, resources, qualifications, and capabilities to perform its obligations hereunder; and
- (D) made all investigations and inspections that it deems necessary to perform its obligations hereunder, including without limitation investigations and inspections of the Site.

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.

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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**

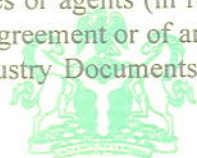
10.4.1 Each Party covenants that it and the owners, stockholders, officers, directors, employees and agents of it and its Affiliates have not made, offered, or authorised and will not make, offer or authorise, with respect to the matters which are the subject of this Agreement, any payment, gift, promise 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 twenty two million, two hundred thousand United States Dollars (US\$ 22,200,000); and

11.2.2 seventy four percent (74%) of the Upfront Annual Fee being an amount of one hundred and fifty three million, eight hundred and twenty three thousand, eight hundred United States Dollars (US\$ 153,823,800).

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 three hundred thousand United States Dollars (US\$ 300,000); and

11.3.2 one percent (1%) of the Upfront Annual Fee, being an amount of two million, seventy eight thousand, seven hundred United States Dollars (US\$ 2,078,700).

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 Stations 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 Niger or in or on the bottom of Kainji Reservoir and Jebba 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 Niger or the Kainji Reservoir and Jebba 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 Stations.

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 Stations 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.



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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 Stations 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 Stations 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

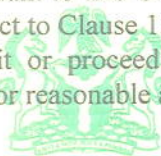
15.5.1 Each Party shall promptly notify the other Party of any Loss or proceeding in respect of which such notifying Party is or may be entitled to indemnification pursuant to Clause 15.2. Such notice shall be given as soon as reasonably practicable after the relevant Party becomes aware of the Loss 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.



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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);

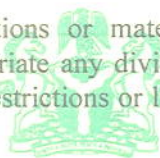
16.1.3 where such event or circumstance, or combination of events or circumstances arises as a result of the occurrence of a force majeure event under an Industry Document (as defined in such Industry Document), it renders the Affected Party wholly or partially unable to carry out its obligations under 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;



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- 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



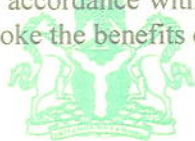
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one hundred and eighty (180) days without an arrangement being provided to exempt the Concessionaire from all such restrictions or limitations; or

- (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



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- 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 Stations 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.



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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.

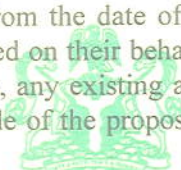


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17.11.3 The direct agreement shall provide, inter alia, for the release of all security and encumbrances affecting any of the Hydro Property upon payment of the Transfer Price and the Concessionaire acknowledges that payments made by BPE to the lender 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 18.9 and 19, any Dispute which is not resolved in accordance with Clause 18.2, relating to this Agreement or the breach, termination or invalidity thereof shall be finally settled by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force (the "**UNCITRAL Rules**"). Such Dispute shall be submitted to arbitration at the request of a Party or Parties, as applicable, upon written notice to that effect to the other Party in accordance with the UNCITRAL Rules.
- 18.4 The number of arbitrators shall be three (3). The arbitral tribunal shall be composed of three (3) 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 London Court of International Arbitration; 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 London Court of International Arbitration 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 London Court of International Arbitration. 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 London Court of International Arbitration. 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



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two arbitrators nominated by the Parties (or by the London Court of International Arbitration) 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 London Court of International Arbitration shall appoint a third arbitrator to act as chairman of the tribunal.

- 18.6 The place of the arbitration shall be London, England. The language to be used in the arbitral proceedings shall be English.
- 18.7 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, any experts appointed in the arbitration and the London Court of International Arbitration acting as appointing authority.

Related disputes

- 18.8 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 18.8 or in accordance with an equivalent provision under another Related Agreement.

Interim relief in the Courts of Nigeria

- 18.9 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.



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- 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.

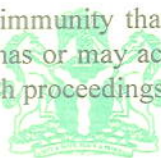
20.2 Right to Specific Performance; Waivers

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

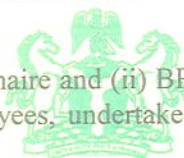
20.8.1 No waiver by either (i) the Concessionaire or (ii) BPE or the Company of any default by the other Party/Parties in the performance of any of the provisions of this Agreement:

- (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 whatsoever, 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 advisers and to prospective lenders or investors in such Party, to succeeding entities, to prospective transferees and assignees and their professional advisers 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.



