



FEDERAL REPUBLIC OF NIGERIA

FEDERAL CAPITAL DEVELOPMENT AUTHORITY, ABUJA

PPP CONTRACT AGREEMENT

FOR

**THE DEVELOPMENT OF
ENGINEERING INFRASTRUCTURE FOR
KATAMPE DISTRICT, PHASE II, FCC, ABUJA**

BETWEEN

FEDERAL CAPITAL DEVELOPMENT AUTHORITY

AND



Deanshanger

DEANSHANGER PROJECT LIMITED

SEPTEMBER 2010

CONTRACT AGREEMENT

Sign.....
Date.....

This Agreement made the 19th day
of October 2010

Between

THE FEDERAL CAPITAL DEVELOPMENT AUTHORITY established pursuant to Section 3 of the Federal Capital Territory Act Cap.F6 Laws of the Federation of Nigeria (LFN) 2004, of No 8 Ayangba Street, Area 11, Garki, Abuja (hereinafter called the "FCDA" which expression where the context so admits shall include its successors, agents and assigns) for and on behalf of the Federal Government of Nigeria, on the one part,

And

DEANSHANGER PROJECT LIMITED, RC No: 715734, a company incorporated under the Laws of the Federal Republic of Nigeria and having its registered office at No. 6 River Kubanni Crescent, Maitama District, Abuja (hereinafter called the "Developer" which expression where the context so admits shall include its successors and assigns) of the other part.

WHEREAS

- A. The Federal Government of Nigeria recognizes that the provision of infrastructure is crucial for sustainable socio-economic development of Nigeria in general and the Federal Capital Territory in particular.
- B. The Federal Government of Nigeria acknowledges the critical importance of the private sector as a component of the national economy's growth and is willing to encourage private investment and participation in the nation's development.
- C. The FCDA is mandated by law, specifically Section 4(2) (e) of the Federal Capital Territory Act Cap.F6 LFN 2004, to carry out

investment and infrastructure development projects with private sector involvement.

- D. The Federal Executive Council had at its meeting of 22nd November, 2006 in line with the provisions of the Infrastructure Concession Regulatory Commission (ICRC) Act of 2005, approved the securing of private financing to provide Katampe, Mabushi, Durumi, Gwarinpa I and Kado Districts with integrated civil infrastructure through a Public-Private Partnership arrangement between the FCDA and the Private Sector in line with the ICRC Act, 2005.
- E. The FCDA had accordingly published a Notice of Investment Opportunity/Expression of Interest (E.O.I) in the Thisday Newspaper dated 20th November 2004 and invited E.O.I.'s from qualified firms to submit technical and financial proposals for the review and adoption of the design, construction and financing of the provision of integrated engineering infrastructure to Katampe District (the "Project") in accordance with the terms and conditions contained in the Invitation to Bid.
- F. The FCDA had thereafter invited tenders on the 27th of April, 2005 with reference no. PPP/FCDA/DCEI.01/02/02 from eligible firms to review and adopt the design, finance, build, and transfer to the FCDA comprehensive integrated engineering infrastructure to support the development of the Katampe District (as more particularly described in Schedule 1 of this PPP Contract Agreement.
- G. The Developer was selected by FCDA as preferred bidder having met the requirements of the PPP bid criteria. Both Parties entered into a non-binding Memorandum of Understanding (MOU) dated 16th April 2007 as a preliminary step towards the execution of a PPP Contract Agreement for the implementation of the project.
- H. In accordance with the requirements and on the basis of the MOU, Preferred Bidders Information Memorandum (PBIM)

and bid documents, both Parties have had series of negotiations since November 2007; the concluding negotiations having been carried out between Infrastructure Concessions Regulatory Commission (ICRC)/FCDA and the Developer between July to December 2009.

- I. The Developer shall provide a Financial Close Security in Amount of ₦125,000,000.00 to enter into this Contract Agreement pursuant to the acceptance of FCDA's letter of award. The Financial Close Security shall remain in full force and effect until the Performance Security has been submitted.
- J. On the basis of the outcome of the negotiations, the ICRC has issued a "No Objections" letter dated February 09, 2010 for the projects further progress by submitting it to the Federal Executive Council for approval and the Federal Executive Council at its meeting of 26th May 2010 has approved same and the Parties have agreed to implement the Project according to the terms and conditions set forth in this PPP Contract Agreement.

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. SCOPE OF WORKS

The Scope of Works shall include the review and adoption of the design, finance, construction and transfer of the completed works to FCDA in accordance with the PPP Contract Agreement. The detailed Scope of Works is described in Schedule 2.

2. TOTAL DEVELOPMENT COST

The Total Development Cost is ₦ 61,194,747,645.00 (Sixty One Billion One Hundred and Ninety-Four Million Seven Hundred and Forty-Seven Thousand Six Hundred and Forty-five Naira) as fully set out in Schedule 4 - Summary of Total Development Cost and Schedule 5 - Financial Model.

3. METHOD OF FINANCING AND PAYMENT

3.1 The Developer shall pursuant to the implementation of the Project raise finances as follows:

- (a) make Equity contribution of 5% of the Project Cost;
- (b) secure Debt issued as Principal and Debt issued as Capitalised Interest(representing 47.5% of the Project Cost) during the first 18 months of the Construction Period as outlined in the Financial Model to enable the take off of the project;
- (c) arrange a stand-by funding to augment any revenue and/or payment shortfall that may arise pursuant to Sub - clause 1.21.1[Revenue Shortfall].

3.2 The Development levies paid into the Escrow Account is to be used to fund the balance of Project Costs, Financing Cost, Debt servicing (Bank Loan and Interest payments), Equity and Returns Drawdown and the Net Income to FCDA as outlined in the Financial Model

3.3 All payments to the Developer shall be made from the Escrow Accounts in accordance with Clause 14 [Total Development Cost and Payments].

4. COMPLETION PERIOD AND PPP CONTRACT DURATION.

4.1 The Developer shall complete the entire construction works within the completion period of 36 months from the date of Financial Close [Sub-Clause 1.17.2 of Conditions Precedent to Commencement] and in accordance with Clause 8.2 of the Conditions of Contract.

4.2 The PPP Contract Duration for the full recovery of the Project Finance is 60 months from the date of Financial Close.

5. CONTRACT DOCUMENTS

The following documents forming the PPP Contract Agreement are to be taken as mutually explanatory of one another:

- (a) The Contract Agreement,
- (b) The Letter of Award of PPP Contract
- (c) The Developer's Letter of Acceptance
- (d) The Conditions of Contract, and
- (e) Schedules


The Letter of Award of PPP Contract and The Developer's Letter of Acceptance referred to in this clause are attached under Appendix A following page 7 of the PPP Contract Agreement.

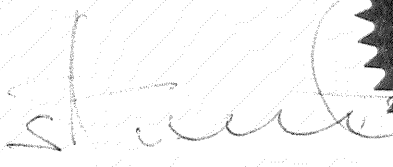
6 MUTUAL COVENANTS

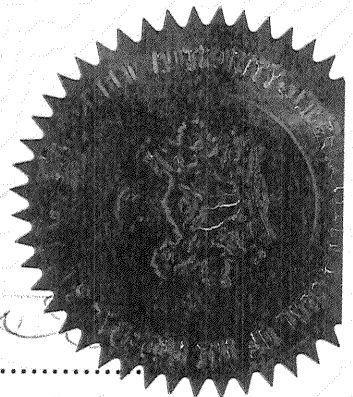
- 6.1 In consideration of the payments to be made from the Escrow Accounts to the Developer as hereinafter mentioned, the Developer hereby covenants with the FCDA to review and adopt the design, finance, execute and complete the Works and remedy any defects therein in conformity with the provisions of this PPP Contract Agreement.
- 6.2 The FCDA hereby covenants to ensure that the Developer is paid from the Escrow Account, in consideration of the completion of review and adoption of the design, financing, execution and completion of the Works and the remedying of defects therein, the final Total Development Cost at the times and in the manner prescribed by this PPP Contract Agreement.
- 6.3 The PPP Contract Agreement shall come into full force and effect on the date of the Financial Close [Sub-Clause 1.17.2 of Conditions Precedent to Commencement].

In witness whereof, the Parties hereto, have hereunder set their
respective hands and seals, the day and year first above written.

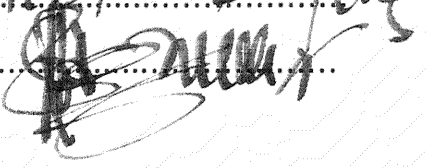
SIGNED, SEALED AND DELIVERED BY:


.....
THE HONOURABLE MINISTER/
CHAIRMAN, FCDA
FOR AND ON BEHALF OF
THE FCDA

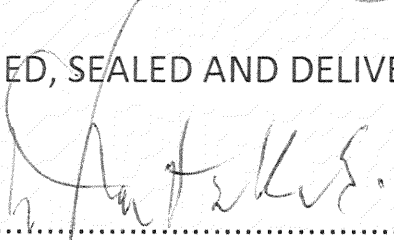

.....
THE EXECUTIVE SECRETARY, FCDA
FOR AND ON BEHALF OF
THE FCDA

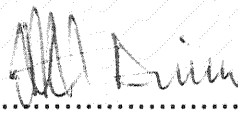


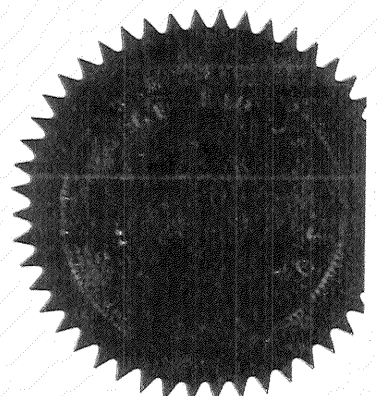
In the Presence of:

Name: *A. E. Kufamona*
Address: *Legal Secretary*
Designation: *Director of Legal*
Signature: 

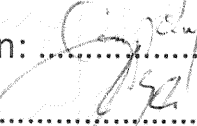
SIGNED, SEALED AND DELIVERED:


.....
CHAIRMAN,
FOR AND ON BEHALF OF THE
DEANSHANGER PROJECT LIMITED


.....
MANAGING DIRECTOR/CEO,
FOR AND ON BEHALF OF THE
DEANSHANGER PROJECT
LIMITED



In the presence of:

Name: *S. Sison* *I. K. H.*
Address: *1468 Ayala Street, Alabang*
Designation: *Signer for*
Signature: 

APPENDIX A

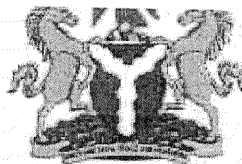
The Letter of Award of PPP Contract & The Developer's Letter of Acceptance

The following letters;

The Letter of Award of PPP Contract: FCDA Tenders Board letter No: FCDA/TB/2010/NA/18/19 dated 7th July 2010, and

The Developer's Letter of Acceptance: Deanshanger Project Limited letter of Acceptance dated July 23, 2010,

are those referred to in Sub-Clauses 5(b) and (c) of the form of Contract Agreement and Sub-Clauses 1.5 (b) & (c) of the Conditions of Contract as forming part of the PPP Contract Agreement and follow between pages 7 and 8 of this document.



DEPT. OF
Legal Services Secretariat

Sign.....

Date.....

FEDERAL CAPITAL DEVELOPMENT AUTHORITY TENDERS BOARD

FCDA Secretariat, Kapital Road, Area 11, P.M.B 24, Abuja, Nigeria

FCDA/TB/2010/NA/18/19

7th July, 2010

The Managing Director
Deanshanger Project Limited
No.6, River Kubanni Crescent
Off Nile Street, Ministers Hill, Maitama
P.O.Box 16377 Wuse
Abuja – Nigeria

Dear Sir,

AWARD OF PPP CONTRACT FOR THE COMPLETION OF DESIGN DOCUMENTATION, FINANCE, BUILD AND TRANSFER OF THE ENGINEERING INFRASTRUCTURE DEVELOPMENT OF THE KATAMPE DISTRICT OF THE FCC, ABUJA

I am pleased to inform you that sequel to the conclusion of the negotiation process between your Company and the Federal Capital Development Authority (FCDA), that was endorsed by the Infrastructure Concession Regulatory Commission (ICRC), the Federal Executive Council (FEC) has given approval to your Company for the award of the PPP Contract for the Completion of Design Documentation, Finance, Build and Transfer of the Engineering Infrastructure for the Katampe District of the Federal Capital City, Abuja at a total development cost of **N61,194,747,645.00 (Sixty One Billion, One Hundred and Ninety Four Million, Seven Hundred and Forty Seven Thousand, Six Hundred and Forty Five Naira)** only, with a construction period of three (3) years and cost recovery period of 5 (five) years.

2. The key components of the Approval/Terms of the PPP Contract Agreement are as outlined below:-

2.1 PPP Contract Agreement:

The PPP Agreement shall be based on the FIDIC Standard Conditions of Contract for EPC/Turnkey Projects (First Edition 1999) modified with contractual provisions for private party financing arrangements and adopted and harmonized to



address all agreed PPP contractual issues/requirements of the project as outlined in the Contract Agreement.

2.2 Project Finance Model:

The Project Finance Model which establishes the project financing plan is as adopted by all parties, audited and attached to the schedules in the PPP Contract Agreement.

2.3 Total Development Cost:

The Total Development Cost of N61,194,747,645.00 (Sixty One Billion, One Hundred and Ninety Four Million, Seven Hundred and Forty Seven Thousand, Six Hundred and Forty Five Naira) only, comprises the following components:

- Project Cost (Management & Completion of Design Documentation, Insurance & Bonds, General Services & Contingencies, Construction, Fees and Permits, Marketing, Administration and Project Contingencies Provision);
- Debt Financing Cost;
- Debt Servicing (Debt and Interest Payments);
- Equity Returns and Drawdown;
- Interest Income;
- The adjusted net income/FCDA Contingent Liability;

2.4. Funding Arrangement:

- (i) Equity: 5% of Development Cost;
- (ii) Debt: 47.5% of Development Cost;
- (iii) Pre-Sales: 47.5% of Development Cost;
- (iv) The balance of Sales (Development levy) will be used to fund Debt Servicing and Equity Returns & Drawdown;
- (v) The Adjusted Net Income shall become the property of FCDA as provision for any contingent liability.

2.5 **Development Levy:**

The Approved Development Levy (the Premium charge collected by the FCDA from Land allottees for infrastructural development) is as follows:

(i)	Total Development Levy:	₦12,000.00m ²
(ii)	Approved Government Subsidy:	₦4,000.00/m ²
(iii)	Actual Development Levy payable by Plot allottees:	₦8,000.00/m ²

2.6 **PPP Contract Duration:** 5 Years

2.7 **Construction Period:** 3 Years

2.8 **Guarantees/Securities:**

- (i) Performance Security/Guarantee and Insurances from DPL to FCDA;
- (ii) Financial/Payment Guarantee (Federal Government Guarantee) from FCDA to DPL;
- (iii) Type and form of guarantees to be mutually agreed.

3. You are required to indicate in writing acceptance of the award within two (2) weeks from the date of this letter and thereafter provide the FCDA with a Financial Close Guarantee in the sum of ₦125,000,000.00 from an acceptable Financial Institution.

4. A copy of the PPP Contract Agreement is hereby forwarded to you for review subject to further harmonization by the Director of Legal Services, FCDA and the ICRC.

5. Accordingly, you are to liaise with the office of the **Director, Mass Housing/PPP, FCDA** for further instructions.

6. The Director of Legal Services, FCDA is informed by copy of this letter to make all the necessary arrangements for the signing of the PPP Agreement between your Company and the FCDA.

DEPT. OF DRAFTING
Legal Services Secretariat

Sign.....
Date.....

7. Please accept my Congratulations.

Yours faithfully,

FEDERAL CAPITAL DEV.

A.M. Dalhatu
A.M. Dalhatu
SIGN

Secretary, Tender Board
For: Executive Secretary

July 23, 2010.

The Executive Secretary,
Federal Capital Development Authority,
Area 11, Garki,
Abuja.

Attn: A.M. Dalhatu (Secretary Tenders Board)

Dear Sir,

RE: AWARD OF PPP CONTRACT FOR THE COMPLETION OF DESIGN DOCUMENTATION, FINANCE, BUILD AND TRANSFER OF THE ENGINEERING INFRASTRUCTURE DEVELOPMENT OF THE KATAMPE DISTRICT OF THE FCC, ABUJA

We write to acknowledge with thanks the receipt of your letter Ref: FCDA/TB/2010/NA/18/19 dated 7th July 2010 received July 23rd 2010 with respect to the above subject matter.

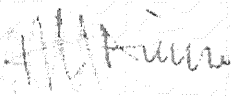
Consequently, we hereby wish to formally convey to you our acceptance of the award of the PPP Contract for the Completion of the Design Documentation, Finance, Build, and Transfer of the Engineering Infrastructure Development of the Katampe District of the FCC, Abuja and the terms and conditions of the PPP Agreement as contained in your letter under reference.

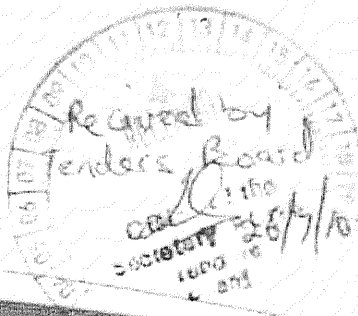
To this end, we shall review the draft contract and revert back in due course as well as furnish you with the Financial Close Guarantee accordingly.

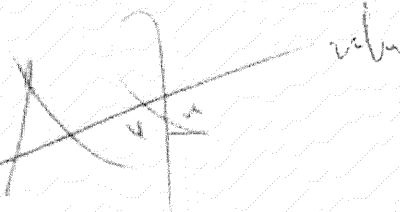
Thank you and accept the assurances of our esteem regards. We remain,

Yours faithfully,

for: Deanshanger Project Limited


Shehu A. Dikko
Managing Director/CEO




Mohammed A. Audu
Executive Director/COO

CONDITIONS OF CONTRACT

Sign.....
Date.....

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Date.....

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CONDITIONS OF CONTRACT

Sign.....
Date.....

Clause 1 General Provisions

1.1 Definitions

In the Conditions of Contract ("these Conditions"), the following words and expressions shall have the meanings stated. Words indicating persons or Parties include corporations and other legal entities, except where the context requires otherwise.

1.1.1 The Contract

1.1.1.1 "PPP Contract Agreement" means the Contract Agreement, the Letter of Award of PPP Contract, the Developer's Letter of Acceptance, the Conditions of Contract and Schedules.

1.1.1.2 "FCDA's Requirements" means the document entitled FCDA's Requirements specifying the purpose, scope, design documentation and other technical criteria for the Works contained in Schedule 3 to the PPP Contract Agreement, and any additions and modifications to such document in accordance with the PPP Contract Agreement.

1.1.1.3 "Tender" means the Developer's signed offer for the Works and all other documents which the Developer submitted therewith as reviewed, negotiated and included in the PPP Contract Agreement.

1.1.1.4 "Performance Guarantees" mean the document so named, as included in the PPP Contract Agreement.

1.1.1.5 "The Letter of Award of PPP Contract" means the letter containing the negotiated terms for award of the PPP Contract dated 7th July 2010, signed by the FCDA, including any annexed documents.

1.1.1.6 **"The Developer's Letter of Acceptance"** means the letter of the Developer dated 23rd July 2010 accepting the negotiated terms for award of the PPP Contract.

1.1.2 **Parties and Persons**

1.1.2.1 **"Party"** means the FCDA or Deanshanger Project Limited, as the context requires.

1.1.2.2 **"FCDA"** means the Federal Capital Development Authority established pursuant to Section 3 of the Federal Capital Territory Act Cap.F6 Laws of the Federation of Nigeria (LFN) 2004 including its successors, agents and assigns.

1.1.2.3 **"Developer"** means Deanshanger Project Limited, RC No: 715734, a company incorporated under the Laws of the Federal Republic of Nigeria and having its registered office at No. 6 River Kubanni Crescent, Maitama District, Abuja including its successors and assigns.

1.1.2.4 **"FCDA's Representative"** means the person named by the FCDA in the PPP Contract Agreement or appointed from time to time by the FCDA under Sub-Clause 3.1 [The FCDA's Representative], who acts on behalf of the FCDA.

1.1.2.5 **"Developer's Representative"** means the person named by the Developer in the PPP Contract Agreement or appointed from time to time by the Developer under Sub-Clause 4.3 [Developer's Representative], who acts on behalf of the Developer.

1.1.2.6 **"FCDA's Personnel"** means the FCDA's Representative, the assistants referred to in Sub-Clause 3.2 [Other FCDA's Personnel] and all other staff, labour and other employees of the FCDA and of the FCDA's Representative; and any other personnel notified to the Developer, by the FCDA or the FCDA's Representative, as FCDA's Personnel.

1.1.2.7 "Developer's Personnel" means the Developer's Representative and all personnel whom the Developer utilises on Site, who may include the staff, labour and other employees of the Developer and of each Subcontractor; and any other personnel assisting the Developer in the execution of the Works.

1.1.2.8 "Subcontractor" means any person named in the PPP Contract Agreement as a subcontractor, or any person appointed as a subcontractor by the Developer and includes the Engineering, Procurement and Construction (EPC) Contractor and Technical Partners, for a part of the Works; and the legal successors in title to each of these persons.

1.1.2.9 "DAB" means the Dispute Adjudication Board comprising three persons so named in the PPP Contract Agreement, or other person(s) appointed under Sub-Clause 20.2 [Appointment of the Dispute Adjudication Board] or Sub-Clause 20.3 [Failure to Agree Dispute Adjudication Board].

1.1.3 Dates, Tests, Periods and Completion

1.1.3.1 "Base Date" means the date of Financial Close.

1.1.3.2 "Commencement Date" means the date when the Financial Close is achieved as stated in Sub-Clause 1.17 [Conditions Precedent to Commencement] and notified under Sub-Clause 8.1 [Commencement of Works].

1.1.3.3 "Time for Completion/Construction Completion Period" means the time or period for completing the construction Works or a Section (as the case may be) under Sub-Clause 8.2 [Time for Completion], as stated in the PPP Contract Agreement – Clause 4 (with any extension under Sub-Clause 8.4 [Extension of Time for Completion]), calculated from the Commencement Date.

- 1.1.3.4 "Tests on Completion"** means the tests which are specified in the PPP Contract Agreement or agreed by both Parties or instructed as a Variation, and which are carried out under Clause 9 [Tests on Completion] before the Works or a Section (as the case may be) are taken over by the FCDA.
- 1.1.3.5 "Taking-Over Certificate"** means a certificate issued under Clause 10 [FCDA's Taking Over].
- 1.1.3.6 "Tests after Completion"** means the tests which are specified in the PPP Contract Agreement and which are carried out under Clause 12 [Tests after Completion] after the Works or a Section (as the case may be) are taken over by the FCDA.
- 1.1.3.7 "Defects Notification Period"** means the period for notifying defects in the Works or a Section (as the case may be) under Sub-Clause 11.1 [Completion of Outstanding Work and Remedying Defects]. The Defects Notification Period shall be one year (with any extension under Sub-Clause 11.3 [Extension of Defects Notification Period]), calculated from the date on which the Works or Section is completed as certified under Sub-Clause 10.1 [Taking Over of the Works and Sections].
- 1.1.3.8 "Performance Certificate"** means the certificate issued under Sub-Clause 11.9 [Performance Certificate].
- 1.1.3.9 "day"** means a calendar day and **"year"** means 365 days.
- 1.1.3.10 "promptly"** means initiating action within two days by the FCDA's Representative, Developer's Representative or the Independent Engineer within the context of the clause.

1.1.4.1 "Total Development Cost" means the agreed amount stated in the PPP Contract Agreement for the review and adoption of the design, finance, execution and completion of the Works and the remedying of any defects, and comprise (a) the Project Costs (b) Financing Costs (c) Debt and Interests (d) equity and returns (e) Net income to FCDA and as set out in the Schedule 4 - Summary of Total Development Cost and Schedule 5 - Financial Model and includes adjustments in accordance with the PPP Contract Agreement and Financial Model.

1.1.4.2 "Cost" where unqualified means all expenditure reasonably incurred (or to be incurred) by the Developer, whether on or off the Site, including overhead and similar charges, but does not include profit.

1.1.4.3 "Final Statement" means the statement defined in Sub-Clause 14.10 Application for Final Payment].

1.1.4.4 "Local Currency" means the Nigerian Naira.

1.1.4.5 "Provisional Sum" means a sum which is specified in the PPP Contract Agreement as a provisional sum, for the execution of any part of the Works or for the supply of Plant, Materials or services under Sub-Clause 13.4 [Provisional Sums].

1.1.4.6 "Retention Money" means the accumulated retention moneys which the FCDA retains under Sub-Clause 14.2 [Application for Interim Payments] and pays under Sub-Clause 14.8 [Payment of Retention Money].

1.1.4.7 "Statement" means a statement submitted by the Developer as part of an application for payment under Clause 14 [Total Development Cost and Payment].

1.1.4.8 "Schedule of Payments" means the document so named and attached as Schedule 6 to the PPP Contract Agreement.

1.1.5 Works and Goods

1.1.5.1 "Developer's Equipment" means all apparatus, machinery, vehicles and other things required for the execution and completion of the Works and the remedying of any defects. However, Developer's Equipment excludes Temporary Works, Plant, Materials and any other things intended to form or forming part of the Permanent Works.

1.1.5.2 "Goods" means Developer's Equipment, Materials, Plant and Temporary Works, or any of them as appropriate.

1.1.5.3 "Materials" means things of all kinds (other than Plant) intended to form or forming part of the Permanent Works, including the supply - only materials (if any) to be supplied by the Developer under the PPP Contract Agreement.

1.1.5.4 "Permanent Works" means the permanent works to be designed and executed by the Developer under the PPP Contract Agreement.

1.1.5.5 "Plant" means the apparatus, machinery and vehicles intended to form or forming part of the Permanent Works.

1.1.5.6 "Section" means a part of the Works specified in the PPP Contract Agreement as a Section (if any).

1.1.5.7 "Temporary Works" means all temporary works of every kind (other than Developer's Equipment) required

on Site for the execution and completion of the Permanent Works and the remedying of any defects.

1.1.5.8 "Works" mean the Permanent Works and the Temporary Works or either of them as appropriate.

1.1.6 Other Definitions

1.1.6.1 "Developer's Documents" means the calculations, computer programs and other software, drawings, manuals, models and other documents of a technical nature supplied by the Developer under the PPP Contract Agreement; as described in Sub-Clause 5.2 [Developer's Documents].

1.1.6.2 "Country" means Nigeria

1.1.6.3 "Force Majeure" shall have the meaning ascribed in Clause 19 [Force Majeure].

1.1.6.4 "Laws" means all national (or state) legislation, statutes, ordinances and other laws, and regulations and by-laws of any legally constituted public authority.

1.1.6.5 "Performance Security" means the security (or securities, if any) under Sub-Clause 4.2 [Performance Security].

1.1.6.6 "Site" means Katampe District, located in Phase II area of the Federal Capital City, Abuja, where the Permanent Works are to be executed and to which Plant and Materials are to be delivered, and any other places as may be specified in the PPP Contract Agreement as forming part of the Site.

1.1.6.7 "Variation" means any change to the FCDA's Requirements or the Works, which is instructed or approved as a variation under Clause 13 [Variations and Adjustments].

1.1.6.8 “Administrative Machinery” the means the FCDA's responsibility for administering and managing the payments of development levy and the subsidy into the Escrow Account for purposes of the PPP Contract Agreement.

1.1.6.9 “Annual Debt Service Coverage Ratio (ADSCR)” means the ratio of the cash flow available for debt service (CFADS) divided by the total amount of debt servicing (Principal plus Interest) over any one year of the project as contained in the Financial Model.

1.1.6.10 “Applicable Permit” means all clearances, permits, licences authorizations, consents and approvals under or pursuant to any of the applicable laws required to be obtained and maintained by the Developer in order to implement the project in accordance with this PPP Contract Agreement.

1.1.6.11 “Debt” means the funds borrowed by the Developer from any of the various debt sources including commercial lenders as contained in the Financial Model.

1.1.6.12 “Debt Servicing” means periodic payment of principal and interest on loans, bonds, notes and other debt instruments as contained in the Financial Model.

1.1.6.13 “DMO” means The Debt Management Office, the Federal Government of Nigeria (FGN) body established under Debt Management Office Act of 2003 which shall be responsible, among other things, for the preparation and implementation of a plan for the efficient management of Nigeria's external and domestic debt obligations at sustainable levels compatible with desired economic activities for growth, development and participate and in negotiations aimed at realizing these objectives.

1.1.6.14 “Development Levy” means the chargeable premium collected by the FCDA from land allottees for infrastructure development at Katampe District, Abuja.

1.1.6.15 **"Development"** means the review and adoption of the design, finance, construction and transfer of the completed works by the Developer in accordance with the PPP Contract Agreement.

1.1.6.16 **"Drawdown"** means the actual takedown (borrowing) of money by the borrower progressively according to construction expenditures under the terms of a loan facility as contained in the Financial Model or adjusted in accordance with the PPP Contract Agreement.

1.1.6.17 **"Encumbrances"** means any mortgage, charge, pledge, lien, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations and shall include without limitation any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project.

1.1.6.18 **"Escrow Account"** means a bank or financial institution account established by the Parties to channel funds needed to finance the project in accordance with Sub-Clause 1.19.

1.1.6.19 **"Escrow Account Agreement"** means the agreement entered into between the FCDA, Developer and Lenders providing for the appointment and responsibility of the Escrow Agent, establishment of the Escrow Account, disbursement and payments, operations of the account as it relates to the deposit of development levies collection and in accordance with the PPP Contract Agreement.

1.1.6.20 **"Equity"** means the cash contributed by the Developer as part of project financing and it is the equivalent of 5% of the Project Cost and which becomes due to the Developer at the end of the PPP duration as contained in the Financial Model subject to payment of all statutory taxes by the Developer and any claims due to

the FCDA in accordance with the PPP Contract Agreement.

- 1.1.6.21 "Financial Close"** means that stage when all of the Conditions Precedent have been fully met and fulfilled under Clause Sub-Clause 1.17.3.
- 1.1.6.22 "Financial Close Security"** means the Security to be provided by the Developer under sub-clause 1.16.2.
- 1.1.6.23 "Financial Model"** means the audited and certified Financial Model contained in Schedule 5 and as adjusted in accordance with the PPP Contract Agreement.
- 1.1.6.24 "Financing Costs"** means financial advisory/arranger fee, underwriting/management fee, commitment fees, legal expenses and other technical/professional fees or expenses including all other costs and expenses incurred prior to the commencement of the PPP Contract Agreement.
- 1.1.6.25 "Financing Documents"** has the meaning set out in Sub-Clause 1.18.1(a) including any amendments or modifications made in accordance with the PPP Contract Agreement.
- 1.1.6.26 "Good Industry Practice"** means those practices, methods, techniques, standards, skills, diligence and prudence that are generally and reasonably expected of, and accepted internationally from, a reasonably skilled and experienced entity engaged in the same type of undertaking as envisaged under this PPP Contract Agreement, including good engineering practices in design, engineering, construction and project management.
- 1.1.6.27 "Government Agency"** means a government or a governmental, semi governmental, judicial, municipal, statutory or public entity or authority in Nigeria.

1.1.6.28 "Guarantee" means a guarantee in favour of the Lenders issued by the FCDA in respect of the indebtedness incurred by the Developer and to secure the financial obligations of the FCDA to the project pursuant to the Financing Documents.

1.1.6.29 "ICRC" means The Infrastructure Concession Regulatory Commission, the Federal Government of Nigeria (FGN) body established under ICRC Act of 2005 to provide the requisite regulatory framework for the implementation of PPP procurement by Government Agencies.

1.1.6.30 "Independent Engineer" has the meaning set out in Sub-Clause 1.22

1.1.6.31 "Interest Rate" means the percentage payable to the lender calculated at an annual rate on the principal amount outstanding on a loan as contained in the Financial Model.

1.1.6.32 "Instruction(s)" means written instruction(s) issued by the FCDA in accordance with Sub-Clause 3.4.

1.1.6.33 "Lenders" means any bank, institution or company or a syndicate of banks or club of banks providing loans to the Developer or to the FCDA for the construction and development of the Project.

1.1.6.34 "Lenders Agent" means the bank responsible for administering a project financing loan among the intermediaries who are members of the syndicate providing the loan for the Developer.

1.1.6.35 "Lenders' Direct Agreement" means the agreement to be entered into between the Developer, the FCDA, and the Lenders providing for the Step-in or substitution of the Developer by another Person subject to and in accordance with Sub-Clause 1.26 of this PPP Contract Agreement and such Lenders' Direct Agreement.

Legal Services
1.1.6.36 **"Marketing and Stakeholder Consultation"** has the meaning set out in Sub-Clause 1.25. Date.....

