



MODEL PUBLIC PRIVATE PARTNERSHIP AGREEMENT

BETWEEN

.....
(GRANTOR)

AND

(CONCESSIONAIRE)

ICRC GUIDANCE NOTE ON THE USE OF THE MODEL PPP AGREEMENT

1. Purpose of this Document

This Model Public Private Partnership Agreement has been prepared by the Infrastructure Concession Regulatory Commission (ICRC) to serve as a reference framework for Ministries, Departments, and Agencies (MDAs) of the Federal Government of Nigeria in structuring, negotiating, and implementing PPP projects in Nigeria.

The Model Agreement draws on:

- a) Applicable Nigerian laws and regulatory requirements;
- b) Established PPP policy principles; and
- c) International best practices in risk allocation, bankability, and project governance.

2. Nature and Status of the Model Agreement

This Guidance Note is intended solely as interpretive guidance and does not constitute legal advice or create contractual or legal rights; it should also not be treated as a one-size-fits-all template. MDAs are therefore expected to review and adapt the provisions of the Agreement to reflect the specific requirements, risk profile, and commercial structure of each Project on a case-by-case basis.

3. Project Specific Modifications

PPP projects vary widely depending on:

- a) Sector;
- b) Structure/PPP Model;
- c) Project Scope;
- d) Revenue model; and
- e) Risk allocation and financing arrangements.

Accordingly, MDAs shall ensure that the Model Agreement is not adopted without proper modification and its provisions are aligned with the Project's Financial Model, project scope, sector-specific risks, and regulatory requirements are adequately reflected; and the resulting Agreement remains bankable, enforceable, and commercially balanced.

4. Regulatory Compliance and Approvals

Nothing in this Model Agreement shall derogate from Applicable Law neither shall use of this template replace or override compliance with the ICRC Act, Regulations, Guidelines and any other Applicable Law. MDAs shall still obtain all required approvals, including Outline Business Case (OBC) and Full Business Case (FBC) Compliance Certifications and Federal Executive Council (FEC) approval, where applicable. All adapted Agreements shall be submitted to the ICRC for review as part of the statutory approval process.

5. Role of MDAs and Transaction Advisers

MDAs are expected to engage competent legal, financial, and technical advisers in the development of PPP Agreements. Any modifications to this Model Agreement should reflect sound PPP practice, be internally consistent, and preserve the project's bankability and value for money.

6. Interpretation of Explanatory Notes

Explanatory notes included in the Model Agreement are provided for guidance only. They do not form part of the contractual provisions and should be removed or replaced in the final executed Agreement.

7. No Substitution for Professional Judgment

This Model Agreement is not a substitute for sound commercial judgment, project-specific structuring, or proper legal drafting. Each MDA remains responsible for ensuring that the final PPP Agreement is fit for purpose, legally robust, and aligned with national interest.

8. Continuous Improvement

The ICRC may update this Model Agreement from time to time to reflect changes in law or policy, lessons from implemented PPP projects, and evolving international best practices.

Version 1.0: Issued April 2026

Subject to periodic review and update by the ICRC

THIS PUBLIC PRIVATE PARTNERSHIP AGREEMENT (hereinafter referred to as "this Agreement") is made this [...] day of [insert month] [insert year] [**Execution Date**]

BETWEEN

THE MINISTRY OF FOR AND ON BEHALF OF THE FEDERAL GOVERNMENT OF NIGERIA with its address at.....

(Hereinafter referred to as "the Grantor" which expression shall where the context so admits include its authorised representatives, successors-in-office and assigns) of the one part thereof;

Explanatory Note: *The Ministry's authority to enter into this Agreement is derived from the Federal Government; accordingly, it shall execute the Agreement "for and on behalf of the Federal Government of Nigeria" in the Parties' clause. Furthermore, any Department, or Agency) that is not expressly vested by its enabling Act with the legal capacity to contract on behalf of the Federal Government must do so through its supervising Ministry. Conversely, Departments and Agencies established by statute and duly endowed with contracting capacity shall execute the Agreement in their own name.*

and

..... Limited, a Company incorporated under the Laws of the Federal Republic of Nigeria with **RC Number....** and registered office at (hereinafter referred to as "the Concessionaire" which expression shall where the context so admits include its agents, authorised representatives, successors-in-title and assigns) of the other part.

Explanatory Note: *By the ICRC Regulations the Concessionaire/Private Sector entity shall be a Special Purpose Vehicle incorporated for the sole purpose of executing and implementing the Project in order to ring fence the assets and liabilities of the project company from the parent company.*

In this Agreement the Grantor and the Concessionaire are hereinafter collectively referred to as the "**Parties**" and individually as a "**Party**."

WHEREAS:

A. Description / Mandate of the Grantor

Introduce the Grantor and state its mandate in relation to the subject of the concession and its authority to procure, develop, and manage infrastructure and/or services within the (relevant sector), based on its enabling Legislation.

B. Identification of the Problem

[This paragraph highlights the challenges faced by the Grantor in executing its mandate, including operational inefficiencies, resource constraints, and the need for improved processes or infrastructure]

C. Justification for the Project

[This paragraph outlines the rationale for seeking a solution, emphasizing the need for efficiency, security, modernization, or compliance with evolving regulatory requirements and best practices.]

D. Procurement Process (Solicited or Unsolicited)

[This paragraph states whether the Project Sponsor was selected as the preferred bidder for the Project pursuant to a (competitive procurement process conducted in accordance with applicable laws and guidelines]

OR (where applicable):

The Project originated as an unsolicited proposal submitted by the Project Sponsor(s), along with supporting documentation such as a feasibility study or business case, demonstrating the viability and benefits of the proposed project which were subsequently reviewed, structured, and subjected to a competitive process in accordance with applicable laws and guidelines.

E. Profile and Expertise of Project Sponsors

This paragraph provides an overview of the Project Sponsor(s), highlighting its/their expertise, capabilities, and track record in delivering similar projects in relevant sectors relating to the current expertise needed on the current project.

F. Project Company

The Concessionaire is a special purpose vehicle incorporated under the laws of the Federal Republic of Nigeria for the sole purpose of implementing the Project and performing its obligations under this Agreement.

G. Review and Submission of Business Case to ICRC, Regulatory Review and Approval

[Where paragraph D is an unsolicited proposal, this paragraph would state that the Grantor reviewed the proposal/Outline Business Case and referred it to ICRC for further review and the OBC Compliance Certificate. It would also mention that the ICRC provided guidelines on the next steps, including any competitive benchmarking processes required. Where paragraph D refers to a solicited process, this Clause would mention that Grantor prepared and submitted the Outline Business Case for the Project in accordance with applicable laws and guidelines, and the Project has received the necessary approvals, including the issuance of required Compliance Certificates by the ICRC, following which the Project Sponsor(s) emerged from a competitive process after having satisfied the pre-qualification criteria and submitted the most technically and economically responsive bid]

H. Due Diligence and Negotiations

[This paragraph outlines the process of due diligence, negotiations, and compliance with applicable laws, policies, and regulatory guidelines to ensure the project's feasibility and alignment with national objectives.]

I. Final Approval and Certification

[This paragraph indicates that the Full Business Case Certificate has been issued by the ICRC, and the Federal Executive Council/Project Approval Board has given its approval]

J. Compliance with Legal and Regulatory Requirements

[This paragraph states that all necessary approvals, certifications, consents, and authorizations have been obtained from relevant government agencies, ensuring compliance with applicable laws and due process for the implementation of the project.]

K. Intention to Create Legal Relations

The Parties intend that this Agreement shall constitute a legally binding and enforceable agreement setting out the terms and conditions governing the implementation of the Project.

CLAUSE 1

DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, unless the subject or context otherwise requires, the following definitions shall apply:

“Affected Party” means a Party that, as a direct result of a Force Majeure Event, is prevented from fulfilling its obligations under this Agreement, and a Party whose rights, assets or economic interests are directly and materially impacted by the termination of the Concession to the extent that such impact materially affects the performance of its obligations under this Agreement;

“Agreement” means this Public Private Partnership Agreement (including the Schedules), as the same may be varied, amended or supplemented from time to time;

“Affiliate” means in relation to either Party, a company and any other entity that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with that Party, including a subsidiary of the company or a holding company of the company or any other subsidiary of that holding company (as used in this definition, the expression "control" means with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise);

"Applicable Law" means any law, statute, order, agreement or regulation of any Government Authority in Nigeria having jurisdiction over the matter in question, or other legislative or administrative action of a Government Authority, or judgment or order of a court which relates to the Project, the Operations or the interpretation or application of this Agreement, as the case may be;

“Applicable Permits” means all clearances, licenses, authorisations, no-objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the implementation of the Project;

“Base Case Financial Model” means the financial model agreed between the Parties at Financial

Close, including all assumptions, projections, and sensitivities, which forms the basis for evaluating the financial viability of the Project and for determining compensation, tariff adjustments, and other economic adjustments under this Agreement;

“Best Industry Practice” means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a highly-skilled and experienced Concessionaire engaged in the same type of undertaking as envisaged under this Agreement and which would be expected to result in the performance of its obligations by the Concessionaire in accordance with this Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner;