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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: Kainji Power Station Complex, Kainji, 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:

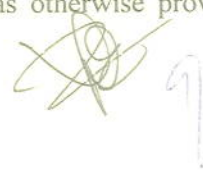
- (A) in the case of hand delivery, upon delivery at that address; or
- (B) in the case of a letter sent by registered mail, pre-paid recorded delivery, recognised international courier service or first class pre-paid post, on the third (3rd) day after posting or, if posted to or from a place outside 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.

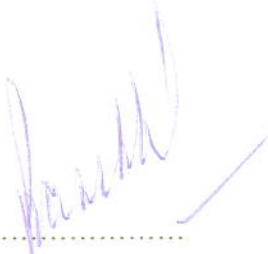
21. PAYMENT FREE OF DEDUCTION

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 E. DIKKI
Ag. Director-General



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

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

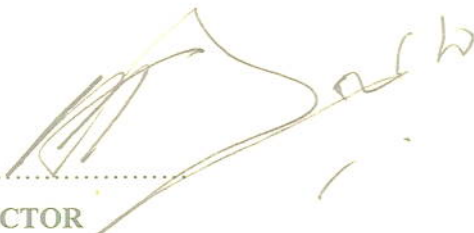


.....
DIRECTOR



.....
SECRETARY

The Common Seal of **MAINSTREAM ENERGY SOLUTIONS LIMITED**
was hereunto affixed in the presence of



.....
DIRECTOR



.....
SECRETARY



SCHEDULE 1
MAP OF RELEVANT CONCESSION AREA



SCHEDULE 2
THE FIXED ASSETS

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

S/N	Description of Asset	Asset Year
1	TURBINE 1G10	2001-Jan-01
2	TURBINE 1G11	2001-Jan-01
3	TURBINE 1G12	2001-Jan-01
4	TURBINE 1G5	2001-Jan-01
5	TURBINE 1G6	2001-Jan-01
6	TURBINE 1G7	2001-Jan-01
7	TURBINE 1G8	2001-Jan-01
8	TURBINE 1G9	2001-Jan-01
9	Navigational Locks - Various	2005-Jan-01
10	Power house crane - Various	2005-Jan-01
11	Rotor lifting beam	2005-Jan-01
12	145 MVA 16KV/330KV Transformer -2Nos	2001-Jan-01
13	155 MVA 16KV/330KV Transformer - 2 Nos	2001-Jan-01
14	Generator Circuit Breaker - 5Nos	2001-Jan-01
15	Dam crast crane	2005-Jan-01
16	7.5 MVA 16KV/11KV Power Transformer 3 - Nos	2005-Jan-01
17	183.6 MVA 16KV/330KV Tranformer	2001-Jan-01
18	184 MVA 16KV/330KV Transformer	2001-Jan-01
19	11KV Circuit Breakers 26- Nos	2005-Jan-01
20	11 Kv Protective Relay - - Various	2005-Jan-01
21	Draft tube crane	2005-Jan-01
22	spillway gates 4 - Nos	2005-Jan-01
23	1.5mvA diesel generator	2005-Jan-01
24	Qi PurifigingMachinies 3 - Nos	2005-Jan-01
25	DistribtnTransformers(Station Transformer) 50 - Nos	2005-Jan-01
26	16 KV C.B an Compressor 4 - Nos	2005-Jan-01
27	Gov. Oil Vessel Air Compressor 8 - Nos	2005-Jan-01
28	864kvA diesel generator	2005-Jan-01
29	11 KV G.B Control Panel 26 - Nos	2005-Jan-01
30	Distribution Board (Station Auxiliary) 150 - Nos	2005-Jan-01
31	Coles Crane 2 - Nos	2005-Jan-01
32	Battary chargers 8 - Nos	2005-Jan-01
33	50 vdcBattary bank 100 - Nos	2005-Jan-01
34	Lorain Crane 2 - Nos	2005-Jan-01
35	Sewage ejectors 2 - Nos	2005-Jan-01
36	Dewafering pump 3- Nos	2005-Jan-01



See attached schedules

**SCHEDULE 3
APPROVED FINANCING PACKAGE**



**SCHEDULE 4
THE CONTRACTS**

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



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 Power Stations 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 Stations.
- 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 Stations 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

Kainji 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;
- "**Kainji Minimum Capacity Target**" has the meaning given in paragraph 2.2.4;
- "**Kainji Rehabilitation Target**" has the meaning given in paragraph 5.1;
- "**Kainji 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;
- "**Kainji 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 Kainji Power Station as at the date of this Agreement is 220MW.
- 2.2 The Concessionaire shall operate, maintain and refurbish or repower or replace or expand the Kainji 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 Kainji Power Station; and
- 2.2.4 so that the Available Capacity on the Kainji Target Date is equal to or greater than 760MW (the "**Kainji 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 Kainji Target Date, where on the Kainji Target Date or any anniversary of the Kainji Target Date (in either case being the "**LD Calculation Date**") the Available Capacity is less than the Kainji Minimum Capacity Target, the Concessionaire shall pay to BPE as liquidated damages an amount calculated in