1.1.6.37 **"Material Adverse Effect"** means a material adverse effect on:

- (i) the ability of the Developer to observe and perform any of its obligations, or to enjoy or exercise any of its rights, under and in accordance with the provisions of this PPP Contract Agreement; and/or
- (ii) the legality, validity, binding nature or enforceability of this PPP Contract Agreement.

1.1.6.38 **"Net Income to FCDA"** means the amount accruing in the Escrow Account at the end of the PPP Duration after payments have been made for (a) the Project Cost (b) Financing Cost (c) Debt Servicing [Debt and Interests] (d) equity and returns as set out in the Financial Model and any adjustments in accordance with the PPP Contract Agreement.

1.1.6.39 **"Plot Allottee"** means each person that has been allotted a portion of land by the FCDA within the Katampe District and who has paid the FCDA a development levy for the land so allotted prior to the execution of this PPP Contract Agreement.

1.1.6.40 **"PPP"** means a Public-Private Partnership which is a risk-sharing relationship based on a shared aspiration between the public sector and one or more partners from the private and/or voluntary sectors to deliver a publicly agreed outcome and/or a public service.

1.1.6.41 **"PPP Consultant"** means the firm Murty International Limited so appointed by the FCDA pursuant to Sub-Clause 1.23.

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1.1.6.42 **"PPP Contract Duration"** means the period commencing on Commencement Date and ending on the date of completion of project financing recovery and any adjustments in accordance with the Financial Model and the PPP Contract Agreement.

1.1.6.43 **"Pricing Document"** means the document identified in the Schedule 7 - containing the breakdown and analysis of the Construction Cost component of the Total Development Cost.

1.1.6.44 **"Project Cost"** means (a) the Developer's Management, Design and technical/professional fees and costs; Insurance & Bonds including guarantees fees and costs; General Services & Contingencies including all other costs and expenses incurred prior to the commencement of the PPP Contract Agreement, lump sum & fixed price Construction Cost; Taxes (including value added tax ,company tax or the like); Fees and Permits costs ; and (b) FCDA / Public Authority Expenses and contingent liability provision as set out in Schedule 4 - Summary of Total Development Cost, Schedule 5 - Financial Model, Schedule 6 - Schedule of Payments and Schedule 7 - Project Cost and Pricing Document.

1.1.6.45 **"Project Finance"** means the financing of capital projects that depends for its security on the expected cash flow of the project itself rather than the guarantees from the borrower or third Parties.

1.1.6.46 **"Project Governance Committees"** means the committees set up under Sub-clause 1.24 to facilitate the implementation of the Project.

1.1.6.47 **"Refinancing Gain"** has the meaning set out in Sub-Clause 1.18.3.

26

1.1.6.48 "Return on Equity" (Equity Returns) means the percentage annual rate of return earned on the equity investment, the aggregate of which becomes due to the Developer at the end of the PPP Duration as contained in the Financial Model subject to payment of all statutory taxes by the Developer and any claims due to the FCDA in accordance with the PPP Contract Agreement.

1.1.6.49 "Shareholders Funding Agreement" means the agreement entered into between the shareholders providing for percentage share ownership of Deanshanger Project Limited, equity subscription amongst other corporate matters for the efficient management and implementation of the Development.

1.1.6.50 "Specifications and Standards" means the specifications and standards relating to the quality, capacity and other requirements for the Project which form part of FCDA requirements as listed in Schedule 3 and any modifications or additions thereto, in the PPP Contract Agreement as included in the design and engineering for the Project and expressly approved by FCDA.

1.1.6.51 "Standby Facility" has the meaning given to it in Sub-Clause 1.21-Revenue Shortfall.

1.1.6.52 "Step-In Rights" means the rights under the Lenders' Direct Agreement and Sub-Clause 1.26[Step-in] for the Lenders and FCDA to seek the substitution of the Developer for the residue of the Period of the PPP Agreement to ensure continuity of the project to achieve completion following a default by the Developer.

1.1.6.53 "Subsidy" means the difference between the actual chargeable premium and the amount payable by the allottees which shall be paid by FCDA into the Escrow

Account in accordance with the Financial Model
Schedule 5.

1.1.6.54 "Term Sheet" means the document that outlines the Summary of Indicative Terms and Conditions for the Financing documents that formed the basis of the project financing negotiations and the Financial Model.

1.2 Interpretation

In the PPP Contract Agreement, except where the context requires otherwise:

- (a) words indicating one gender include all genders;
- (b) words indicating the singular also include the plural and words plural also include the singular;
- (c) provisions including the word "agree", "agreed" or "agreement" require agreement to be recorded in writing, and
- (d) "written" or "in writing" means hand-written, type-written, print made, and resulting in a permanent record.

The marginal words and other headings shall not be taken into consideration in the interpretation of these Conditions.

1.3 Communications

Wherever this PPP Contract Agreement provides for the giving or issuing of approvals, certificates, consent, determinations, notices and requests, these communications shall be:

- (a) in writing and delivered by hand (against receipt), sent by mail or recognized national courier, or transmitted by facsimile or e-mail
- (b) delivered, sent or transmitted to the address for the recipient's communications as stated below:
 - (i) If to the FCDA to:
The Executive Secretary of the FCDA
Federal Capital Development Authority
Headquarters,

No. 8 Ayangba Street, Area 11, Garki District,
P M B 757, Garki,
Abuja.

- (ii) If to the Developer to:
The Managing Director / Chief Executive Officer
Deanshanger Project Limited,
No.6 River Kubanni Crescent,
Maitama District, Abuja.

In the event:

- (a) the recipient gives notice of another address, communications shall thereafter be delivered accordingly; and
- (b) the recipient has not stated otherwise when requesting an approval or consent, it may be sent to the address from which the request was issued

Approvals, certificates, consents and determinations shall not be unreasonably withheld or delayed.

A copy of all important and critical notices and communications shall also be forwarded to the Lenders.

1.4 Law and Language

The PPP Contract Agreement shall be governed by the laws of the Federal Republic of Nigeria.

The language for communications shall be in English.

1.5 Contract Documents

The following documents forming the PPP Contract Agreement are to be taken as mutually explanatory of one another:

- (a) The Contract Agreement,
- (b) The Letter of Award of PPP Contract
- (c) The Developer's Letter of Acceptance
- (d) The Conditions of Conditions, and
- (e) Schedule

The Letter of Award of PPP Contract and The Developer's Letter of Acceptance referred to in this clause are attached under Appendix A following page 7 of the PPP Contract Agreement.

1.6

Entry into Force of the PPP Contract Agreement

The Contract shall come into full force and effect when the Financial Close is achieved as set out in Sub-Clause 1.17 [Conditions Precedent to Commencement]. The costs of stamp duties and similar charges (if any) imposed by law in connection with entry into the PPP Contract Agreement shall be borne by the Developer.

1.7

Assignment

Neither Party shall assign the whole or any part of the Contract or any benefit interest in or under the Contract. However, either Party:

- (a) may assign the whole or any part with the prior agreement of the other Party, at the sole discretion of such other Party, and
- (b) may, as security in favour of a bank or financial institution, assign its right to any money due, or to become due, under the Contract.

1.8

Care and Supply of Documents

Each of the Developer's Documents shall be in the custody and care of the Developer, unless and until taken over by the FCDA. Unless otherwise stated in the PPP Contract Agreement, the Developer shall supply to the FCDA six (6) hard and electronic copies of each of the Developer's Documents.

The Developer shall keep, on the Site, a copy of the PPP Contract Agreement, publications named in the FCDA's Requirements, the Developer's Documents, and Variations and other communications given under the PPP Contract Agreement. The FCDA's Personnel shall have the right of access to all these documents at all reasonable times.

If a Party becomes aware of an error or defect of a technical nature in a document which was prepared for use in executing the Works, the Party shall promptly give notice to the other Party of such error or defect.

Confidentiality

The Developer shall treat the details of the ~~PPP Contract Agreement~~ as private and confidential, except to the extent necessary to carry out the Developer's obligations under the contract or to comply with applicable Laws. The Developer shall not publish or disclose any particulars of the Works without the previous agreement of FCDA. Except that, the Developer shall be permitted to disclose any publicly available information, or information otherwise required to establish its qualifications to compete for other projects.

1.10**FCDA's Use of Developer's Documents**

As between the Parties, the Developer shall retain the copyright and other intellectual property rights in the Developer's Documents and other design documents made by (or on behalf of) the Developer.

The Developer shall be deemed (by signing the PPP Contract Agreement) to give to the FCDA a non-terminable transferable non-exclusive royalty-free licence to copy, use and communicate the Developer's Documents, including making and using modifications of them. This licence shall:

- (a) apply throughout the actual or intended working life (whichever is longer) of the relevant parts of the Works,
- (b) entitle any person in proper possession of the relevant part of the Works to copy, use and communicate the Developer's Documents for the purposes of completing, operating, maintaining, altering, adjusting, repairing and demolishing the Works, and
- (c) in the case of Developer's Documents which are in the form of computer programs and other software, permit their use on any computer on the Site and other places as envisaged by the PPP Contract Agreement, including replacements of any computers supplied by the Developer.

1.11

Developer's Use of FCDA's Documents

As between the Parties, the FCDA shall retain the copyright and other intellectual property rights in the FCDA's Requirements and other documents made by (or on behalf of) the FCDA. The Developer may, at his cost, copy, use, and obtain communication of these documents for the purposes of the Contract.

They shall not, without the FCDA's consent, be copied, used or communicated to a third party by the Developer, except as necessary for the purposes of the Contract.

1.12

Confidential Details

The Developer shall disclose all such confidential and other information which the FCDA may reasonably require in order to verify the Developer's compliance with the Contract.

1.13

Compliance with Laws

The Developer shall, in performing the Contract, comply with applicable Laws. Unless otherwise stated in the PPP Contract Agreement:

- (a) the FCDA shall have obtained (or shall obtain) the planning, zoning or similar permission for the Permanent Works, and any other permissions described in the FCDA's Requirements as having been (or being) obtained by the FCDA; and the FCDA shall indemnify and hold the Developer harmless against and from the consequences of any failure to do so; and
- (b) the Developer shall give all notices, pay all taxes, duties and fees, and obtain all permits, licences and approvals, as required by the Laws in relation to the design, execution and completion of the Works and the remedying of any defects; and the Developer shall indemnify and hold the FCDA harmless against and from the consequences of any failure to do so.

1.14

Joint and Several Liability

If the Developer constitutes (under applicable Laws) a joint venture, consortium or other unincorporated grouping of two or more persons:

- (a) these persons shall be deemed to be jointly and severally liable to the FCDA for the performance of the Contract;
- (b) these persons shall notify the FCDA of their leader who shall have authority to bind the Developer and each of these persons; and
- (c) the Developer shall not alter its composition or legal status without the prior consent of the FCDA.

1.15 Representations and Warranties

1.15.1 Representations & Warranties of the Developer

The Developer represents and warrants to the FCDA that:

- (a) It is duly organized, validly existing and in good standing under the laws and regulations on the incorporation of companies and all other applicable laws of the Federal Republic of Nigeria;
- (b) It is a special purpose company set up as Developers for the purpose of implementing the Project in accordance with the terms of the PPP Contract Agreement.
- (c) It has the technical expertise comprising professionals registrable or registered with the appropriate engineering and built environment registration councils such as Council for the Regulation of Engineering in Nigeria(COREN),Architects Registration Council of Nigeria (ARCON),Quantity Surveyors Registration Board of Nigeria (QSRBN) etc and financial standing and capacity to undertake the Project;
- (d) It has full power to execute, deliver and perform its obligations under this PPP Contract Agreement and to carry out the transactions contemplated hereby;
- (e) It has undertaken all the necessary corporate and requisite actions under the Applicable Laws to authorize the execution, delivery and performance of this PPP Contract Agreement;
- (f) This PPP Contract Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;

- (g) it is subject to the civil and commercial laws of Nigeria with respect to this PPP Contract Agreement and it hereby expressly and irrevocably waives any immunity in any jurisdiction in respect thereof;
- (h) It has provided a Financial Close Security to enter into this PPP Contract Agreement pursuant to this acceptance. The Financial Close Security shall remain in full force and effect until Performance Security has been submitted as Condition Precedent to commencing of the Contract.
- (i) There are no actions, suits, proceedings, or investigations pending or, to the Developer's knowledge, threatened, against it at law or equity before any court or before any other judicial, quasi judicial or other authority, the outcome of which may result in the breach of or result into the termination of the employment of the Developer under this PPP Contract Agreement or that individually or in aggregate may result in any Material Adverse Effect;
- (j) It has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Agency that may result in any Material Adverse Effect;
- (k) It has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities that individually or in the aggregate have or may have a Material Adverse Effect;
- (l) It has not done and has no knowledge of anything which may result in any Material Adverse Effect on, or impairment of its financial condition or its ability to perform its obligations and duties under the PPP Contract Agreement;
- (m) The rights and interests of the Developer in the Project shall pass to and vest in the FCDA at the end of the PPP Contract Agreement or on the Termination Date, free from all liens, claims and Encumbrances without any further act or deed on the part of the Developer or the FCDA.
- (n) None of the Project Assets, including materials, supplies, machinery and equipment shall be acquired subject to any agreement under which a security interest or other lien or

encumbrance is retained by any person save and except as expressly provided in this PPP Contract Agreement.

- (o) To the best of its knowledge, no sums, in cash or kind, have been paid by or on behalf of the Developer to any representative, agent, officer or employee of the FGN or any Government Agency by way of fees, commission or otherwise for securing or entering into this PPP Contract Agreement or for influencing or attempting to influence any officer or employee of the FGN, the FCDA or any Government Agency in connection therewith.

1.15.2 Representations & Warranties of the FCDA

The FCDA represents and warrants to the Developer that:

- (a) FCDA is duly organised and validly existing under laws of the Federal Republic of Nigeria;
- (b) It has full power and authority to execute, deliver and perform its obligations under this PPP Contract Agreement and to carry out the transactions contemplated hereby;
- (c) It has taken all necessary actions governmental and otherwise to authorize the execution, delivery and performance of this PPP Contract Agreement;
- (d) The Project site together with the necessary right of way have been acquired through the due process of law and is vested in the Government, and that it has full powers to hold, dispose of and deal with it in the manner provided in this PPP Contract Agreement;
- (e) The Government shall be responsible for the payment of any compensation or appeasement whatsoever to any person from whom the Project Site or any part thereof may have been acquired;
- (f) The Developer shall subject to complying with the terms and conditions of this PPP Contract Agreement, remain in peaceful possession and enjoyment of the Project throughout the period of this PPP Contract Agreement and shall be free from any interference or obstruction from any person claiming any right, title or interest in or over the Project Site or any part thereof;

- (g) In the event of any legal action by any person against the Developer relating to or in connection with the development of the Project, the FCDA, if called upon by the Developer shall defend such action and any proceedings arising there from and shall indemnify the Developer against any direct or consequential loss or damage which the Developer may suffer as a result of such action;
- (h) It shall ensure performance of all its obligations under all applicable laws both existing and future for the successful implementation of the Project.
- (i) It is subject to civil and commercial laws of Nigeria with respect to this PPP Contract Agreement and it hereby expressly and irrevocably waives any sovereign immunity in any jurisdiction in regard to matters set forth in this Agreement.

1.16 Financial Close Security

1.16.1 Provision of Financial Close Security

Prior to executing this PPP Contract Agreement, the Developer shall provide the Financial Close Security to the FCDA.

1.16.2 Form of Financial Close Security

The Financial Close Security shall:

- (a) be in amount of ₦ 125,000,000.00;
- (b) be issued by a Bank registered in Nigeria by the Central Bank of Nigeria (CBN) and/or any Financial Institution accepted and approved by the FCDA;
- (c) have an expiry date of a minimum of 90 days from the date of signing the PPP Contract Agreement and shall be renewed for a further 90 days if Financial Close is not achieved;
- (d) be in the form of an unconditional on-demand payment guarantee; and

- (e) be on terms and conditions substantially the same as those set out in Schedule 8.

1.16.3 Return and Forfeiture of Financial Close Security

- (a) The Financial Close Security shall be returned to the Developer on:
- (i) Financial Close and within 14 days after the Performance security has been provided; or
 - (ii) if this Agreement is terminated by the Developer under Sub-Clause 1.17.9 within 14 days after such termination.
- (b) If this Agreement is terminated by the FCDA under clause 15.2(a) of Clause 15[Termination by FCDA] of these Conditions, then the Financial Close Security will be forfeited to the FCDA absolutely, and the Developer shall make no Claim whatsoever against the FCDA, in respect of the Financial Close Security.

1.17 Conditions Precedent to Commencement

1.17.1 Notwithstanding the date of signing, this PPP Contract Agreement shall be deemed to have commenced on the date when the Financial Close is achieved.

1.17.2 Financial Close shall be achieved when all Conditions Precedent outlined in sub-clause 1.17.3 hereunder have been fully met and fulfilled.

1.17.3 Subject to Sub-Clauses 1.17.1, 1.17.2 & 1.18[Developer's Financing Arrangements], this PPP Contract Agreement shall only commence upon the fulfilment of the under-listed conditions:

- (a) The developer shall have submitted certified true copies of the Financing documents containing the terms and conditions on which the Lenders shall provide funds to the Developer for financing the Project after the FCDA has undertaken the necessary due diligence and agreed the terms and conditions of such Financing documents.

is opened by both Parties in accordance with sub-clause 1.19[Escrow Account].

- (c) The Developer's Equity contribution of 5% of the Project costs is available and duly set aside in the Escrow Account and shall be formally advised by Lenders to FCDA.
- (d) The Financial Model has been audited and certified by all Parties and Lenders.
- (e) Performance Security in full has been obtained and provided to FCDA by the Developer in accordance with Clause 4.2[Performance Security] of these Conditions.
- (f) All Insurances shall have been effected in accordance with the relevant Clauses and Sub-Clauses.
- (g) Certified true copies of the Developer's Sub-Contracts (including the EPC) have been delivered to FCDA by the Developer.
- (h) Submission by the Developer of the Programme of Works in accordance with Sub-Clause 8.3[Programme] of these Conditions.
- (i) The Shareholders Funding Agreement has been delivered to FCDA by the Developer.
- (j) The Developer shall have obtained all Applicable Permits and Licenses in accordance with this PPP Contract Agreement.
- (k) The FCDA shall have handed over to the Developer the Project Site free from any encumbrance, together with the necessary rights-of-way and easements for the purposes of implementing the Project in accordance with this PPP Contract Agreement.
- (l) All of the representations and warranties of the Developer set forth in Sub-Clause 1.15.1 are true and correct as at date of the Financial Close.
- (m) FCDA shall have received from the Developer copies (certified as true copies by an authorised officer of the Developer) of the company registration documents of the

Developer verifiable from the Corporate Affairs Commission.

- (n) FCDA shall have received copies (certified as true copies by a Director of the Developer) of all resolutions adopted by the Board of Directors of the Developer authorising the execution, delivery and performance by the Developer of this PPP Contract Agreement and each of the Project Agreements.
- (o) FCDA shall have gazetted the details and procedure for the payment of development levies by Katampe District Plot Allottees
- (p) FCDA shall have provided the appropriate guarantee required by the Developer and Lenders.
- (q) FCDA shall have executed the Lender's Direct Agreement.
- (r) FCDA shall have executed the Escrow Account Agreement.

1.17.4

The Conditions Precedent shall be achieved not more than ninety (90) days after the signing of this PPP Contract Agreement. If the Financial Close is not achieved ninety (90) days after the signing of this PPP Contract Agreement both Parties hereby agree to extend the Financial Close period by a further ninety (90) days.

Notwithstanding anything to the contrary contained in this PPP Contract Agreement, if the Financial Close shall not occur within one hundred and eighty (180) days from the date of execution of this agreement all rights, privileges, claims and entitlements, if any, of the Developer under or arising out of this PPP Contract Agreement shall be deemed to have been waived by and to have ceased with the concurrence of the Developer and this PPP Contract Agreement shall be deemed to have terminated by mutual consent of the Parties.

1.17.5

Any of the conditions precedent set forth in Sub-Clause 1.17.3, save and except condition of Sub-clause 1.17.3 (a) to (e) inclusive, (g), (i) and (k) to (r) inclusive hereof, may be waived fully or partially by FCDA at in its sole discretion.

1.17.6

Any of the conditions precedent set forth in Sub-Clause 1.17.3, save and except condition of Sub-clause 1.17.3 (a) to (n) inclusive,

(p) to (r) inclusive thereof, may be waived fully or partially by the Developer at its sole discretion.

1.17.7 Any such waiver shall only take effect upon written notification by the party waiving the condition.

1.17.8 Obligation to Satisfy the Conditions Precedent.

The Developer and FCDA shall respectively use its best endeavours to fully satisfy the Conditions Precedent set out in Sub-Clause 1.17.3. Each Party shall bear its respective cost and expense of satisfying such Conditions Precedent.

1.17.9 If the Conditions Precedent set forth in Sub-Clause 1.17.3 have not been satisfied on or before the Financial Close in accordance with Sub-Clauses 1.17.4 and 1.18[Developer's Financing Arrangements], and the FCDA or the Developer have not waived, fully or partially, such conditions under Sub-Clause 1.17.3, the FCDA may, notwithstanding anything to the contrary contained in this PPP Contract Agreement, terminate this Contract in accordance with provisions of Sub-Clause 15.2(a) [Termination by FCDA] of these Conditions without being liable in any manner whatsoever to the Developer who shall forfeit the Financial Close Security and/or the Performance Security provided that where FCDA does not fulfil its obligations under Sub-Clause 1.17.7 and terminates this Agreement under this Sub-Clause 1.17.9 it shall return in full Financial Close Security or the Performance Security, as the case may be.

1.18 Developer's Financial Arrangements

1.18.1 Financing Documents

- (a) Not more than ninety (90) days after the signing of this PPP Contract Agreement, the Developer shall provide to the FCDA copies of all the Financing documents containing the terms and conditions on which the Lenders shall provide funds to the Developer for financing the Project.
- (b) The Developer shall communicate in writing to the FCDA not later than ninety (90) days from the date of signing this PPP Contract Agreement that Financial Close has been attained.

- (c) The Developer shall present details that fairly represent the nature and particulars of the funding to the FCDA to facilitate the completion of due diligence by the FCDA.
- (d) The Developer shall, at its own costs, expenses and risk, make such financing arrangement as would be necessary to finance the Project and to meet its obligations under this PPP Contract Agreement in a timely manner.
- (e) Notwithstanding anything to the contrary contained in this Agreement, if the Financial Close shall not occur within one hundred and eighty (180) days from the date of execution of this agreement all rights, privileges, claims and entitlements, if any, of the Developer under or arising out of this PPP Contract Agreement shall be deemed to have been waived by and to have ceased with the concurrence of the Developer and this PPP Contract Agreement shall be deemed to have terminated by mutual consent of the Parties.

1.18.2 Amendments to Financing Documents

The Parties hereby agree that no amendments shall be made to the financing documents without the express consent of the FCDA.

1.18.3 Refinancing Gain

If the Developer refinances or causes the refinancing of the Project to a lower interest rate at his instance or at the request of the FCDA so as to change the debt and debt servicing profile for the project from that which has been incorporated into the Financial Model, it must:

- (a) promptly provide the FCDA with full details of any proposed Refinancing;
- (b) obtain the prior written consent of the FCDA to the amended or replacement financing arrangements and Finance Agreements; and
- (c) in conjunction with the PPP Consultant, adjust the Financial Model in respect of the refinancing or amended finance terms to identify the reductions in the debt

servicing costs, but not in the principal amount of the Debt provided for the project.

The amounts saved as a result of the refinancing gain shall be distributed by 40% credited to the Net Income to FCDA and 60% credited to the Developers Equity returns and the Financial Model adjusted accordingly.

1.19

Escrow Account

- (a) The Parties shall by the date of the Financial Close open and establish the Escrow Account with a Bank (the "Escrow Bank") and all payments from Development Levies that constitute part of the Total Development Cost shall be credited / deposited into such Escrow Account from time to time.
- (b) The mode of operations of the Escrow Account as it relates to deposit of development levy, disbursement to Developer and all other activities on the account are to be agreed by the Parties and detailed in an Escrow Account Agreement.
- (c) The Escrow Account shall be an interest bearing account with a bank registered by the Central Bank of Nigeria. The credit balance of the Escrow Account shall, unless otherwise agreed by the Parties, be on best interest rates at reasonable tenors and be on call at 24 hours notice.
- (d) The credit balance of the Escrow Account at the end of the PPP Contract Duration of 60 months, after the deductions of the amount constituting the Total Development Cost as adjusted in accordance with the PPP Contract Agreement shall vest in the FCDA.
- (e) Closure of Escrow Account

The Escrow Account shall be closed when the credit balance representing the Net Income is paid to the FCDA at the end of the PPP Contract Duration.

execution of this PPP Contract Agreement shall be paid into an Escrow Account.

- (c) Development Levy Subsidy shall be paid by FCDA into the Escrow Account in accordance with the Financial Model – Schedule 5
- (d) The FCDA shall provide the administrative machinery for the payment of development levy by Plot Allotees and the Subsidy into the Escrow Account.
- (e) The FCDA may arrange for supportive funding through Federal Government of Nigeria (FGN) Bonds from the Debt Management Office (DMO) to augment any revenue and/or payment shortfall that may arise from payment of development levies.

1.21

Revenue Shortfall

1.21.1

Total Revenue is the total amount to be collected from development levy comprising the previous Development Levy increase in Development Levy and Subsidy.

If the realisable proceeds from the collection of Development Levy in any quarter during the PPP Contract Period shall fall below the Total Revenue Level, as from the nineteenth (19th) month of the Project, the Developer shall arrange a standby facility to augment any revenue and/or payment shortfall that may arise.

Prior to the Drawdown of the Standby Facility, it shall seek to utilise the FCDA supportive funding through the FGN Bonds from the Debt Management Office (DMO) to meet any shortfall in the collection of the development levy and payment of Subsidy. Such

supportive funding shall have been paid into the Escrow Account at least 90 days before the next quarterly payment due date.

The FCDA shall bear the cost (Interest, fees and any other charges accruable) from this funding. The cost shall be determined by the PPP Consultant on the basis of adjustments to the Financial Model (Schedule 5), the Schedule of Payments (Schedule 6) and Financing Documents.

1.22

Independent Engineer

1.22.1

Appointment

- (a) Within [60] days from the date of signing the PPP Contract Agreement, FCDA shall invite proposals from consulting engineering firms by competitive open bidding. 5 (five) consultants shall be selected by FCDA for the appointment of the Independent Engineer and communicated immediately to the Developer who may be present during the evaluation. The Developer shall submit 3 (three) names from the list of Consultants to FCDA.
- (b) Within [30] days from the date of evaluation of the proposals and receipt of the 3 (three) names proposed by the Developer, FCDA shall appoint a consulting engineering firm from the proposed names and communicate same to the Developer.
- (c) The scope of services to be carried out by the Independent Engineer and the terms and conditions of engagement shall be as set out in Schedule 10.

1.22.2

Termination and Fresh Appointment

- (a) FCDA may terminate the appointment of the Independent Engineer at any time subject to the appointment of a replacement in accordance with this Sub-Clause 1.22.
- (b) If the Developer has reason to believe that the Independent Engineer is not discharging its duties in a fair, efficient and diligent manner, it may make a written representation to FCDA, stating its reasons in detail, seeking termination of the appointment of the Independent Engineer. Upon receipt of such representation, FCDA shall hold a tripartite meeting with

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the Developer and Independent Engineer to consider such representations in taking a decision whether or not to terminate the appointment of the Independent Engineer. In case the appointment of an Independent Engineer is terminated under this Sub-Clause, it shall be replaced by another in accordance with this Sub-Clause 1.22.1.

1.23 PPP Consultant

For the purposes of the implementation of the project, the FCDA has retained the services of Murty International Limited as PPP Consultant and advisers for the PPP Contract Agreement management to undertake and perform the duties, work, functions and activities set forth in Schedule 11.

1.24 Project Governance Committees

1.24.1 Project Monitoring Committee

The FCDA and the Developer shall, pursuant to the PPP Contract Agreement, constitute a Project Monitoring Committee comprising three representatives each of the FCDA and the Developer, a representative of the Lender, the Independent Engineer, PPP Consultant, and representatives of such other Stakeholders as may be nominated by the FCDA. The Project Monitoring Committee shall carry out such functions and responsibilities as set out in a Schedule 12.

The recommendations of the Project Monitoring Committee shall not affect the rights or obligations of either the FCDA or the Developer under any of the Project Agreements.

1.24.2 Project Executive Committee

The FCDA shall, pursuant to the PPP Contract Agreement constitute a Project Executive Committee comprising at least two representatives each of FCDA and the Developer.

The Independent Engineer and the PPP Consultant shall serve as advisers and present necessary reports to the committee.

The Executive Secretary of FCDA or his representative shall be the Chairman of the Committee.

The Project Executive Committee shall carry out such functions and responsibilities as set out in a Schedule 12.

1.25 Marketing and Stakeholder Consultation of the Project**1.25.1 Marketing and Stakeholder Consultation**

The Developer shall collaborate, liaise and consult with the FCDA and ascertain its requirements regarding marketing through statutory requirements and Stakeholder Consultation. The requirements shall include;

- (a) developing an appropriate Communications Strategy to promote the Katampe District development.
- (b) developing appropriate principles and guidelines to assist in Stakeholder Consultation and Marketing of the development.

1.25.2 Approvals of Marketing Activities

All Marketing and Promotion activities of the Project shall receive the approval of FCDA in accordance with the marketing budget as provided for in the Financial Model.

1.26 Step-In

The FCDA and the Developer hereby expressly and irrevocably agree as follows:

1.26.1 In the event the FCDA terminates the Contract in accordance with Sub-Clause 15.2 [Termination by FCDA] of these Conditions as a result of the Developer's default under any of the provisions of Sub-Clause 15.2 [Termination by FCDA] of these Conditions, the FCDA and the Lenders in accordance with the Lenders' Direct Agreement shall have the right to seek the Substitution of the Developer by the Substituted Person for the residue of the Period of the PPP Contract Agreement in accordance with the provisions of this Sub-Clause. The exercise of this right shall be without prejudice to any other rights or remedies available to the Lenders under the Financing Documents or any law, without them being required to exercise such rights or remedies first.

1.26.2 If the Developer fails to remedy a default within the 60 day Period specified as in Sub-Clause 15.1[Notice to Correct] of these

Conditions, the FCDA may give notice of a further 30 days to the Developer on the expiry of the period of Notice to Correct. Thereafter, the FCDA may terminate the PPP Contract and expel the Developer from Site. The FCDA shall immediately inform the Lenders to initiate the process for the substitution of the Developer by the Substituted Person for the residue of the Period of the PPP Contract Agreement.

1.26.3 The FCDA in conjunction with the Lenders or their Representatives shall establish the Valuation and Project Financing implications in accordance with the terms of the PPP Contract Agreement.

1.26.4 The FCDA in conjunction with the Lenders or their Representatives shall apply the following criteria in the selection of a Substituted Person:

- (a) the Substituted Person shall possess the experience, technical capacity and managerial ability to perform and discharge all the residual duties, obligations and liabilities of the Developer under the PPP Contract Agreement,
- (b) the Substituted Person shall have the capability and shall unconditionally consent to assume responsibility for the completion of the Project.

1.26.5 Procedures for Substitution

The following procedures shall be followed for the substitution of the Developer by the substituted person:

- (a) Not later than 60 days from the delivery of the substitution notice, the FCDA and the Lenders shall invite by public competitive bidding suitably qualified persons for selection as a Substituted person in accordance with ICRC guidelines and procedures, and Transaction documentation prepared for the purpose.
- (b) The FCDA and the Lenders after appointing a substituted person shall submit to the ICRC a proposal for the approval of such Substituted person by the ICRC. The proposal shall contain particulars about the substituted persons, the

terms of the substitution; particulars of the ^{Sign}Debt Due and ^{Date}such data information as would be necessary and relevant for the ICRC to decide whether or not to accept the Substituted Person selected by the FCDA and Lenders.

- (c) The proposal shall be accompanied by an unconditional undertaking by the Substituted Person selected to the effect that:
- (i) It shall upon acceptance by the FCDA of the Proposal, observe, comply with, perform and fulfil throughout the residue of the Period of the PPP Contract Agreement, all the duties, functions, obligations and liabilities of the Developer as if the Substituted Person had been the Developer under this Agreement.
 - (ii) It shall execute such instruments or documents with the FCDA and the Lenders as may be necessary or required to give effect to the substitution of the Developer by the substituted person.

1.26.6 The FCDA shall communicate to the lenders its acceptance or otherwise of the substituted person within 30 days from the date of receipt of any additional information from the Lenders, clarification or any data or particulars contained in the Proposal whichever is later.

1.26.7 The substitution of the Developer by the Substituted Person shall be deemed to be complete as soon as the Substituted Person executes all necessary documents and instruments with or in favour of the FCDA and the Lenders, so as to give full effect to the terms and conditions subject to which the Substituted Person has been accepted by the Lenders and to the transfer by the FCDA of the Project Site and the Project Assets to the Substituted Person.