"Business Day" means any day other than a Saturday, Sunday, or a public holiday declared by the Federal Government of Nigeria on which banks and government offices are generally open for business in Nigeria;

“Calendar day” shall mean every day of the week;

“Calendar Month” means each of the twelve (12) months of the year. Each Calendar Month shall end on the day immediately preceding the beginning of the next succeeding Calendar Month;

“Change in Law” means at any time after the Execution Date, the occurrence of any of the following in Nigeria:

(a) the enactment, adoption, promulgation, amendment, modification, reinterpretation, or repeal by any Government Authority of any Applicable Law or regulation including that which results in any Applicable Permit previously granted ceasing to remain in full force and effect, or being renewed on materially more onerous terms, for reasons not attributable to any act, omission, negligence, or default of the Concessionaire,

(b) the imposition by a Government Authority of any material condition in connection with the issuance, renewal, or modification of any Applicable Permit, which materially and adversely affects the performance of the Project;

which, in each case, materially and adversely affects either:

(i) the performance by the Concessionaire of its obligations under this Agreement; or

(ii) the economic or financial position of the Concessionaire, as determined by reference to the Financial Model.

provided that:

(A) a Change in Law shall not include changes in general economic conditions, inflation, or currency fluctuations;

(B) general changes in taxation or fiscal policy applicable to all persons or sectors shall not constitute a compensable Change in Law;

(C) any Discriminatory or Project-Specific Change in Law, including taxation measures that specifically target the Project, the Concessionaire, or infrastructure projects of a similar nature, shall constitute a Change in Law; and

(D) any change arising from the failure of the Concessionaire to comply with Applicable Law or Applicable Permits shall not constitute a Change in Law.

Compensation Event” means any event expressly designated as such under this Agreement which entitles the Concessionaire to compensation and/or relief;

“Concession” means the rights granted to the Concessionaire by the Grantor to (insert the PPP Model based on the structure agreed between the parties, e.g., BOOT, BOT, DBFOT, etc) in accordance with the terms of the Agreement.

“Concession Term” means the period defined in Clause 4.2 of this Agreement;

“Concessionaire” means the company so mentioned in the preamble of this agreement. (Insert name of the SPV)

“Concessionaire’s Event of Default” means any event or circumstance specified in this Agreement as constituting a default by the Concessionaire;

“Concession Fees” means any payments, whether fixed, variable, or a combination thereof, that the Concessionaire is required to pay to the Grantor as consideration for the rights and privileges granted under this Agreement. Such fees shall include, but are not limited to, upfront fees, annual fees, revenue-sharing payments, or any other financial obligations specified in this Agreement.

“Condition Report” means the state of the Existing Assets prior to the Hand back Date;

“Confidential Information” means any confidential commercial, financial, marketing, technical or other information of whatever nature including, without limitation, information in or relating to the Project, the Project Company or either Parties’ know-how, trade secrets and other information concerning the transactions contemplated by this Agreement or related thereto in any form or medium whether disclosed orally or in writing before or after the date of this Agreement, together with any reproductions of such information in any form or medium or any part(s) of such information (and ‘confidential’ means that the information, either in its entirety or in the precise configuration or assembly of its components, is not publicly available);

“Cure Period” means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Party responsible for such breach or default, and shall:

- (a) Commence from the date on which a notice specifying the type and nature of default that occurred, giving reasonable details of the default, and which is delivered by the non-defaulting Party to the defaulting Party asking the latter to cure the breach or default specified in such notice,
- (b) Not relieve a defaulting Party from liability, including the liability to pay damages or compensation under the provisions of this Agreement,
- (c) Not in any way be extended by any period under this Agreement except by mutual consent of the Parties in writing; provided that if the cure of any breach by the Party in default requires any reasonable action by that Party, the carrying out of that action must be approved by the non-defaulting Party, and
- (d) Be for a period as provided under this Agreement and where the period is not specifically provided under this Agreement shall be for a period not exceeding thirty (30) days;

“Dispute” means any claim, dispute or difference of whatever nature arising under, out of or in connection with this Agreement (including a claim, dispute or difference regarding its existence, validity, termination or relating to non-contractual obligations arising out of or in connection with it);

“Effective Date” means the date on which the tenure of the contract starts running and comes into full force and effect, being the date on which the last of the Condition Precedents is either satisfied or waived in accordance with clause ...

“Emergency” means a condition or situation that is likely to endanger the safety or security of individuals including Users thereof, or which poses an immediate threat of material damage to any of the Project Assets;

Encumbrances” means any mortgage, charge, pledge, lien, hypothecation, security interest,

assignment by way of security, privilege, priority or other interest or arrangement of any nature having the effect of creating security or conferring any preferential right in favour of any person, together with any designation of loss payees, beneficiaries or analogous rights under any insurance policy relating to the Project, and any claim, right, title, interest, restriction, caveat or third-party arrangement (whether contractual, statutory or otherwise) affecting the Concessionaire's rights, assets or the Project Assets so as to restrict, impair or adversely affect the Concessionaire's ability to finance, develop, implement, operate, maintain, transfer or otherwise perform its obligations in respect of the Project;

"Execution Date" means the date that the Parties sign this Agreement or where both parties do not sign on the same day, the date the last party signs the Agreement;

Existing Assets" mean the assets of Grantor prior to Execution Date but which shall be taken over and maintained by the Concessionaire upon the Effective Date;

"Extension of Time" shall mean an extra period or timeline allowed by the approving Party for the performance of specified obligations by the Party responsible for same subject to the provisions of this Agreement;

"Financial Close" means the date on which the Concessionaire shall have obtained the required financing for the Project and the funds for the execution of the Project can be readily accessed and the PPP Regulator (ICRC) has been notified;

"Financing Agreements" means the agreements executed by the Concessionaire with Lenders in connection with the financing or refinancing of the Project, and shall include any amendments or modifications to the agreements;

"Force Majeure" means the events referred to in Clause [insert Clause]

"Full Business Case (FBC)" means the detailed, definitive project appraisal and structuring document prepared after procurement in a Public Private Partnership (PPP) or concession project and which confirms that the project, as structured and negotiated, delivers value for money, is affordable, and is ready for contract award and financial close. The FBC builds on the approved Outline Business Case (OBC) and reflects the actual bid terms, risk allocation, and negotiated commercial arrangements;

"Grantor" means the Ministry, Department or Agency of the Federal Government of Nigeria as the case may be that enters into the PPP Agreement with the Concessionaire;

"Grantor Event of Default" means any event or circumstance specified in this Agreement as constituting a default by the Grantor Agreement;

"Gross Revenue" means all income, fees, charges, rent, tariffs, or other amounts received or receivable by the concessionaire from third parties and users in connection with the use, operation, or deployment of the project facilities and the provision of services under this Agreement, before any deductions for taxes, operating expenses or other costs;

"Hand back" means the reversion of the possession of the Project Assets to the Grantor at the end of the Concession period;

"Hand back Date" means the date on which the Concession Period expires or is earlier terminated pursuant to the provisions of this Agreement and the Project Assets are transferred to the Grantor;

“Hand back Requirements” shall have the meaning as set forth in this Agreement pursuant to Regulation 29 of the ICRC Regulations 2014;

“Handover” means the formal process by which the Grantor transfers possession, access, and operational control of the Project Site and/or Existing Assets to the Concessionaire at or after the Effective Date, to enable the Concessionaire commence the Project in accordance with the Agreement. Handover shall be deemed complete upon the execution of a Handover Certificate by both Parties confirming delivery of the Site and assets.”

“Handover Certificate” means a Certificate countersigned by both parties showing that the Grantor has handed over possession and control of the Project to the satisfaction of the Concessionaire (acting reasonably)

"ICRC" means the Infrastructure Concession Regulatory Commission, responsible for regulating and monitoring Public Private Partnership (PPP) projects in Nigeria; otherwise referred to as the PPP Regulator;

“Independent Engineer” means the technical expert, firm, or entity appointed jointly by the Grantor and the Concessionaire to monitor, review, and certify the design, construction, operation, and maintenance of the Project; and do such other things as may be prescribed in the Independent Engineer’s Agreement in accordance with the terms of this Agreement, applicable laws, and best industry practices;

“Independent Expert” means a person or firm with the necessary experience and professional qualifications, appointed jointly by the Parties, or failing such agreement, appointed in accordance with the dispute resolution mechanism under this Agreement, to provide an independent and impartial opinion, determination, certification, or valuation in respect of any technical, financial, or operational matter arising under this Agreement. The Independent Expert shall act in accordance with principles of independence, fairness, and Good Industry Practice, and its opinion or determination shall, unless otherwise provided, be final and binding on the Parties;

Insurance Cover” means the aggregate of the maximum sums insured under the insurance policies taken out by the Concessionaire pursuant to clause ..., and includes all insurance policies required to be taken out by the Concessionaire under clause ... and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event;

“Intellectual Property” means all current and future registered or unregistered trademarks, service marks, patents, registered designs, utility marks, applications for any of the foregoing, copyrights, unregistered designs, inventions, confidential information, know-how or other intellectual property, including and without limitation to, trademarks, service marks, logos, get-up, trade names, internet domain names, rights in designs, blue prints, programme, software, hardware and manuals, drawings, copyright, computer software, database rights, rights in know-how and other intellectual property rights, and including applications for registration, and all rights or forms of protection having equivalent or similar effect anywhere in the world;