4. EXTENSIONS

21.1 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 Kainji Minimum Capacity Target by the Kainji Target Date:

4.1.1 by a Force Majeure Event; or

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

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

21.3 General Extension

4.2 If, prior to the Kainji Target Date, the Concessionaire considers that the Available Capacity will be less than the Kainji Minimum Capacity Target on the Kainji Target Date, the Concessionaire may request in writing no later than sixty (60) days prior to the Kainji Target Date that BPE provide a one-year extension to the Kainji Target Date to allow the Concessionaire to continue working towards achieving the Kainji 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 Kainji 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.

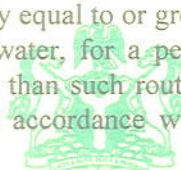
4.5 If BPE does not provide the written notice required by paragraph 4.4 within such thirty (30) days it shall be deemed to have granted the proposed one (1) year extension.

4.6 If BPE notifies the Concessionaire in accordance with paragraph 4.4 that it will not grant the one-year extension to the Kainji 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 Kainji Minimum Capacity Target.

5. MAINTENANCE AND RESTORATION

21.4 Rehabilitation Target

5.1 By the Kainji 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 Kainji Power Station as are reasonably required to ensure that the Kainji Power Station is designed to achieve and capable of achieving safe and efficient operation and an Available Capacity equal to or greater than the Kainji 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



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Construction Practices, in relation to the relevant assets (the "Kainji Rehabilitation Target").

21.5 Rehabilitation to be assessed by engineer

- 5.2 Sixty (60) days prior to the Kainji Rehabilitation Target Date, the Parties shall appoint an independent engineer who shall certify to the Parties whether the Kainji Rehabilitation Target will be achieved by the Kainji Rehabilitation Target Date. The independent engineer shall deliver its opinion as to whether or not the Kainji 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.

21.6 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 Kainji Rehabilitation Target by the Kainji Rehabilitation Target Date by a Force Majeure Event which extends for a period of thirty (30) days or longer, then the Kainji Rehabilitation Target Date shall be extended to such later date as is fair and reasonable to reflect such hindrance, prevention or delay.

21.7 General Extension

- 5.6 If the Concessionaire considers that the Kainji Rehabilitation Target will not have been achieved by the Kainji Rehabilitation Target Date, the Concessionaire shall request in writing no later than ninety (90) days prior to, the Kainji Rehabilitation Target Date that BPE provide a one-year extension to the Kainji Rehabilitation Target Date to allow the Concessionaire to continue working towards achieving the Kainji 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 Kainji 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 5.7 that it will not grant the one-year extension to the Kainji 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 Kainji Rehabilitation Target.

6. EVENTS OF DEFAULT

6.1 If:

- 6.1.1 on the Kainji Target Date the Available Capacity is less than the Kainji Minimum Capacity Target;



- 6.1.2 on any anniversary of Kainji Target Date the Available Capacity is less than ninety-five per cent (95%) of the Kainji 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 Kainji Rehabilitation Target by the Kainji Rehabilitation Target Date,
- 21.8 then a "**Performance Default**" shall have occurred unless the failure to achieve the Kainji Minimum Capacity Target in the case of paragraph 6.1.1, or to exceed ninety-five per cent (95%) of the Kainji Minimum Capacity Target in the case of paragraph 6.1.2, or to achieve the Kainji 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.

PART B

Jebba 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;
- "**Jebba Minimum Capacity Target**" has the meaning given in paragraph 2.2.4;
- "**Jebba Rehabilitation Target**" has the meaning given in paragraph 5.1;
- "**Jebba 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;
- "**Jebba 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 Jebba Power Station as at the date of this Agreement is 482MW.
- 2.2 The Concessionaire shall operate, maintain and refurbish or repower or replace or expand the Jebba Power Station:
- 2.2.1 in accordance with this Agreement;
- 2.2.2 in accordance with the Post-Acquisition Plan;



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- 2.2.3 in such a way as to increase the available capacity of the Jebba Power Station; and
- 2.2.4 so that the Available Capacity on the Jebba Target Date is equal to or greater than 578.4MW (the "**Jebba 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 Jebba Target Date, where on the Jebba Target Date or any anniversary of the Jebba Target Date (in either case being the "**LD Calculation Date**") the Available Capacity is less than the Jebba 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:

$$\frac{(\text{Jebba Minimum Capacity Target (MW)} - \text{Available Capacity (MW)}) \times \text{US\$350} \times 365}{12}$$