1.26.8 As soon as the substitution becomes effective, all the rights of the Developer under this PPP Contract Agreement shall cease to exist without prejudice to any pending or subsisting claims of the Developer against the FCDA or any claim of the FCDA against the Developer.

1.26.9

The decision of the FCDA and the Lenders in the selection of the Substituted Person shall be final and binding on the Developer and shall be deemed to have been made with the concurrence of the Developer. The Developer hereby waives any rights to object to or to challenge such selection of the Substituted Person or any ground whatsoever.

1.27

PPP Contract Monitoring for Compliance by the ICRC

The ICRC in compliance with its Establishment Act of 2005 shall:

- (a) take custody of the PPP Contract Agreement and monitor compliance with the terms and conditions of the agreement.
- (b) ensure efficient execution of the Contract entered into by a Government Agency.

The Developer shall permit and give free access to the ICRC at any time during the day to enter upon and inspect the Project Site and Contract for the construction of the infrastructure project in compliance with its statutory functions.

1.28

Inspections by appropriate Federal Government Agencies

The Developer shall permit and give free access to appropriate Federal Government Agencies approved by the FCDA and the ICRC at any time during the day to enter upon and inspect the project site and PPP Contract Agreement for the construction of the infrastructure project in compliance with the ICRC Act of 2005.

1.29

Severability

In the event that any one or more of the provisions of this PPP Contract Agreement, shall for any reason be held to be invalid or unenforceable, the remaining provisions shall be unimpaired, and the invalid or unenforceable provision shall be replaced by a provision which, being valid and enforceable, come closest to the intention of the Parties underlying the invalid or unenforceable provision.

Schedules

The PPP Contract Agreement constitutes and shall be read in conjunction with the Schedules attached hereto. The Schedules to the PPP Contract Agreement are:

- (a) Schedule 1: Project Site
- (b) Schedule 2: Scope of Works
- (c) Schedule 3: FCDA's Requirements
- (d) Schedule 4: Summary of Total Development Cost
- (e) Schedule 5: Financial Model
- (f) Schedule 6: Schedule of Payments
- (g) Schedule 7: Project Cost and Pricing Document
- (h) Schedule 8: Form of Performance Security
- (i) Schedule 9: Form of Retention Money Guarantee
- (j) Schedule 10: Duties, Responsibilities and Functions of Project Independent Engineer.
- (k) Schedule 11: Duties, Responsibilities and Functions of PPP Consultant.
- (l) Schedule 12: Functions and Responsibilities of the Project Governance Committees.
- (m) Schedule 13: General Conditions of Dispute Adjudication Agreement.
- (n) Schedule 14: Lenders Direct Agreement Requirements
- (o) Schedule 15: Escrow Account Agreement Requirement
- (p) Schedule 16: Term Sheet
- (q) Schedule 17: Conditions Precedent – comprising list of Documents and Agreements to be or executed provided as part of the PPP Contract Agreement.

Clause 2 The FCDA

2.1 Right of Access to the Site

The FCDA shall give the Developer right of access to and possession of all parts of the project Site on an "as is" basis together with the necessary rights of way and easements for the purpose of implementing the Project in accordance with this PPP Contract Agreement within (90) days from the date of this agreement free from any Encumbrance. The right and possession may not be exclusive to the Developer. If, under the PPP Contract Agreement, the FCDA is required to give (to the Developer) possession of any foundation, structure, plant or means of access, the FCDA shall do so in the time and manner stated in the FCDA's Requirements. However, the FCDA may withhold any such right or possession until the Financial Close has been achieved.

The FCDA confirms that, upon the Project Site being handed over pursuant to Sub-Clause 1.17.3(k) of Sub-Clause 1.17[Conditions Precedent to Commencement], the Developer shall have the right to enter upon, occupy and use the Project Site and to make at its cost and expense such investigation, development and improvements on the Project Site as may be necessary or appropriate to implement the Project, subject to and in accordance with the provisions of this PPP Contract Agreement.

The Developer shall not use the Project Site for any purpose other than for the purposes of implementing the Project in accordance with this PPP Contract Agreement.

Any existing utilities on, under or above the Site are kept in continuous satisfactory use, if necessary by the use of suitable temporary or permanent diversions by the Developer in Consultation with the FCDA.

Any existing roads or right of ways are kept in continuous satisfactory condition, if necessary, by the use of suitable temporary or permanent diversions by the Developer in

temporary roads, the FCDA shall assist the Developer in acquiring the right of way;

The Developer shall bear all costs and charges for special and temporary rights of way required by it in connection with access to the Site. The Developer shall obtain at its cost such facilities on or outside the Site as may be required by it for the purposes of the Project development and the performance of its obligations under this PPP Contract Agreement.

The information on the Project Site set out in Schedule 1 hereto is provided by the FCDA in good faith and with due regard to the matters for which such information is required by the Developer.

The FCDA undertakes to provide to the Developer any such further information relating to the Project Site as may be required to secure project financing.

2.2

Permits, Licences or Approvals

The FCDA shall (where he is in a position to do so) provide reasonable assistance to the Developer at the request of the Developer:

- (a) by obtaining copies of the Laws of Nigeria which are relevant to the PPP Contract Agreement but are not readily available, and
- (b) for the Developer's applications for any permits, licences or approvals required by the Laws of the Country:
 - (i) which the Developer is required to obtain under Sub-Clause 1.13 [Compliance with Laws],
 - (ii) for the delivery of Goods, including clearance through customs, and
 - (iii) for the export of Developer's Equipment when it is removed from the Site.

2.3

FCDA's Personnel

The FCDA shall be responsible for ensuring that the FCDA's Personnel and the FCDA's other Developers on the Site:

- (a) co-operate with the Developer's efforts under Sub-Clause 4.6 [Co-operation], and
- (b) take actions similar to those which the Developer is required to take under sub-paragraphs (a), (b) and (c) of Sub-Clause 4.8 [Safety Procedures] and under Sub-Clause 4.18 [Protection of the Environment].

2.4

FCDA's Financial Arrangements

The FCDA shall submit, within 28 days after receiving any request from the Developer, reasonable evidence that financial arrangements and administrative machinery for the payment of development levy by Plot Allotees and the Subsidy into the Escrow Account have been made and are being maintained which will enable the Developer to be paid from the Escrow Account, the Total Development Cost in accordance with Clause 14 [Total Development Cost and Payment]. If the FCDA intends to make any material change to its financial arrangements and Administrative Machinery, the FCDA shall give notice to the Developer with detailed particulars, subject to the acceptance of the Developer and Lenders.

The FCDA's financial arrangements shall include the following:

- (a) FCDA shall gazette the details and procedure for the payment of Development Levy by Plot allottees and Subsidy into the Escrow Account in accordance with Sub-Clause 1.19[Escrow Account] and Sub-Clause 1.20 [Development Levy].
- (b) FCDA shall provide the appropriate guarantee in the form and manner acceptable to the Developer and Lenders.

(c) FCDA shall execute the Lender's Direct Agreement.

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Date

(d) FCDA shall execute the Escrow Account Agreement pursuant to Clause 1.19.

2.5

FCDA's Claims

If the FCDA considers himself to be entitled to any payment under any Clause of these Conditions or otherwise in connection with the PPP Contract Agreement, and/or to any extension of the Defects Notification Period, he shall give notice and particulars to the Developer and Independent Engineer.

The notice shall be given as soon as practicable after the FCDA become aware of the event or circumstances giving rise to the claim. A notice relating to any extension of the Defects Notification Period shall be given before the expiry of such period.


The particulars shall specify the Clause or other basis of the claim, and shall include substantiation of the amount and/or extension to which the FCDA considers himself to be entitled in connection with the PPP Contract Agreement. The Independent Engineer shall then proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine (i) the amount (if any) which the FCDA is entitled to be paid by the Developer, and/or (ii) the extension (if any) of the Defects Notification Period in accordance with Sub-Clause 11.3 [Extension of Defects Notification Period].

This amount may be included as a deduction in the Total Project Cost and Payment Certificates. The FCDA shall only be entitled to set off against or make any deduction from an amount due to the Developer, or to otherwise claim against the Developer, in accordance with this Sub-Clause or with sub-paragraph (a) and/or (b) of Sub-Clause 14.5 [Interim Payments].

Clause 3

The FCDA's Administration

Legal Counsel
Sig. _____
Date _____



3.1

The FCDA's Representative

The FCDA shall appoint an FCDA's Representative to act on his behalf under the PPP Contract Agreement. In this event, the FCDA shall prior to commencement give notice to the Developer of the name, address, duties and authority of the FCDA's Representative.

The FCDA's Representative shall carry out the duties assigned to him, and shall exercise the authority delegated to him, by the FCDA. Unless and until the FCDA notifies the Developer otherwise, the FCDA's Representative shall be deemed to have the full authority of the FCDA under the PPP Contract Agreement, except in respect of Clause 15 [Termination by FCDA].

If the FCDA wishes to replace any person appointed as FCDA's Representative, the FCDA shall give the Developer not less than 14 days' notice of the replacement's name, address, duties and authority, and of the date of appointment.

3.2

Other FCDA's Personnel

The FCDA or the FCDA's Representative may from time to time assign duties to assistants, and may also revoke such assignment. These assistants may include a resident engineer, and/or independent inspectors appointed to inspect and/or test items of Plant and/or Materials. The assignment or revocation shall not take effect until a copy of it has been received by the Developer.

Assistants shall be suitably qualified persons, who are competent to carry out these duties and exercise this authority, and who are fluent in the language for communications defined in Sub-Clause 1.4 [Law and Language].

The FCDA Representative shall prior to commencement of the assignment of other FCDA Personnel give notice to the Developer of the name, address, duties and authority of such assistants.

3.3

Delegated Persons

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Legal Services Secretariat
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Date.....

All these persons, including the FCDA's Representative and assistants, to whom duties have been assigned or authority has been delegated, shall only be authorised to issue instructions to the Developer to the extent defined by the delegation through the Independent Engineer as provided under Sub-Clause 3.4[Instructions] Any approval, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test, or similar act by a delegated person, in accordance with the delegation, shall have the same effect as though the act had been an act of the FCDA. However:

- (a) unless otherwise stated in the delegated person's communication relating to such act, it shall not relieve the Developer from any responsibility he has under the PPP Contract Agreement, including responsibility for errors, omissions, discrepancies and non-compliances;
- (b) any failure to disapprove any work, Plant or Materials shall not constitute approval, and shall therefore not prejudice the right of the FCDA to reject the work, Plant or Materials; and
- (c) if the Developer questions any determination or instruction of a delegated person, the Developer may refer the matter to the FCDA, who shall promptly confirm, reverse or vary the determination or instruction.

3.4

Instructions

The FCDA may cause the Independent Engineer to issue to the Developer instructions which may be necessary for the Developer to perform his obligations under the PPP Contract Agreement. Each instruction shall be approved by the FCDA before the Independent Engineer issues the instruction in writing stating the obligations to which it relates and the Sub- Clause (or other term of the PPP Contract Agreement) in which the obligations are specified. If any such instruction constitutes a Variation, Clause 13 [Variations and Adjustments] shall apply.

Independent Engineer shall issue a written instruction to the Developer.

The Independent Engineer shall at all times obtain specific approval of both Parties before taking action on all matters under the PPP Contract Agreement, relating to a variation in Total Project Cost, specifications, scope of works and completion period. The PPP Consultant shall advise the Independent Engineer on the financial implications of all instructions on the Total Development Cost which shall be determined on the basis of adjustments to the Financial Model, the Schedule of Payments and Financing Documents in accordance with the PPP Contract Agreement.

3.5

Determinations

Whenever these Conditions provide that the FCDA shall proceed in accordance with this Sub-Clause 3.5 to agree or determine any matter, the Independent Engineer shall consult with both Parties in an endeavour to reach agreement. If agreement is not achieved, the Independent Engineer shall make a fair determination in accordance with the PPP Contract Agreement, taking due regard of all relevant circumstances.

The PPP Consultant shall advise on the financial implications of all Determinations on the Total Development Cost which shall be determined on the basis of adjustments to the Financial Model, the Schedule of Payments and Financing Documents in accordance with the PPP Contract Agreement.

The Independent Engineer shall thereafter give notice to both Parties of each agreement or determination, with supporting particulars. Each Party shall give effect to each agreement or determination, unless either party gives notice to the Independent Engineer, of its dissatisfaction with a determination within 14 days of receiving it. Either Party may then refer the dispute to the DAB in accordance with Sub-Clause 20.4 [Obtaining Dispute Adjudication Board's Decision].

Clause 4 The Developer

4.1 Developer's General Obligations

The Developer shall review and adopt the design, execute and complete the Works in accordance with the PPP Contract Agreement, and shall remedy any defects in the Works. When completed, the Works shall be fit for the purposes for which the Works are intended as defined in the PPP Contract Agreement.

The Developer shall provide the Plant and Developer's Documents specified in the PPP Contract Agreement, and all Developer's Personnel, Goods, consumables and other things and services, whether of a temporary or permanent nature, required in and for this design, execution, completion and remedying of defects.

The Works shall include any work which is necessary to satisfy the FCDA's Requirements, or is implied by the PPP Contract Agreement, and all works which (although not mentioned in the PPP Contract Agreement) are necessary for stability or for the completion, or safe and proper operation, of the Works.

The Developer shall be responsible for the adequacy, stability and safety of all Site operations, of all methods of construction and of all the Works.

The Developer shall, whenever required by the FCDA, submit details of the arrangements and methods which the Developer proposes to adopt for the execution of the Works. No significant alteration to these arrangements and methods shall be made without this having previously been notified to the FCDA.

The Developer shall arrange the necessary financing which shall constitute the initial funding of the Project as detailed in Sub-Clause 3.1[Contract Agreement] and Sub-Clause 1.18 [Developer's Financing Arrangements] and the Financial Model set out in Schedule 5.

4.2 Performance Security

The Developer having provided five percent (5%) of Project Cost as equity shall obtain (at its cost) a Performance Security for

proper performance in the amount equivalent to five percent (5%) of the Total Project Cost stated in the PPP Contract Agreement.

The Developer shall deliver the Performance Security to the FCDA in accordance with Sub-Clause 1.17[Conditions Precedent to Commencement], within 90 days after both Parties have signed the PPP Contract Agreement. The Performance Security shall be issued by a Bank and/ or any other Financial Institution approved by the FCDA, and shall be in the form annexed as Schedule 8 or in another form approved by the FCDA.

The Developer shall ensure that the Performance Security is valid and enforceable until the Developer has executed and completed the Works and remedied any defects. If the terms of the Performance Security specify its expiry date, and the Developer has not become entitled to receive the Performance Certificate by the date 28 days prior to the expiry date, the Developer shall extend the validity of the Performance Security until the Works have been completed and any defects have been remedied.

The FCDA shall not make a claim under the Performance Security, except for amounts to which the FCDA is entitled under the PPP Contract Agreement in the event of:

- (a) failure by the Developer to extend the validity of the Performance Security as described in the preceding paragraph, in which event the FCDA may claim the full amount of the Performance Security,
- (b) failure by the Developer to pay the FCDA an amount due, as either agreed by the Developer or determined under Sub-Clause 2.5 [FCDA's Claims] or Clause 20 [Claims, Disputes and Arbitration], within 42 days after this agreement or determination,
- (c) failure by the Developer to remedy a default within 42 days after receiving the FCDA's notice requiring the default to be remedied, or
- (d) circumstances which entitle the FCDA to termination under Sub-Clause 15.2 [Termination by FCDA], irrespective of whether notice of termination has been given.

The FCDA shall indemnify and hold the Developer harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from a claim under the Performance Security to the extent to which the FCDA was not entitled to make the claim.

The FCDA shall return the Performance Security to the Developer within 21 days after the Developer has become entitled to receive the Performance Certificate.

4.3

Developer's Representative

The Developer shall appoint the Developer's Representative and shall give him all authority necessary to act on the Developer's behalf under the Contract.

Unless the Developer's Representative is named in the PPP Contract Agreement, the Developer shall, prior to the Commencement Date, provide name (s) and particulars of the person to act as its representative. Such representatives shall be appointed subject to the Sub-clause 1.15.1[Representations & Warranties of the Developer].

If the Developer wishes to replace any person appointed as Developer's Representative, the Developer shall give the FCDA not less than 14 days' notice of the replacement's name, address, duties and authority, and of the date of appointment.

The Developer's Representative shall, on behalf of the Developer, receive instructions under Sub-Clause 3.4 [Instructions].

The Developer's Representative may delegate any powers, functions and authority to any competent person, and may at any time revoke the delegation. Any delegation or revocation shall not take effect until the FCDA has received prior notice signed by the Developer's Representative, naming the person and specifying the powers, functions and authority being delegated or revoked.

The Developer's Representative and all these persons shall be fluent in the language for communications defined in Sub-Clause 1.4 [Law and Language].

4.4

Subcontractors

The Developer shall provide to FCDA certified true copies of the Sub-Contracts (EPC Contractor and Technical Partners Contracts) in accordance with Sub-Paragraph 1.17vi. of Sub-Clause 1.17 [Conditions Precedent to Commencement] together with detailed particulars which shall include their relevant experience and evidence of qualifications with the appropriate engineering and built environment registration councils such as Council for the Regulation of Engineering in Nigeria (COREN), Architects Registration Council of Nigeria (ARCON), Quantity Surveyors Registration Board of Nigeria (QSRBN) etc

The Developer shall be responsible for the acts or defaults of any Subcontractor, his agents or employees, as if they were the acts or defaults of the Developer.

The Developer shall provide the intended date of the commencement of each Subcontractor's work, and of the commencement of such work on the Site in accordance with Sub-Clause 1.17 [Conditions Precedent to Commencement] and Clause 8.3 (Programme).

4.5

Technical Experts

In this Sub-Clause, Technical Experts means those persons whom the FCDA, under Sub-Clause 13.4 [Provisional Sums], instructs the Developer to employ as a Technical Experts. The Developer shall be obliged to employ such Technical Experts whose payments for services or works rendered shall be limited to the provision in the Total Project Cost for FCDA/Public Authority Expenses.

The appointment of such Technical Experts shall be carried by competitive public bidding.

4.6

Co-operation

The Developer shall, as specified in the PPP Contract Agreement or as instructed by the FCDA, allow appropriate opportunities for carrying out work to:

- (a) the FCDA's Personnel,

(b) any other Developers employed by the FCDA, and

(c) the personnel of any legally constituted public authorities,

Any such instruction shall constitute a Variation if and to the extent that it causes the Developer to incur Cost in an amount which was not reasonably foreseeable by an experienced Developer by the date for submission of the Tender. Services for these personnel and other Developers may include the use of Developer's Equipment, Temporary Works or access arrangements which are the responsibility of the Developer.

The Developer shall be responsible for his construction activities on the Site, and shall co-ordinate his own activities with those of other Developers to the extent (if any) specified in the FCDA's Requirements.

If, under the PPP Contract Agreement, the FCDA is required to give to the Developer possession of any foundation, structure, plant or means of access in accordance with Developer's Documents, the Developer shall submit such documents to the FCDA in the time and manner stated in the FCDA's Requirements.

4.7

The Developer shall set out the Works in relation to original points, lines and levels of reference specified in the PPP Contract Agreement. The Developer shall be responsible for the correct positioning of all parts of the Works, and shall rectify any error in the positions, levels, dimensions or alignment of the Works.

4.8

The Developer shall:

- (a) comply with all applicable safety regulations,
- (b) take care for the safety of all persons entitled to be on the Site.

- Legal Department
- (c) use reasonable efforts to keep the Site and Works clear of unnecessary obstruction so as to avoid danger to these persons
 - (d) provide fencing, lighting, guarding and watching of the Works until completion and taking over under Clause 10 [FCDA's Taking Over], and
 - (e) provide any Temporary Works (including roadways, footways, guards and fences) which may be necessary, because of the execution of the Works, for the use and protection of the public and of owners and occupiers of adjacent land.

4.9

Quality Assurance

The Developer shall institute a quality assurance system to demonstrate compliance with the requirements of the PPP Contract Agreement. The system shall be in accordance with the details stated in the PPP Contract Agreement. The FCDA shall be entitled to audit any aspect of the system.

Details of all procedures and compliance documents shall be submitted to the FCDA for information before each design and execution stage is commenced. When any document of a technical nature is issued to the FCDA, evidence of the prior approval by the Developer himself shall be apparent on the document itself.

Compliance with the quality assurance system shall not relieve the Developer of any of his duties, obligations or responsibilities under the PPP Contract Agreement.

4.10

Site Data

The FCDA shall have made available to the Developer for his information, prior to the Base Date, all relevant data in the FCDA's possession on subsurface and hydrological conditions at the Site, including environmental aspects. The FCDA shall similarly make available to the Developer all such data which come into the FCDA's possession after the Base Date.

The Developer shall be responsible for verifying and interpreting all such data. The FCDA shall have no responsibility for the accuracy, sufficiency or completeness of such data, except as stated in Sub-Clause 5.1 [General Design Responsibilities].

4.11 Sufficiency of the Total Development Cost

The Developer shall be deemed to have satisfied himself as to the correctness and sufficiency of the Total Development Cost.

Unless otherwise stated in the PPP Contract Agreement, the Total Development Cost covers all the Developer's obligations under the PPP Contract Agreement (including the Net Income to FCDA and those under Provisional Sums) and all things necessary for the proper design, finance, execution and completion of the Works and the remedying of any defects and as defined in Clause 2-Total Development Cost of the PPP Contract Agreement hereinbefore stated and also set out Schedule 4 - Summary of Total Development Cost and Schedule 5 - Financial Model.

4.12 Unforeseeable Difficulties

Except as otherwise stated in the PPP Contract Agreement:

- (a) the Developer shall be deemed to have obtained all necessary information as to risks, contingencies and other circumstances which may influence or affect the Works;
- (b) by signing the PPP Contract Agreement, the Developer accepts total responsibility for having foreseen all difficulties and costs of successfully completing the Works; and
- (c) the Total Development Cost shall not be adjusted to take account of any unforeseen difficulties or costs save for all works related to Earthworks which shall be adjusted in accordance with Clause 13 [Variations and Adjustments].

4.13 Rights of Way and Facilities

The Developer shall bear all costs and charges for special and/or temporary rights- of- way which he may require, including those

for access to the Site that are not covered under Sub-Clause 2.1 herein.

The Developer shall also obtain, at his risk and cost, any additional facilities outside the Site which he may require for the purposes of the Works.

4.14 **Avoidance of Interference**

The Developer shall not interfere unnecessarily or improperly with:

- (a) the convenience of the public, or
- (b) the access to and use and occupation of all roads and footpaths, irrespective of whether they are public or in the possession of the FCDA or of others.

The Developer shall indemnify and hold the FCDA harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from any such unnecessary or improper interference.

4.15 **Access Route**

The Developer shall be deemed to have been satisfied as to the suitability and availability of access routes to the Site. The Developer shall use reasonable efforts to prevent any road or bridge from being damaged by the Developer's traffic or by the Developer's Personnel. These efforts shall include the proper use of appropriate vehicles and routes.

Except as otherwise stated in these Conditions:

- (a) the Developer shall (as between the Parties) be responsible for any maintenance which may be required for his use of access routes;
- (b) the Developer shall provide all necessary signs or directions along access routes, and shall obtain any permission which may be required from the relevant authorities for his use of routes, signs and directions;
- (c) the FCDA shall not be responsible for any claims which may arise from the use or otherwise of any access route,

- (d) the FCDA does not guarantee the suitability or availability of particular access routes, and
- (e) Costs due to non-suitability or non-availability, for the use required by the Developer, of access routes shall be borne by the Developer.

4.16 Transport of Goods

The Developer shall:

- (a) give the FCDA not less than 21 days' notice of the date on which any Plant or a major item of other Goods will be delivered to the Site;
- (b) be responsible for packing, loading, transporting, receiving, unloading, storing and protecting all Goods and other things required for the Works; and
- (c) indemnify and hold the FCDA harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from the transport of Goods, and shall negotiate and pay all claims arising from their transport.

4.17 Developer's Equipment

The Developer shall be responsible for all Developer's Equipment. When brought on to the Site, Developer's Equipment shall be deemed to be exclusively intended for the execution of the Works.

4.18 Protection of the Environment

The Developer shall take all reasonable steps to protect the environment (both on and off the Site) and to limit damage and nuisance to people and property resulting from pollution, noise and other results of his operations.

The Developer shall ensure that emissions, surface discharges and effluent from the Developer's activities shall not exceed the values indicated in the FCDA's Requirements, and shall not exceed the values prescribed by applicable Laws.

4.19 Electricity, Water and Gas

The Developer shall be responsible for the power, water and other services it may require for the implementation of the project.

4.20 Progress Reports

Monthly progress reports shall be prepared by the Developer and submitted to the FCDA in six copies. The first report shall cover the period up to the end of the first calendar month following the Commencement Date. Reports shall be submitted monthly thereafter, each within 7 days after the last day of the period to which it relates.

Reporting shall continue until the Developer has completed all work which is known to be outstanding at the completion date stated in the Taking-Over Certificate for the Works.

Each report shall include:

- (a) charts and detailed descriptions of progress, including each stage of design, Developer's Documents, procurement, manufacture, delivery to Site, construction, erection, testing, commissioning and trial operation;
- (b) photographs showing the status of manufacture and of progress on the Site;
- (c) for the manufacture of each main item of Plant and Materials, the name of the manufacturer, manufacture location, percentage progress, and the actual or expected dates of:
 - (i) commencement of manufacture,
 - (ii) Developer's inspections,
 - (iii) tests, and
 - (iv) shipment and arrival at the Site;
- (d) the details described in Sub-Clause 6.10 [Records of Developer's Personnel and Equipment];

- (e) copies of quality assurance documents, test results and certificates of Materials;
- (f) list of Variations, notices given under Sub-Clause 2.5 [FCDA's Claims] and notices given under Sub-Clause 20.1 [Developer's Claims];
- (g) safety statistics, including details of any hazardous incidents and activities relating to environmental aspects and public relations; and
- (h) comparisons of actual and planned progress, with details of any events or circumstances which may jeopardize the completion in accordance with the PPP Contract Agreement, and the measures being (or to be) adopted to overcome delays.

4.21

Security of the Site

The Developer shall be responsible

- (a) for keeping unauthorised persons off the Site, and
- (b) authorised persons shall be limited to the Developer's Personnel and the FCDA's Personnel; and to any other personnel notified to the Developer, by (or on behalf of) the FCDA, as authorised personnel of the FCDA's other Developers on the Site.

4.22

Developer's Operation on Site

The Developer shall confine his operations to the Site, and to any additional areas which may be obtained by the Developer and agreed by the FCDA as working areas. The Developer shall take all necessary precautions to keep Developer's Equipment and Developer's Personnel within the Site and these additional areas, and to keep them off adjacent land.

During the execution of the Works, the Developer shall keep the Site free from all unnecessary obstruction, and shall store or dispose of any Developer's Equipment or surplus materials. The Developer shall clear away and remove from the Site any

wreckage, rubbish and Temporary Works which are no longer required.

Upon the issue of the Taking-Over Certificate for the Works, the Developer shall clear away and remove all Developer's Equipment, surplus material, wreckage, rubbish and Temporary Works. The Developer shall leave the Site and the Works in a clean and safe condition. However, the Developer may retain on Site, during the Defects Notification Period, such Goods as are required for the Developer to fulfil obligations under the PPP Contract Agreement.

4.23

Fossils

All fossils, coins, articles of value or antiquity, and structures and other remains or items of geological or archaeological interest found on the Site shall be placed under the care and authority of the FCDA. The Developer shall take reasonable precautions to prevent Developer's Personnel or other persons from removing or damaging any of these findings.

The Developer shall, upon discovery of any such finding, promptly give notice to the FCDA, who shall issue instructions for dealing with it. If the Developer suffers delay and/or incurs Cost from complying with the instructions, the Developer shall give a further notice to the FCDA and shall be entitled subject to Sub-Clause 20.1 [Developer's Claims] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and
- (b) payment of any such Cost., which shall be added to the Total Development Cost.

After receiving this further notice, the FCDA shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.

Clause 5 Design

5.1 General Design Obligations

The Developer shall be deemed to have scrutinised, prior to the Base Date, the FCDA's Requirements (including design criteria and calculations, if any). The Developer shall be responsible for the design of the Works and for the accuracy of such FCDA's Requirements (including design criteria and calculations), except as stated below.

The FCDA shall not be responsible for any error, inaccuracy or omission of any kind in the FCDA's Requirements as originally included in the PPP Contract Agreement and shall not be deemed to have given any representation of accuracy or completeness of any data or information, except as stated below. Any data or information received by the Developer, from the FCDA or otherwise, shall not relieve the Developer from his responsibility for the design and execution of the Works.

However, the FCDA shall be responsible for the correctness of the following portions of the FCDA's Requirements and of the following data and information provided by (or on behalf of) the FCDA:

- (a) portions, data and information which are stated in the PPP Contract Agreement as being immutable or the responsibility of the FCDA,
- (b) definitions of intended purposes of the Works or any parts thereof,
- (c) criteria for the testing and performance of the completed Works, and
- (d) portions, data and information which cannot be verified by the Developer, except as otherwise stated in the PPP Contract Agreement.

5.2

Developer's Documents

The Developer's Documents shall comprise the technical documents specified in the FCDA's Requirements, documents required to satisfy all regulatory approvals, and the documents described in Sub-Clause 5.6 [As-Built Documents] and Sub-Clause 5.7 [Operation and Maintenance Manuals]. Unless otherwise stated in the FCDA's Requirements, the Developer's Documents shall be written in the language for communications defined in Sub-Clause 1.4 [Law and Language].

The Developer shall prepare all Developer's Documents, and shall also prepare any other documents necessary to instruct the Developer's Personnel.

If the FCDA's Requirements describe the Developer's Documents which are to be submitted to the FCDA for review, they shall be submitted accordingly, together with a notice as described below. In the following provisions of this Sub-Clause, (i) "review period" means the period required by the FCDA for review, and (ii) "Developer's Documents" exclude any documents which are not specified as being required to be submitted for review.

Unless otherwise stated in the FCDA's Requirements, each review period shall not exceed 21 days, calculated from the date on which the FCDA receives a Developer's Document and the Developer's notice. This notice shall state that the Developer's Document is considered ready, both for review in accordance with this Sub-Clause and for use. The notice shall also state that the Developer's Document complies with the PPP Contract Agreement, or the extent to which it does not comply.

The FCDA may, within the review period, give notice to the Developer that a Developer's Document fails (to the extent stated) to comply with the PPP Contract Agreement. If a Developer's Document so fails to comply, it shall be rectified, resubmitted and reviewed in accordance with this Sub-Clause, at the Developer's cost.

For each part of the Works, and except to the extent that the Parties otherwise agree:

Legal Services
Signature
Date

- (a) execution of such part of the Works shall not commence prior to the expiry of the review periods for all the Developer's Documents which are relevant to its design and execution;
- (b) execution of such part of the Works shall be in accordance with these Developer's Documents, as submitted for review; and
- (c) if the Developer wishes to modify any design or document which has previously been submitted for review, the Developer shall immediately give notice to the FCDA. Thereafter, the Developer shall submit revised documents to the FCDA in accordance with the above procedure.

Any such agreement (under the preceding paragraph) or any review (under this Sub. Clause or otherwise) shall not relieve the Developer from any obligation or responsibility.

5.3

Developer's Undertaking

The Developer undertakes that the review and adoption of the design, the Developer's Documents, execution and the completed Works will be in accordance with:

- (a) the Laws of Nigeria, and
- (b) the documents forming the PPP Contract Agreement, as altered or modified by Variations.

5.4

Technical Standards and Regulations

The design, the Developer's Documents, the execution and the completed Works shall comply with the Country's technical standards, building, construction and environmental Laws, Laws applicable to the product being produced from the Works, and other standards specified in the FCDA's Requirements, applicable to the Works, or defined by the applicable Laws.

All these Laws shall, in respect of the Works and each Section, be those prevailing when the Works or Section are taken over by the FCDA under Clause 10 [FCDA's Taking Over]. References in the PPP Contract Agreement to published standards shall be understood to be references to the edition applicable on the Base Date, unless stated otherwise.

If changed or new applicable standards come into force in the Country after the Base Date, the Developer shall give notice to the FCDA and (if appropriate) submit proposals for compliance. In the event that:

- (a) the FCDA determines that compliance is required, and
- (b) the proposals for compliance constitute a variation,

then the FCDA shall initiate a Variation in accordance with Clause 13 [Variations and Adjustments].

5.5 Training

The Developer shall carry out the training of FCDA's Personnel in the operation and maintenance of the Works to the extent specified in the FCDA's Requirements. If the PPP Contract Agreement specifies training which is to be carried out before taking-over, the Works shall not be considered to be completed for the purposes of taking-over under Sub-Clause 10.1 [Taking Over of the Works and Sections] until this training has been completed.