“Lender(s)” means any finance party granting credit or other debt facilities to the Concessionaire for the performance of the Project;

“Material Adverse Effect” means a serious effect of any act or event on the rights, duties and ability of either Party to perform any of its obligations under and in accordance with the provisions of this Agreement and which act or event causes a material financial burden or loss to either Party; or materially affects the financial position or pecuniary gains of the Parties, or alters the position of

the Parties, or re-allocates any risks in the Project, or makes such other unauthorized changes that may impact the success of the Project;

“Material Breach” shall mean any action of either Party resulting in Material Adverse Effect to the other Party;

“Material Change” means any change, alteration, variation or modification of the Scope of the Project which would reasonably be expected to add cost, or negatively affect the responsibility, liability or profitability of the Concessionaire;

“Maintenance Requirements” mean the scheduled preventive and reactive ad hoc operational review, servicing, replacement, repair, part replacement of deployed technologies, including Equipment as defined in this Agreement, machinery, building, and other supporting installations to deliver the Project;

“Non-material Change” means any change, alteration, variation or modification of the Scope of the Project which is at no cost or only at nominal additional cost to the Concessionaire;

“Operation and Maintenance Manual” means the manuals including user guidelines, processes, procedures, policies for the operation and maintenance of the Project Asset which shall be provided by the Concessionaire to the Grantor and updated at the required and/or agreed intervals;

“Outline Business Case” means the project proposal document prepared at the early stage of the Public Private Partnership (PPP) project lifecycle to justify the need for the project and demonstrate its bankability and viability before procurement;

“Performance Guarantee” means irrevocable and unconditional corporate instrument issued by a financial institution providing a formal guarantee on behalf of the Concessionaire to the Grantor that the Project implementation will be effected in accordance and subject to the provisions of this Agreement;

Performance Standards” means the standards and service levels set out in Schedule (X) against which the performance of the Concessionaire shall be measured;

“Periodic Reports” means the reports to be prepared and submitted by the Concessionaire to the Grantor at regular intervals as specified in this Agreement, setting out information on the technical, operational, financial, and compliance performance of the Project, in such form and detail as may be reasonably required by the Grantor;

“Project” means *(insert project specific definition)*;

“Project Agreements” means this Agreement, the Financing Agreement, Accounts Agreement, Operation & Maintenance Agreement, Shareholders’ Agreement, Equipment Supply Agreement and any other material agreements or contracts that may be entered into by the Concessionaire with any person in connection with matters relating to, arising out of or incidental to the Project, but does not include the Step-in Agreement;

“Project Assets” means all tangible and intangible assets, including but not limited to land, buildings, infrastructure, equipment, technology, intellectual property, and any other assets, whether existing prior to or developed during the Term of this Agreement, that are utilised for the implementation, operation, and maintenance of the Project.

“Project Costs” means the total investment needed to deploy, implement and complete the Project

and shall comprise both Direct and Indirect Costs, pre-development and development costs of the Project as contained in the financial model;

“Project Sites” means all locations, facilities, and components of the Project System where the Project is to be implemented, together with any additional sites as may be designated and mutually agreed by the Parties from time to time;

“Project Sponsor(s)” means any individual, firm, company, or other legal entity, whether acting alone or as part of a consortium, that initiates and promotes the Project and assumes primary responsibility for its structuring, financing, and development, including the provision and/or arrangement of equity capital, until the incorporation of the Special Purpose Vehicle (“SPV”).

“Quarter” means a period of three (3) consecutive calendar months, commencing on January 1, April 1, July 1, or October 1 of any year, as the case may be;

“Refinancing” any restructuring, replacement, extension, renewal, amendment, or modification of the Concessionaire’s existing financial arrangements, including but not limited to debt financing, equity financing, or any other financial instruments, whether through the introduction of new lenders, changes in interest rates, repayment schedules, or the issuance of additional debt or equity, that that has the effect of improving the financial terms of the Project;

“Refinancing Gain” means any financial benefit arising from Refinancing, including reduction in financing costs; improved debt terms; and/or increase in equity returns;

“Relief Event” means any event which entitles the Concessionaire to relief from performance obligations but not to monetary compensation;

“Right of Way” means the legal right to access, enter upon, pass through, occupy, or use the designated land or Project Site for the performance of the project;

“Safety Requirements” means the documented workplace and environmental standards which seek to eliminate hazards, to maintain a safe and accident-free workplace, including but not limited to sanitary work place, hazard warning signs, appropriate personal protective gear for employees, such as goggles or respiratory devices where applicable, and similar protective standards, including Original Equipment Manufacturer’s recommended temperature observations for storing equipment to ensure Project equipment is safe and any risk of damage eliminated;

“Scope of the Project” shall have the meaning as set forth in *(Insert Clause)*;

“Senior Debt” means the loan or debt obligation that gets paid first from the project’s cash flows before any other debt or equity investors receive money

“Specifications and Standards” means the specifications and standards relating to the quality, quantity, capacity, and other requirements for the Project as set forth in this Agreement, together with any modifications or additions thereto, including those reflected in the preliminary and detailed designs for the Project submitted by the Concessionaire and approved by the Grantor;

“Sub-contractor” means any company, firm, or person to whom the Concessionaire has, directly or indirectly, subcontracted the performance of any part of the Project. The term includes vendors and suppliers of goods, materials, equipment, or components of the Project Assets, as well as contractors engaged in respect of assigned contracts forming part of the Project;

“Subordinated Debt” means any debt obligation acquired for this project that is repaid only after all senior debt obligations have been fully met;

“Taxes” means all charges, fees, levies, duties, or other assessments imposed by any Governmental Authority, whether Federal, State, Local, or otherwise, including without limitation income tax, withholding tax, companies income tax, value added tax, pay-as-you-earn (PAYE) tax, capital gains tax, excise duties, customs and import duties, environmental levies, stamp duties, documentary taxes, and any similar taxes or charges of whatever nature, together with any interest, penalties, surcharges, or additions thereto, whether disputed or not; and all stamp or documentary taxes and fees and any other applicable taxes;

“Termination” means the expiry or termination of this Agreement in accordance with ... *(insert the Article)*

“Termination Compensation” means the amount payable upon Termination of this Agreement, calculated in accordance with the principles set out in Clause X, but shall not include any amount payable as a consequence of a Political Force Majeure Event;

“Termination Exit Plan” means the plan to be drawn for each Phase of the Project by the Concessionaire and approved by the Grantor upon the Effective Date of this Agreement and which shall:

- (i) Set out the strategy to be followed by the Concessionaire upon the termination of this Agreement prior to the expiration of the Concession Period, and
- (ii) Require the Concessionaire to support an orderly, controlled transition of responsibility for the provision of Operations Support from the Concessionaire to the Grantor or any other party, at the Grantor’s direction, with minimum disruption to the business continuity and operations of the Grantor;

“Termination Notice” means the written notification (which shall not exceed a period of One and Hundred Fifty (150) days) issued in accordance with this Agreement by one Party to the other Party terminating this Agreement;

“User” means a person natural or artificial, organization, corporation, who uses or utilizes any of the services provided under the Project; and

[Explanatory note: This definition of User can be expanded on a case-by-case basis to capture the project context]

“Year” means twelve calendar months in a Gregorian calendar year.

1.2 Interpretation

(The Agreement should include provisions which present the agreed principles that will be used in interpreting the language, definitions and other terms used in the Agreement.)

1.2.1 The Annexes to this Agreement shall form an integral part hereof and references to Annexes shall be to Annexes to this Agreement unless otherwise stated.

1.2.2 The headings of Clauses to this Agreement and the Table of Contents are inserted for convenience of reference only and shall not in any way affect the interpretation of this Agreement.

1.2.3 References to any party or person referred to in this Agreement include references to its

respective successors and permitted assignees.

- 1.2.4 The words "include", "includes", and "including" shall at all times be construed as if followed by the words "without limitation".
- 1.2.5 References to days, weeks, months and years are references to days, weeks, months and years of the Gregorian calendar.
- 1.2.6 Reference to any law or statutory regulation shall include any amendment, re-enactment, or replacement thereof including all statutory instruments, regulations, and orders made thereunder.

CLAUSE 2

PRIORITY OF DOCUMENTS

2.1 The documents forming part of this Agreement shall be read together and construed as mutually explanatory of one another. In the event of any inconsistency, ambiguity, or conflict between the provisions of the documents comprising this Agreement, the order of precedence shall be as follows:

- (a) this Agreement (excluding the Schedules and Annexes);*
- (b) the Schedules to this Agreement;*
- (c) the Annexes and Appendices; and*
- (d) any other documents incorporated by reference into this Agreement.*

Explanatory Note: *The above list is just a guide. The actual documents forming part of the arrangement between the parties may be listed under this Clause*

CLAUSE 3

GRANT OF RIGHTS FROM THE GRANTOR TO THE CONCESSIONAIRE

3.1 Upon the terms and subject to the conditions set forth in this Agreement, the Grantor hereby grants the Concessionaire the right and obligation during the Concession Term to... [insert the scope of the rights.]