12

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 Jebba 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 Jebba Minimum Capacity Target is directly attributable to a Force Majeure Event, an FGN Event of Default or where the failure to reach the Jebba Minimum Capacity Target is due solely to the water levels or flows at the Jebba 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 Jebba 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 Jebba Minimum Capacity Target and is in lieu of actual damages for Loss arising from failure to achieve the Jebba 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

21.9 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 Jebba Minimum Capacity Target by the Jebba Target Date:

4.1.1 by a Force Majeure Event; or

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

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

21.11 General Extension

- 4.2 If, prior to the Jebba Target Date, the Concessionaire considers that the Available Capacity will be less than the Jebba Minimum Capacity Target on the Jebba Target Date, the Concessionaire may request in writing no later than sixty (60) days prior to the Jebba Target Date that BPE provide a one-year extension to the Jebba Target Date to allow the Concessionaire to continue working towards achieving the Jebba 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 Jebba 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 Jebba 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 Jebba Minimum Capacity Target.

5. MAINTENANCE AND RESTORATION

21.12 Rehabilitation Target

- 5.1 By the Jebba 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 Jebba Power Station as are reasonably required to ensure that the Jebba Power Station is designed to achieve and capable of achieving safe and efficient operation and an Available Capacity equal to or greater than the Jebba 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 "**Jebba Rehabilitation Target**").

21.13 Rehabilitation to be assessed by engineer

- 5.2 Sixty (60) days prior to the Jebba Rehabilitation Target Date, the Parties shall appoint an independent engineer who shall certify to the Parties whether the Jebba Rehabilitation Target will be achieved by the Jebba Rehabilitation Target Date. The independent engineer shall deliver its opinion as to whether or not the Jebba 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.

21.14 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 Jebba Rehabilitation Target by the Jebba Rehabilitation Target Date by a Force Majeure Event which extends for a period of thirty (30) days or longer, then the Jebba Rehabilitation Target Date shall be extended to such later date as is fair and reasonable to reflect such hindrance, prevention or delay.

21.15 General Extension

- 5.6 If the Concessionaire considers that the Jebba Rehabilitation Target will not have been achieved by the Jebba Rehabilitation Target Date, the Concessionaire shall request in writing no later than ninety (90) days prior to, the Jebba Rehabilitation Target Date that BPE provide a one-year extension to the Jebba Rehabilitation Target Date to allow the Concessionaire to continue working towards achieving the Jebba 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 Jebba 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.



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- 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 Jebba 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 Jebba Rehabilitation Target.

6. EVENTS OF DEFAULT

6.1 If:

- 6.1.1 on the Jebba Target Date the Available Capacity is less than the Jebba Minimum Capacity Target;
- 6.1.2 on any anniversary of Jebba Target Date the Available Capacity is less than ninety-five per cent (95%) of the Jebba 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 Jebba Rehabilitation Target by the Jebba Rehabilitation Target Date,

21.16 then a "**Performance Default**" shall have occurred unless the failure to achieve the Jebba Minimum Capacity Target in the case of paragraph 6.1.1, or to exceed ninety-five per cent (95%) of the Jebba Minimum Capacity Target in the case of paragraph 6.1.2, or to achieve the Jebba 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 Error! Reference source not found. of this Agreement shall apply.




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SCHEDULE 8
PAYMENT OF CONCESSION FEES

PART A

In consideration of this Agreement and the lease of the Hydro Property and the lease of the Site the Concessionaire shall pay the following Concession Fees to BPE:

- (a) an initial payment of thirty million United States Dollars (US\$ 30,000,000) the “**Fixed Entry Fee**”) to be paid as follows:
- (i) The Concessionaire shall, in accordance with Clause 2.2.1(A)(1), transfer twenty five per cent (25%) of the Fixed Entry Fee, being an amount of seven million, five hundred thousand United States Dollars (US\$ 7,500,000), within fifteen (15) Business Days from the date of execution of this Agreement directly into the BPE Account.
 - (ii) The Concessionaire shall transfer to the BPE Account seventy four per cent (74%) of the Fixed Entry Fee, being an amount of twenty two million, two hundred thousand United States Dollars (US\$ 22,200,000), not later than the Commencement Date in accordance with Clause 11.2.1;
 - (iii) The Concessionaire shall pay CPCS Transcom International Ltd (“CPCS”) and transfer by electronic transfer to the CPCS bank account identified in Part B of this Schedule one per cent (1%) of the Fixed Entry Fee, being an amount of three hundred thousand United States Dollars (US\$ 300,000), not later than the Commencement Date in accordance with Clause 11.3.1 (the Parties hereby agree that CPCS shall be entitled to enforce the payment obligations contained in this paragraph in Clause 11.3.1 as if it were a party to this Agreement and BPE and 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 Fixed Entry Fee);
- (b) an upfront payment of two hundred and seven million, eight hundred and twenty three thousand, eight hundred United States Dollars (US\$ 207,823,800) representing the total of the first five (5) Annual Fees discounted at a rate of ten percent (10%) per annum (the “**Upfront Annual Fee**”) to be paid as follows:
- (i) The Concessionaire shall, in accordance with Clause 2.2.1(A)(2), transfer twenty five per cent (25%) of the Upfront Annual Fee, being an amount of fifty one million, nine hundred and sixty seven thousand, five hundred United States Dollars (US\$ 51,967,500), within fifteen (15) Business Days from the date of execution of this Agreement directly into the BPE Account.
 - (ii) The Concessionaire shall transfer to the BPE Account seventy five per cent (75%) of the Upfront Annual Fee, being an amount of one hundred and fifty three million, eight hundred and twenty three thousand, eight hundred United States Dollars (US\$ 153,823,800), not later than the Commencement Date in accordance with Clause 11.2.2;
 - (iii) The Concessionaire shall pay CPCS and transfer by electronic transfer to the CPCS bank account identified in Part B of this Schedule one per cent (1%) of the Upfront Annual Fee, being an amount of two million, seven hundred and eighty thousand, seven hundred United States Dollars (US\$ 2,780,700), not later than the Commencement Date in accordance with Clause 11.3.2 (the Parties hereby agree that CPCS shall be entitled to enforce the payment obligations contained in this paragraph and in Clause 11.3.2 as if it were a party to this Agreement and BPE and

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.
- (d) On or before the same date each year thereafter, commencing on the fifth (5th) anniversary of the payment under subsection (b)(i) above, the Concessionaire shall pay an amount equal to the Annual Fee for each Operating Year as detailed below:

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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):



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BUREAU OF PUBLIC ENTERPRISES

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BUREAU OF PUBLIC ENTERPRISES

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 Kainji 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 and the Kainji Rehabilitation Contract (the "**Contracts**").
- 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**").

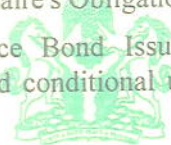
NOW THEREFORE THIS DEED WITNESSES AS FOLLOWS:

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 Contracts, 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 Contracts 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 Contracts;

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 subparagraph 4.1.4 above;

4.1.6 any claim or enforcement of payment from the Concessionaire or any other person;



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- 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 Contracts 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 Contracts or in any other document, instrument or agreement executed in connection with the Contracts.

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

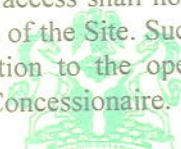
The Company and the Concessionaire shall each appoint four (4) representatives to form a Transition Committee who shall be responsible for overseeing the implementation of the provisions of the Transition Plan during the Transition Period. The Transition Committee shall be chaired by a representative 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 Stations 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.

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SCHEDULE 12
TERMINATION PLAN

9. DEFINITIONS

9.1 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.

10. THE TERMINATION PLAN

10.1 The Parties agree that this Termination Plan shall apply during the Termination Period.

10.2 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.

11. CONDITION SURVEY

11.1 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**").

11.2 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.

11.3 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.

12. THE HYDRO PROPERTY

12.1 The Concessionaire shall, not later than fifteen (15) days after the date of termination of Concession Term, provide the Company with inventories of:

12.1.1 the relevant Hydro Property Moveable Assets; and

12.1.2 the spare parts and consumables,

which it used in the context of the Operations.

12.2 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.



13. **TERMINATION DATE**

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

13.1.1 vacate the Site;

13.1.2 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;

13.1.3 hand over to the Company all documents including as built drawings, manuals and records relating to operation and maintenance of the Hydro Property;

13.1.4 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;

13.1.5 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

13.1.6 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.

14. **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:



[Handwritten signature]

- (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 bidders: 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



BUREAU OF PUBLIC ENTERPRISES

SCHEDULE 16
TECHNICAL SERVICES AGREEMENT



BUREAU OF PUBLIC ENTERPRISES

SCHEDULE 17
INDUSTRY WIDE INDEX



BUREAU OF PUBLIC ENTERPRISES

SCHEDULE 18
COMPANY SPECIFIC INDEX