5.6 As-Built Documents

The Developer shall prepare, and keep up-to-date, a complete set of "as-built" records of the execution of the Works, showing the exact as-built locations, sizes and details of the work as executed. These records shall be kept on the Site and shall be used exclusively for the purposes of this Sub-Clause. Two copies shall be supplied to the FCDA prior to the commencement of the Tests on Completion.

In addition, the Developer shall supply to the FCDA as-built drawings of the Works, showing all Works as executed, and submit them to the FCDA for review under Sub-Clause 5.2 [Developer's Documents]. The Developer shall obtain the consent

of the FCDA as to their size, the referencing system and other relevant details.

Prior to the issue of any Taking-Over Certificate, the Developer shall supply to the FCDA the specified numbers and types of copies of the relevant as-built drawings, in accordance with the FCDA's Requirements. The Works shall not be considered to be completed for the purposes of taking-over under Sub-Clause 10.1 [Taking Over of the Works and Sections] until the FCDA has received these documents.

Unless otherwise stated in the FCDA's requirements, prior to the issue of any Taking -Over Certificate, the Developer shall supply to the FCDA six (6) hard and electronic copies each of the "As Built Documents".

5.7

Operation and Maintenance Manuals

Prior to commencement of the Tests on Completion, the Developer shall supply to the FCDA provisional operation and maintenance manuals in sufficient detail for the FCDA to operate, maintain, dismantle, reassemble, adjust and repair the Plant.

The Works shall not be considered to be completed for the purposes of taking-over under Sub-Clause 10.1 [Taking Over of the Works and Sections] until the FCDA has received final operation and maintenance manuals in such detail, and any other manuals specified in the FCDA's Requirements for these purposes.

5.8

Design Error

If errors, omissions, ambiguities, inconsistencies, inadequacies or other defects are found in the Developer's Documents, they and the Works shall be corrected at the Developer's cost, notwithstanding any consent or approval under this Clause.

Clause 6 Staff and Labour

6.1 Engagement of Staff and Labour

The Developer shall make arrangements for the engagement of all staff and labour, local or otherwise, and for their payment, housing, feeding and transport.

6.2 Rates of Wages and Conditions of Labour

The Developer shall pay rates of wages, and observe conditions of labour, which are not lower than those established for the trade or industry where the work is carried out. If no established rates or conditions are applicable, the Developer shall pay rates of wages and observe conditions which are not lower than the general level of wages and conditions observed locally by employers whose trade or industry is similar to that of the Developer.

6.3 Persons in the Service of FCDA

The Developer shall not recruit, or attempt to recruit, staff and labour from amongst the FCDA's Personnel.

6.4 Labour Laws

The Developer shall comply with all the relevant labour Laws applicable to the Developer's Personnel, including Laws relating to their employment, health, safety, welfare, immigration and emigration, and shall allow them all their legal rights.

The Developer shall require his employees to obey all applicable Laws, including those concerning safety at work.

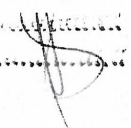
6.5 Working Hours

No work shall be carried out on the Site on locally recognised days of rest, or outside normal working hours, unless:

- (a) the FCDA gives consent, or
- (b) the work is unavoidable, or necessary for the protection of life or property or for the safety of the Works, in which case the Developer shall immediately advise the FCDA.

6.6

Facilities for Staff and Labour

File No.
Date, 

The Developer shall provide and maintain all necessary accommodation and welfare facilities for the Developer's Personnel. The Developer shall also provide facilities for the FCDA's Personnel as stated in the FCDA's Requirements.

The Developer shall not permit any of the Developer's Personnel to maintain any temporary or permanent living quarters within the structures forming part of the Permanent Works.

6.7

Health and Safety

The Developer shall at all times take all reasonable precautions to maintain the health and safety of the Developer's Personnel. In collaboration with local health authorities, the Developer shall ensure that medical staff, first aid facilities, sick bay and ambulance service are available at all times at the Site and at any accommodation for Developer's and FCDA's Personnel, and that suitable arrangements are made for all necessary welfare and hygiene requirements and for the prevention of epidemics.

The Developer shall appoint an accident prevention officer at the Site, responsible for maintaining safety and protection against accidents. This person shall be qualified for this responsibility, and shall have the authority to issue instructions and take protective measures to prevent accidents. Throughout the execution of the Works, the Developer shall provide whatever is required by this person to exercise this responsibility and authority.

The Developer shall send, to the FCDA, details of any accident as soon as practicable after its occurrence. The Developer shall maintain records and make reports concerning health, safety and welfare of persons, and damage to property, as the FCDA may reasonably require.

6.8

Developer' Superintendence

Throughout the design and execution of the Works, and as long thereafter as is necessary to fulfil the Developer's obligations, the Developer shall provide all necessary superintendence to plan, arrange, direct, manage, inspect and test the work.

Superintendence shall be given by a sufficient number of persons having adequate knowledge of the language for communications (defined in Sub-Clause 1.4 [Law and language]) and of the operations to be carried out (including the methods and techniques required, the hazards likely to be encountered and methods of preventing accidents), for the satisfactory and safe execution of the Works.

6.9

Developer's Personnel

The Developer's Personnel shall be appropriately qualified, skilled and experienced in their respective trades or occupations. The FCDA may require the Developer to remove (or cause to be removed) any person employed on the Site or Works, including the Developer's Representative, who:

- (a) persists in any misconduct or lack of care,
- (b) Carries out duties incompetently or negligently,
- (c) fails to conform with any provisions of the PPP Contract Agreement, or
- (d) persists in any conduct which is prejudicial to safety, health, or the protection of the environment.

The Developer shall then appoint (or cause to be appointed) a suitable replacement person.

6.10

Records of Developer's Personnel and Equipment

The Developer shall submit, to the FCDA, details showing the number of each class of Developer's Personnel and of each type of Developer's Equipment on the Site. Details shall be submitted each calendar month, in a form approved by the FCDA, until the Developer has completed all work which is known to be outstanding at the completion date stated in the Taking-Over Certificate for the Works.

6.11

Disorderly Conduct

The Developer shall at all times take all reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or amongst the Developer's Personnel, and to preserve peace and protection of persons and property on and near the Site.

Clause 7 Plant, Materials and Workmanship

7.1 Manner of Execution

The Developer shall carry out the manufacture of Plant, manufacture of Materials, and all other execution of the Works:

- (a) in the manner (if any) specified in the PPP Contract Agreement.
- (b) in a proper workmanlike and careful manner, in accordance with recognised good practice, and
- (c) with properly equipped facilities and non-hazardous Materials, except as otherwise specified in the PPP Contract Agreement.

7.2 Samples

The Developer shall submit samples to the FCDA, for review in accordance with the procedures for Developer's Documents described in Sub-Clause 5.2 [Developer's Documents], as specified in the PPP Contract Agreement and at the Developer's cost. Each sample shall be labelled as to origin and intended use in the Works.

7.3 Inspection

The FCDA's Personnel shall at all reasonable times:

- (a) have full access to all parts of all places from which natural Materials are being obtained, and
- (b) during production, manufacture and construction (at the Site and, to the extent specified in the PPP Contract, Agreement elsewhere), be entitled to examine, inspect, measure and test the materials and workmanship, and to check the progress of manufacture of Plant and production and manufacture of Materials.

The Developer shall give the FCDA's Personnel full opportunity to carry out these activities, including providing access, facilities, permissions and safety equipment. No such activity shall relieve the Developer from any obligation or responsibility.

In respect of the work which FCDA's Personnel are entitled to examine, inspect, measure and/or test, the Developer shall give notice to the FCDA whenever any such work is ready and before it is covered up, put out of sight, or packaged for storage or transport. The FCDA shall then either carry out the examination, inspection, measurement or testing without unreasonable delay, or promptly give notice to the Developer that the FCDA does not require to do so. If the Developer fails to give the notice, he shall, if and when required by the FCDA, uncover the work and thereafter reinstate and make good, all at the Developer's cost.

7.4

Testing

This Sub-Clause shall apply to all tests specified in the PPP Contract Agreement other than the Tests after Completion. The Standards to be used for all tests shall be as specified in the specifications document of the FCDA's Requirements.

The Developer shall provide all apparatus, assistance, documents and other information, electricity, equipment, fuel, consumables, instruments, labour, materials, and suitably qualified and experienced staff, as are necessary to carry out the specified tests efficiently. The Developer shall agree, with the FCDA, the time and place for the specified testing of any Plant, Materials and other parts of the Works.

The FCDA may, under Clause 13 [Variations and Adjustments], vary the location or details of specified tests, or instruct the Developer to carry out additional tests. If these varied or additional tests show that the tested Plant, Materials or workmanship is not in accordance with the PPP Contract Agreement, the cost of carrying out this Variation shall be borne by the Developer, notwithstanding other provisions of the PPP Contract Agreement.

The FCDA shall give the Developer not less than, 24 hours' notice of the FCDA's intention to attend the tests. If the FCDA does not attend at the time and place agreed, the Developer may proceed with the tests, unless otherwise instructed by the FCDA, and the tests shall then be deemed to have been made in the FCDA's presence.

If the Developer suffers delay and/or incurs Cost from complying with these instructions or as a result of a delay for which the

FCDA is responsible, the Developer shall give notice to the FCDA and shall be entitled subject to Sub- Clause 20.1 [Developer's Claims] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and
- (b) payment of any such Cost plus reasonable profit, which "shall be added to the Total Development Cost.

After receiving this notice, the FCDA shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.

The Developer shall promptly forward to the FCDA duly certified reports of the tests. When the specified tests have been passed, the FCDA shall endorse the Developer's test certificate, or issue a certificate to him, to that effect. If the FCDA has not attended the test tests, he shall be deemed to have accepted the readings as accurate.

7.5

Rejection

If, as a result of an examination, inspection, measurement or testing, any Plant, Materials, design or workmanship is found to be defective or otherwise not in accordance with the PPP Contract Agreement, the FCDA may reject the Plant, Materials, design or workmanship by giving notice to the Developer, with reasons. The Developer shall then promptly make good the defect and ensure that the rejected item complies with the PPP Contract Agreement.

If the FCDA requires this Plant, Materials, design or workmanship to be retested, the tests shall be repeated under the same terms and conditions. If the rejection and retesting cause the FCDA to incur additional costs, the Developer shall subject to Sub-Clause 2.5 [FCDA's Claims] pay these costs to the FCDA.

7.6

Remedial Work

Notwithstanding any previous test or certification, the FCDA may instruct the Developer to:

- (a) remove from the Site and replace any Plant or Materials which is not in accordance with the PPP Contract Agreement,
- (b) remove and re-execute any other work which is not in accordance with the PPP Contract Agreement, and
- (c) execute any work which is urgently required for the safety of the Works, whether because of an accident, unforeseeable event or otherwise.

If the Developer fails to comply with any such instruction, which complies with Sub-Clause 3.4 [Instructions], the FCDA shall be entitled to employ and pay other persons to carry out the work. Except to the extent that the Developer would have been entitled to payment for the work, the Developer shall subject to Sub-Clause 2.5 [FCDA's Claims] pay to the FCDA all costs arising from this failure.

7.7

Ownership of Plant and Materials

Each item of Plant and Materials shall, to the extent consistent with the Laws of Nigeria, become the property of the FCDA at whichever is the earlier of the following times, free from liens and other encumbrances:

- (a) when it is delivered to the Site;
- (b) when the Developer is entitled to payment of the value of the Plant and Materials under Sub-Clause 8.10 [Payment for Plant and Materials in Event of Suspension]

7.8

Royalties

The Developer shall pay all royalties, rents and other payments to the appropriate Government Agencies for:

- (a) natural Materials obtained from outside the Site, and
- (b) the disposal of material from demolitions and excavations and of other surplus material (whether natural or man-made), except to the extent that disposal areas within the Site are specified in the PPP Contract Agreement.

Clause 8 Commencement, Delays and Suspension

8.1 Commencement of Works

Notwithstanding the date of signing, this PPP Contract Agreement shall be deemed to have commenced on the date when the Financial Close is achieved as stated in Sub-Clause 1.17[Conditions Precedent to Commencement].

Upon the achievement of Financial Close, the Developer shall commence the design and execution of the Works as soon as is reasonably practicable and shall then proceed with the Works with due expedition and without delay.


8.2 Time for Completion

The Developer shall complete the whole of the Works, and each Section (if any), within the Time for Completion for the Works or Section (as the case may be), including:

- (a) achieving the passing of the Tests on Completion, and
- (b) completing all work which is stated in the PPP Contract Agreement as being required for the Works or Section to be considered to be completed for the purposes of taking over under Sub-Clause 10.1 [Taking Over of the Works and Sections].

8.3 Programme

The Developer shall submit a time programme to the FCDA by the Commencement Date, that is the date when Financial Close is achieved as stated in Sub –clause 1.17 [Conditions Precedent to Commencement]. The Developer shall also submit a revised programme whenever the previous programme is inconsistent with actual progress or with the Developer's obligations. Unless otherwise stated in the PPP Contract Agreement, each programme shall include:

- 
- (a) the order in which the Developer intends to carry out the Works, including the anticipated timing of each major stage of the Works,
 - (b) the periods for reviews under Sub-Clause 5.2 [Developer's Documents],
 - (c) the sequence and timing of inspections and tests specified in the PPP Contract Agreement, and
 - (d) a supporting report which includes
 - (i) a general description of the methods which the Developer intends to adopt for the execution of each major stage of the Works, and
 - (ii) the approximate number of each class of Developer's Personnel and of each type of Developer's Equipment for each major stage.

Unless the FCDA, within 21 days after receiving a programme, gives notice to the Developer stating the extent to which it does not comply with the PPP Contract Agreement, the Developer shall proceed in accordance with the programme, subject to his other obligations under the PPP Contract Agreement. The FCDA's Personnel shall be entitled to rely upon the programme when planning their activities.

The Developer shall promptly give notice to the FCDA of specific probable future events or circumstances which may adversely affect or delay the execution of the Works. In this event, or if the FCDA gives notice to the Developer that a programme fails (to the extent stated) to comply with the PPP Contract Agreement or to be consistent with actual progress and the Developer's stated intentions, the Developer shall submit a revised programme to the FCDA in accordance with this Sub-Clause.

Extension of Time for Completion

Legal Services Department
Sign.....
Date.....

The Developer shall be entitled subject to Sub-Clause 20.1 [Developer's Claims] to an extension of the Time for Completion if and to the extent that completion for the purposes of Sub-Clause 10.1 [Taking Over of the Works and Sections] is or will be 'delayed by any of the following causes:

- (a) a Variation (unless an adjustment to the Time for Completion has been agreed under Sub-Clause 13.3 [Variation Procedure]),
- (b) a cause of delay giving an entitlement to extension of time under a Sub-Clause of these Conditions, or ,
- (c) any delay, impediment or prevention caused by or attributable to the FCDA, the FCDA's Personnel, or the FCDA's other Developers on the Site.

If the Developer considers himself to be entitled to an extension of the Time for Completion, the Developer shall give notice to the FCDA in accordance with Clause 20.1 [Developer's Claims]. When determining each extension of time under Sub-Clause 20.1, the FCDA shall review previous determinations and may increase, but shall not decrease, the total extension of time.

Delays Caused by Government Agencies

If the following conditions apply, namely

- (a) the Developer has diligently followed the procedures laid down by the relevant Government Agencies
- (b) these authorities delay or disrupt the Developer's work, and
- (c) the delay or disruption was not reasonably foreseeable by an experienced Developer by the date for Commencement of Works

then this delay or disruption will be considered as a cause of delay under sub. paragraph (b) of Sub-Clause 8.4 [Extension of Time for Completion]

8.6

Rate of Progress

If, at any time:

- (a) actual progress is too slow to complete within the Time for Completion, and/or
- (b) progress has fallen (or will fall) behind the current programme under Sub-Clause 8.3 [Programme],

other than as a result of a cause listed in Sub-Clause 8.4 [Extension of Time for Completion], then the FCDA may instruct the Developer to submit, under Sub-Clause 8.3 [Programme], a revised programme and supporting report describing the revised methods which the Developer proposes to adopt in order to expedite progress and complete within the Time for Completion.

Unless the FCDA notifies otherwise, the Developer shall adopt these revised methods, which may require increases in the working hours and/or in the numbers of Developer's Personnel and/or Goods, at the risk and cost of the Developer. If these revised methods cause the FCDA to incur additional costs, the Developer shall subject to Sub-Clause 2.5 [FCDA's Claims] pay these costs to the FCDA, in addition to delay damages (if any) under Sub-Clause 8.7 below.

8.7

Delay Damages

If the Developer fails to comply with Sub-Clause 8.2 [Time for Completion], the Developer shall subject to Sub-Clause 2.5 [FCDA's Claims] pay delay damages to the FCDA for this default.

The delay damages payable per day shall be a sum equivalent to 0.015% of the Final Total Project Cost. Such sum shall be paid for every day which shall elapse between the relevant Time for Completion and the date stated in the Taking over Certificate. However, the maximum amount due under this sub-Clause for delay damages shall not exceed one and a quarter percent (1.25%) of the Final Total Project Cost stated in the PPP Contract Agreement

These delay damages shall be the only damages due from the Developer for such default, other than in the event of termination under Sub-Clause 15.2 [Termination by FCDA] prior to completion of the Works. These damages shall not relieve the Developer from his obligation to complete the Works, or from any other duties, obligations or responsibilities which he may have under the PPP Contract Agreement.

8.8 Suspension of Work

The FCDA may at any time instruct the Developer to suspend progress of part or all of the Works. During such suspension, the Developer shall protect, store and secure such part or the Works against any deterioration, loss or damage.

The FCDA may also notify the cause for the suspension. If and to the extent that the cause is notified and is the responsibility of the Developer, the following Sub- Clauses 8.9, 8.10 and 8.11 shall not apply.

8.9 Consequences of Suspension

If the Developer suffers delay and/or incurs Cost from complying with the FCDA's instructions under Sub-Clause 8.8 [Suspension of Work] and/or from resuming the work, the Developer shall give notice to the FCDA and shall be entitled subject to Sub-Clause 20.1 [Developer's Claims] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion]; and
- (b) payment of any such Cost, which shall be added to the Total Development Cost.

After receiving this notice, the FCDA shall proceed in accordance with Sub-CI, 3.5 [Determinations] to agree or determine these matters.

The Developer shall not be entitled to an extension of time for, or to payment of the Cost incurred in, making good the consequences of the Developer's faulty design, workmanship or materials, or of the Developer's failure to protect, store or secure in accordance with Sub-Clause 8.8 [Suspension of Work].

8.10

Payment for Plant and Materials in Event of Suspension

The Developer shall be entitled to payment of the value (as at the date of suspension) of Plant and/or Materials which have not been delivered to Site, if:

- (a) the work on Plant or delivery of Plant and/or Materials has been suspended for more than 28 days, and
- (b) the Developer has marked the Plant and/or Materials as the FCDA's property in accordance with the FCDA's instructions.

8.11

Prolonged Suspension

If the suspension under Sub-Clause 8.8 [Suspension of Work] has continued for more than 84 days, the Developer may request the FCDA's permission to proceed. If the FCDA does not give permission within 28 days after being requested to do so, the Developer may, by giving notice to the FCDA, treat the suspension as an omission under Clause 13 [Variations and Adjustments] of the affected part of the Works. If the suspension affects the whole of the Works, the Developer may give notice of termination under Sub-Clause 16.2 [Termination by Developer].

8.12

Resumption of Work

After the permission or instruction to proceed is given, the Parties shall jointly examine the Works and the Plant and Materials affected by the suspension. The Developer shall make good any deterioration or defect in or loss of the Works or Plant or Materials, which has occurred during the suspension.

Clause 9 Tests on Completion

9.1 Developer's Obligations

The Developer shall carry out the Tests on Completion in accordance with this Clause and Sub-Clause 7.4, [Testing] after providing the documents in accordance with Sub-Clause 5.6 [As-Built Documents] and Sub-Clause 5.7 [Operation and Maintenance Manuals].

The Developer shall give to the FCDA not less than 21 days' notice of the date after which the Developer will be ready to carry out each of the Tests on Completion. Unless otherwise agreed, Tests on Completion shall be carried out within 14 days after this date, on such day or days as the FCDA shall instruct.

The Tests on Completion shall be carried out in the following sequence:

- (a) pre-commissioning tests, which shall include the appropriate inspections and ("dry" or "cold") functional tests to demonstrate that each item of Plant can safely under-take the next stage, (b);
- (b) commissioning tests, which shall include the specified operational tests to demonstrate that the Works or Section can be operated safely and as specified, under all available operating conditions; and
- (c) trial operation, which shall demonstrate that the Works or Section perform reliably and in accordance with the PPP Contract Agreement.

During trial operation, when the Works are operating under stable conditions, the Developer shall give notice to the FCDA that the Works are ready for any other Tests on Completion, including performance tests to demonstrate whether the Works conform with criteria specified in the FCDA's Requirements and with the Performance Guarantees.

Trial operation shall not constitute a taking-over under Clause 10 [FCDA's Taking Over]. Any product produced by the Works during trial operation shall be the property of the FCDA.

In considering the results of the Tests on Completion, appropriate allowances shall be made for the effect of any use of the Works by the FCDA on the performance or other characteristics of the Works. As soon as the Works, or a Section, have passed each of the Tests on Completion described in sub-paragraph (a), (b) or (c), the Developer shall submit a certified report of the results of these Tests to the FCDA.

9.2

Delayed Tests

If the Tests on Completion are being unduly delayed by the FCDA, Sub-Clause 7.4 [Testing] (fifth paragraph) and/or Sub-Clause 10.3 [interference with Tests on Completion] shall be applicable.

If the Tests on Completion are being unduly delayed by the Developer, the FCDA may by notice require the Developer to carry out the Tests within 21 days after receiving the notice. The Developer shall carry out the Tests on such day or days within that period as the Developer may fix and of which he shall give notice to the FCDA.

If the Developer fails to carry out the Tests on Completion within the period of 21 days, the FCDA's Personnel may proceed with the Tests at the risk and cost of the Developer. These Tests on Completion shall then be deemed to have been carried out in the presence of the Developer and the results of the Tests shall be accepted as accurate.

9.3

Retesting

If the Works, or a Section, fail to pass the Tests on Completion, Sub-Clause 7.5 [Rejection] shall apply, and the FCDA or the Developer may require the failed Tests and Tests on Completion

on any related work, to be repeated under the same terms and conditions.

9.4

Failure to Pass Tests on Completion

If the Works, or a Section, fail to pass the Tests on Completion repeated under Sub-Clause 9.3 [Retesting], the FCDA shall be entitled to:

- (a) order further repetition of Tests on Completion under Sub-Clause 9.3;
- (b) if the failure deprives the FCDA of substantially the whole benefit of the Works or Section, reject the Works or Section (as the case may be), in which event the FCDA shall have the same remedies as are provided in sub- paragraph (c) of Sub-Clause 11.4 [Failure to Remedy Defects];
- (c) or issue a Taking-Over Certificate.

In the event of sub-paragraph (c), the Developer shall proceed in accordance with all other obligations under the PPP Contract Agreement, and the Total Project Cost shall be reduced by such amount as shall be appropriate to cover the reduced value to the FCDA as a result of this failure. Unless the relevant reduction for this failure is stated (or its method of calculation is defined) in the Contract, the FCDA may require the reduction to be (i) agreed by both Parties (in full satisfaction of this failure only) and paid before this Taking-Over Certificate is issued, or (ii) determined and paid under Sub-Clause 2.5 [FCDA's Claims] and Sub-Clause 3.5 [Determinations].

Clause 10 FCDA's Taking Over

10.1 Taking Over of the Works and Sections

Except as stated in Sub-Clause 9.4 [Failure to Pass Tests on Completion], the Works shall be taken over by the FCDA when (i) the Works have been completed in accordance with the PPP Contract Agreement, including the matters described in Sub-Clause 8.2 [Time for Completion] and except as allowed in sub-paragraph (a) below, and (ii) a Taking-Over Certificate for the Works has been issued, or is deemed to have been issued in accordance with this Sub-Clause.

The Developer may apply by notice to the FCDA for a Taking-Over Certificate not earlier than 14 days before the Works will, in the Developer's opinion, be complete and ready for taking over. If the Works are divided into Sections, the Developer may similarly apply for a Taking-Over Certificate for each Section.

The FCDA shall, within 28 days after receiving the Developer's application:

- (a) issue the Taking-Over Certificate to the Developer, stating the date on which the Works or Section were completed in accordance with the PPP Contract Agreement, except for any minor outstanding work and defects which will not substantially affect the use of the Works or Section for their intended purpose (either until or whilst this work is completed and these defects are remedied); or
- (b) reject the application, giving reasons and specifying the work required to be done by the Developer to enable the Taking-Over Certificate to be issued. The Developer shall then complete this work before issuing a further notice under this Sub-Clause.

If the FCDA fails either to issue the Taking-Over Certificate or to reject the Developer's application within the period of 28 days, and if the Works or Section (as the case may be) are substantially in accordance with the PPP Contract Agreement, the, Taking-

Over Certificate shall be deemed to have been issued on the last day of that period.

10.2 Taking Over of Parts of the Works

Parts of the Works (other than Sections) shall not be taken over or used by the FCDA, except as may be stated in the PPP Contract Agreement or as may be agreed by both Parties.

10.3 Interference with Tests on Completion

If the Developer is prevented, for more than 14 days, from carrying out the Tests on Completion by a cause for which the FCDA is responsible, the Developer shall carry out the Tests on Completion as soon as practicable.

If the Developer suffers delay and/or incurs Cost as a result of this delay in carrying out the Tests on Completion, the Developer shall give notice to the FCDA and shall be entitled subject to Sub-Clause 20.1 [Developer's Claims] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and
- (b) payment of any such Cost plus reasonable profit, which shall be added to the Total Development Cost.

After receiving this notice, the FCDA shall proceed in accordance 3.5 [Determinations] to agree or determine these matters.

Clause 11 Defects Liability

11.1 Completion of Outstanding Work and Remedying Defects

In order that the Works and Developer's Documents, and each Section, shall be in the condition required by the PPP Contract Agreement (fair wear and tear excepted) by the expiry date of the relevant Defects Notification Period or as soon as practicable thereafter, the Developer shall:

- (a) complete any work which is outstanding on the date stated in a Taking-Over Certificate, within such reasonable time as is instructed by the FCDA, and
- (b) execute all work required to remedy defects or damage, as may be notified by the FCDA on or before the expiry date of the Defects Notification Period for the Works or Section (as the case may be).

If a defect appears or damage occurs, the FCDA shall notify the Developer accordingly.

The Defects Notification Period shall be one year (with any extension under Sub-Clause 11.3 [Extension of Defects Notification Period]), calculated from the date on which the Works or Section is completed as certified under Sub-Clause 10.1 [Taking Over of the Works and Sections]

11.2 Cost of Remedying Defects

All work referred to in sub-paragraph (b) of Sub-Clause 11.1 [Completion of Outstanding Work and Remedying Defects] shall be executed at the risk and cost of the Developer, if and to the extent that the work is attributable to:

- (a) the design of the Works,
- (b) Plant, Materials or workmanship not being in accordance with the PPP Contract Agreement,
- (c) improper operation or maintenance which was attributable to matters for which the Developer is responsible (under Sub-Clauses 5.5 to 5.7 or otherwise), or
- (d) failure by the Developer to comply with any other obligation.

If and to the extent that such work is attributable to any other cause, the FCDA shall give notice to the Developer accordingly, and Sub-Clause 13.3 [Variation Procedure] shall apply.

11.3

Extension of Defects Notification Period

The FCDA shall be entitled subject to Sub-Clause 2.5 [FCDA's Claims] to an extension of the Defects Notification Period for the Works or a Section if and to the extent that the Works, Section or a major item of Plant (as the case may be, and after taking over) cannot be used for the purposes for which they are intended by reason of a defect or damage. However, a Defects Notification Period shall not be extended by more than two years.

If delivery and/or erection of Plant and/or Materials was suspended under Sub-Clause 8.8 [Suspension of Work] or Sub-Clause 16.1 [Developer's Entitlement to Suspend Work], the Developer's obligations under this Clause shall not apply to any defects or damage occurring more than two years after the Defects Notification Period for the Plant and/or Materials would otherwise have expired.

11.4

Failure to Remedy Defects

If the Developer fails to remedy any defect or damage within a reasonable time, a date may be fixed by (or on behalf of) the FCDA, on or by which the defect or damage is to be remedied. The Developer shall be given reasonable notice of this date.

If the Developer fails to remedy the defect or damage by this notified date and this remedial work was to be executed at the cost of the Developer under Sub-Clause 11.2 [Cost of Remedying Defects], the FCDA may (at his option):

- (a) carry out the work himself or by others, in a reasonable manner and at the Developer's cost, but the Developer shall have no responsibility for this work; and the Developer shall subject to Sub-Clause 2.5 [FCDA's Claims] pay to the FCDA the costs reasonably incurred by the FCDA in remedying the defect or damage;
- (b) agree or determine a reasonable reduction in the Total Development Cost in accordance with Sub-Clause 3.5 [Determinations]; or
- (c) if the defect or damage deprives the FCDA of substantially the whole benefit of the Works or any major part of the Works, terminate the PPP Contract Agreement as a whole, or in respect of such major part which cannot be put to the intended use. Without prejudice to any other rights, under the PPP Contract Agreement or otherwise, the FCDA shall then be entitled to recover all sums paid for the Works or

for such part (as the case may be), plus financing costs and the cost of dismantling the same, clearing the Site and returning Plant and Materials to the Developer.

11.5 Removal of Defective Work

If the defect or damage cannot be remedied expeditiously on the Site and the FCDA gives consent, the Developer may remove from the Site for the purposes of repair such items of Plant as are defective or damaged. This consent may require the Developer to increase the amount of the Performance Security by the full replacement cost of these items, or to provide other appropriate security.

11.6 Further Tests

If the work of remedying of any defect or damage may affect the performance of the Works, the FCDA may require the repetition of any of the tests described in the PPP Contract Agreement, including Tests on Completion and/or Tests after Completion. The requirement shall be made by notice within 28 days after the defect or damage is remedied.

These tests shall be carried out in accordance with the terms applicable to the previous Tests, except that they shall be carried out at the risk and cost of the Party liable, under Sub-Clause 11.2 [Cost of Remedying Defects], for the cost of the remedial work.

11.7 Right of Access

Until the Performance Certificate has been issued, the Developer shall have the right of access to all parts of the Works and to records of the operation and performance of the Works, except as may be inconsistent with the FCDA's reasonable security restrictions.

11.8 Developer to Search

The Developer shall, if required by the FCDA, search for the cause of any defect, under the direction of the FCDA. Unless the defect is to be remedied at the cost of the Developer under Sub-Clause 11.2 [Cost of Remedying Defects], the Cost of the search plus reasonable profit shall be agreed or determined in accordance with Sub-Clause 3.5 [Determinations] and shall be added to the Total Development Cost.

11.9 Performance Certificate

Performance of the Developer's obligations shall not be considered to have been completed until the FCDA has issued the

Performance Certificate to the Developer, stating the date on which the Developer completed his obligations under the PPP Contract Agreement.

The FCDA shall issue the Performance Certificate within 28 days after the latest of the expiry dates of the Defects Notification Periods, or as soon thereafter as the Developer has supplied all the Developer's Documents and completed and tested all the Works, including remedying any defects. If the FCDA fails to issue the Performance Certificate accordingly:

- (a) the Performance Certificate shall be deemed to have been issued on the date 28 days after the date on which it should have been issued, as required by this Sub-Clause, and
- (b) Sub-Clause 11.11 [Clearance of Site] and sub-paragraph (a) of Sub-Clause 14.13 [Cessation of FCDA's Liability] shall be inapplicable.

Only the Performance Certificate shall be deemed to constitute acceptance of the Works.

11.10

Unfulfilled Obligations

After the Performance Certificate has been issued, each Party shall remain liable for the fulfilment of any obligation which remains unperformed at that time. For the purposes of determining the nature and extent of unperformed obligations, the PPP Contract Agreement shall be deemed to remain in force.

11.11

Clearance of Site

Upon receiving the Performance Certificate; the Developer shall remove any remaining Developer's Equipment, surplus material, wreckage, rubbish and Temporary Works from the Site.

If all these items have not been removed within 28 days after the FCDA issues the Performance Certificate, the FCDA may sell or otherwise dispose of any remaining items. The FCDA shall be entitled to be paid the costs incurred in connection with, or attributable to, such sale or disposal and restoring the Site.

Any balance of the moneys from the sale shall be paid to the Developer. If these moneys are less than the FCDA's costs, the Developer shall pay the outstanding balance to the FCDA.

Clause 12 Tests after Completion

12.1 Procedure for Tests after Completion

The following shall apply to Tests after Completion:

- (a) the Developer shall provide all electricity, fuel and materials;
- (b) the Developer shall provide any other plant, equipment and suitably qualified and experienced staff, as are necessary to carry out the Tests after Completion efficiently; and
- (c) the Developer shall carry out the Tests after Completion in the presence of such FCDA's and/or Developer's Personnel as either Party may reasonably request.