3.2 Project Objectives

[State the Objectives the Grantor wishes to achieve by entering the Contract as set out in this agreement.]

3.3 Scope of the Project

[State the scope of the Concessionaire's responsibilities under the Agreement]

CLAUSE 4

EFFECTIVE DATE AND CONCESSION TERM

4.1 This Agreement shall become effective on the Effective Date, being the date on which all Conditions Precedent set out in Clause 5 have been satisfied or waived.

4.2 Concession Term

Unless earlier terminated pursuant to Clause [Default and Termination], this Agreement

shall remain in effect for a term of [insert duration], subject to any extensions as may be mutually agreed upon by the parties in writing and confirmed by the Regulator [ICRC].

CLAUSE 5

CONDITIONS PRECEDENT AND PROJECT HAND OVER

5.1 The obligations of each Party to complete the transactions contemplated under this Agreement shall be subject to the fulfilment (or, where permitted, waiver) of the Conditions Precedent specified in this Agreement prior to the Effective Date.

5.1.1 Any Condition Precedent expressly identified in this Agreement as a “Non-Waivable Condition Precedent” shall be satisfied in full and shall not be capable of waiver by either Party, and any purported waiver thereof shall be null and void and of no effect.

5.1.2 Any Condition Precedent not designated as a Non-Waivable Condition Precedent may be waived, in whole or in part:

(a) by the Concessionaire, where such Condition Precedent is to be fulfilled by the Grantor; and

(b) by the Grantor, where such Condition Precedent is to be fulfilled by the Concessionaire,

in each case by written notice to the other Party.

5.1.3 For the avoidance of doubt, the waiver of any Condition Precedent shall not prejudice or affect the obligation of the relevant Party to satisfy any other Condition Precedent not so waived.

5.2 Conditions Precedent to the Obligations of both Parties

The obligations of the Grantor and the Concessionaire to complete the transactions envisaged in this Agreement shall be contingent upon the satisfaction of the following conditions prior to the Effective Date:

(a) Prior to the execution of this Agreement, no applicable law, including any order, injunction, decree, or judgment of any court or government authority, has been issued that restrains, prohibits, or renders illegal in any material respect the consummation of the transactions contemplated by this Agreement

(b) Government Consents

All requisite consents, approvals, permits and authorisations required from any Government Authority for the implementation of the Project and the performance of the Parties’ respective obligations under this Agreement shall have been duly obtained and shall remain in full force and effect.

(c) Covenants and Compliance

Each Party shall have performed in all material respects all covenants and obligations required to be performed by it prior to the Effective Date.

(d) No Material Adverse Effect

No event or circumstance shall have occurred which has or is reasonably likely to have a material adverse effect on the ability of either Party to perform its obligations under this Agreement.

5.3 Conditions Precedent of the Concessionaire

5.3.1 The Grantor's obligations to complete the transactions contemplated by this Agreement shall be contingent upon the fulfilment of the following conditions by the Concessionaire prior to the Effective Date:

(a) Representations and Warranties of Concessionaire:

The Concessionaire's representations and warranties, as outlined in this Agreement, shall remain accurate and true in all material respects at the time they are made and on both the Execution Date and the Effective Date, with the same effect as if made at those times. Representations and warranties that are specifically dated shall be true and accurate in all material respects as of the specified date.

(b) Covenants of Concessionaire:

The Concessionaire shall have fully performed and complied in all material respects with all covenants and obligations stipulated in this Agreement, which are required to be performed or complied with prior to or on the Effective Date.

(c) Certificate of Compliance:

The Concessionaire shall provide the Grantor with a certificate, in a form and substance satisfactory to the Grantor, dated the Effective Date and signed by a duly authorised officer, confirming the fulfilment of the conditions precedent specified in Clauses 5.2(a) and (b).

(d) Provision of the Finance Documents:

The Concessionaire shall provide the Grantor with the Finance Documents as required under Clause [insert Clause].e.g the Direct Agreement

(e) Achieve Financial Close:

The Concessionaire shall have achieved Financial Close in accordance with the terms and conditions specified in this Agreement and shall notify the PPP Regulator promptly upon achieving Financial Close

(f) Corporate Proceedings:

All corporate actions taken by the Concessionaire in relation to the transaction contemplated in this Agreement, and all associated documents and instruments, must be reasonably satisfactory to the Grantor. The Grantor must receive all requested documents and instruments, or certified copies thereof. Additionally, the Concessionaire shall provide the Grantor with a certificate from the Concessionaire's Secretary confirming:

- (i) the resolutions passed by the Concessionaire that authorised actions described in this Clause;
- (ii) the Concessionaire's memorandum and articles of association; and
- (iii) the incumbency of the Concessionaire's officers executing this Agreement and associated documents.

(g) Performance Bond:

Within ...days [insert duration] following the Execution Date, the Concessionaire shall provide the Grantor with a performance bond in a form and amount satisfactory to the Grantor, issued by a reputable financial institution acceptable to the Grantor.

The bond shall guarantee the Concessionaire's obligations under this Agreement, including payment of Concession Fees and covering any other costs or liabilities arising from its obligations, as well as any penalties due.

However, the performance bond will not cover liabilities resulting from:

- a. Force majeure events beyond the Concessionaire's reasonable control, as defined in

Clause [Clause Number] of this Agreement;

b. Breach of this Agreement caused by the Grantor's failure to fulfil its obligations.

(i) Appointment of Independent Expert and/or Independent Engineer
[this Condition Precedent shall be based on individual projects.]

5.3.2 Conditions precedent that are administrative and non-critical in nature can be waived by mutual agreement of the parties in writing.

5.3.3 For the avoidance of doubt, the following Conditions precedent shall not be waived by either party:

- (a) achievement of Financial Close;
 - (b) execution and effectiveness of the Direct Agreement;
 - (c) provision and maintenance of Performance Security in accordance with this Agreement;
- and
- (d) full satisfaction of the legal capacity, due incorporation, and corporate authority requirements of the Concessionaire to enter into and perform its obligations under this Agreement.

5.4 Conditions Precedent of the Grantor

5.4.1 The Concessionaire's obligations to complete the transactions contemplated by this Agreement shall be contingent upon the fulfilment of the following conditions by the Grantor prior to the Effective Date unless expressly waived in writing by the Concessionaire:

(a) Representations and Warranties:

The representations and warranties of the Grantor under this Agreement shall be true and correct in all material respects as of the Execution Date and the Effective Date, except where made as of a specific date, in which case they shall be true and correct as of that date.

(b) Covenants:

The Grantor shall have duly performed and complied in all material respects with all covenants and agreements required to be performed or complied with under this Agreement by the Effective Date.

(c) No Material Adverse Effect:

Between the Execution Date and the Effective Date, no event or change shall have occurred that would result in a Material Adverse Effect on the Concessionaire.

(d) Land and Site Access:

The Grantor shall have secured all necessary land and site access rights required for the Project's commencement (Where applicable).

(e) Utility and Infrastructure Arrangements:

The Grantor shall ensure the availability of essential utilities and infrastructure at the Project site as needed for operations. (*Where applicable*)

(f) Environmental Clearance:

The Grantor shall have obtained all necessary environmental clearances and approvals in compliance with applicable laws.

(g) Stakeholder Consultations:

The Grantor shall have conducted all necessary consultations with relevant stakeholders to

secure their support or consent for the Project.

(h) Government Support Agreements:

The Grantor shall have executed any required government support agreements, such as guarantees or subsidies.

(i) Project Documentation Delivery:

The Grantor shall deliver to the Concessionaire any project-specific documentation, such as feasibility studies or engineering reports.

5.4.2 Conditions precedent that are administrative and non-critical in nature can be waived by mutual agreement of the parties in writing.

5.4.3 For the avoidance of doubt, the following Conditions precedent shall not be waived by either party:

- a) Confirmation that the Grantor has full legal capacity, statutory authority, and competence to enter into and perform the Agreement, including all necessary internal and ministerial approvals required for enforceability.
- b) Securing of legal title, possession, access rights, and rights of way required to enable commencement and implementation of the Project.
- c) No event or circumstance shall have occurred before the Effective Date which materially undermines the viability, legality, or implementation of the Project or materially prejudices the Concessionaire's ability to perform under the Agreement.

5.5 Satisfaction of Conditions Precedent

Except as otherwise provided in this Agreement, the Parties shall fulfil their respective Conditions Precedent within *one hundred and eighty [180] days* from the Execution Date, or within such extended period as may be mutually agreed upon in writing, not exceeding an additional period of *ninety [90] days*.

5.5.1 Each Party shall notify the other in writing within [insert duration] of satisfying the Conditions Precedent for which it is responsible following which the Parties shall jointly execute:

- a) a CP satisfaction notice confirming that all CPs have been satisfied and the occurrence of the Effective Date;
- b) the Handover Certificate

5.5.2 Failure of either Party to fulfil the Conditions Precedent within the agreed time frame shall result in the automatic termination of this Agreement.

5.6 Handover of Project/Project Commencement

Upon the occurrence of the Effective Date of this Agreement, the Grantor shall hand over possession and control of the Project site and all associated assets, facilities, and documentation required for the implementation of the Project to the Concessionaire. [This clause regulates, as agreed by the parties, the management of movable assets that are part of the assets acquired for the purpose of implementing the PPP project. It outlines the terms and conditions, upon the Effective Date, under which the Grantor shall transfer, and the Concessionaire shall receive from the Grantor, the Movable Assets from the

Grantor].