The Tests after Completion shall be carried out as soon as is reasonably practicable after the Works or Section have been taken over by the FCDA. The FCDA shall give to the Developer 21 days' notice of the date after which the Tests after Completion will be carried out. Unless otherwise agreed, these Tests shall be carried out within 14 days after this date, on the day or days determined by the FCDA.

The results of the Tests after Completion shall be compiled and evaluated by the Developer, who shall prepare a detailed report. Appropriate account shall be taken of the effect of the FCDA's prior use of the Works.

12.2 Delayed Tests

If the Developer incurs Cost as a result of any unreasonable delay by the FCDA to the Tests after Completion, the Developer shall (i) give notice to the FCDA and (ii) be entitled subject to Sub-Clause 20.1 [Developer's Claims] to payment of any such Cost plus

reasonable profit, which shall be added to the Total Development Cost.

After receiving this notice, the FCDA shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine this Cost and profit.

If, for reasons not attributable to the Developer, a Test after Completion on the Works or any Section cannot be completed during the Defects Notification Period (or any other period agreed upon by both Parties), then the Works or Section shall be deemed to have passed this Test after Completion.

12.3

Retesting

If the Works, or a Section, fail to pass the Tests after Completion

- (a) sub-paragraph (b) of Sub-Clause 11.1 [Completion of Outstanding Work and Remedying of Defects] shall apply, and
- (b) either Party may then require the failed Tests, and the Tests after Completion on any related work, to be repeated under the same terms and conditions.

If and to the extent that this failure and retesting are attributable to any of the matters listed in sub-paragraphs (a) to (d) of Sub-Clause 11.2 [Cost of Remedying Defects] and cause the FCDA to incur additional costs, the Developer shall subject to Sub-Clause 2.5 [FCDA's Claims] pay these costs to the FCDA.

12.4

Failure to Pass Tests Completion

If the following conditions apply, namely:

- (a) the Works, or a Section, fail to pass any or all of the Tests after Completion,

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- (b) the relevant sum payable as non-performance damages for this failure is stated (or its method of calculation is defined) in the PPP Contract Agreement, and
 - (c) the Developer pays this relevant sum to the FCDA during the Defects Notification Period,

then the Works or Section shall be deemed to have passed these Tests after Completion.

If the Works, or a Section, fail to pass a Test after Completion and the Developer proposes to make adjustments or modifications to the Works or such Section, the Developer may be instructed by (or on behalf of) the FCDA that right of access to the Works or Section cannot be given until a time that is convenient to the FCDA. The Developer shall then remain liable to carry out the adjustments or modifications and to satisfy this Test, within a reasonable period of receiving notice by (or on behalf of) the FCDA of the time that is convenient to the FCDA. However, if the Developer does not receive this notice during the relevant Defects Notification Period, the Developer shall be relieved of this obligation and the Works or Section (as the case may be) shall be deemed to have passed this Test after Completion.

If the Developer incurs additional Cost as a result of any unreasonable delay by the FCDA in permitting access to the Works or Plant by the Developer, either to investigate the causes of a failure to pass a Test after Completion or to carry out any adjustments or modifications, the Developer shall (i) give notice to the FCDA and (ii) be entitled subject to Sub-Clause 20.1 [Developer's Claims] to payment of any such Cost plus reasonable profit, which shall be added to the Total Development Cost.

After receiving this notice, the FCDA shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine this Cost and profit.

Clause 13 Variations and Adjustments

13.1 Right to Vary

Variations may be initiated by the FCDA at any time prior to issuing the Taking-Over Certificate for the Works, either by an instruction or by a request for the Developer to submit a proposal. A Variation shall not comprise the omission of any work which is to be carried out by others.

The Developer shall execute and be bound by each Variation, unless the Developer promptly gives notice to the FCDA stating (with supporting particulars) that (i) the Developer cannot readily obtain the Goods required for the Variation, (ii) it will reduce the safety or suitability of the Works, or (iii) it will have an adverse impact on the achievement of the Performance Guarantees. Upon receiving this notice, the FCDA shall cancel, confirm or vary the instruction.

13.2 Value Engineering

The Developer may, at any time, submit to the FCDA a written proposal which (in the Developer's opinion) will, if adopted, (i) accelerate completion, (ii) reduce the cost to the FCDA of executing, maintaining or operating the Works, (iii) improve the efficiency or value to the FCDA of the completed Works, or (iv) otherwise be of benefit to the FCDA.

The proposal shall be prepared at the cost of the Developer items listed in Sub-Clause 13.3 [Variation Procedure].

13.3 Variation Procedure

If the FCDA requests a proposal, prior to instructing a Variation, the Developer shall respond in writing as soon as practicable, either by giving reasons why he cannot comply (if this is the case) or by submitting:

- (a) a description of the proposed design and/or work to be performed and a programme for its execution,
- (b) the Developer's proposal for any necessary modifications to the programme according to Sub-Clause 8.3 [Programme] and to the Time for Completion, and
- (c) the Developer's proposal for adjustment to the Total Development Cost.

The FCDA shall, as soon as practicable after receiving such proposal (under Sub-Clause 13.2 [Value Engineering] or otherwise)

instruct the Independent Engineer to analyse and establish the cost implications of all proposals and options as the basis for the response with approval, disapproval or comments. The Developer shall not delay any work whilst awaiting a response.

All variations shall be approved by the FCDA. Thereafter, each instruction to execute a Variation, with any requirements for the recording of Costs, shall be issued by the Independent Engineer to the Developer, who shall acknowledge receipt.

Upon the FCDA instructing or approving a Variation, the Independent Engineer, shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine adjustments to the Total Project Cost and the Schedule of Payments. These adjustments shall include reasonable profit, and shall take account of the Developer's submissions under Sub-Clause 13.2 [Value Engineering] if applicable.

13.4

Provisional Sums

Each Provisional Sum shall only be used, in whole or in part, in accordance with the FCDA's approval followed by Independent Engineer's instructions, and the Total Project Cost shall be adjusted accordingly. The total sum paid to the Developer shall include only such amounts, for the work, supplies or services to which the Provisional Sum relates, as the FCDA shall have instructed. For each Provisional Sum, the FCDA may instruct:

- (a) Work to be executed or project preliminaries accounts to be settled (including Plant, Materials, services to be supplied or Land compensation) by the Developer and valued under Sub-Clause 13.3 [Variation Procedure]; and/or
- (b) Plant, Materials or services to be purchased by the Developer, for which there shall be added to the Total Project Cost less the original Provisional Sums:
 - (i) the actual amounts paid (or due to be paid) by the Developer, and
 - (ii) a sum for overhead charges and profit, calculated as a percentage of these actual amounts by applying the relevant percentage rate stated in the PPP Contract Agreement.
- (c) The use of funds for the Professional Services rendered on/and for the supervision of the project.

The Developer shall, when required by the FCDA, produce quotations, invoices, vouchers and accounts or receipts in substantiation upon instruction by Independent Engineer.

The provision in the Total Development Cost and Financial Model described as FCDA / Public Authority Expenses, FCDA Contingent Liability Provision and Adjusted Net Income for FCDA shall be expended at the sole discretion of the FCDA and the balance in the Escrow Account at the end of the PPP Agreement and closure of Account shall vest in the FCDA.

The financial implications of Instructions issued under this Sub-Clause 13.4 [Provisional Sums] on the Total Development Cost shall be determined on the basis of adjustments to the Financial Model, the Schedule of Payments and Financing Documents by PPP Consultant in accordance with the PPP Contract Agreement.

13.5

Adjustments for Changes in Legislation

The Total Development Cost shall be adjusted to take account of any increase or decrease in Cost resulting from a change in the Laws of Nigeria (including the introduction of new Laws and the repeal or modification of existing Laws) or in the judicial or official governmental interpretation of such Laws, made after the Base Date, which affect the Developer in the performance of obligations under the PPP Contract Agreement.

If the Developer suffers (or will suffer) delay and/or incurs (or will incur) additional Cost as a result of these changes in the Laws or in such interpretations, made after the Base Date, the Developer shall give notice to the FCDA and shall be entitled subject to Sub-Clause 20.1 [Developer's Claims] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and
- (b) payment of any such Cost, which shall be added to the Total Development Cost.

After receiving this notice, the FCDA shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters

13.6

Adjustments for Changes in Cost

The Total Development Cost shall not be adjusted for rises or falls in the cost of labour, Goods and other inputs to the Works except in accordance with the provisions of Sub-Clause 13.5[Adjustments for Changes in Legislation] of these Conditions.

Clause 14 Total Development Cost and Payment

14.1 The Total Development Cost

The Total Development Cost shall be as fully set out in Schedule 4 - Summary of Total Development Cost and Schedule 5 - Financial Model.

Payments under the PPP Contract Agreement shall be made on the basis of the lump sum Total Development Cost subject to adjustments in accordance with this PPP Contract Agreement.

The Developer shall pay all taxes, duties and fees required to be paid by him under the PPP Contract Agreement, and the Total Development Cost shall not be adjusted for any of these costs, except as stated in Sub-Clause 13.5 [Adjustments for Changes in Legislation].

14.2 Application for Interim Payments

The Developer shall submit a Statement of Valuation in six copies to the FCDA after the end of each three-month period. The Statement shall show in detail the amount to which the Developer considers himself to be entitled, together with supporting documents which shall include the relevant report on progress in accordance with Sub-Clause 4.20 [Progress Reports].

The Statement shall include the following items, as applicable in the sequence listed:

- (a) the estimated contract value of the Works executed and the Developer's Documents produced up to the end of the month (including Variations but excluding items described in sub-paragraphs (b) to (f) below);
- (b) any amounts to be added and deducted for changes in legislation and changes in cost, in accordance with Sub-Clause 13.5 [Adjustments for Changes in Legislation];
- (c) any amount to be deducted for retention, calculated by applying the percentage of retention 5% of the total of the above amounts, until the amount so retained by the FCDA reaches the limit of Retention Money 2.5% of the Total Project Cost. The requirement for deduction of retention

money may be waived by the submission of a retention guarantee by the Developer in accordance with Sub-Clause 14.8 [Payment of Retention Money].

- (d) any other additions or deductions which may have become due under the PPP Contract Agreement or otherwise, including those under Clause 20 [Claims, Disputes and Arbitration]
- (e) Value Added Tax; and
- (f) the deduction of amounts included in previous Statements.

14.3 Schedule of Payments

The Schedule of Payments specifying the instalments in which Total Development Cost will be paid is set out in Schedule 6.

The analysis and evaluation of Interim Payment to be drawn from the Equity, Lenders and Escrow Account shall be adjusted on the basis of the following documents:

- (a) The Statement of Valuation submitted in accordance with Sub-Clause 14.2 [Application for Interim Payments.] which shall include the relevant report on progress in accordance with Sub-Clause 4.20[Progress Reports]
- (b) The Financial Model – Schedule 5
- (c) The Schedule of Payments - Schedule 6, and
- (d) Project Cost and Pricing Document – Schedule 7

If the analysis of actual progress contained in the Statement of Valuation submitted in accordance with Sub-Clause 14.2 [Application for Interim Payments] is found to be less or more than that on which the Schedule of Payments was based, then the Independent Engineer may proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine revised instalments, which shall take account of the extent to which progress is less or more than that on which the instalments were previously based.

After such determinations, the PPP Consultant shall on the basis of adjustments to the Financial Model, the Schedule of Payments and Financing Documents in accordance with the PPP Contract Agreement advise the Independent Engineer on

- (a) the amount of interim payment to be drawn from the Lenders/Escrow Account.
- (b) The Payments to Lenders which cover all principal, interest and other charges due.

14.4 Plant and Materials intended for the Works

If the Developer is entitled, under the PPP Contract Agreement, to an interim payment for Plant and Materials which are not yet on the Site, the Developer shall nevertheless not be entitled to such payment unless:

- (a) the relevant Plant and Materials are in the Country and have been marked as the FCDA's property in accordance with the FCDA's instructions; or
- (b) the Developer has delivered, to the FCDA, an on-demand payment bank and/ or any other Financial Institution guarantee in a form and issued by an entity approved by the FCDA in amounts equal to such payment. This guarantee shall be valid until the Plant and Materials are properly stored on Site and protected against loss, damage or deterioration.

14.5 Interim Payments

The Interim Payment for the works from the Lenders/Escrow Account shall be paid in accordance with the procedures for payment set out in Sub-Clause 14.3 [Schedule of Payments]. Payments due shall not be withheld except that:

- (a) if anything supplied or work done by the Developer is not in accordance with the PPP Contract Agreement, the cost of rectification or replacement may be withheld until rectification or replacement has been completed; and/or
- (b) if the Developer was or is failing to perform any work or

and had been so notified by the FCDA, the value of this work or obligation may be withheld until the work or obligation has been performed.

- (c) Notwithstanding sub-paragraphs (a) and (b) above, all payments due to the Lenders shall not be withheld and shall be made as and when due in accordance with the provisions of the Financial Model, the Schedule of Payments and Financing Documents. If FCDA incurs any additional costs as a result of this the Independent Engineer shall be instructed to proceed in accordance with Sub-Clause 3.5[Determinations] to determine the cost implications which shall be borne by the Developer.

The FCDA may, by any payment, make any correction or modification that should properly be made to any amount previously considered due. Payment shall not be deemed to indicate the FCDA's acceptance, approval, consent or satisfaction.

14.6 Timing of Payments

The timing of payments shall be in accordance with the procedures for payment set out in Sub-Clause 14.3 [Schedule of Payments].

14.7 Delayed Payment

There shall be a stand-by facility arranged by the Developer to augment any revenue and/or payment shortfall that may arise in accordance with Sub-Clause 1.21[Revenue Shortfall] and to prevent any delayed payment.

14.8 Payment of Retention Money

When the Taking-Over Certificate has been issued for the Works, and the Works have passed all specified tests (including the Tests after Completion, if any), the first half of the Retention Money shall be paid to the Developer. If a Taking-Over Certificate is issued for a Section, the relevant percentage of the first half of the Retention Money shall be paid when the Section passes all tests.

Promptly after the latest of the expiry dates of the Defects Notification Periods, the outstanding balance of the Retention Money shall be paid to the Developer. If a Taking-Over Certificate was issued for a Section, the relevant percentage of the second half of the Retention Money shall be paid promptly after the expiry date of the Defects Notification Period for the Section.

However, if any work remains to be executed under Clause 11 [Defects Liability] or Clause 12 [Tests after Completion], the FCDA shall be entitled to withhold the estimated cost of this work until it has been executed.

The relevant percentage for each Section shall be the percentage value of the Section as stated in the PPP Contract Agreement. If the percentage value of a Section is not stated in the PPP Contract Agreement, no percentage of either half of the Retention Money shall be released under this Sub-Clause in respect of such Section.

The requirement for deduction of retention money may be waived by the submission of a retention guarantee by the Developer. The Retention guarantee shall be in the form of an unconditional on-demand payment guarantee annexed as Schedule 9 or in another form approved by the FCDA.

14.9 Statement at Completion

Within 84 days after receiving the Taking-Over Certificate for the Works, the Developer shall submit to the FCDA six copies of a Statement at completion with supporting documents, in accordance with Sub-Clause 14.2 [Application for Interim Payments], showing:

- (a) the value of all work done in accordance with the PPP Contract Agreement up to the date stated in the Taking-Over Certificate for the Works,
- (b) any further sums which the Developer considers to be due, and
- (c) an estimate of any other amounts which the Developer considers will become due to him under the PPP Contract Agreement. Estimated amounts shall be shown separately in this Statement at completion.

The FCDA shall then give notice to the Developer in accordance with Sub-Clause 14.5 [Interim Payments] and make payment in accordance with Sub-Clause 14.6 [Timing of Payments].

The agreement of the Final Payment Analysis shall form the basis for the Adjustment of the Financial Model for the Project Financing Accounts.

14.10 Application for Final Payment

Within 56 days after receiving the Performance Certificate, the Developer shall submit, to the FCDA, six copies of a draft final statement with supporting documents showing in detail in a form approved by the FCDA:

- (a) the value of all work done in accordance with the PPP Contract Agreement, and
- (b) any further sums which the Developer considers to be due to him under the PPP Contract Agreement or otherwise.

If the FCDA disagrees with or cannot verify any part of the draft final statement, the Developer shall submit such further information as the FCDA may reasonably require and shall make such changes in the draft as may be agreed between them. The Developer shall then prepare and submit to the FCDA the final statement as agreed. This agreed statement is referred to in these Conditions as the "Final Statement".

However if, following discussions between the Parties and any changes to the draft final statement which are agreed, it becomes evident that a dispute exists, the FCDA shall pay the agreed parts of the draft final statement in accordance with Sub-Clause 14.5 [Interim Payments] and Sub-Clause 14.6 [Timing of Payments]. Thereafter, if the dispute is finally resolved under Sub-Clause 20.4 [Obtaining Dispute Adjudication Board's Decision] or Sub-Clause 20.7 [Amicable Settlement], the Developer shall then prepare and submit to the FCDA a Final Statement.

14.11 Discharge

When submitting the Final Statement, the Developer shall submit a written discharge which confirms that the total of the Final Statement represents full and final settlement of all moneys due to the Developer under or in connection with the PPP Contract Agreement. This discharge may state that it becomes effective when the Developer has received the Performance Security and the out-standing balance of this total, in which event the discharge shall be effective on such date.

14.12 Final Payment

The Final payment shall be made in accordance with the Adjustment of the Financial Model for the Project Financing Accounts. The FCDA shall pay to the Developer the amount which is finally due, less all amounts previously paid by the FCDA and any deductions in accordance with Sub-Clause 2.5 [FCDA's Claims].

14.13 Cessation of FCDA's Liability

The FCDA shall not be liable to the Developer for any matter or thing under or in connection with the PPP Contract Agreement or execution of the Works, except to the extent that the Developer shall have included an amount expressly for it:

- (a) in the Final Statement and also
- (b) (except for matters or things arising after the issuing of the Taking-Over Certificate for the Works) in the Statement at completion described in Sub-Clause 14.9 [Statement at Completion].

However, this Sub-Clause shall not limit the FCDA's liability under his indemnification) obligations, or the FCDA's liability in any case of fraud, deliberate default or reckless misconduct by the FCDA.

Clause 15 Termination by FCDA

15.1 Notice to Correct

If the Developer fails to carry out any obligation under the PPP Contract Agreement, the FCDA may by notice require the Developer to make good the failure and to remedy it within 60 days.

15.2 Termination by FCDA

The FCDA shall be entitled to terminate the PPP Contract Agreement if the Developer:

- (a) fails to achieve Financial Close under Sub-Clause 1.17 [Conditions Precedent to Commencement] or comply with a notice under Sub-Clause 15.1 [Notice to Correct].
- (b) abandons the Works or otherwise plainly demonstrates the intention not to continue performance of his obligations under the PPP Contract Agreement,
- (c) without reasonable excuse fails to proceed with the Works in accordance with Clause 8 [Commencement, Delays and Suspension],
- (d) assigns the PPP Contract Agreement without the required agreement,
- (e) becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events, or
- (f) gives or offers to give (directly or indirectly) to any person any bribe, gift, gratuity, commission or other thing of value, as an inducement or reward:
 - (i) for doing or forbearing to do any action in relation to the PPP Contract Agreement, or

(ii) for showing or forbearing to show ^{Date.....} favour or disfavour to any person in relation to the PPP Contract Agreement,

or if any of the Developer's Personnel, agents or Subcontractors gives or offers to give (directly or indirectly) to any person any such inducement or reward as is described in this sub-paragraph (f). However, lawful inducements and rewards to Developer's Personnel shall not entitle termination.

In any of these events or circumstances, the FCDA may, upon giving 14 days' notice to the Developer, terminate the PPP Contract Agreement and expel the Developer from the Site. However, in the case of sub-paragraph (e) or (f), the FCDA may by notice terminate the PPP Contract Agreement immediately.

The FCDA's election to terminate the PPP Contract Agreement shall not prejudice any other rights of the FCDA, under the PPP Contract Agreement or otherwise.

The Developer shall then leave the Site and deliver any required Goods, all Developer's Documents, and other design documents made by or for him, to the FCDA. However, the Developer shall use his best efforts to comply immediately with any reasonable instructions included in the notice (i) for the assignment of any sub- contract, and (ii) for the protection of life or property or for the safety of the Works.

After termination, the FCDA may complete the Works and/or arrange for any other entities to do so. The FCDA and these entities may then use any Goods, Developer's Documents and other design documents made by or on behalf of the Developer.

The FCDA shall then give notice that the Developer's Equipment and Temporary Works will be released to the Developer at or near the Site. The Developer shall promptly arrange their removal, at the risk and cost of the Developer. However, if by this time the Developer has failed to make a payment due to the FCDA, these items may be sold by the FCDA in order to recover this payment. Any balance of the proceeds shall then be paid to the Developer.

15.3 Valuation at Date of Termination

Sign.....
Date.....

As soon as practicable after a notice of termination under Sub-Clause 15.2 [Termination by FCDA] has taken effect, the FCDA shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine the value of the Works, Goods and Developer's Documents, and any other sums work executed in accordance with the PPP Contract Agreement.

15.4 Payment after Termination

After a notice of termination under Sub-Clause 15.2 [Termination by FCDA] taken effect, the FCDA may:

- (a) proceed in accordance with Sub-Clause 2.5 [FCDA's Claims],
- (b) with-hold further payments to the Developer until the costs of design, execution, completion and remedying of any defects, damages for delay in completion (if any), and all other costs incurred by the FCDA, have been established, and/or
- (c) recover from the Developer any losses and damages incurred by the FCDA and any extra costs of completing the Works, after allowing for any sum due to the Developer under Sub-Clause 15.3 [Valuation at Date of Termination]. After recovering any such losses, damages and extra costs, the FCDA shall pay any balance to the Developer.

15.5 FCDA's Entitlement to Termination for convenience

The FCDA shall be entitled to terminate the PPP Contract Agreement, at any time for the FCDA's convenience, by giving notice of such termination to the Developer.

The termination shall take effect 28 days after the latter of the dates on which the Developer receives this notice or the FCDA returns the Performance Security. The FCDA shall not terminate the PPP Contract Agreement under this Sub-Clause in order to execute the Works himself or to arrange for the Works to be executed by another Developer.

After this termination, the Developer shall proceed in accordance with Sub-Clause 16.3 [Cessation of Work and Removal of Developer's Equipment] and shall be paid in accordance with Sub-Clause 19.6 [Optional Termination, Payment and Release].

Clause 16 Suspension and Termination by Developer

16.1 Developer's Entitlement to suspend Work

If the FCDA fails to comply with Sub-Clause 1.19 [FCDA's Financial Arrangements] or Sub-Clause 14.6 [Timing of payments] the Developer may, after giving not less than 28 days' notice to the FCDA, suspend work (or reduce the rate of work) unless and until the Developer has received the reasonable evidence or payment, as the case may be and as described in the notice.

The Developer's action shall not prejudice his entitlements to termination under Sub-Clause 16.2 [Termination by Developer].

If the Developer subsequently receives such evidence or payment (as described in the relevant Sub-Clause and in the above notice) before giving a notice of termination, the Developer shall resume normal working as soon as is reasonably practicable.

If the Developer suffers delay and/or incurs Cost as a result of suspending work (or reducing the rate of work) in accordance with this Sub-Clause the Developer shall give notice to the FCDA and shall be entitled subject to Sub-Clause 20.1 [Developer's Claims] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and
- (b) payment of any such Cost plus reasonable profit, which shall be added to the Total Development Cost.

After receiving this notice, the FCDA shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.

The Developer shall be entitled to terminate the PPP Contract Agreement if:

- (a) the Developer does not receive the reasonable evidence within 42 days after giving notice under Sub-Clause 16.1 [Developer's Entitlement to Suspend Work] in respect of a failure to comply with Sub-Clause 2.4 [FCDA's Financial Arrangements],
- (b) the Developer does not receive the amount due within 42 days after the expiry of the time stated in Sub-Clause 14.6 [Timing of Payments] within which payment is to be made (except for deductions in accordance with Sub-Clause 2.5 [FCDA's Claims]),
- (c) the FCDA substantially fails to perform his obligations under the PPP Contract Agreement in such a manner as to materially and adversely affect the ability of the Developer to perform.
- (d) the FCDA fails to comply with Sub-Clause 1.7 [Assignment],
- (e) a prolonged suspension affects the whole of the Works as described in Sub- Clause 8.11 [Prolonged Suspension], or
- (f) the FCDA becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events.

In any of these events or circumstances, the Developer may, upon giving 28 days' notice to the FCDA, terminate the PPP Contract Agreement. However, in the case of sub- paragraph (e) or (f), the Developer may by notice terminate the PPP Contract Agreement immediately.

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The Developer's election to terminate the PPP Contract Agreement shall not prejudice any other rights of the Developer, under the PPP Contract Agreement or otherwise.

16.3

Cessation of Work and Removal of Developer's Equipment

After a notice of termination under Sub-Clause 15.5 [FCDA's Entitlement to Termination], Sub-Clause 16.2 [Termination by Developer] or Sub-Clause 19.6 '[Optional Termination, Payment and Release] has taken effect, the Developer shall promptly:

- (a) cease all further work, except for such work as may have been instructed by the FCDA for the protection of life or property or for the safety of the Works,
- (b) hand over Developer's Documents, Plant, Materials and other work, for which the Developer has received payment, and
- (c) remove all other Goods from the Site, except as necessary for safety, and leave the Site.

16.4

Payment on Termination

After a notice of termination under Sub-Clause 16.2 [Termination by Developer] has taken effect, the FCDA shall promptly:

- (a) return the Performance Security to the Developer,
- (b) pay the Developer in accordance with Sub-Clause 19.6 [Optional Termination, Payment and Release], and
- (c) pay to the Developer the amount of any loss or other loss or damage sustained by the Developer as a result of this termination.

Clause 17 Risk and Responsibility

Legal
Sign.....
Date.....

17.1 Indemnities

The Developer shall indemnify and hold harmless the FCDA, the FCDA's Personnel, and their respective agents, against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect of:

- (a) bodily injury, sickness, disease or death, of any person whatsoever arising out of or in the course of or by reason of the design, execution and completion of the Works and the remedying of any defects, unless attributable to any negligence, wilful act or breach of the PPP Contract Agreement by the FCDA, the FCDA's Personnel, or any of their respective agents, and
- (b) damage to or loss of any property, real or personal (other than the Works), to the extent that such damage or loss arises out of or in the course of or by reason of the design, finance, execution and completion of the Works and the remedying of any defects, unless and to the extent that any such damage or loss is attributable to any negligence, wilful act or breach of the PPP Contract Agreement by the FCDA, the FCDA's Personnel, their respective agents, or anyone directly or indirectly employed by any of them.

The FCDA shall indemnify and hold harmless the Developer, the Developer's Personnel, and their respective agents, against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect of (1) bodily injury, sickness, disease or death, which is attributable to any negligence, wilful act or breach of the PPP Contract Agreement by the FCDA, the FCDA's Personnel, or any of their respective agents, and (2) the matters for which liability may be excluded from insurance cover, as described in sub-paragraphs (d)(i), (ii) and (iii) of Sub-Clause 18.3 [Insurance Against Injury to Persons and Damage to Property].

17.2 Developer's Care of the Works

The Developer shall take full responsibility for the care of the Works and Goods from the Commencement Date until the Taking-Over Certificate is issued (or is deemed to be issued under

Sub-Clause 10.1 [Taking Over of the Works and Sections] for the Works, when responsibility for the care of the Works shall pass to the FCDA. If a Taking-Over Certificate is issued (or is so deemed to be issued) for any Section of the Works, responsibility for the care of the Section shall then pass to the FCDA.

After responsibility has accordingly passed to the FCDA, the Developer shall take responsibility for the care of any work which is outstanding on the date stated in a Taking-Over Certificate, until this outstanding work has been completed.

If any loss or damage happens to the Works, Goods or Developer's Documents during the period when the Developer is responsible for their care, from any cause not listed in Sub-Clause 17.3 [FCDA's Risks], the Developer shall rectify the loss or damage at the Developer's risk and cost, so that the Works, Goods and Developer's Documents conform with the PPP Contract Agreement.

The Developer shall be liable for any loss or damage caused by any actions performed by the Developer after a Taking-Over Certificate has been issued. The Developer shall also be liable for any loss or damage which occurs after a Taking-Over Certificate has been issued and which arose from a previous event for which the Developer was liable.

17.3

FCDA's Risks

The risks referred to (in Sub-Clause 17.4 below are:

- (a) war, hostilities (whether war be declared or not), invasion, act of foreign enemies,
- (b) Rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war, within the Country,
- (c) riot, commotion or disorder within the Country by persons other than the Developer's Personnel and other employees of the Developer and Subcontractors,
- (d) munitions of war, explosive materials, ionising radiation or contamination by radio-activity, within the Country, except as may be attributable to the Developer's use of such munitions, explosives, radiation or radio-activity, and
- (e) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds.

17.4

Consequences of FCDA's Risks

If and to the extent that any of the risks listed in Sub-Clause 17.3 above results in loss or damage to the Works, Goods or Developer's Documents, the Developer shall promptly give notice to the FCDA and shall rectify this loss or damage to the extent required by the FCDA.

If the Developer suffers delay and/or incurs Cost from rectifying this loss or damage, the Developer shall give a further notice to the FCDA and shall be entitled subject to Sub-Clause 20.1 [Developer's Claims] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and
- (b) payment of any such Cost, which shall be added to the Total Development Cost.

After receiving this further notice, the FCDA shall proceed in accordance with Sub Clause 3.5 [Determinations] to agree or determine these matters.

17.5

Intellectual and Industrial Property Rights

In this Sub-Clause, "infringement" means an infringement (or alleged infringement) of any patent, registered design, copyright, trade mark, trade name, trade secret or other intellectual or industrial property right relating to the Works; and "claim" means a claim (or proceedings pursuing a claim) alleging an infringement.

Whenever a Party does not give notice to the other Party of any claim within 28 days of receiving the claim, the first Party shall be deemed to have waived any right to indemnity under this Sub-Clause.

The FCDA shall indemnify and hold the Developer harmless against and from any claim alleging an infringement which is or was:

- (a) an unavoidable result of the Developer's compliance with the FCDA's Requirements, or
- (b) a result of any Works being used by the FCDA:

- (i) for a purpose other than that indicated by, or reasonably to be inferred from, the PPP Contract Agreement, or
- (ii) in conjunction with any thing not supplied by the Developer, unless such use was disclosed to the Developer prior to the Base Date or is stated in the PPP Contract Agreement.

The Developer shall indemnify and hold the FCDA harmless against and from any other claim which arises out of or in relation to (i) the Developer's design, manufacture, construction or execution of the Works, (ii) the use of Developer's Equipment, or (iii) the proper use of the Works.

If a Party is entitled to be indemnified under this Sub-Clause, the indemnifying Party may (at its cost) conduct negotiations for the settlement of the claim, and any litigation or arbitration which may arise from it. The other Party shall, at the request and cost of the indemnifying Party, assist in contesting the claim. This other Party (and its Personnel) shall not make any admission which might be prejudicial to the indemnifying Party, unless the indemnifying Party failed to take over the conduct of any negotiations, litigation or arbitration upon being requested to do so by such other Party.

17.6

Limitation of Liability

Neither Party shall be liable to the other Party for loss of use of any Works, loss of profit, loss of any contract or for any indirect or consequential loss or damage which may be suffered by the other Party in connection with the PPP Contract Agreement, other than under Sub-Clause 16.4 [Payment on Termination] and Sub-Clause 17.1 [Indemnities].

The total liability of the Developer to the FCDA, under or in connection with the PPP Contract Agreement other than under Sub-Clause 17.1 [Indemnities] and Sub-Clause 17.5 [Intellectual and Industrial Property Rights], shall not exceed the Total Development Cost stated in the PPP Contract Agreement.

This Sub-Clause shall not limit liability in any case of fraud, deliberate default for reckless misconduct by the defaulting Party.

Clause 18 Insurance

18.1 General Requirement for Insurance

In this Clause, and other Insurance Clauses and Sub-clauses the "Insuring Party" shall be the Developer. The Developer shall be responsible for effecting and maintaining the insurance for each type of insurance specified in the relevant Sub-Clause.

Wherever the Developer is the insuring Party, each insurance shall be effected with insurers and on terms approved by the FCDA. These terms shall be consistent with the terms and conditions of the PPP Contract Agreement

If a policy is required to indemnify joint insured, the cover shall apply separately to each insured as though a separate policy had been issued for each of the joint insured. If a policy indemnifies additional joint insured, namely in addition to the insured specified in this Clause, (i) the Developer shall act under the policy on behalf of these additional joint insured except that the FCDA shall act for FCDA's Personnel, (ii) additional joint insured shall not be entitled to receive payments directly from the insurer or to have any other direct dealings with the insurer, and (iii) the insuring Party shall require all additional joint insured to comply with the conditions stipulated in the policy.

Each policy insuring against loss or damage shall provide for payments to be made in the currencies required to rectify the loss or damage. Payments received from insurers shall be used for the rectification of the loss or damage.

The relevant insuring Party shall, within the respective periods stated in the PPP Contract Agreement (calculated from the Commencement Date), submit to the other Party:

- (a) evidence that the insurances described in this Clause have been effected, and
- (b) copies of the policies for the insurances described in Sub-Clause 18.2 [Insurance of Works and Developer's Equipment] and Sub-Clause 18.3 [Insurance against Injury to Persons and Damage to Property].

When each premium is paid, the insuring Party shall submit evidence of payment to the other Party.

Each Party shall comply with the conditions stipulated in each of the insurance policies. The insuring Party shall keep the insurers informed of any relevant changes to the execution of the Works and ensure that insurance is maintained in accordance with this Clause.

Neither Party shall make any material alteration to the terms of any insurance without the prior approval of the other Party. If an insurer makes (or attempts to make) any alteration, the Party first notified by the insurer shall promptly give notice to the other Party.

If the insuring Party fails to effect and keep in force any of the insurances it is required to effect and maintain under the PPP Contract Agreement, or fails to provide satisfactory evidence and copies of policies in accordance with this Sub-Clause, the other) Party may (at its option and without prejudice to any other right or remedy) effect insurance for the relevant coverage and pay the premiums due. The insuring Party shall pay the amount of these premiums to the other Party, and the Total Development Cost shall be adjusted accordingly.

Nothing in this Clause limits the obligations, liabilities or responsibilities of the Developer or the FCDA, under the other terms of the PPP Contract Agreement or otherwise. Any amounts not insured or not recovered from the insurers shall be borne by the Developer and/or the FCDA in accordance with these obligations, liabilities or responsibilities. However, if the insuring Party fails to effect and keep in force an insurance which is available and which it is required to effect and maintain under the PPP Contract Agreement, and the other Party neither approves the omission nor effects insurance for the coverage relevant to this default, any moneys which should have been recoverable under this insurance shall be paid by the insuring Party.

Payments by one Party to the other Party shall be subject to Sub-Clause 2.5 [FCDA's Claims] or Sub-Clause 20.1 [Developer's Claims], as applicable.

10.2

Sign.....
Date.....

The insuring Party shall insure the Works, Plant, Materials and Developer's Documents for not less than the full reinstatement cost including the costs of demolition, removal of debris and professional fees and profit. This insurance shall be effective from the date by which the evidence is to be submitted under sub-paragraph (a) of Sub-Clause 18.1 [General Requirements for Insurances], until the date of issue of the Taking-Over Certificate for the Works.

The insuring Party shall maintain this insurance to provide cover until the date of issue of the Performance Certificate, for loss or damage for which the Developer is liable arising from a cause occurring prior to the issue of the Taking-Over Certificate, and for loss or damage caused by the Developer or Subcontractors in the course of any other operations (including those under Clause 11 [Defects Liability] and Clause 12 [Tests after Completion]).

The insuring Party shall insure the Developer's Equipment for not less than the full replacement value, including delivery to Site. For each item of Developer's Equipment, the insurance shall be effective while it is being transported to the Site and until it is no longer required as Developer's Equipment.

Insurances under this Sub-Clause:

- (a) shall be effected and maintained by the Developer as insuring Party,
- (b) shall be in the joint names of the Parties, who shall be jointly entitled to receive payments from the insurers, payments being held or allocated between the Parties for the sole purpose of rectifying the loss or damage,
- (c) shall cover all loss and damage from any cause not listed in Sub-Clause 17.3 [FCDA's Risks],
- (d) shall also cover loss or damage from the risks listed in sub-paragraph (c) of Sub-Clause 17.3 [FCDA's Risks], with deductibles per occurrence of not more than ₦ 2,000,000.00 per occurrence.
- (e) may however exclude loss of, damage to, and reinstatement of:
 - (i) a part of the Works which is in a defective condition due to a defect in its design, materials or

workmanship (but cover shall include any other parts which are lost or damaged as a direct result of this defective condition and not as described in sub-paragraph (ii) below),

- (ii) a part of the Works which is lost or damaged in order to reinstate any other part of the Works if this other part is in a defective condition due to a defect in its design, materials or workmanship,
- (iii) a part of the Works which has been taken over by the FCDA, except to the extent that the Developer is liable for the loss or damage, and
- (iv) Goods while they are not in the Country, subject to Sub-Clause 14.4 [Plant and Materials intended for the Works].

If, more than one year after the Base Date, the cover described in sub-paragraph (d) above ceases to be available at commercially reasonable terms, the Developer shall (as insuring Party) give notice to the FCDA, with supporting particulars. The FCDA shall then (i) be entitled subject to Sub-Clause 2.5 [FCDA's Claims] to payment of an amount equivalent to such commercially reasonable terms as the Developer should have expected to have paid for such cover, and (ii) be deemed, unless he obtains the cover at commercially reasonable terms, to have approved the omission under Sub-Clause 18.1 [General Requirements for Insurances].

18.3 Insurance against Injury to Persons and Damage to Property

The insuring Party shall insure against each Party's liability for any loss, damage, death or bodily injury which may occur to any physical property (except things insured under Sub-Clause 18.2 [Insurance for Works and Developer's Equipment]) or to any person (except persons insured under Sub-Clause 18.4 [Insurance for Developer's Personnel]), which may arise out of the Developer's performance of the PPP Contract Agreement and occurring before the issue of the Performance Certificate.

This insurance shall be for a limit per occurrence of not less than ₦ 30,000,000.00 with no limit on the number of occurrences.

The insurances specified in this Sub-Clause:

- Signature.....
Date.....
- (a) shall be effected and maintained by the Developer as insuring Party,
 - (b) shall be in the joint names of the Parties,
 - (c) shall be extended to cover liability for all loss and damage to the FCDA's property (except things insured under Sub-Clause 18.2) arising out of the Developer's performance of the PPP Contract Agreement, and
 - (d) may however exclude liability to the extent that it arises from:
 - (i) the FCDA's right to have the Permanent Works executed on, over, under, in or through any land, and to occupy this land for the Permanent Works,
 - (ii) damage which is an unavoidable result of the Developer's obligations to execute the Works and remedy any defects, and
 - (iii) a cause listed in Sub-Clause 17.3 [FCDA's Risks], except to the extent that cover is available at commercially reasonable terms.

18.4 Insurance for Developer's Personnel

The Developer shall effect and maintain insurance against liability for claims, Personnel damages, losses and expenses (including legal fees and expenses) arising from injury, sickness, disease or death of any person employed by the Developer or any other of the Developer's Personnel.

The FCDA shall also be indemnified under the policy of insurance, except that this insurance may exclude losses and claims to the extent that they arise from any act or neglect of the FCDA or of the FCDA's Personnel.

The insurance shall be maintained in full force and effect during the whole time that these personnel are assisting in the execution of the Works. For a Subcontractor's employees, the insurance may be effected by the Subcontractor, but the Developer shall be responsible for compliance with this Clause

Clause 19 Force Majeure

19.1 Definition of Force Majeure

In this Clause, "Force Majeure" means an exceptional event or circumstance:

- (a) which is beyond a Party's control,
- (b) which such Party could not reasonably have provided against before entering into the PPP Contract Agreement,
- (c) which, having arisen, such Party could not reasonably have avoided or overcome, and
- (d) which is not substantially attributable to the other Party.
- (e) expropriation or compulsory acquisition by any Government Agency of the Project Site, Assets or rights of the Developer.

Force Majeure may include, but is not limited to, exceptional events or circumstances of the kind listed below, so long as conditions (a) to (d) above are satisfied:

- (i) war, hostilities (whether war be declared or not), invasion, act of foreign enemies,
- (ii) rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war,
- (iii) riot, commotion, disorder, strike or lockout by persons other than the Developer's Personnel and other employees of the Developer and Sub-Developers,
- (iv) munitions of war, explosive materials, ionising radiation or contamination by radio-activity, except as may be attributable to the Developer's use of such munitions, explosives, radiation or radio-activity, and
- (v) natural catastrophes such as earthquake, hurricane, typhoon or volcanic activity.

19.2

Notice of Force Majeure

Legal Services

Sign

Date

If a Party is or will be prevented from performing any of its obligations under the PPP Contract Agreement by Force Majeure, then it shall give notice to the other Party of the event or circumstances constituting the Force Majeure and shall specify the obligations, the performance of which is or will be prevented. The notice shall be given within 14 days after the Party became aware, or should have become aware, of the relevant event or circumstance constituting Force Majeure.

The Party shall, having given notice, be excused performance of such so long as such Force Majeure prevents it from performing them.

Notwithstanding any other provision of this Clause, Force Majeure shall not apply to obligations of either Party to make payments to the other Party under the PPP Contract Agreement.

19.3

Duty to Minimise Delay and Mitigate Losses

Each Party shall at all times use all reasonable endeavours to minimise any delay and mitigate losses in the performance of the PPP Contract Agreement as a result of Force Majeure.

A Party shall give notice to the other Party when it ceases to be affected by the Force Majeure.

19.4

Consequences of Force Majeure

If the Developer is prevented from performing any of his obligations under the PPP Contract Agreement by Force Majeure of which notice has been given under Sub-Clause 19.2 [Notice of Force Majeure], and suffers delay and/or incurs Cost by reason of such Force Majeure, the Developer shall be entitled subject to Sub-Clause 20.1 [Developer's Claims] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and
- (b) if the event or circumstance is of the kind described in subparagraphs (i) to (iv) of Sub-Clause 19.1 [Definition of Force

Majeure] and, in the case of sub- paragraphs (ii) to (iv), occurs in the Country, payment of any such Cost.

After receiving this notice, the FCDA shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.

19.5 Force Majeure Affecting Subcontractor

If any Subcontractor is entitled under any contract or agreement relating to the Works to relief from force majeure on terms additional to or broader than those specified in this Clause, such additional or broader force majeure events or circumstances shall not excuse the Developer's non-performance or entitle him to relief under this Clause.

19.6 Optional Termination, Payment and Release

If the execution of substantially all the Works in progress is prevented for a continuous period of 84 days by reason of Force Majeure of which notice has been given under Sub-Clause 19.2 [Notice of Force Majeure], or for multiple periods which total more than 140 days due to the same notified Force Majeure, then either Party may give to the other Party a notice of termination of the PPP Contract Agreement. In this event, the termination shall take effect 7 days after the notice is given, and the Developer shall proceed in accordance with Sub-Clause 16.3 [Cessation of Work and Removal of Developer's Equipment].

Upon such termination, the FCDA shall pay to the Developer:

- (a) the amounts payable for any work carried out for which a price is stated in the PPP Contract Agreement;
- (b) the Cost of Plant and Materials ordered for the Works which have been delivered to the Developer, or of which the Developer is liable to accept delivery: this Plant and Materials shall become the property of (and be at the risk of) the FCDA when paid for by the FCDA, and the Developer shall place the same at the FCDA's disposal;

- (c) any other Cost or liability which in the circumstances was reasonably incurred by the Developer in the expectation of completing the Works;
- (d) the Cost of removal of Temporary Works and Developer's Equipment from the Site and the return of these items to the Developer's works in his country (or to any other destination at no greater cost); and
- (e) the Cost of repatriation of the Developer's staff and labour employed wholly in connection with the Works at the date before termination.
- (f) All costs ascertained from the Financing Documents payable to the Lender.

19.7

Release from Performance Under the Law

Notwithstanding any other provision of this Clause, If any event or circumstance outside the control of the Parties (including, but not limited to, Force Majeure) arises which makes it impossible or unlawful for either or both Parties to fulfil its or their contractual obligations or which, under the law governing the PPP Contract Agreement, entitles the Parties to be released from further performance of the PPP Contract Agreement, then upon notice by either Party to the other Party of such event or circumstance:

- (a) the Parties shall be discharged from further performance, without prejudice to the rights of either Party in respect of any previous breach of the Contract, and
- (b) the sum payable by the FCDA to the Developer shall be the same as would have been payable under Sub-Clause 19.6 [Optional Termination, Payment and Release] if the PPP Contract Agreement had been terminated under Sub-Clause 19.6.

Clause 20 Claims, Disputes and Arbitration

20.1 Developer's Claims

If the Developer considers himself to be entitled to any extension of the Time for Completion and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the PPP Contract Agreement, the Developer shall give notice to the FCDA, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than 28 days after the Developer became aware, or should have become aware, of the event or circumstance.

If the Developer fails to give notice of a claim within such period of 28 days, the Time for Completion shall not be extended, the Developer shall not be entitled to additional payment, and the FCDA shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Sub-Clause shall apply.

The Developer shall also submit any other notices which are required by the PPP Contract Agreement, and supporting particulars for the claim, all as relevant to such event or circumstance.

The Developer shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the FCDA. Without admitting liability, the FCDA may, after receiving any notice under this Sub-Clause, monitor the record-keeping and/or instruct the Developer to keep further contemporary records. The Developer shall permit the FCDA to inspect all these records, and shall (if instructed) submit copies to the FCDA.

Within 42 days after the Developer became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the Developer and approved by the FCDA, the Developer shall send to the FCDA a fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect:

- (a) this fully detailed claim shall be considered as interim;

- (b) the Developer shall send further interim claims at monthly intervals, giving the accumulated delay and/or amount claimed, and such further particulars as the FCDA may reasonably require; and
- (c) the Developer shall send a final claim within 28 days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Developer and approved by the FCDA.

Within 42 days after receiving a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the FCDA and approved by the Developer, the FCDA shall respond with approval, or with disapproval and detailed comments. He may also request any necessary further particulars, but shall nevertheless give his response on the principles of the claim within such time.

Each interim payment shall include such amounts for any claim as have been reasonably substantiated as due under the relevant provision of the PPP Contract Agreement. Unless and until the particulars supplied are sufficient to substantiate the whole of the claim, the Developer shall only be entitled to payment for such part of the claim as he has been able to substantiate.

The FCDA shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine (i) the extension (if any) of the Time for Completion (before or after its expiry) in accordance with Sub-Clause 8.4 [Extension of Time for Completion], and/or (ii) the additional payment (if any) to which the Developer is entitled under the PPP Contract Agreement.

The requirements of this Sub-Clause are in addition to those of any other Sub-Clause which may apply to a claim. If the Developer fails to comply with this or another Sub-Clause in relation to any claim, any extension of time and/or additional payment shall take account of the extent (if any) to which the failure has prevented or prejudiced proper investigation of the claim, unless the claim is excluded under the second paragraph of this Sub-Clause.

Disputes shall be adjudicated by a DAB in accordance with Sub-Clause 20.4 [Obtaining Dispute Adjudication Board's Decision]. The Parties shall jointly appoint a DAB by the date 28 days after a Party gives notice to the other Party of its intention to refer a dispute to a DAB in accordance with Sub-Clause 20.4.

The DAB shall comprise three suitably qualified persons ("the members").

Each Party shall nominate one member for the approval of the other Party. The Parties shall consult both members and shall agree upon the third member, who shall be appointed to act as chairman.

The agreement between the Parties and each of the three members shall incorporate by reference the General Conditions of Dispute Adjudication Agreement contained in Schedule 13 of the PPP Contract Agreement, with such amendments as are agreed between them.

The terms of the remuneration of the three members, shall be mutually agreed upon by the Parties when agreeing the terms of appointment. Each Party shall be responsible for paying one-half of this remuneration.

If at any time the Parties so agree, they may appoint a suitably qualified person or persons to replace anyone or more members of the DAB. Unless the Parties agree otherwise, the appointment will come into effect if a member declines to act or is unable to act as a result of death, disability, resignation or termination of appointment. The replacement shall be appointed in the same manner as the replaced person was required to have been nominated or agreed upon, as described in this Sub-Clause.

The appointment of any member may be terminated by mutual agreement of both Parties, but not by the FCDA or the Developer acting alone. Unless otherwise agreed by both Parties, the appointment of the DAB (including each member) shall expire when the DAB has given its decision on the dispute referred it under Sub-Clause 20.4 [Obtaining Dispute Adjudication Board's Decision] unless other disputes have been referred to the DAB by that time under Sub-Clause 20.4, in which event the relevant

date shall be when the DAB has also given decisions on those disputes.

20.3 Failure to Agree Dispute Adjudication Board

If any of the following conditions apply, namely:

- (a) either Party fails to nominate a member (for approval by the other Party) of a DAB of three persons by such date stated in the first paragraph of Sub-Clause 20.2,
- (b) the Parties fail to agree upon the appointment of the third member (to act as chairman) of the DAB by such date, or
- (c) the Parties fail to agree upon the appointment of a replacement person within 42 days after the date on which the sole member or one of the three members declines to act or is unable to act as a result of death, disability, resignation or termination of appointment,

then the Director-General of ICRC shall, upon the request of either or both of the Parties and after due consultation with both Parties, appoint this member of the DAB. This appointment shall be final and conclusive. Each Party shall be responsible for paying one-half of the remuneration of the appointing entity or official.

20.4 Obtaining Dispute Adjudication Board's Decision

If a dispute (of any kind whatsoever) arises between the Parties in connection with, or arising out of, the PPP Contract Agreement or the execution of the Works, including any dispute as to any certificate, determination, instruction, opinion or valuation of the FCDA, then after a DAB has been appointed pursuant to Sub-Clauses 20.2 [Appointment of the Dispute Adjudication Board] and 20.3 [Failure to Agree Dispute Adjudication Board], either Party may refer the dispute in writing to the DAB for its decision, with a copy to the other Party. Such reference shall state that it is given under this Sub-Clause.

For a DAB of three persons, the DAB shall be deemed to have received reference on the date when it is received by the chairman of the DAB.

Both Parties shall promptly make available to the DAB all information, access to the Site, and appropriate facilities, as the DAB may require for the purposes of making a decision on such dispute. The DAB shall be deemed to be not acting as arbitrator(s).

Within 84 days after receiving such reference, or the advance payment referred to in Clause 6 of Schedule 13 - General Conditions of Dispute Adjudication Agreement, whichever date is later or within such other period as may be proposed by the DAB and approved by both Parties, the DAB shall give its decision, which shall be reasoned and shall state that it is given under this Sub-Clause. However, if neither of the Parties has paid in full the invoices submitted by each member pursuant to Clause 6 of Schedule 13, the DAB shall not be obliged to give its decision until such invoices have been paid in full. The decision shall be binding on both Parties, who shall promptly give effect to it unless and until it shall be revised in an amicable settlement or an arbitral award as described below. Unless the PPP Contract Agreement has already been abandoned, repudiated or terminated, the Developer shall continue to proceed with the Works in accordance with the PPP Contract Agreement.

If either Party is dissatisfied with the DAB's decision, then either Party may, within 28 days after receiving the decision, give notice to the other Party of its dissatisfaction. If the DAB fails to give its decision within the period of 84 days (or as otherwise approved) after receiving such reference or such payment, then either Party may, within 28 days after this period has expired, give notice to the other Party of its dissatisfaction.

In either event, this notice of dissatisfaction shall state that it is given under this Sub-Clause, and shall set out the matter in dispute and the reason(s) for dissatisfaction. Except as stated in Sub-Clause 20.5 [Failure to Comply with Dispute Adjudication Board's Decision] and Sub-Clause 20.6 [Expiry of Dispute Adjudication Board's Appointment], neither Party shall be entitled to commence arbitration of a dispute unless a notice of dissatisfaction has been given in accordance with this Sub-Clause.

If the DAB has given its decision as to a matter in dispute to both Parties, and no notice of dissatisfaction has been given by either Party within 28 days after it received the DAB's decision, then the decision shall become final and binding upon both Parties.

20.5 Failure to Comply With Dispute Adjudication Board's Decision

In the event that:

- (a) neither Party has given notice of dissatisfaction within the period stated in Sub- Clause 20.4 [Obtaining Dispute Adjudication Board's Decision],
- (b) the DAB's related decision (if any) has become final and binding, and
- (c) a Party fails to comply with this decision,

then the other Party may, without prejudice to any other rights it may have, refer the failure itself to amicable settlement process under Sub-Clause 20.7 [Amicable Settlement] and subsequently to arbitration under Sub-Clause 20.8 [Arbitration].

20.6 Expiry of Dispute Adjudication Board's Appointment

If a dispute arises between the Parties in connection with, or arising out of, the PPP Contract Agreement or the execution of the Works and there is no DAB in place, whether by reason of the expiry of the DAB's appointment or otherwise:

- (a) Sub-Clause 20.4 [Obtaining Dispute Adjudication Board's Decision] shall not apply, and
- (b) the dispute may be referred to amicable settlement process under Sub- Clause 20.7 [Amicable Settlement] and subsequently to arbitration under Sub-Clause 20.8 [Arbitration].

20.7 Amicable Settlement

Where notice of dissatisfaction has been given under Sub-Clause 20.4 above, both Parties shall attempt to settle the dispute amicably before the commencement of arbitration.

Except where expressly stated otherwise in this PPP Contract Agreement, any dispute, difference or controversy of whatever

nature howsoever arising under, out of or in relation to this Agreement including non-completion of the Project between the Parties and so notified in writing by either Party to the other (the Dispute) in the first instance shall be resolved amicably by the **Project Executive Committee** within **14 (fourteen)** days of reference and failing such resolution of the same, it shall be referred to the **ICRC**.

Either Party shall require the dispute to be referred to the **ICRC** for amicable settlement before the commencement of arbitration. Upon such reference, both the Parties shall meet with the **ICRC** at the earliest mutual convenience and in any event within **14 (fourteen)** days of such reference to discuss and attempt to amicably resolve the dispute.

If the dispute is not amicably resolved within **28 (twenty eight)** days of such meeting, either Party may refer the Dispute to arbitration in accordance with the provision of Sub-Clause 20.8 below.

20.8

Arbitration

(a) Arbitrators

Any Dispute that is not resolved amicably by the Dispute Adjudication Board, the Project Executive Committee or The ICRC shall be finally settled by binding arbitration under the Arbitration and Conciliation Act Cap A18 Laws of the Federation of Nigeria, 2004. The arbitration shall be conducted by a panel of three arbitrators, one to be appointed by each Party and the third to be appointed by the two arbitrators appointed by the Parties, who shall chair the panel. Where the appointed arbitrators fail to appoint a third arbitrator within 28 days, the Chief Judge of the Federal Capital Territory shall appoint same. A Party requiring arbitration can call upon the other Party to appoint its arbitrator. If the other Party fails to appoint its arbitrator within 30 days, the Party appointing its arbitrator shall instruct the arbitrator properly appointed to act as the sole arbitrator.

(b) Place of Arbitration

The place of arbitration shall be in Abuja.

(c) **Language**

Date.....

The request for arbitration, the answer to the request, the terms of reference, any written submissions, any orders and rulings shall be in English and, if oral hearing takes place, English shall be the language to be used in the hearings.

(d) **Procedure**

The procedure to be followed within the arbitration/arbitral tribunal and the rules of evidence which are to apply shall be in accordance with the Arbitration and Conciliation Act, 2004.

(e) **Enforcement of Award**

Any decision or award resulting from arbitration shall be final and binding upon the Parties. The Parties may waive any rights to appeal or to review such award by any Court or Tribunal. The Parties agree that the arbitral award may be enforced against the Parties to the arbitration proceedings or their assets wherever they may be found and that a judgment upon the arbitral award may be entered in any Court having jurisdiction thereof.

(f) **Fees and Expenses:**

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

(g) **Performance during Arbitration**

Pending the submission of and/ or decision on a Dispute, difference or claim or until the arbitral award is published; the Parties shall continue to perform all of their obligations under this PPP Contract Agreement without prejudice to a final adjustment in accordance with such award.

SCHEDULES

Legal Services Secretariat
Sign.....
Date.....

The Schedules to the PPP Contract Agreement are:

- (a) Schedule 1: Project Site
- (b) Schedule 2: Scope of Works
- (c) Schedule 3: FCDA's Requirements
- (d) Schedule 4: Summary of Total Development Cost
- (e) Schedule 5: Financial Model
- (f) Schedule 6: Schedule of Payments
- (g) Schedule 7: Project Cost and Pricing Document
- (h) Schedule 8: Form of Performance Security
- (i) Schedule 9: Form of Retention Money Guarantee
- (j) Schedule 10: Duties, Responsibilities and Functions of Project Independent Engineer.
- (k) Schedule 11: Duties, Responsibilities and Functions of PPP Consultant.
- (l) Schedule 12: Functions and Responsibilities of the Project Governance Committees.
- (m) Schedule 13: General Conditions of Dispute Adjudication Agreement.
- (n) Schedule 14: Lenders Direct Agreement Requirements
- (o) Schedule 15: Escrow Account Agreement Requirements
- (p) Schedule 16: Term sheet
- (q) Schedule 17: Conditions Precedent – comprising list of Documents and Agreements to be executed or provided as part of the PPP Contract Agreement.

Schedule 1: Project Site

Signature: _____
Date: _____

The Project site covers an area of approximately 777 hectares of land and is situated on the north-eastern corner of FCT Phase II development area. The site is bounded as follows:

- North by Outer Northern Expressway.
- South by Arterial N12 Road and Mabushi District
- West by Arterial N20 Road and Jahi District
- East by Ring Road 1 and Maitama District,

The site map is contained in Schedule No 3 – FCDA's Requirements.

Schedule 2: Scope of Works

The Scope of works comprises the review and adoption of the design finance construction and transfer of engineering infrastructure for Katampe District located in the phase II Area of Federal Capital City, Abuja and transfer of the completed works to FCDA in accordance with the PPP Contract Agreement. The Quantities are estimates which form the basis to describe Scope of Works only and the Developer is advised to establish its own detailed quantities. The general Scope of works based on lengths amongst other things are:

Approximate Quantity

a.) Roads categories in the District:

• Arterial	5,137m
• Collector	6,182m
• Special Important Local Street	7,802m
• Important Local Street	2,075m
• Local Street	19,436m
• Minor Access Road	28,880m

The total length of the roads is approximately 69,512m.

b.) Storm Water Drainage Network consists of different pipe sizes and manholes:

• 600mm dia. concrete pipe	70,718m
• 800mm dia. concrete pipe	60,470m

The total length is approximately 131,188m.

c.) Water Supply Network consists of:

• 200mm dia. G.I pipe	20,345m
• 200mm dia. UPVC pipe	43,784m
• 250mm dia. UPVC pipe	17,408m
• 300mm dia. – 400mm D.I pipe	9,014m

Total length is approximately 90,551m

d.) Sewage Network consists of:

• 200mm dia. UPVC pipe	24,251m
• 300mm dia. UPVC pipe	32,910m
• 400mm dia. UPVC pipe	7,332m

Total length is approximately 64,493m

e.) Electrical Distribution Network:

(Note: All Quantities are approximate)

- Nos. 3 x 15MVA, 33/11KV Injection sub-station
- 168 Nos. 500KVA, Package Substation
- 215 Nos. 400A Feeder Pillars
- 2,528 Nos. various size of Street light poles.
- 66 Nos. of Street light kiosk
- 3,327 Nos. of various types of fitting
- 429,145m of various sizes of Low voltage cable
- 1950m of various sizes of 33KV High tension cables
- 74,540m of various sizes of 11KV High tension cables.

f.) Telecom ducts:

- | | |
|----------|---------|
| • 2 way | 14,230m |
| • 4 way | 5,680m |
| • 8 way | 1,490m |
| • 12 way | 1,772m |
| • 10 way | 1,475m |
| • 24 way | 537m |
| • 32 way | 787m |

Schedule 3: FCDA's Requirements

The elements of FCDA's Requirements which specifies the purpose, scope, and/or design and/or other technical criteria for the Works are contained in the following documents,

The Design Documentation, Specifications and Construction Requirements which are issued separately are:

- i.) The site map,
- ii.) Katampe District Detailed Site Development Planning and Preliminary Engineering Design-FINAL REPORT,
- iii.) The Final Engineering Design Drawings, and
- iv.) Specifications and Standards

The Design Guidelines:

The designs are to be reviewed on the basis of the Guidelines for Final Engineering Design of Infrastructure or the Federal Capital City(FCC) issued by the Department of Engineering Services, FCDA[March 2009] and adjusted for the Developer and reproduced below

Final engineering design of the Federal Capital City (FCC)

1. District infrastructure
2. Water supply system
3. Foul sewerage system
4. Storm water drainage system
5. Electricity supply system
6. Telecommunication system
7. Regional highways
8. Sub-surface (soil / rock) investigation



1 District infrastructure

- 1.1 The design of the district infrastructure only concerns itself with the distribution networks for services like water, electricity, sewerage and storm water on a tertiary level. The roads consist of the arterial and collector roads, important local streets, access roads and footpaths. Transit ways, ring roads, parkways, outer and inner expressways are excluded from the scope of services although their rights of way are to be reserved. The district infrastructure must conform to approved land use plans.

1.2 Design of Roads Network / Culverts and Bridges

The works involve ground surveys, final design of horizontal and vertical alignments of all categories of roads, pavement design, design of culverts and bridges, and soil tests to depths not exceeding 3m. The general layout shall be to a scale of 1:1000. The horizontal and vertical alignment of each road shall be to scales of 1:1000 and 1:1000/100 respectively.

Cross sections and details are to be to scales of 1:50, 1:20 or as appropriate. Detailed hydrological reports and hydraulic calculations for culverts and bridges and soil/materials report shall be submitted. Cost of sub-soil investigations shall be borne by the Developer

Right-of-way plans for the various categories of roads and typical road cross-sections showing approximate levels of the services should be submitted.

1.3 Design of Water Supply Network

This involves final design of the tertiary network. In general, the districts are to be served by gravity flow. Hydraulic computations should be provided. The layout of distribution network shall be to a scale of 1:1000. Also longitudinal sections should be to a scale of 1:1000/100.

Cross-sections and details are to be to scales of 1:50 or 1:20 as appropriate. Other parameters for the design should be based on approved land use plans. Specifications for pipe materials and appurtenances should be included. Individual plots are to be serviced. Fire hydrants are to be adequately provided at 200m – 250m intervals in residential areas and approximately 100m intervals in commercial and district centres.

1.4 Design of Waste Water Network

This involves final design of tertiary network within the districts. The network is to consist of closed pipe systems. In general, the districts are to be served by gravity flow. Design of interceptor sewers is excluded. Hydraulic computations should be provided. Layout and longitudinal sections shall be to scales of 1:1000 and 1:1000/100 respectively. Cross-sections and details are to be scales of 1:50 or 1:20 as found necessary. Other parameters for the design should be based on approved land use plans. Individual plots are to be serviced. Specifications for pipe materials and appurtenances should be included.

1.5 Design of Storm Water Network

The network is to be designed to final level. The storm sewer is to consist of closed conduits with open sections were deemed necessary. Hydraulic calculations, longitudinal sections and network layout are required. The layout and longitudinal sections are to be to scales of 1:1000 and 1:1000/100 respectively. Other design parameters should be based on approved land use plans. Due consideration should be given to the topography of the area. The design should also include drainage of plots.

1.6 Design of Electricity Network

This will cover the final design of the electrical distribution networks in the districts. The source of power is the 330/132KV overhead line from the national grid. Power is then stepped down via 132/33KV and 33/11KV sub-stations. The scope of works shall include design of:

- Medium voltage system with load forecast including 11KV underground network, cable cross-sections and 11/0.415KV transformer sub-stations.
- Low voltage system with distribution stations in the various supply areas includes 0.415KV underground cables from the sub-station in-feed point to the consumers.
- Basic recommendations for central monitoring and control system for the power network of the districts.
- Line diagram, voltage calculations, cable schedule, load and connection points from sub-stations, medium voltage stations, public emergency call and alarm systems.

- Manholes and specifications of appliances within the manholes.

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- Ducts for traffic signals to be provided at road junctions.

Specifications to be adopted shall conform to IEC and NERC requirements. Other parameters for the design should be based on approved land use plans. The layout drawings shall be to a scale of 1:1000.

1.7 Designs for Road Lighting

This involves final design for:

- Lighting poles, wiring luminaries capacitors etc.
- Low voltage power cables from 11/0.415KV sub-stations to lighting poles.

1.8 Design of Telecommunication Duct Network

The works shall cover final design of the telecommunication cables duct network and manholes. The specifications to be adopted shall conform to NITEL requirements. The layout drawings shall be to a scale of 1:1000.

1.9 Reports / Documents

Final reports for all aspects of the above should include recommendations. The Bills of Quantities/BEME should be submitted for information only.

1.10 Other Information

The Developers design partners/consultants should liaise with other design consultants working within the same area and adjoining areas.

2 Water supply system

2.1 The scope of services cover design of primary (main) and secondary water distribution network for the given area of the city.