CLAUSE 6
RIGHTS AND OBLIGATIONS OF THE CONCESSIONAIRE

[this would depend on specific project and in accordance with the Agreement of the Parties.]

6.1 Obligations of the Concessionaire

This section should outline the responsibilities of the private party under the Agreement. The private party may delegate the Project Deliverables to subcontractors. The section addresses key aspects such as general obligation (including training), shareholding structure, financial arrangements, refinancing, obtaining adequate and appropriate insurance, utilization of insurance proceeds, management of uninsurable risks, information disclosure, public communication, and performance security. It may also cover obligations related to sector-specific issues, such as ensuring interconnection with services provided by other operators, as well as various reporting requirements to sector regulators and other relevant bodies, which may be detailed here or in a separate section.

6.1.1 Performance Obligations

(This should include specific details around the responsibilities and obligations of the Concessionaire required to successfully deliver the Project and should make reference to Project specific KPIs captured in a Schedule to the Agreement.)

6.1.2 Obligation on Insurance

Without limiting the responsibilities and liabilities of the Concessionaire in respect of the implementation of the Project under this Agreement, the Concessionaire shall undertake and maintain an appropriate insurance policy on the Project Asset for the duration of the Concession Period, at its own expense with an insurance company licensed with the National Insurance Commission (NAICOM).

6.1.2.1 Such insurance shall include, but not be limited to:

- a) Third party liability insurance including property damage, sudden and accidental pollution and injury or death to third parties including injury or death to personnel of the Grantor and other Persons who may enter the site, with a minimum cover of (*as provided by insurance companies*) per occurrence.
- b) Employers' liability insurance in respect of claims for death or injury to employees.
- c) All Risk insurance or equivalent policy form, which shall include insurance against physical loss or damage to the Project Assets (*tangible and intangible*) erected or constructed, including theft, strike, riot and civil commotion, collapse, earthquake, flood, windstorm, testing, professional fees for debris removal, with sum insured equal to the full value of each item of the Project Assets insured.

The Equipment and materials to be deployed for the Project shall be insured during shipment and transportation to the Project Sites, and after deployment at the project sites.

- d) Professional Liability insurance in respect of design faults or other such technical or operational services provided by the Sub-Contractors or defects in equipment supplied by the Sub-Contractor in the implementation of the Project. This policy shall cover any claim by third parties for the acts or omissions of the Concessionaire and the Grantor, and any of the Sub-Contractors or other persons for whom it may be responsible, during implementation and operation of the Project. This Policy shall cover any claim by a third party for the act or omission of any director or officer of the Concessionaire which may have a Material Adverse Effect on the Project.
- e) And any other applicable insurance policy.

6.1.2.2 Parties to Insurance Policy

The Grantor shall be named as a co-insured and its interests noted against all policies referred to under clause X (the insurance clause) of the Agreement.

6.1.2.3 Content of Insurance Policy

Each insurance policy shall include:

- a) A provision whereby the policy of insurance shall apply to each of the Co-Insured as if a separate policy had been issued to each of them, other than in the event of exhaustion of the sum insured or the insurance limit.
- b) An exclusion of any cut-through clause in respect of any primary insurer or reinsurers in respect of each policy.
- c) A provision that a notice of a claim given to the insurer by the Concessionaire or the Grantor or any other insured under the policy shall, in the absence of manifest error, be accepted by the insurer as valid notification of a claim in respect of the interests of all co-insureds.
- d) A provision that requires the insurer to send copies of all notices of cancellation or any other notices about any amendments or notices of change given under or in relation to the policy to all co-insureds.
- e) A provision that notification must be given to all Co-Insured at least sixty (60) days in advance of the date on which the omission or breach concerned may result in the lapsing or loss of the validity of the policy in whole or in part. Each policy shall also provide that it will not lapse or lose validity in whole or in part if the insurer has not complied with the obligation referred to herein within the prescribed period from the date of notification.

6.1.2.4 Duty to Insure

Each Party shall, at its own expense, insure and keep insured all persons employed by it in connection with this Agreement against all risks of injury or death arising out of their employment.

6.1.2.5 Proof of Insurance

During the Concession Period, the Concessionaire shall, within fifteen (15) days before the anniversary date of each policy and whenever the Grantor, the ICRC, or the Lenders

so request, provide evidence, including copies of all insurance certificates, proof of payment of premium, that all policies continue in force and that the insurance has been taken out and is being maintained by the Concessionaire as required hereunder.

6.1.2.6 Notice of Claim or Damage

The Concessionaire shall inform the Grantor, the ICRC, and the Lenders in writing as soon as reasonably practicable after it becomes aware of the occurrence of any event that may give rise to a claim under a policy of insurance required by this clause where the estimated claim exceeds xxx (Nxxx) and will ensure that the Grantor, the ICRC, and the Lenders are kept fully informed of the subsequent action and developments concerning the claim.

6.1.2.7 Application of Proceeds

On every occasion when any part or the whole of the Project or Project Assets is destroyed or damaged and the Concessionaire estimates that the estimated loss is xxx or more:

- a) The agreement of loss shall be signed by both the Grantor and the Concessionaire.
- b) All monies received under any insurance policy taken out in accordance with this clause shall be paid to the Concessionaire in an interest-yielding account designated for that purpose.
- c) The Concessionaire shall apply or procure the application of the proceeds of any claim in all instances to the repair, reconstruction, reinstatement, replacement, improvement, or delivery of the Project.

6.1.2.8 Assessment of Repair/Reinstatement Cost

Upon notification by the Concessionaire to the Grantor of its intention to reinstate or repair the Project Assets, which is the subject of the insurance claim, the Grantor and the Concessionaire shall consult with one another with a view to reaching an agreement, in writing, whether the amount received or to be received under the insurance policy will be sufficient for such purpose. In the absence of such a written agreement within five (5) days, the dispute shall be referred to the ICRC or an Independent Expert for resolution, and its decision shall be final and binding on the Parties.

6.1.2.9 Payment of Repair/Reinstatement Cost

If an agreement has been reached in terms of the clause above that the relevant Project Assets are to be reinstated or repaired, or if the Independent Expert determines that the amount available is sufficient to reinstate or repair the relevant Project Assets, then the full amount retained in the bank account designated for that purpose shall forthwith be paid to the Concessionaire and the Concessionaire shall forthwith use the insurance proceeds and at its own expense, all other such money as shall be necessary to reinstate, rebuild and/or replace the Project Assets in accordance with all such consents and approvals as shall be necessary and to the extent that the Grantor and the Concessionaire agree that any reinstatement, rebuilding or replacement shall be in accordance with drawings and specifications approved by the Parties.

6.1.2.10 Insufficiency of Repair Funds/Cost

If the Independent Expert determines that the amount available will not be sufficient to reinstate or repair the relevant Project Assets and if such non-reinstatement or non-repair has a Material Adverse Effect upon the Concessionaire's ability to fulfil its obligations in terms of this Agreement, the Concessionaire shall take necessary steps to provide funds that will augment the insufficient Insurance Cover and replace the Project Assets.

6.1.2.11 Scale of Loss

Where the Concessionaire estimates that the estimated loss is less than xxx (Nxxx):

- a) The Concessionaire shall be responsible for the reinstatement, rebuilding and/or replacement of such destroyed or damaged Project Assets, and
- b) The Concessionaire shall be entitled to sign the agreement of loss and to institute and finalise all relevant insurance claims for and on behalf of all the Co-Insured.

6.1.2.12 Duty to Insure Outside Nigeria

Where applicable, where Equipment are to be shipped or transported to a Project Site from outside Nigeria, the Concessionaire shall in the name of the Concessionaire, insure and keep same insured with a registered insurer for the full replacement value thereof under a policy of marine transit insurance subject to instituted cargo clauses (all risks), war, strikes, riots and civil commotion clauses, as well as sixty (60) days concealed damage and on-site storage cover.

6.1.2.13 Concessionaire's Liability for Loss

Where the Concessionaire is responsible and/or liable for any loss or damage, it shall bear the amount of all uninsured losses, which shall include the amount of all applicable deductibles under any relevant policy of insurance.

6.1.2.14 Non-Waiver of Liability

Subject to the preceding provision of this clause, the procurement of applicable insurance policies shall not diminish the liabilities of the Parties, who shall remain solely responsible and liable for the discharge of all their respective obligations under this Agreement and, in particular, the Concessionaire's obligation to hold the Grantor harmless in compliance with any indemnity provisions contained in this Agreement.

6.1.2.15 Insurance Notice to Grantor

No later than ninety (90) days after the Commencement Date of this Agreement, the Concessionaire shall, by notice furnished to the Grantor, in reasonable detail, provide information in respect of the insurance policies that it proposes to effect and maintain in accordance with this provision. Within thirty (30) days of receipt of such notice, the Grantor may require the Concessionaire to effect and maintain such insurances as may be necessary, and in the event of any dispute or disagreement relating to any of such insurance, Parties shall take steps to resolve the dispute amicably, and if it yields no result, the dispute shall be referred to the dispute resolution mechanism under this Agreement under Clause 24.