2.2 Design should conform to the approved Land Use Plans

- 2.3 Final Design should be in conformity with the general guidelines for primary and secondary water distribution network by Messrs C. Lotti & Associates.
- 2.4 Sectors are supplied from semi-independent loops formed from ring mains fed from designated tanks.
- 2.5 Networks carry treated water only.
- 2.6 Primary and secondary lines should preferably be of ductile iron pipes and adequately protected.
- 2.7 i. The following average demand criteria are to be used:
- a. Residential – 230L/head/day
 - b. Offices and Commercial – 30L/head/day
 - c. Hospitals and Clinics – 500L/head/day
 - d. Schools – 15L/head/day
 - e. Hotels – 250L/head/day
 - f. Parks area – 5L/head/day
- ii. Peak daily demand = 2.00 x average demand
- iii. Peak hourly demand = 1.5 x average hourly demand.
- 2.8 Maximum head during peak periods not to exceed 25m and minimum head not to be less than 10m.
- 2.9 Fire hydrants to be adequately provided at 200m – 250m intervals in residential areas and approximately 100m intervals in commercial and district centres.
- 2.10 Pressure meters and other hydraulic appurtenances to be installed within respective sectors and approximate points on the main lines for monitoring purposes.
- 2.11 Major road crossings to have manholes and ducts adequate for inspection and maintenance purpose.
- 2.12 Minimum depth of cover to pipes to be 1.2m
- 2.13 Hydraulic calculations should be provided.
- 2.14 The layout and longitudinal sections should be to scales of 1:1000 and 1:100/100 respectively. Cross-sections and details are to be to scales of 1:50 or 1:20 as found necessary.
- 2.15 The associated water tanks should be designed.
- 2.16 **Reports/Documents**

Final reports for all aspects of the above should include recommendations. The Bills of Quantities/BEME should be submitted for information only.

2.17 Other Information

The Developers design partners/consultants should liaise with other design consultants working within the same area and adjoining areas.

3 Foul sewage system

- 3.1 The scope of services covers design of interceptor sewer system for the given area of the city.
- 3.2 The design should conform to the approved Land Use Plans.
- 3.3 General design concept should be in conformity with the design considerations of Messrs. Hensley Schimdt and Del-Kan Associates.
- 3.4 Sewage composition is expected to be of domestic origin
- 3.5 Flow is to be gravitational at half full. Intermediate pumping stations are to be avoided as much as practicable.
- 3.6 The following average discharges are to be considered.
 - a. Average daily discharge - 230L/head/day
 - b. Maximum daily discharge - 2.5 x daily average
 - c. Peak hourly discharge - 2.0 x hourly maximum
- 3.7 Design flow velocity should be limited to a maximum of 2.0m/s and minimum of 0.7 – 1.0m/s.
- 3.8 Minimum cover (depth to top) of sewer lines should as much as possible be 1.8m and always below the water line. Approximate pipe bedding should be provided.
- 3.9 Alignment of the main trunk line should avoid the water course.
- 3.10 Manholes are to be provided at junctions and at all change of curvatures and a maximum spacing of 80m on straights for large diameter main lines.

3.11 Concrete pipes with adequate lining against corrosion should be considered.

3.12 Adequate soil investigation along the sewer alignment should be undertaken.

3.13 The layout and longitudinal sections should be to scale of 1:1000 and 1:1000/100 respectively. Cross-sections and details are to be to a scale of 1:50 or 1:20 as appropriate.

3.14 Reports/Documents

Final reports for all aspects of the above should include recommendations. The Bills of Quantities/BEME should be submitted for information only.

3.15 Other Information

The Developers design partners/consultants should liaise with other design consultants working within the same area and adjoining areas.

4 Storm water drainage system

4.1 The scope of services covers design of storm water drainage for the given area of the city.

4.2 The general design concept should be in conformity with the design considerations of Messrs. Technosynthesis.

4.3 The natural drainage channels which form the streams and rivers also receive the storm water discharge from the district drainage systems.

4.4 The design should be in conformity with the approved Land Use Plans.

4.5 Adequate protection at the discharge points of the district drains should be provided.

4.6 The layout and longitudinal sections should be to scales of 1:1000 and 1:1000/100 respectively. Cross-sections and details are to be to a scale of 1:50 or 1:20 as appropriate.

4.7 Reports/Documents

Final reports for all aspects of the above should include recommendations. The Bills of Quantities/BEME should be submitted for information only.

4.8 Other Information

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The Developers design partners/consultants should liaise with other design consultants working within the same area and adjoining areas.

5 Electricity supply system

- 5.1 The objectives and strategy shall be based on the approved Land Use Plan for the given area of the city and electrical concept study by Messrs. Electrowatt-Renardet, Tacas and Fajemirokun and Associates.
- 5.2 The source of power is the 330/132KV line from the national grid.
- 5.3 The design shall take into account the following:
 - Land demand for each sector
 - The infeed points of power to serve the sectors from the source shall be 132/33KV sub-stations.
 - The primary power line will be transmitted through overhead towers.
- 5.4 132/33KV, 33/11KV sub-stations and associated networks to be designed.
- 5.5 The distribution of power to the sectors from the infeed point shall be through underground 33KV cable network.
- 5.6 Detailed dimensions of ducts equipment and cables are required.
- 5.7 The drawings to represent power supply network from the infeed point to the distribution level to be of a single line diagram with appropriate scales.
- 5.8 All the sub-station equipment shall be clearly stated to reflect their make.
- 5.9 A uniform make of equipment shall be adhered to as much as possible in order to reduce problem of maintenance.
- 5.10 All design parameters and calculations are to be submitted.
- 5.11 All 33KV lines shall be ringed.

5.12 Allowances for the carrying capacity.

5.13 The earthing method to be specified.

5.14 The design shall conform to IEC and NERC standards.

5.15 Reports/Documents

Final reports for all aspects of the above should include recommendations. The Bills of Quantities/BEME should be submitted for information only.

5.16 Other Information

The Developers design partners/consultants should liaise with other design consultants working within the same area and adjoining areas.

6 Telecommunication system

6.1 The aims and objectives shall be based on specifications acceptable to Nigeria Communications Commission (NCC) and the approved Land Use Plans.

6.2 The source of telephone tone shall be the NCC /Appropriate Telecommunications Company Exchange.

6.3 The overall design shall take into account the following:

- Subscribers' basic demand in each of the sectors
- Subscribers' line protections
- Junction - Lines protections
- Other areas protections.

6.4 Cable distribution system with emphasis on

- Cross-Connection Point (CCP)
- Direct Feed Area
- Cross Connection Cabinet Area
- Distribution points and stumped pairs

- Loading of junction cables
- Cable jointing methods
- Terminations
- Subscribers' lines

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- 6.5 Cable plant (Types of cable)
- 6.6 Detailed dimensions of ducts and manholes of various types
- 6.7 All design parameters and calculations are to be submitted
- 6.8 Expansion to be reflected
- 6.9 The design shall conform to NCC standards.

6.10 Reports/Documents

Final reports for all aspects of the above should include recommendations. The Bills of Quantities/BEME should be submitted for information only.

6.11 Other Information

The Developers Design Consultants should liaise with other consultants working within the same area and adjoining areas.

7 Regional highways

- 7.1 The regional roads include ring roads, parkways, airport expressway, outer and inner express ways within the Federal Capital City and highways linking the satellite towns.

The scope of services comprises of the provision of adequate right of way, geometric design, cross-section, traffic analysis, soil/material investigation, culvert and bridge designs, intersection and interchange designs including configuration/geometrics and structural design, drainage studies and design, pavement design, service crossings and cost estimate. Environmental impact assessment should be carried out.

7.2 Geometric Design

The design speed for all regional highways is 110Km per hour. Horizontal and vertical alignment shall be designed to meet standards specified for this speed in the Federal Ministry of Works highways

highways. Stopping sight distance should be provided all through the length of the highway. Profile and horizontal alignment should be designed, taking into consideration the final land use plan and existing physical developments and structures. Maximum slope of 4% is desirable and a minimum slope of about 0.5% should be maintained for drainage purposes and riding comfort, in accordance to AASHTO specifications.

7.3 Road Lighting

Within the urban areas, the regional roads should be lit. The work involves design for:

- Lighting poles, wiring luminaries, capacitors etc.
- Low voltage power design cables from 11/0.415KV sub-stations to lighting poles.

7.4 Cross Section

Total number of carriageway and number of lands for each should be recommended for the highway. Separate cross-section configuration details should be recommended for sections of the road within the designated urban areas and for sections within the rural areas. Gentle side slopes to be maintained for fills and cuts.

7.5 Pavement Design

Based on estimated capacity and axle loads for the highway and sub-grade studies, pavements are to be designed for 20 years life in accordance with AASHO specifications. Lane width is to be 3.75m.

7.6 Soil Investigation

This should be carried out at approximate intervals along the alignment to determine nature of sub-grade. Report of laboratory tests and other soil investigation analysis are to be submitted. Soil probing are to be to a maximum depth of 3m, except at bridge and box culvert locations and cost of this is to be borne by the Developer. Cost of sub-soil investigation to depths greater than 3m (where necessary) is also to be borne by the Developer. Where rocks are encountered in cut areas, comprehensive probing shall be carried out to determine the volume to be excavated and report on this is to be submitted.

7.7 Box Culvert and Bridge Designs

Detailed design of bridges and box culverts including layout configuration and structural analysis is to be carried out. The structural analysis calculations must be submitted with the drawings. Thorough site survey is to be carried out to determine the final location of the bridges and the sub-soil investigation to be carried out using specialized sub-contractor to be approved by the Federal Capital Development Authority, prior to foundation design.

The Developer should study the profile of all crossing roads in addition to earlier proposed interchangers to determine finally, the appropriate interchange or intersection type. In the case of interchange, the final design should recommend which road flies over the other. Minimum headroom of 5m must be maintained. Structural analysis calculations are to be submitted with the structural drawings.

7.8 Drawings Design

Within the urban areas, the cross drainage openings must be designed taking into consideration the drainage details of the adjacent district development/infrastructure. Outside the urban areas, reviews of earlier hydrological studies are to be carried out where available. Otherwise, fresh hydrological studies should be carried out. Physical site inspection to determine natural flood paths must be undertaken. Pipe culverts should have minimum diameter of 900mm.

7.9 Service Crossing

This has to be provided as ducts in conformity with the requirements for the district infrastructure.

7.10 Reports/Documents

Final reports for all aspects of the above should include recommendations. The Bills of Quantities/BEME should be submitted for information only.

7.11 Other Information

The Developers design partners/consultants should liaise with other design consultants working within the same area and adjoining areas.

8 SUB-SURFACE (SOIL/ROCK) INVESTIGATION

8.1 Geological/Geotechnical Data from Sub-Surface Investigation

The Developer needs specific and reliable information on foundation problems. The types of sub-surface information required for the design of structure in Abuja include, but are not limited to the following:

- i. Location depth and nature of overburden, the sequence, thickness and area extent of each soil stratum to include a description and classification of the soils and their structure and stratification in the undisturbed state.
- ii. Elevation and configuration of the bed-rock surface as well as the location, sequence, area extent, depth of weathering, soundness, strike and dip spacing of joints and bedding planes, presence of fault zones, and a description of rock in each rock stratum within the depth of influence of the engineering structure.
- iii. Elevation, configuration, and limits of fluctuation of the water-table including whether the latter is perched or normal, depth of and pressure in the artesian zone, and quantity of any soluble salts or other minerals present.
- iv. Engineering properties of the soil and/or rock site should specify permeability, compressibility and shear strength
- v. Probable quarry and borrow pit locations.
- vi. Probable poor sites for construction.
- vii. Approximate soil bearing capacity for dwelling units.

8.2 Reports/Documents

Final reports for all aspects of the above should include recommendations. The Bills of Quantities/BEME should be submitted for information only.

8.3 Other Information

The Developers Consultants should liaise with other consultants working within the same area and adjoining areas.

Schedule 4: Summary of Total Development Cost

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Schedule 4.1 outlines the unaudited summary of Total Development Cost prepared at the time of contract negotiations, and which formed the basis of approval of the project by the Federal Executive Council at its meeting of 26th May 2010.

Schedule 4.2 outlines the summary of Total Development Cost based on Financial Model audited before the signing of the PPP Contract Agreement.

For the purposes of this PPP Contract Agreement, Schedule 4.2 will be used unless an audited Financial Model is carried out and agreed by both Parties.

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Schedule 5: Financial Model

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Schedule 5.1 (pages 158 – 173) presents the unaudited Financial Model prepared at the time of contract negotiations, and which formed the basis of approval of the project by the Federal Executive Council at its meeting of 26th May 2010.

Schedule 5.2 (pages 174 – 189) presents the Financial Model audited before the signing of the PPP Contract Agreement.

For the purposes of this PPP Contract Agreement, Schedule 5.2 will be used unless an audited Financial Model is carried out and agreed by both Parties.

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Schedule 6: Schedule of Payments

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The Schedules of Payments applicable to each quarter of the five years PPP duration are contained in the Quarterly Cash Flow Forecast of the Financial Model audited before the signing of the PPP Contract Agreement. The forecast of project cost withdrawals during construction from drawdown of Equity, Debt and the Escrow Accounts are included in the Quarterly Cash Flow Forecast.

On the whole, the Quarterly Cash Flow Forecast include the Development activities, Financing activities, Interest/ Income (Expense) and Debt service to be financed from Equity, Debt and the Escrow Accounts.

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Schedule 8: Form of Performance Security

[See comments on Sub-Clause 4.2]

_____ [Bank's Name, and Address of Issuing Branch or Office]

Beneficiary: _____ [Name and Address of Employer]

Date: _____

PERFORMANCE GUARANTEE No.: _____

We have been informed that _____ [name of Developer] (hereinafter called "the Contractor") has entered into Contract No. _____ [reference number of the contract] dated _____ with you, for the execution of _____ [name of contract and brief description of Works] (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee is required.

At the request of the Developer, we _____ [name of Bank] hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of _____ [amount in figures] (_____) [amount in words],¹ such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of your first demand in writing accompanied by a written statement stating that the Developer is in breach of its obligation(s) under the Contract, without your needing to prove or to show grounds for your demand or the sum specified therein.

This guarantee shall expire, no later than the Day of, 2...², and any demand for payment under it must be received by us at this office on or before that date and any claims or demands received after the said date shall be null void and of no effect.

Dated thisday of, 200.....

The common seal of the within named
..... Limited (or Plc)
was hereunto affixed in the presence of:

.....

DIRECTOR

.....

SECRETARY

Note: All italicized text (including footnotes) is for use in preparing this form and shall be deleted from the final product.

¹ *The Guarantor shall insert an amount representing the percentage of the Contract Price specified in the Contract and denominated either in the currency(cies) of the Contract or a freely convertible currency acceptable to the Employer.*

² *Insert the date twenty-eight days after the construction completion date. The Employer should note that in the event of an extension of the time for completion of the Contract, the Employer would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Employer might consider adding the following text to the form, at the end of the penultimate paragraph: "The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months][one year], in response to the Employer's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee."*

Schedule 9: Form of Retention Money Guarantee

[See comments on Sub-Clause 14.8]

Beneficiary: _____ [Bank's Name, and Address of Issuing Branch or Office]
Date: _____ [Name and Address of Employer]

RETENTION MONEY GUARANTEE No.: _____

We have been informed that _____ [name of Developer] (hereinafter called "the Developer") has entered into Contract No. _____ [reference number of the contract] dated _____ with you, for the execution of _____ [name of contract and brief description of Works] (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, when the Taking-Over Certificate has been issued for the Works and the first half of the Retention Money has been certified for payment, payment of [insert "the second half of the Retention Money or if the amount guaranteed under the Performance Guarantee when the Taking-Over Certificate is issued is less than half of the Retention Money, the difference between half of the Retention Money and the amount guaranteed under the Performance Guarantee"] is to be made against a Retention Money guarantee.

At the request of the Developer, we _____ [name of Bank] hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of _____ [amount in figures] () [amount in words]¹ upon receipt by us of your first demand in writing accompanied by a written statement stating that the Developer is in breach of its obligation under the Contract because the Developer used the advance payment for purposes other than the costs of mobilization in respect of the Works.

It is a condition for any claim and payment under this guarantee to be made that the payment of the second half of the Retention Money referred to above must have been received by the Developer in its account number _____ at _____ [name and address of Bank].

This guarantee shall expire, at the latest, 21 days after the date when the Employer has received a copy of the Performance Certificate issued by the Engineer. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

Dated thisday of, 200.....

The common seal of the within named
..... Limited (or Plc)
was hereunto affixed in the presence of:

.....
DIRECTOR

.....
SECRETARY

Note: All italicized text (including footnotes) is for use in preparing this form and shall be deleted from the final product.

¹ *The Guarantor shall insert an amount representing the amount of the second half of the Retention Money or or if the amount guaranteed under the Performance Guarantee when the Taking-Over Certificate is issued is less than half of the Retention Money, the difference between half of the Retention Money and the amount guaranteed under the Performance Guarantee and denominated either in the currency(ies) of the second half of the Retention Money as specified in the Contract, or in a freely convertible currency acceptable to the Employer.*

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Schedule 10: Duties, Responsibilities and Functions of the Independent Engineer

The following are the Duties, Responsibilities and Functions of the Independent Engineer

1 General

- 1.1 The Independent Engineer's duties shall include, inter alia, advising, reviewing, making recommendations, informing, providing counsel and giving opinions to the Project Committees, concerning the Design documentation and Construction Works all in order to assist in the completion of the Construction Works in accordance with the terms of this PPP Contract Agreement,
- 1.2 The Independent Engineer shall report directly to the Project Executive Committee. The costs of engaging the services of the Independent Engineer as contained in the Consulting Agreement shall be made from the provision in the Project Cost.

2 Duties and Responsibilities of the Independent Engineer

- 2.1 The Independent Engineer shall carry out the duties specified in the PPP Contract Agreement
- 2.2 Observe and monitor the quality of the Works as is reasonably necessary during construction to determine in general that it is proceeding in accordance with this PPP Contract Agreement. Notify the Project Committees immediately if, in the Independent Engineer's opinion, Work does not conform to the PPP Contract Agreement or requires special inspection or testing.
- 2.3 Monitor the progress and construction schedule and report to the Project Committees conditions which may cause delay in completion for further action by both Parties.
- 2.4 Review applications for Interim Payments submitted by the Developer and with the advice of the PPP Consultant analyse and evaluate the amount of interim payment to be drawn from the Lenders/Escrow Account in accordance with the PPP Contract Agreement.

2.5 Whenever the PPP Contract Agreement provides for the Independent Engineer to issue Instructions, it shall be carried out in accordance with Sub-Clause 3.4 [Instructions].

2.6 Whenever the PPP Contract Agreement provides that the FCDA shall agree or determine any matter or adjustments to the Project Cost and Schedule of Payments, the Independent Engineer shall proceed in accordance with Sub-Clause 3.5[Determinations].

2.7 The Independent Engineer shall attend meetings of all the Project Committees in order to report and review all issues relating to the implementation of the project in accordance with his Terms of Reference under the Consulting Agreement.

The Independent Engineer shall record the business of the Project Committees meetings and submit copies of the records to those attending the meeting and to all the Parties.

2.8 Maintain records of all Project activities and issues comprising all correspondences, Instructions, Determinations, Interim Certificates, Design & As-Built Documentation, minutes of meetings, Government Agencies permits amongst other things related to this PPP Contract Agreement at the construction site in an orderly manner.

2.9 Observe tests required by the PPP Contract Agreement record and report to the Project Committees on test procedures and, where applicable, the results in accordance with the PPP Contract Agreement.

2.10 The Independent Engineer shall be consulted by both Parties on any matter relating to the project and shall on their request issue an opinion or recommendation as applicable, with respect to technical matters and performance relating to the Project in accordance with this PPP Contract Agreement.

Date.....

Schedule 11: Duties, Responsibilities and Functions of the PPP Consultant.

1 General

- 1.1 The PPP Consultant's duties shall include providing advice to FCDA on PPP Contract Management and also include the establishment of the PPP Contract Agreement administration; partnership relationship and project delivery and environment scanning and management; Project Financing arrangements and Project Financing Model all in order to assist in the implementation of the Project in accordance with the terms of this PPP Contract Agreement,
- 1.2 The PPP Consultant shall report directly to the Executive Secretary, FCDA. The FCDA shall bear the costs of engaging the services of the PPP Consultant contained in the Consulting Agreement as a part of the provision in the Project Cost

2 Duties and Responsibilities of the PPP Consultant

- 2.1 Advise FCDA on the establishment of the appropriate PPP Contract Management , project organisation and governance structure for the administration of the PPP Contract Agreement
- 2.2 Coordinate the compliance by FCDA its Conditions Precedent to Commencement.
- 2.3 Prepare the PPP agreement management plan which provides a strategic management tool to guide the establishment of the PPP Contract Agreement administration, partnership relationship, stake holder consultation, project delivery and risk and environment management including the discharge of FCDA obligations and responsibilities as set out in the PPP agreement amongst other things. The PPP Consultant shall provide advice to FCDA on the implementation of the PPP agreement management plan.
- 2.4 Prepare the PPP agreement management manual which provides: a repository of PPP agreement management procedures, key stakeholder details, all the important documents relating to the PPP agreement, document management and capacity building tool for project participants. The PPP Consultant shall provide advice to FCDA on the implementation of the PPP agreement management manual.

- 2.5 Review and analyse project reports with respect to the project objectives and risk management and prepare reports and recommendations to the FCDA on factors which may cause delay in completion or deviation from project objectives for further action.
- 2.6 Provide advice to the Independent Engineer during the review of applications for Interim Payments submitted by the Developer to determine the amount of interim payment to be drawn from the Lenders/Escrow Account, issue of Instructions and Determinations to determine the financial implications on the Total Development Cost on the basis of adjustments to the Financial Model, the Schedule of Payments and Financing Documents in accordance with the PPP Contract Agreement.
- 2.7 The PPP Consultant shall attend meetings of all the Project Committees in order to advice on PPP contract management issues relating to the implementation of the project in accordance with his Terms of Reference under the Consulting Agreement
- 2.8 Advice on the establishment of the FCDA Information System for management of the project based on maintaining records of all Project activities and issues comprising all correspondences, Instructions, Determinations, Interim Certificates, Payments to the Developers and Lenders which cover all principal, interest and other charges from the Escrow Account, matters concerning Project Financing, minutes of meetings, amongst other things related to this PPP Contract Agreement at the construction site or project office in an orderly manner.
- 2.9 Provide regular advice to FCDA on the compliance of the PPP Contract Agreement and ICRC statutory requirements during project implementation.

Schedule 12: Functions and Responsibilities of the Project Governance Committees

The Governance Committees shall comprise the Project Monitoring Committee and the Project Executive Committee:

A Project Monitoring Committee

1 General

- 1.1 The FCDA and the Developer shall, pursuant to the PPP Contract Agreement, constitute a Project Monitoring Committee comprising three representatives each of the FCDA and the Developer, a representative of the Lender, the Independent Engineer, PPP Consultant, and representatives of such other Stakeholders as may be nominated by the FCDA.

The Developer's Representative will chair all meetings of the Project Monitoring Committee.

The Developer will bear the costs of facilities and meetings of the Project Monitoring Committee as part of the total cost of the Project. The Project Monitoring Committee shall operate for the entire PPP Duration.

However, members of the Committee will at their own cost, arrange from time to time to attend meetings of the Project Monitoring Committee.

2 Functions and Responsibilities of the Project Monitoring Committee

- 2.1 The Project Monitoring Committee shall hold meetings as required to review the progress of the implementation of the project and the review and adoption of the design, Construction Works and Commissioning issues. The Independent Engineer shall record the business of meetings and submit copies of the records to those attending the meeting and to all the Parties.
- 2.2 Monitor and review performance by the Developer of its obligations under this PPP Contract Agreement and resolve issues arising thereof.
- 2.3 Monitor progress of the Design Documentation and Construction Works by reference to the Construction Program;

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- 2.4 Resolve issues arising from the reports or documents provided by the Parties and members of the Committee.
 - 2.5 Review quality assurance and safety issues;
 - 2.6 Address and resolve issues of public concern;
 - 2.7 Address community and media relations issues;
 - 2.8 Address any other matters under this PPP Contract Agreement which will ensure the achievement of Project objectives
 - 2.9 Conduct its meetings in such a manner and in accordance with such procedures as its members may from time to time agree provided that at least 1 representative from each of the FCDA and the Developer must be present in order for there to be a quorum at a meeting of the Project Monitoring Committee.
 - 2.10 The recommendations of the Project Monitoring Committee shall not affect the rights or obligations of either the FCDA or the Developer under the PPP Contract Agreement.

B Project Executive Committee:

1 General

- 1.1 The FCDA shall, pursuant to the PPP Contract Agreement constitute a Project Executive Committee comprising at least two representatives each of FCDA and the Developer.

The Independent Engineer and the PPP Consultant shall serve as advisers and present necessary reports to the committee.

The Executive Secretary of FCDA or his representative shall be the Chairman of the Committee.

The Developer shall bear the costs of facilities and meetings of the Project Executive Committee as part of the total cost of the Project. The Project Executive Committee shall operate for the entire PPP Contract Duration.

However, members of the Committee will at their own cost, arrange from time to time to attend meetings of the Project Executive Committee.

2 Functions and Responsibilities of the Project Executive Committee

- 2.1 The Project Executive Committee shall hold meetings as required to review and address matters and issues referred to it from time to time by the Project Monitoring Committee and to receive Reports of the Parties, the Independent Engineer and the PPP Consultant on the issues relating to the implementation of the Project.
- 2.2 Conduct its meetings in such a manner and in accordance with such procedures as its members may from time to time agree provided that at least 1 representative from each of the FCDA and the Developer must be present in order for there to be a quorum at a meeting of the Project Executive Committee. The Independent Engineer shall record the business of meetings and submit copies of the records to those attending the meeting and to all the Parties.
- 2.3 All minutes and reports of the Project Executive Committee shall be sent to the Lenders for their information and any necessary action.
- 2.4 The Project Executive Committee may address any or all of the issues which fall under the functions and responsibilities of the Project Monitoring Committee whether referred to it or not.
- 2.5 Address any other matters under this PPP Contract Agreement which will ensure the achievement of Project objectives
- 2.6 The Project Executive Committee shall perform Dispute Resolution functions in accordance with Sub-Clause 20.7 [Amicable Settlement] under PPP Contract Agreement.
- 2.7 The decisions of the Project Executive Committee shall be binding on both Parties and may result into Instructions and Determinations under the PPP Contract Agreement.

Schedule 13: General Conditions of Dispute Adjudication Agreement

Clause 1 Definitions

Each "Dispute Adjudication Agreement" is a tripartite agreement by and between:

- (a) the "FCDA";
- (b) the "Developer"; and
- (c) the "Member" who is defined in the Dispute Adjudication Agreement as being:
 - (i) the sole member of the "DAB" (or "adjudicator") and, where this is the case, all references to the "Other Members" do not apply,
 - or
 - (ii) one of the three persons who are jointly called the "DAB" (or "dispute adjudication board") and, where this is the case, the other two persons are called the "Other Members",

The FCDA and the Developer have entered (or intend to enter) into a contract, which is called the "Contract" and is defined in the Dispute Adjudication Agreement, which incorporates this Appendix. In the Dispute Adjudication Agreement, words and expressions which are not otherwise defined shall have the meanings assigned to them in the Contract.

Clause 2 General Provisions

The Dispute Adjudication Agreement shall take effect when the FCDA, the Developer and each of the Members (or Member) have respectively each signed a Dispute Adjudication Agreement.

When the Dispute Adjudication Agreement has taken effect, the FCDA and the Developer shall each give notice to the Member accordingly. If the Member does not receive either notice within

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Sign _____
Date _____
six months after entering into the Dispute Adjudication Agreement, it shall be void and ineffective.

This employment of the Member is a personal appointment, No assignment or subcontracting of the Dispute Adjudication Agreement is permitted without the prior written agreement of all the Parties to it and of the Other Members (if any).

Clause 3 Warranties

The Member warrants and agrees that he/she is and shall be impartial and independent of the FCDA, the Developer and the FCDA's Representative. The Member shall promptly disclose, to each of them and to the Other Members (if any), any fact or circumstance which might appear inconsistent with his/her warranty and agreement of impartiality and independence.

When appointing the Member, the FCDA and the Developer relied upon the Member's representations that he/she is:

- (a) experienced in the work which the Developer is to carry out under the Contract,
- (b) experienced in the interpretation of contract documentation, and
- (c) fluent in the language for communications defined in the Contract.

Clause 4 General Obligations of the Member

The Member shall:

- (a) have no interest financial or otherwise in the FCDA or the Developer, nor any financial interest in the Contract except for payment under the Dispute Adjudication Agreement;
- (b) not previously have been employed as a consultant or otherwise by the FCDA or the Developer, except in such circumstances as were disclosed in writing to the FCDA and the Developer before they signed the Dispute Adjudication Agreement;

- (c) have disclosed in writing to the FCDA, the Developer and the Other Members (if any), before entering into the Dispute Adjudication Agreement and to his/her best knowledge and recollection, any professional or personal relationships with any director, officer or employee of the FCDA or the Developer, and any previous involvement in the overall project of which the Contract forms part;
- (d) not, for the duration of the Dispute Adjudication Agreement, be employed as a consultant or otherwise by the FCDA or the Developer, except as may be agreed in writing by the FCDA, the Developer and the Other Members (if any);
- (e) comply with the annexed procedural rules and with Sub-Clause 20.4 of the Conditions of Contract;
- (f) not give advice to the FCDA, the Developer, the FCDA's Personnel or the Developer's Personnel concerning the conduct of the Contract, other than in accordance with the annexed procedural rules;
- (g) not while a Member enter into discussions or make any agreement with the FCDA or the Developer regarding employment by any of them, whether as a consultant or otherwise, after ceasing to act under the Dispute Adjudication Agreement;
- (h) ensure his/her availability for any site visit and hearings as are necessary; and
- (i) treat the details of the Contract and all the DAB's activities and hearings as private and confidential, and not publish or disclose them without the prior written consent of the FCDA, the Developer and the Other Members (if any).

Clause 5 General Obligations of the FCDA and the Developer

The FCDA, the Developer, the FCDA's Personnel and the Developer's Personnel shall not request advice from or consultation with the Member regarding the Contract, otherwise than in the normal course of the DAB's activities under the Contract and the Dispute Adjudication Agreement, and except to

the extent that prior agreement is given by the FCDA and the Developer and the Other Members (if any). The FCDA and the Developer shall be responsible for compliance with this provision, by the FCDA's Personnel and the Developer's Personnel respectively.

The FCDA and the Developer undertake to each other and to the Member that the Member shall not, except as otherwise agreed in writing by the FCDA, the Developer, the Member and the Other Members (if any):

- (a) be appointed as an arbitrator in any arbitration under the Contract;
- (b) be called as a witness to give evidence concerning any dispute before arbitrator(s) appointed for any arbitration under the Contract; or
- (c) be liable for any claims for anything done or omitted in the discharge or purported discharge of the Member's functions, unless the act or omission is shown to have been in bad faith.

The FCDA and the Developer hereby jointly and severally indemnify and hold the Member harmless against and from claims from which he/she is relieved from liability under the preceding paragraph.

Clause 6 Payment

The Member shall be paid as follows, in the currency named in the Dispute Adjudication Agreement:

- (a) a daily fee which shall be considered as payment in full for:
 - (i) each working day spent reading submissions, attending hearings (if any), preparing decisions, or making site visits (if any); and
 - (ii) each day or part of a day up to maximum of two days' travel time in each direction for the journey (if any) between the Members' home and site or an

other location of a meeting with Other Members (if any) and / or the FCDA and the Developer;

- (b) all reasonable expenses incurred in connection with the Member's duties, including the cost of secretarial services, telephone calls, courier charges, faxes and telexes, travel expenses, hotel and subsistence costs; a receipt shall be required for each item in excess of five percent of the daily fee referred to in sub-paragraph (a) of this Clause; and
- (c) any taxes properly levied in the Country on payments made to the Member (unless a national or permanent resident of the Country) under this Clause 6.

The daily fee shall be as specified in the Dispute Adjudication Agreement.

Immediately after the Dispute Adjudication takes effect, the Member shall, before engaging in any activities under the Dispute Adjudication Agreement, submit to the Developer, with a copy to the FCDA, an invoice for (a) an advance of twenty-five (25) percent of the estimated total amount of daily fees to which he / she will be entitled and (b) an advance equal to the estimated total expenses that he / she shall incur in connection with his / her duties. Payment of such invoice shall be made by the Developer upon his receipt of the invoice. The Member shall not be obliged to engage in activities under the Dispute Adjudication Agreement until each of the members has been paid in full for invoices submitted under this paragraph.

Thereafter the Member shall submit to the Developer, with a copy to the FCDA, invoices for the balance of his / her daily fees and expenses, less the amounts advanced. The DAB shall not be obliged to render its decision until invoices for all daily fees and expenses of each Member for making a decision shall have been paid in full.

Unless paid earlier in accordance with the above, the Developer shall pay each of the Member's invoices in full within 28 calendar days after receiving each invoice and shall apply to the FCDA (in the Statements under Contract) for reimbursement of one-half of the amounts of these invoices. The FCDA shall then pay the Developer in accordance with the Contract.