6.1.2.16 Evidence of Insurance Cover

All insurances obtained by the Concessionaire in accordance with the provisions of this

Agreement shall be maintained with insurers approved by both Parties. Within ten (10) Business Days of obtaining any Insurance Cover, the Concessionaire shall furnish to the Grantor and ICRC, Notarised True Copies of the certificate(s) of insurance, copies of insurance policies and premium payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least fifteen (15) Business Days after notice of such proposed cancellation, modification or non-renewal has been delivered by the Concessionaire to the Grantor and the ICRC.

6.1.2.17 Remedy for Failure to Insure

If the Concessionaire fails to effect and keep in force all insurances for which it is responsible pursuant hereto, the Grantor shall have the option to either keep in force any such insurance policies and pay such premiums and recover the costs (including interest) thereof from the Concessionaire. This condition does not in any way relieve the Concessionaire or transfer the responsibility of obtaining Insurance coverage as required for any aspects of the project from the Concessionaire to the Grantor.

6.1.2.18 Waiver of Subrogation

All insurance policies in respect of the insurance obtained by the Concessionaire pursuant to this clause xx (the insurance clause) shall include a waiver of any rights of subrogation of the insurers against any of the Co-insured and the Concessionaire hereby further releases, assigns and waives any rights of subrogation or recovery against, inter alia, the Grantor and its assigns, undertakings and their subsidiaries, Affiliates, employees, successors, insurers and underwriters, which the Concessionaire may otherwise have or acquire in or from or in any way connected with any loss, liability or obligation covered by policies of insurance maintained or required to be maintained by the Concessionaire pursuant to this Agreement other than third party liability insurance policies or because of deductible clauses in or inadequacy of limits of any such policies of insurance.

6.1.2.19 Cross Liabilities

Any such insurance maintained or effected in pursuance to this provision shall include a cross liability clause such that the insurance shall apply to the Concessionaire and to the Grantor as separately insured.

6.1.2.20 Compliance with Policy Conditions

- 6.1.2.20.1. The Concessionaire shall comply with all requirements of the insurers and shall not do anything which might render void or voidable any insurance policy effected in accordance with the provisions of this Clause xx (the insurance clause) or as a result of which payment of insurance moneys might be withheld in whole or in part.
- 6.1.2.20.2. The Concessionaire expressly acknowledges and undertakes to fully indemnify the Grantor from and against all losses and claims arising from the Concessionaire's failure to comply with conditions imposed by the insurance policies effected in accordance with this Agreement.

6.1.2.21 Insurance for Concessionaire's Defects Liability

The Concessionaire shall, for the sole benefit of the Grantor, effect and maintain a defects liability Insurance cover for the Project from the Commencement Date until the end of the Concession Period and the Concessionaire shall also maintain other insurances for maximum cover as may be required under Applicable Laws to restore the Project Assets to a suitably working state for the continued operation of the Project.

6.2 Financing obligations of the Concessionaire and Financial Arrangements

- 6.2.1 The Concessionaire shall be solely responsible, at its own cost and risk, for arranging and securing all financing required for the Project in accordance with this Agreement except as expressly provided in this Agreement.
- 6.2.2 Subject to the provisions of the ICRC Act, the Grantor shall have no obligation, whether direct or contingent, to provide financing or guarantee the financial obligations of the Concessionaire.
- 6.2.3 The Parties acknowledge that the Financial Model represents the agreed financial framework of the Project and forms the basis for all economic, commercial, and financial arrangements under this Agreement.
- 6.2.4 All references to:
- (a) tariffs, revenues, concession fees, or other income streams;
 - (b) operating costs, capital expenditure, or lifecycle costs;
 - (c) financing arrangements, debt service, or equity returns;
 - (d) revenue sharing, profit sharing, or payment obligations; and
 - (e) any compensation, adjustment, or financial relief,
- shall be determined, interpreted, and applied in a manner consistent with the Financial Model set out in Schedule [X] of this Agreement.
- 6.2.5 The Concessionaire shall achieve Financial Close within (180) days from the Execution Date or such extended period as may be agreed between the parties which shall not exceed (90) days, in line with CP Clause.
- 6.2.6 The Concessionaire may structure and restructure its financing arrangements, including refinancing, provided that:
- (a) such refinancing does not adversely affect the rights or obligations of the Grantor;
 - (b) the Concessionaire provides prior written notice to the Grantor; and
 - (c) any Refinancing gains shall be shared between the Parties in accordance with Schedule [X]. Any approved refinancing shall be reflected in the updated Financial Model
- 6.2.7 The Financial Model as at Financial Close (the “Base Case Financial Model”) shall be initialled by the Parties and shall serve as the reference model for the purposes of this Agreement.
- 6.2.8 In consideration for the grant of the Concession Rights, the Concessionaire shall:
- (a) collect, retain, and apply Project revenues in accordance with this Agreement and the Financial Model;

(b) pay to the Grantor such Concession Fees or Revenue Share, (*depending on the payment mechanism and structure of the agreement*) as set out in Schedule [X], which shall be calculated and adjusted in accordance with the Financial Model.

(c) All contractual transactions, payments, tariffs, and financial obligations under this Agreement shall be denominated in Nigerian Naira, except where specific statutory approvals or exemptions apply.

6.2.9 The Financial Model shall be updated from time to time to reflect:

- (a) approved variations, refinancing, or changes in assumptions;
- (b) events giving rise to compensation or adjustment under this Agreement; and
- (c) actual Project performance,

provided that any such update shall not alter the underlying economic equilibrium of the Project except as expressly permitted under this Agreement.

6.2.10 Except as otherwise expressly provided in this Agreement, all financing risks, including cost overruns, funding shortfalls, and financing costs, shall be borne by the Concessionaire without any recourse to the Grantor, and the Grantor shall be insulated from such risks.

6.3 PPP Regulatory Fees

The Concessionaire shall pay 1% of the project's gross revenues to the ICRC as statutory regulatory fees. The remittance by the Concessionaire to the ICRC shall be real-time throughout the duration of the concession.

6.4 Obligation on Stakeholder Engagement

The Concessionaire shall bear primary responsibility for structured stakeholder engagement, under the oversight of the Grantor/MDA.

The Agreement shall provide for engagement with host communities, regulators, relevant stakeholders and affected MDAs, and clear grievance redress and communication mechanisms to minimise disputes and disruptions.

6.5 Obligation of Concessionaire on Maintenance

6.6 Rights of the Concessionaire

[The permitted use of the concessioned assets, including approved alteration of the assets, typically falls under this Clause]

6.7 Environmental Protection

The Concessionaire shall comply with all applicable environmental, health, safety and social laws of the Federal Republic of Nigeria and shall establish, implement and maintain an environmental and social management system appropriate to the Project, including risk identification, mitigation measures, stakeholder engagement and grievance procedures.

The Concessionaire shall obtain and maintain all necessary permits and approvals from the Federal Ministry of Environment and other relevant authorities, and perform its obligations in accordance with Best Industry Practice.

The Concessionaire shall monitor and report to the Grantor and the ICRC on its

environmental and social performance and shall permit audits upon reasonable notice by the Grantor. Any material non-compliance not remedied within the default cure period shall constitute a Concessionaire Event of Default, and the Grantor may require the implementation of corrective action plans at the Concessionaire's cost

CLAUSE 7

RIGHTS AND OBLIGATIONS OF THE GRANTOR

[this would depend on specific project and in accordance with the Agreement of the Parties]

7.1 Obligations of the Grantor

7.1.1 This Clause outlines the general obligations of the Authority, which may include actions such as facilitating the establishment of a regulatory framework for tariff reviews, granting applicable government incentives, ensuring the timely handover of the project site and associated assets, providing necessary access rights, and offering regulatory and administrative support to expedite project implementation. It also specifies the conditions under which such support will be extended, ensuring alignment with prevailing legal and regulatory frameworks.

7.1.2 Shortfall Mechanism (if applicable)

Where Project Revenues are insufficient to meet debt service obligations of the Concessionaire under an availability-based structure, the Grantor shall make availability payments in accordance with Schedule X [Payment Mechanisms]

7.2 Rights of the Grantor

[This section outlines the specific rights of the Grantor under the concession agreement to ensure proper oversight, compliance, and alignment with the agreed terms. These rights are typically structured to safeguard public interest, maintain accountability, and ensure the Project is implemented in line with the objectives of the public-private partnership]

The rights of the Grantor shall include the right to:

- (a) monitor the Concessionaire's performance to ensure compliance with the terms of the Agreement through periodic inspections, audits, and reviews of the Concessionaire's operations, financial records, and adherence to quality standards;
- (b) approve significant actions by the Concessionaire, such as changes in project design, amendments to financing arrangements, or any major modifications to the Project that could impact its delivery or operations
- (c) be entitled to terminate the Concession Rights in extreme case of default provided for this Agreement
- (d) access all relevant information related to the Project, including operational data, financial statements, and reports submitted by the Concessionaire;
- (e) enforce the Concessionaire's obligations under the Agreement. In cases of non-performance or breach, the Grantor may issue notices, impose penalties, or take other remedial measures as stipulated in the Agreement;
- (f) exercise step-in rights under specific circumstances, such as the Concessionaire's breach of critical obligations, or failure to perform in accordance with the Step-in protocol in Schedule 4;
- (g) verify the Concessionaire's revenue streams and ensure accurate payments are

- made in accordance with the agreed terms.
- (h) intervene if the Concessionaire's actions threaten public safety, environmental standards, or compliance with legal and regulatory obligations.
 - (i) oversee the transfer of Project assets back to its ownership, ensuring they are in good condition and meet the stipulated hand back requirements.