If the Developer fails to pay to the Member the amount to which he / she is entitled under the Dispute Adjudication Agreement, the FCDA shall pay the amount due to the Member and any other amount which may be required to maintain the operation of the DAB; and without prejudice to the FCDA's rights or remedies. In addition to all other rights arising from this default, the FCDA shall be entitled to reimbursement of all sums paid in excess of one-half of these payments, plus all costs of recovering these sums and financing charges calculated at the annual rate of three percentage points above the discount rate of the Central Bank of Nigeria.

If the Member does not receive payment of the amount due within 28 days after submitting a valid invoice, the Member may (i) suspend his/her services (without notice) until the payment is received, and/or (ii) resign his/her appointment by giving notice to the FCDA and the Developer. The notice shall take effect when received by them both. Any such notice shall be final and binding on the FCDA, the Developer and the Member.

Clause 7 Default of the Member

If the Member fails to comply with any obligation under Clause 4, he / she shall not be entitled to any fees or expenses hereunder and shall, without prejudice to their other rights, reimburse each of the FCDA and the Developer for any fees and expenses received by the Member and the Other Members (if any), for proceedings or decisions (if any) of the DAB which are rendered void or ineffective.

Clause 8 Disputes

Any dispute or claim arising out of or in connection with this Dispute Adjudication Agreement, or the breach, termination or invalidity thereof, shall be settled under the Rules of Arbitration and Conciliation Act Cap A18 Laws of the Federation of Nigeria, 2004 by one arbitrator appointed in accordance with these Rules of Arbitration.

- 1 The FCDA and the Developer shall furnish to the DAB one copy of all documents which the DAB may request, including Contract documents, progress reports, variation instructions, certificates and other documents pertinent to the matter in dispute. All communications between the DAB and the FCDA or the Developer shall be copied to the other Party. If the DAB comprises three persons, the FCDA and the Developer shall send copies of these requested documents and these communications to each of these persons.
- 2 The DAB shall proceed in accordance with Sub-Clause 20.4 and these Rules. Subject to the time allowed to give notice of a decision and other relevant factors, the DAB shall:
 - (a) act fairly and impartially as between the FCDA and the Developer, giving each of them a reasonable opportunity of putting his case and responding to the other's case and
 - (b) adopt procedures suitable to the dispute, avoiding unnecessary delay or expense.
- 3 The DAB may conduct a hearing on the dispute, in which event it will decide on the date and place for the hearing and may request that written documentation and arguments from the FCDA and the Developer be presented to it prior to or at the hearing.
- 4 Except as otherwise agreed in writing by 'the FCDA and the Developer, the DAB shall have power to adopt an inquisitorial procedure, to refuse admission to hearings or audience at hearings to any persons other than representatives of the FCDA and the Developer, and to proceed in the absence of any party who the DAB is satisfied received notice of the hearing; but shall have discretion to decide whether and to what extent this power may be exercised,
- 5 The FCDA and the Developer empower the DAB, among other things, to:
 - (a) establish the procedure to be applied in deciding a dispute,
 - (b) decide upon the DAB's own jurisdiction, and as to the scope of any dispute referred to it,

- Legal Services
- (c) conduct any hearing as it thinks fit, not being bound by any rules or procedure other than those contained in the Contract and these Rules,
 - (d) take the initiative in ascertaining the facts and matters required for a decision
 - (e) make use of its own specialist knowledge, if any,
 - (f) decide upon the payment of financing charges in accordance with the Contract,
 - (g) decide upon any provisional relief such as interim or conservatory measures, and
 - (h) open up, review and revise any certificate, decision, determination, instruction opinion or valuation of the FCDA, relevant to the dispute.

6

The DAB shall not express any opinions during any hearing concerning the merits of any arguments advanced by the Parties. Thereafter, the DAB shall make and give its decision in accordance with Sub-Clause 20.4, or as otherwise agreed by the FCDA and the Developer in writing. If the DAB comprises three persons:

- (a) it shall convene in private after a hearing, if any, in order to have discussions and prepare its decision;
- (b) it shall endeavour to reach a unanimous decision: if this proves impossible, the applicable decision shall be made by a majority of the Members, who may require the minority Member to prepare a written report for submission to the FCDA and the Developer; and
- (c) if a Member fails to attend a meeting or hearing, or to fulfil and required function, the other two Members may nevertheless proceed to make a decision, unless:
 - (i) either the FCDA or Developer does not agree that they do so, or
 - (ii) the absent Member is the chairman, and he/ she instructs the other Members to not make a decision.

DISPUTE ADJUDICATION AGREEMENT

Sign
Date
[for each member of a three person DAB]

Name and details of Contract: _____
Name and address of Employer: _____
Name and address of Developer: _____
Name and address of Member: _____

Whereas the Employer and the Developer have entered into the PPP Contract Agreement and desire jointly to appoint the Member to act as one of the three persons who are jointly called the "DAB" [and desire the Member to act as chairman of the DAB] to adjudicate a dispute which has arisen in relation to _____ *

The Employer, Developer and Member jointly agree as follows:

1. The conditions of this Dispute Adjudication Agreement comprise the "General Conditions of Dispute Adjudication Agreement", which is set out Schedule 13 and the following provisions. In these provisions, which include amendments and additions to the General Conditions of Dispute Adjudication Agreement, words and expressions shall have the same meanings as are assigned to them in the General Conditions of Dispute Adjudication Agreement.
2. [Details of amendments to the General Conditions of Dispute Adjudication Agreement, if any]
3. In accordance with Clause 6 of the General Conditions of Dispute Adjudication Agreement, the Member shall be paid a daily fee of _____ per day.
4. In consideration of these fees and other payments to be made by the Employer and the Developer in accordance with Clause 6 of the General Conditions of Dispute Adjudication Agreement, the Member undertakes to serve, as described in this Dispute Adjudication Agreement, as one of the three persons who are jointly to act as the DAB.
5. The Employer and the Developer jointly and severally undertake to pay the Member, in consideration of the carrying out of these services, in accordance with Clause 6 of the General Conditions of Dispute Adjudication Agreement.
6. This Dispute Adjudication Agreement shall be governed by the law of _____

SIGNED by: _____

for and on behalf of the
Employer in the presence of

Witness: _____
Name: _____
Address: _____
Date: _____

SIGNED by: _____

for and on behalf of the
Developer in the presence of

Witness: _____
Name: _____
Address: _____
Date: _____

SIGNED by: _____

the member in the presence of:

Witness: _____
Name: _____
Address: _____
Date: _____

[* A brief description or name of dispute to be added]

Schedule 14: Lenders Direct Agreement Requirements

Legal Services Secretariat
DRAFTING
Sign.....
Date.....

1.0 General

1.1 Capitalized Terms

Capitalized terms used in this Schedule have the definitions set out in the PPP Contract Agreement for the Development of Engineering infrastructure for Katampe District, Phase II, FCC, Abuja between the FCDA and the Developer, as defined therein, unless expressed otherwise.

1.2 PPP Contract Agreement Reference

This Schedule is referenced in Clause 1.30 of the Conditions of Contract of the PPP Contract Agreement. The "Lender Direct Agreement" is defined in Section 1.1 and referenced in Sub-Clauses 1.17.3(q) and 1.26.1 of the Conditions of Contract of the PPP Contract Agreement.

The Lender Direct Agreement must in all material respects comply with and fall within the parameters set out in sections 2.1 through 2.16 of this Schedule. The Lender Direct Agreement shall expressly have precedence over the provisions of the PPP Contract Agreement.

1.3 Background

In order to facilitate the Developer's financing with the Lender, the FCDA has consented to enter into this Direct Agreement with the Lender, which sets forth certain rights and obligations of the FCDA and the lender (the FCDA, the Lender and the Developer hereinafter referred to individually as a "**Party**" and collectively as the "**Parties**") upon the occurrence of certain events during the term of the PPP Contract Agreement.

Redacted

The Development levies (former, the increase and subsidy) which shall be paid into the Escrow Account is to be used to fund the balance of Project Costs, Financing Cost, Debt servicing (Bank Loan and Interest payments), Equity and Returns Drawdown and with balance as the Net Income to FCDA as outlined in the Financial Model

The FCDA is to provide the payment Guarantee in the form and manner acceptable to the Developer and Lenders.

2.0 Lender Direct Agreement Requirements

2.1 Parties

The Parties to the Lender Direct Agreement shall be the FCDA, the Developer, and the lender or group of lenders or a trustee for or other representative of the lenders (collectively, the "Lender").

2.2 Definitions

Words and phrases defined and construed in the PPP Contract Agreement shall have the same meaning and construction in this Lender Direct Agreement unless expressly modified pursuant to the terms hereof, in which event such modified meaning shall prevail.

2.3 Conflict

In the event of any conflict between any provision of this Direct Agreement and any provision of the Contract, this Direct Agreement shall prevail.

2.4 No other liability

Nothing herein is intended, nor should be construed, to create or expand any liability on the part of the FCDA under the neither PPP Contract Agreement nor affect any of its rights under the PPP Contract Agreement, except as may be expressly agreed otherwise in this Lender Direct Agreement.

2.5 Commencement and Duration of the Lender Direct Agreement

This Lender Direct Agreement shall commence upon the satisfaction of the agreed conditions and shall continue in full force until the earlier to occur of (a) the expiry of the term of the Contract, and (b) the repayment in full to the Finance Parties of all amounts due and owing by the Developer Company under the Finance Documents.

2.6 Assignment

The provision for Assignment in the Lender Direct Agreement and with respect to the PPP Contract Agreement shall take into consideration the Financing structure of the Development and the Guarantee provided by FCDA to the Developer and Lenders as outlined in Section 2.3 above.

2.7 Step-in and Substitution

The provision for Step-in and Substitution shall be consistent with Clause 1.26[Step-In] of the PPP Contract Agreement.

2.8 Insurance

The Lender Direct Agreement may address the payment and application of the proceeds of insurance required to be maintained by the Contractor under the PPP Contract Agreement; provided that, unless the FCDA otherwise agrees, any proceeds from works insurance required by the PPP Contract Agreement shall be applied firstly to the Development.

The provision for Insurance in the Lender Direct Agreement shall not impose any additional obligations or liability to FCDA. The costs of any such additional obligations or liability shall be borne by the Developer. The provision for Insurance in the Lender Direct Agreement and with respect to the PPP Contract Agreement shall take into consideration the Financing structure of the Development and the Guarantee provided by FCDA to the Developer and Lenders as outlined in Section 1.3 above.

2.9 Representations and Warranties

The FCDA's representations and warranties under the Lender Direct Agreement will be limited to the representations corresponding to the FCDA's representations and warranties in the PPP Contract Agreement.

2.10 Miscellaneous

Other provisions in relation to matters requiring a direct contractual link between the FCDA and the Lenders in order to facilitate the provision of finance to the Developers shall be generally in accordance with the PPP Contract Agreement.

Schedule 15: Escrow Agreement Requirements

Signature of the Secretary
Date

1.0 General

1.1 Capitalized Terms

Capitalized terms used in this Schedule have the definitions set out in the PPP Contract Agreement for the Development of Engineering infrastructure for Katampe District, Phase II, FCC, Abuja between the FCDA and the Developer, as defined therein, unless expressed otherwise.

1.2 PPP Contract Agreement Reference

This Schedule is referenced in Sub-Clause 1.30 of the Conditions of Contract of the PPP Contract Agreement. The "Escrow Account Agreement" is defined in Sub-Clause 1.1 and referenced in Sub-Clauses 1.17.3(r) and 1.19 of the Conditions of Contract of the PPP Contract Agreement.

The Escrow Account Agreement must in all material respects comply with and fall within the parameters set out in sections 2.1 through 2.10 of this Schedule.

1.3 Background

In order to facilitate the Developer's financing with the Lender, the FCDA has consented to enter into this Escrow Account Agreement with the Lender, which sets forth certain rights and obligations of the FCDA and the lender (the FCDA, the Lender and the Developer hereinafter referred to individually as a "**Party**" and collectively as the "**Parties**") upon the occurrence of certain events during the term of the PPP Contract Agreement.

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The Development levies (former, the increase and subsidy) which shall be paid into the Escrow Account is to be used to fund the balance of Project Costs, Financing Cost, Debt servicing (Bank Loan and Interest payments), Equity and Returns Drawdown and with balance as the Net Income to FCDA as outlined in the Financial Model

The FCDA is to provide the payment Guarantee in the form and manner acceptable to the Developer and Lenders.

2.0 Escrow Account Agreement Requirements

2.1 Parties

The Parties to the Escrow Account Agreement shall be the FCDA, the Developer, and the lender or group of lenders or a trustee for or other representative of the lenders (collectively, the "Lender").

2.2 Definitions

Words and phrases defined and construed in the PPP Contract Agreement shall have the same meaning and construction in this Escrow Account Agreement unless expressly modified pursuant to the terms hereof, in which event such modified meaning shall prevail.

2.3 No other liability

Nothing herein is intended, nor should be construed, to create or expand any liability on the part of the FCDA under the neither PPP Contract Agreement nor affect any of its rights under the PPP Contract Agreement, except as may be expressly agreed otherwise in this Escrow Account Agreement

2.4 Commencement and Duration of the Escrow Account Agreement

This Escrow Account Agreement shall commence upon the satisfaction of the agreed conditions and shall continue in full force until the earlier to occur of (a) the expiry of the term of the Contract, and (b) the repayment in full to the Finance Parties of all amounts due and owing by the Developer under the Financing Documents.

2.5 Assignment

The provision for Assignment in the Escrow Account Agreement and with respect to the PPP Contract Agreement shall take into consideration the Financing structure of the Development and the Guarantee provided by FCDA to the Developer and Lenders as outlined in Section 1.3 above.

2.6 Establishment of Escrow Account

The escrow account to be established under this Agreement by the FCDA and Developer shall be consistent with the provisions of Sub-Clause 1.19 of the PPP Contract Agreement.

The Funds in the Escrow Account are to be used exclusively for payments in accordance the provisions of the PPP Contract Agreement and the Financial Model (Schedule 5), and Schedule of Payments (Schedule 6).

2.7 Disbursements and Payments

Disbursements and Payments by the Escrow Agent shall be in accordance with the procedures set in Clause 14 (Total Development Cost and Payment) of the PPP Contract Agreement.

2.8 Escrow Agent's Responsibility

The Escrow Agent's responsibility shall be ministerial in nature. The responsibility and authority of the Escrow Agent's on disbursement, total deposits, investment of funds, resignation, removal and appointment of a successor and handing over of books funds and assets shall be consistent with best practices and Central Bank of Nigeria guidelines.

2.9 Interest

All interest income accrued on Funds in the Escrow Account shall form and become part of the Funds and shall be disbursed in accordance with this PPP Contract Agreement.

2.10 Miscellaneous

Other provisions in relation to status the Escrow Account Agreement, communications and dispute resolution shall be generally in accordance with the PPP Contract Agreement.

Sign.....
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Schedule 16: Term Sheet

The draft Term Sheet referred to in the PPP Contract Agreement are as follows.

Schedule 16.1 Term Sheet (Main Facility) - pages 219 – 223 [1/5 – 5/5]

Schedule 16.2 Term Sheet (Standby Facility) - pages 224 – 228 [1/5 – 5/5]

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Schedule 17: Conditions Precedent - List of Documents and Agreements to be executed or provided as part of the PPP Contract Agreement

S/N	Condition Precedent	Condition Date	Party Responsible
a.	The developer shall have submitted certified true copies of the Financing documents containing the terms and conditions on which the Lenders shall provide funds to the Developer for financing the Project after the FCDA has undertaken the necessary due diligence and agreed the terms and conditions of such Financing documents.		Developer
b.	The Escrow Account for the implementation of the project is opened by both Parties in accordance with sub-clause 1.19[Escrow Account].		Developer & FCDA
c.	The Developer's Equity contribution of 5% of the Project costs is available and duly set aside in the Escrow Account and shall be formally advised by Lenders to FCDA.		Developer and Lender(s)
d.	The Financial Model has been audited and certified by Parties and Lenders.		Developer, FCDA & Lender(s)
e.	Performance Security in full has been obtained and provided to FCDA by the Developer in accordance with Clause 4.2[Performance Security] of the Conditions of Contract		Developer

S/N	Condition Precedent	Condition Date	Party Responsible
f.	All Insurances shall have been effected in accordance with the relevant Clauses and Sub-Clauses.		Developer
g.	Certified true copies of the Developer's Sub-Contracts (including the EPC) have been delivered to FCDA by the Developer.		Developer
h.	Submission by the developer of the Programme of Works in accordance with Sub-Clause 8.3[Programme] of the Conditions of Contract.		Developer
i.	The Shareholders Funding Agreement have been delivered to FCDA by the Developer.		Developer
j.	The developer shall have obtained all Applicable Permits and Licenses in accordance with the PPP Contract Agreement.		Developer
k.	The FCDA shall have handed over to the Developer the Project Site free from any encumbrance, together with the necessary rights-of-way and easements for the purposes of implementing the Project in accordance with this Agreement.		FCDA
l.	All of the representations and warranties of the Developer set forth in Sub-Clause 1.15.1 are true and correct as at date of the Financial Close.		Developer

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APPENDIX B

Pricing Document

The full Pricing Document referred to under Schedule 7: Project Cost and Pricing Document is attached as Appendix B (Pages B/1 – B/41) at the end of this PPP Contract Agreement.

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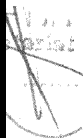
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	BILL NO. 5 - BRIDGE WORK
	EXCAVATION
5.01	Excavate in any material except rock for pile caps and foundations, including dewatering, shutting and backfilling or if necessary haul to spoil. Depth not exceeding 4 m
5.02	Ditto for excavation in rock
5.03	Filling; general with imported natural material other than topsoil or rock [Ref Code E635]
	RIVER DIVERSION
5.04	Excavate in any material except rock for river channel diversion as shown on the drawing
5.05	Extra over item 5.05 for excavation in rock.
5.06	Provide and place 25 cm thick stone pitching on river slopes as directed by the Engineer's Representative.
	PILING
	BORED PIPES
5.07	Allow for bringing piling plant equipment and all works necessary for erecting, dismantling and removal. Payment to be spread over piling period.
5.08	Provide and bore 1300 mm diameter cast in place concrete piles on land in any material to any depth not exceeding 30m and filling with B25 concrete incl. the steel reinforcement, temporary or/and permanent lining.
5.09	Extra over 5.09 for bored piles in rock.
	ABUMENTS PIERS AND WING WALLS
	PILE CAPS, FOUNDATIONS
5.10	Provide mix and place blinding concrete B10(d=10.0cm) under pile caps and foundations.
5.11	Provide mix and place mass concrete B10 to replace unsuitable soil under foundations, (provisional)
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S/NO.	DESCRIPTION
5.12	Provide mix and place B25 concrete in foundations pile caps on land, including formwork and shuttering.
5.13	provide and fix high tensile steel reinforcement, yield strength 420 N/mm ² in foundations, abutments, wing wall and piers.
	PIERS, ABUTMENT WALLS
5.14	Provide mix and place B25 concrete in abutments, wing walls and piers
5.15	Provide and fix wrought shuttering to concrete for abutment, and wing walls.
5.16	Provide and fix rough shuttering to concrete for piers
	TRANSITION SLABS
5.17	Provide mix and place B25 concrete in transition slabs.
5.18	Provide and fix rough shuttering to concrete for transition slabs
5.19	Provide, and fix high tensile steel reinforcement, yield strength 420 N/mm ² in transition slabs
5.20	Provide, mix and place blinding concrete B10, (d=10cm) under transition slabs.
	DEWATERING
5.21	Provide and fix 100 mm diameter P. V. C. pipe as weep holes in abutment and wing walls
5.22	Provide and place rear face drainage filter and drain to abutments and wing walls
	JOINTS
5.23	Provide and fix joints tape, type TRICOSAL DF32 or similar approved material for covering of separation and shrinkage joints
5.24	Provide and fix joints tape, type TRICOSAL AF32 or similar approved material for covering of separation and shrinkage joints.
5.25	Provide and place cage of expanded metal for shrinkage joints as shown on the drawing.
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	SUPERSTRUCTURE	
	CONCRETE STRUCTURE	
5.26	Provide mix and place B35 concrete in slabs and beams of superstructure.	
5.27	Provide and fix wrought shuttering to non-exposed faces of concrete items.	
5.28	Provide and fix wrought shuttering to exposed faces of concrete item.	
5.29	5mm Hardboard e.t.c.	
5.30	Provide and fix high tensile steel reinforcement, yield strength 420/Nmm ² in superstructure	
5.31	Supply, place tension cables for longitudinal prestressing high tensil steel St. 1670/1870 Complete with injection of grout.	
	COPINGS TO SUPERSTRUCTURE	
5.32	Provide mix and place in-situ B35 Concrete	
5.33	Provide and fix wrought shuttering	
5.34	Provide and fix high tensile steel reinforcement, yield strength 420 N/mm ² , including coping of wing walls	
	MISCELLANEOUS	
	STEEL BEARINGS	
5.35	Supply and install laminated rubber bonded bridge bearings type 1:a x b x h = 250 x 400 x 52 mm	
5.36	Ditto: a x b x h = 400 x 500 x 121	
5.37	Ditto:a x b x h = 700 x 800 x 75	
	EXPANSION JOINTS	
5.38	Supply and install expansion joints type STALKO ST 35 a or similar for max. dilatation 100 mm.	
	BRIDGE RAILING	
5.39	Provide and install tube steel hand railing	
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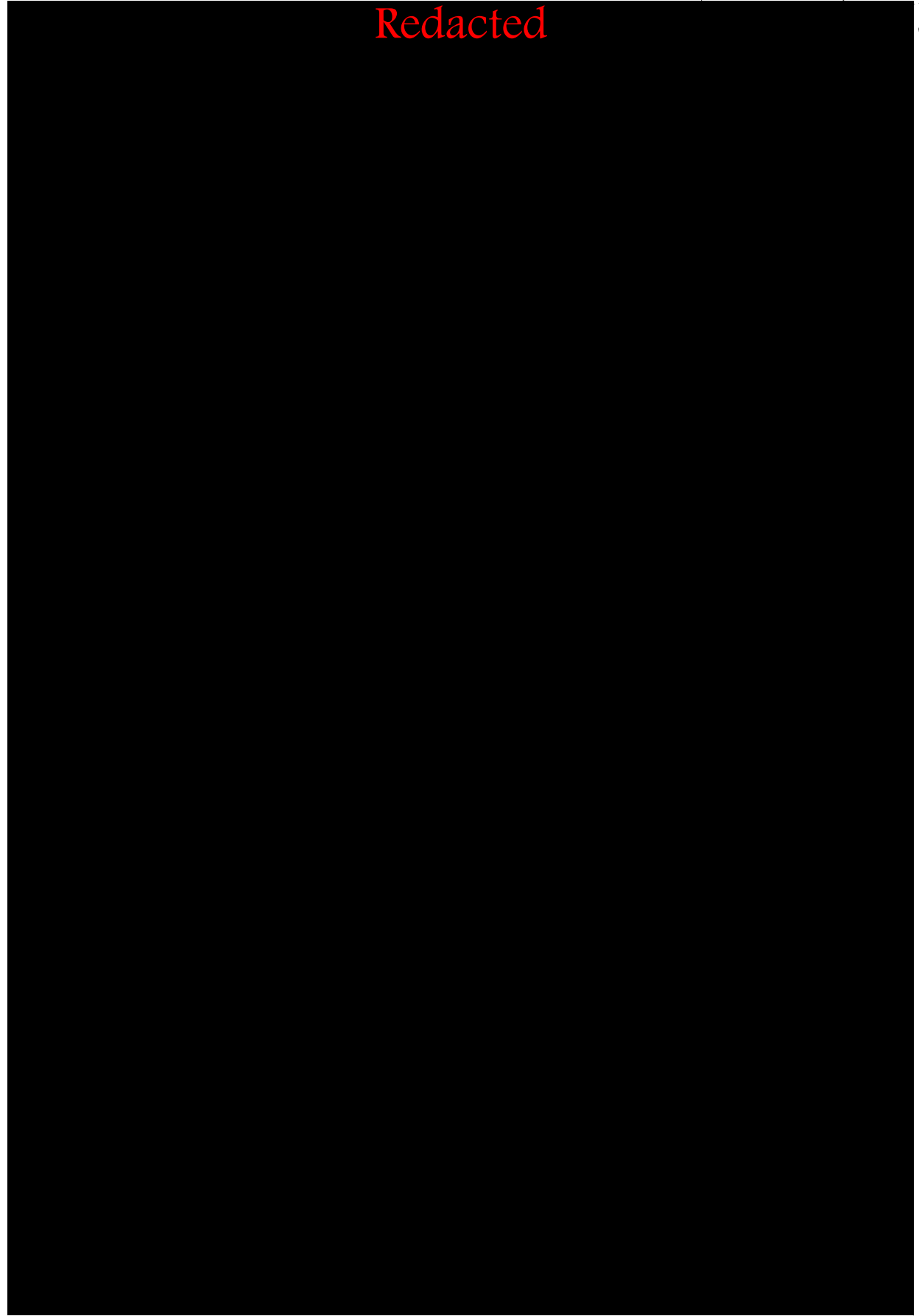
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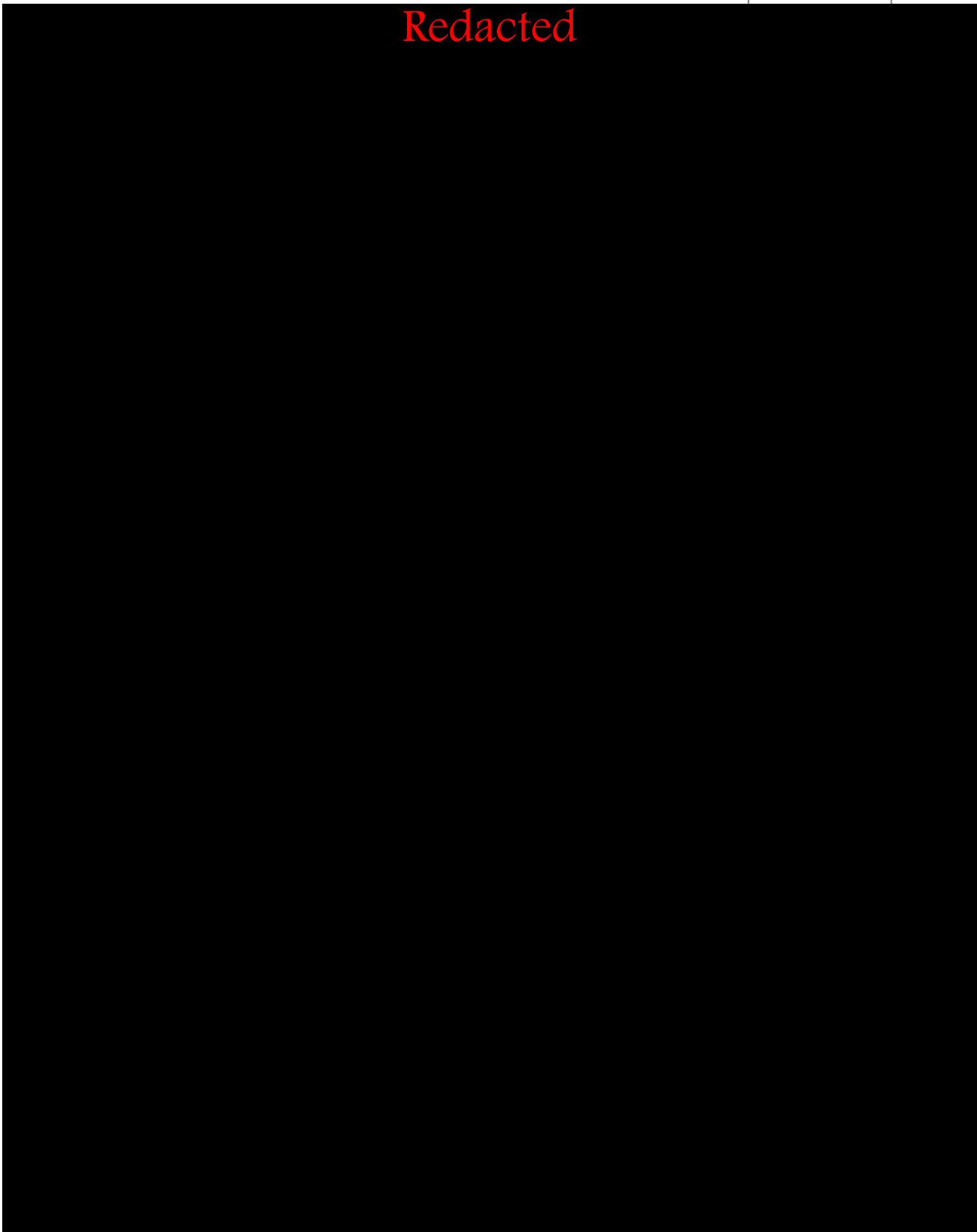
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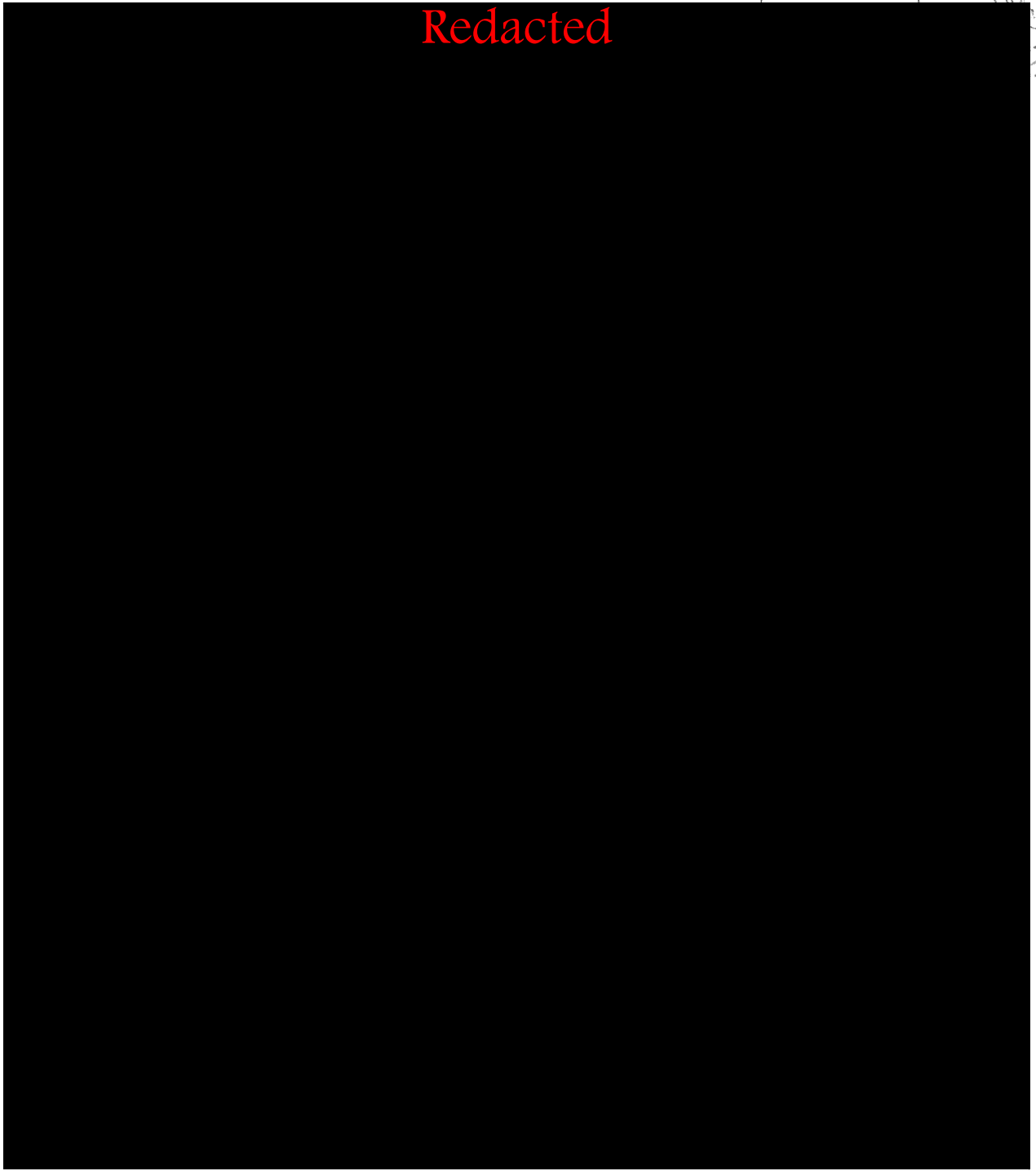
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	<p data-bbox="404 348 861 375"><u>BILL NO. 12 - MISCELLANEOUS WORKS</u></p> <p data-bbox="329 407 833 434">12.01 Temporary realocation of existing services</p> <p data-bbox="329 466 1177 520">12.02 Allow for all other miscellaneous as assessed from site inspection and attach list of work</p>		
	TOTAL BILL NO. 12 CARRIED TO SUMMARY		

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