7.3 *The Grantor may cease to exercise its step-in rights under Clause [7.2(f)] upon:*

(a) the rectification of the circumstances that gave rise to the exercise of such step-in rights; and

(b) satisfaction, acting reasonably, that the Concessionaire is able to resume and continue the performance of its obligations in accordance with this Agreement.

7.3.2 *The Grantor shall provide not less than five (5) Business Days' prior written notice to the Concessionaire of its intention to cease such step-in, except where an earlier cessation is reasonably required to ensure the safe and efficient operation of the Project.*

7.3.3 *The Parties shall cooperate in good faith to ensure an orderly transition of responsibilities from the Grantor to the Concessionaire.*

7.4 *Where the Grantor ceases to exercise its rights under Clause 7.2(f), the Concessionaire shall immediately, within twenty four [24] hours, recommence performing any obligations suspended due to the exercise by the Grantor of those rights, and the Grantor must give reasonable assistance to the Concessionaire to ensure that the transition is effected as smoothly as possible at the Concessionaire's cost and expense in the case of step-in as a result of Concessionaire event of default.*

CLAUSE 8 **CONCESSIONAIRE COVENANTS**

[This specifies Undertakings and Promises made by the Private Party under the Agreement]

- ✓ Performance Obligations
- ✓ Compliance with Laws and Regulations
- ✓ Maintenance and Operations
- ✓ Insurance Obligations
- ✓ Reporting and Transparency
- ✓ Non-Transferability
- ✓ Environmental and Social Obligations
- ✓ Handback and Asset Reversion
- ✓ Financial Covenants
- ✓ Confidentiality and Data Protection
- ✓ Indemnities and Liabilities
- ✓ Safety Procedures and Security Systems
- ✓ Emergencies
- ✓ Concessionaire's Ownership Structure
- ✓ Sub-Agreements
- ✓ Commencement of Construction
- ✓ Project Design

CLAUSE 9

GRANTOR COVENANTS

[This specifies Undertakings and Promises made by the Grantor under the Agreement]

The Grantor covenants to:

- ✓ provide overall support and cooperation necessary for the Concessionaire to meet its obligations under the agreement
- ✓ deliver the project site, free of encumbrances, within the agreed timeline
- ✓ assist the Concessionaire in obtaining any necessary permits, licenses, or approvals required for the project from government authorities [provided the Concessionaire meets the requirements for the permits, licenses or approvals]
- ✓ To refrain from actions or policies that would adversely affect the Concessionaire's ability to perform its obligations or achieve the project's objectives.
- ✓ to indemnify the Concessionaire for losses arising from the Grantor's breach of obligations or actions beyond the Concessionaire's control
- ✓ to ensure compliance with laws, regulations, and regulatory decisions impacting the project
- ✓ to oversee and monitor the project
- ✓ to share necessary data, information, reports, or historical records relevant to the project with the Concessionaire.

CLAUSE 10

GENERAL OPERATIONS

This Clause covers a range of provisions. These Sub-clauses are:

- ✓ Obligation of Concessionaire to perform Project Operations at completion of Construction,
- ✓ Standards of Performance-*The Concessionaire shall perform its obligations in accordance with the **Performance Standards** set out in **Schedule X**, which shall define measurable service levels, specify Key Performance Indicators (KPIs); and establish minimum acceptable service thresholds.*
- ✓ Duties of the Parties to Cooperate with each other to ensure the success of the project,
- ✓ Parties to shall implement a contract management and performance monitoring framework in accordance with **Schedule [X] (Contract Management and Performance Monitoring Framework)** under which the Concessionaire shall comply with the reporting, monitoring, and performance requirements set out in the Schedule, and the Grantor shall be entitled to monitor performance in accordance with such Schedule. In the event of any inconsistency between this Agreement and the Schedule, the provisions of this Agreement shall prevail.
- ✓ Performance requirements, (this means that the Concessionaire shall use best efforts to develop, market and promote the commercial use of the Concession Property in order to achieve maximum utilization thereof in a manner which is consistent with this agreement, the Applicable Law and Prudent Industry Practices, and shall ensure that operations meet new and improved industry standards and there is no decline in the standards of the Operations of any facility or part thereof of the Concession Assets during the Concession Term and for a reasonable time thereafter)
- ✓ Labour (need to use qualified personnel and ensure compliance with applicable laws, training Grantor personnel, reference to training schedule annexed to Agreement)
- ✓ Concessionaire Equipment [This provision sets out the assets to be retained by the Concessionaire and those that will revert to the Grantor at the end of the

concession period. It also outlines the criteria and procedures for determining the categorization and handling of such assets.

CLAUSE 11

REPRESENTATIONS AND WARRANTIES

(Describes what representations and warranties each party is making in terms of the project.)

11.1 Concessionaire Representation and Warranties:

The Concessionaire represents and warrants that:

- (a) The Concessionaire is a Limited Liability Company, duly incorporated and lawfully existing under the laws of the Federal Republic of Nigeria.
- (b) Neither the Concessionaire nor its shareholders are in breach of any Applicable Law or judgment issued by a Government Authority, where such breaches, individually or collectively, could impact its ability to fulfill its obligations under this Agreement. Furthermore, no legal or arbitration proceedings or actions before any Governmental or Non-Governmental Authority are currently pending or, to the Concessionaire's best knowledge, threatened against it, its majority shareholders, or its sub-concessionaires, which could materially and adversely affect their financial condition, operations, business prospects, or ability to perform under this Agreement.
- (c) The execution and delivery of this Agreement, as well as compliance with its terms, do not conflict with or violate the Concessionaire's corporate charter, by-laws, any Applicable Law, regulation, court order, writ, injunction, or decree, nor do they require consent under or result in a breach of any agreement or instrument to which the Concessionaire is a party or bound.
- (d) The Concessionaire has full power and authority to execute, deliver, and fulfill its obligations under this Agreement. All necessary actions for the execution, delivery, and performance of this Agreement by the Concessionaire and its sub-concessionaires have been properly authorized. This Agreement has been validly executed and delivered by the Concessionaire, both on its behalf and on behalf of its sub-concessionaires, and constitutes a legally binding obligation enforceable in accordance with its terms.
- (e) The Concessionaire is financially solvent, capable of meeting its debt obligations as they become due, and possesses adequate working capital and borrowing capacity to fulfill its obligations under this Agreement.
- (f) The Concessionaire has:
 - (i) Carefully reviewed this Agreement, including all attached Schedules and Appendices, and understands their terms and provisions;
 - (ii) Conducted all necessary due diligence on Applicable Laws, physical conditions, and other relevant matters to ensure its ability to fulfill its obligations under this Agreement;
 - (iii) The expertise, workforce, resources, qualifications, and capacity required to perform its obligations; and
 - (iv) Carried out all investigations and inspections deemed necessary for its performance under this Agreement, including, but not limited to, inspections of the Concession Assets

11.2 Grantor Representations and Warranties:

The Grantor represents and warrants that:

- (a) The Grantor is a public authority, duly constituted and lawfully existing under the laws of Nigeria, with the authority and capacity to perform the obligations it has undertaken under this Agreement.
- (b) The Grantor is not in breach of any Applicable Law or judgment issued by any Governmental Authority that, individually or collectively, could impair its ability to fulfill its obligations under this Agreement. Furthermore, no legal or arbitration proceedings, or any actions before any Government Authority, are currently pending or, to the best of the Grantor's knowledge, threatened against it, which could materially hinder its execution of the obligations under this Agreement.
- (c) The execution and delivery of this Agreement, as well as compliance with its terms, do not conflict with or violate any Applicable Law, regulation, court order, writ, injunction, or decree, nor do they require consent under or result in a breach of any agreement or instrument to which the Grantor is a party or by which it is bound.
- (d) The Grantor possesses all necessary authority and power to execute, deliver, and perform its obligations under this Agreement. The execution, delivery, and performance of this Agreement have been duly authorized through all required actions on the part of the Grantor. This Agreement has been properly executed and constitutes a valid, binding, and enforceable obligation of the Grantor, in accordance with its terms.
- (e) The Grantor has obtained all requisite approvals, consents, and authorizations from relevant Government Authorities under Applicable Law to carry out the transactions contemplated herein, including compliance with the ICRC Law and Regulations. It is committed to fulfilling any additional requirements applicable to it as a Grantor.
- (f) As of the Effective Date, the Grantor holds clear and valid title to the movable assets and has the legal authority to transfer and deliver such assets to the Concessionaire as provided in this Agreement. Upon delivery, the Concessionaire will acquire good title to the movable assets, free from all liens, except for any necessary authorizations or consents required from Government Authorities for the transfer of specific assets.

CLAUSE 12 **FORCE MAJEURE**

12.1 For the purpose of this Agreement, "Force Majeure" or "Force Majeure Event" shall mean the occurrence in Nigeria of any event (as set out below) that is beyond the reasonable control of a Party relying on such event (the "Affected Party").

A Force Majeure Event shall:

12.1.1 Be an event that the Affected Party could not have foreseen, prevented, or overcome through the exercise of due diligence and adherence to Best Industry Practices;

12.1.2 Require the Affected Party to have taken all reasonable precautions, exercised due care, and employed measures to prevent, avoid, or mitigate the effect of such circumstances or conditions on its ability to perform its obligations under this Agreement; and

12.1.3 Not result directly from a breach or failure by the Affected Party to perform its obligations under Applicable Law or this Agreement.

12.1.4. A Force Majeure Event shall include, but is not limited to:

- (a) Acts of God, such as epidemics, pandemics, plagues, storms, lightning, earthquakes, landslides, cyclones, floods, extreme weather conditions, volcanic eruptions, chemical or radioactive contamination, or ionizing radiation; fire or explosion originating from sources external to the Concession Area;
- (b) Acts of war (declared or undeclared), invasions, armed conflicts, acts of foreign enemies, blockades, civil disorder, embargoes, riots, sabotage, explosions, labour unrest, insurrections, terrorism, military actions, civil commotions, rebellions, or civil wars;
- (c) Strikes or boycotts not involving the Concessionaire, Sub-Contractors, or their respective employees/representatives, or attributable to any of their acts or omissions, which interrupt services to the Project for a continuous or aggregate period exceeding [insert duration] in any Year;
- (d) Industry-wide or national strikes or industrial actions that prevent the Concessionaire's access to Project Sites for a continuous or aggregate period exceeding [insert duration] in any Year; and
- (e) Delays or failures by Sub-Contractors caused by an Indirect Political Event.

12.3.2 These acts must specifically impact the Affected Party's ability to fulfill its obligations at the affected Project Site, without impeding its obligations under this Agreement at other Project Sites

12.5 Exclusion of Events

12.5.1 Force Majeure shall not include:

- a) Any event which is caused by the negligence or intentional action of a Party or such Party's agents or employees;
- b) Any event which a Party could reasonably have been expected to foresee at the time of the conclusion of this Agreement, or
- c) Any event which a party could reasonably avoid or overcome in the performance of its obligations under this Agreement.

12.6 Duty to Report Force Majeure Event

Upon the occurrence of a Force Majeure Event, the Affected Party shall promptly notify the other Party. Such notice shall include detailed information on:

- a) The nature and scope of each Force Majeure Event forming the basis of any claim for relief under this Clause, accompanied by supporting evidence;
- b) The anticipated duration and the actual or potential impact of the Force Majeure Event on the Affected Party's ability to fulfill its obligations under this Agreement;
- c) The actions being taken or proposed by the Affected Party to mitigate the impact of the Force Majeure Event

Any other information relevant to the Affected Party's claim.

12.7 The Affected Party shall only be entitled to relief in respect of a Force Majeure Event if it notifies the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any case no later than seven [7] Business days after it became aware, or ought reasonably to have become aware, of its occurrence. Such notice must include details of the likely material impact of the Force Majeure Event on the Affected Party's ability to fulfill its obligations under this Agreement.

12.8 While the Affected Party continues to be impacted by the Force Majeure Event, it shall provide the other Party with regular weekly updates containing the information required under this Agreement and any additional information reasonably requested by the other Party.

12.9 Payment of Force Majeure Costs

12.9.1 If a Force Majeure Event occurs during the Concession Period or if there are delays or defaults beyond the control of the Concessionaire arising from a Force Majeure Event (including circumstances attributable to the Grantor), the Concessionaire may postpone its obligations for a duration not exceeding the period of delay caused by the Force Majeure Event.

12.9.2. If the Concessionaire anticipates delays in Project implementation due to the Force Majeure Event, it shall promptly notify the Grantor and provide a written estimate of the delays duration and the Grantor shall grant an extension of the Concession Period, which shall not exceed the duration of the Force Majeure Event.

12.10 Termination Notice for Force Majeure Event

Where the Force Majeure Event continues uninterrupted for a period of one hundred and eighty (180) days or more, either Party may, at its discretion, terminate this Agreement by issuing a Termination Notice to the other Party. Such termination shall be without liability to either Party, except as expressly provided in this Agreement. Prior to issuing the Termination Notice, the Party intending to terminate shall notify the other Party of its intention and provide a period of fifteen (15) days for the other Party to make a representation. Following the expiration of this fifteen (15)-day period, the Party may proceed to issue the Termination Notice, upon which this Agreement shall immediately terminate, notwithstanding any contrary provisions contained herein.

12.11 Assessment of Payment for Force Majeure Event

Any payments due under this Agreement in connection with a Force Majeure Event shall be subject to validation by an Independent Expert appointed in accordance with the terms of this Agreement. Additionally, the payment will be reviewed and certified by an auditor jointly appointed by both Parties.

12.12 Dispute Resolution

In the event that the Parties are unable to reach a good faith agreement regarding the occurrence or existence of a Force Majeure Event, such Dispute shall be resolved in accordance with Clause [insert clause]. The Party seeking relief and/or excuse due to the Force Majeure Event shall bear the burden of proof regarding the occurrence or existence of the Force Majeure Event.

12.13 Excuse from Performance of Obligations

If the Affected Party is wholly or partially unable to perform its obligations under this Agreement due to a Force Majeure Event, such Party shall be excused from performing those obligations to the extent that they are impacted by the Force Majeure Event; provided that:

- a) The suspension of performance shall not exceed the scope and duration reasonably required by the Force Majeure Event; and
- b) The Affected Party shall take all reasonable measures to mitigate or minimize any damage to the other Party arising from the occurrence of such Force Majeure Event, and shall take all necessary steps to resolve the situation in accordance with Best Industry Practice. When the Affected Party is able to resume performance of its obligations under this Agreement, it shall promptly notify the other Party and resume its obligations without undue delay.

CLAUSE 13

MATERIAL ADVERSE GOVERNMENTAL ACTION (MAGA)

13.1 A Material Adverse Governmental Action; shall mean any act or omission by the Government that:

- a) Directly causes the Concessionaire to be unable to perform its obligations under this Agreement and /or
- b) Has a material adverse effect on the operation, cost and or revenues of the Contract including introduction, application, or change of any law, decree, order, regulation, or by law having the force of law after the date of this Agreement so as to expropriate, annex, takeover or take such action deliberately aimed at frustrating the Concessionaire (or any of its Sub-Concessionaires) in performing their function under the relevant laws and which failure renders the performance by the Concessionaire or the Grantor of any or all of the obligations under this Agreement illegal, void or unenforceable;

13.2 A Material Adverse Government Action will be said to have occurred:

- (a) if the Grantor performs or fails to perform the following:
 - i. Failure to grant or renew a required permit or approval within a specific timeline, unless due to the Concessionaire's non-compliance;
 - ii. Expropriation, compulsory acquisition, or nationalisation of the Concessionaire's assets or shares;
 - iii. Any act or omission adversely affecting the legality, validity, or enforceability of this Agreement;
- (b) Any change to the scope of the project that adversely affects the profitability, implementation and operations of the project; or
- (c) in relation to the following acts or occurrences attributable to any Government Agency:
 - i. Any discriminatory or Project-specific Change in Law occurring after the Effective Date which materially and adversely affects the performance of the Concessionaire's obligations under this Agreement, and which is not otherwise addressed under the Change in Law provisions of this Agreement;
 - ii. Compulsory acquisition, expropriation, or requisition of Project Assets or rights of the Concessionaire or Sub-Contractors due to overriding public or national interest;
 - iii. Judgments or orders issued by competent judicial or statutory authorities against the Concessionaire, except when arising from:
 - a. Failure to comply with any Applicable Law or Applicable Permit;
 - b. Breach of Applicable Law, Applicable Permit, or any contract;
 - c. Enforcement of this Agreement; or
 - d. The Grantor exercising its rights under this Agreement.

[Explanatory Note: Termination Compensation in the event of a MAGA Event or Grantor Default should be aligned with, and refer to, Clause 20.4 to avoid duplication and to ensure consistency in the treatment and calculation of compensation throughout the Agreement.]

CLAUSE 14

CHANGE IN LAW

14.1 For the purposes of this Agreement, Change in Law shall be classified as follows:

- (a) General Change in Law means any Change in Law which affects persons or entities generally or a broad class of industries and is not specific to the Project or the

Concessionaire;

(b) Specific or Discriminatory Change in Law means Change in Law which:

- (i) specifically applies to or affects the Project, the Concessionaire, or the Project Assets; or
- (ii) targets private participation in infrastructure projects of a similar nature; or
- (iii) is discriminatory in nature and does not apply generally to other persons or sectors.

14.2 The Party affected by a Change in Law (the “Affected Party”) shall:

- (a) notify the other Party within (X) days of becoming aware or when it ought reasonably to have become aware of the Change in Law;
- (b) provide reasonable details of the nature, expected duration, and impact of such Change in Law; and
- (c) use all reasonable endeavours to mitigate the effects of such Change in Law.

14.3 In the event of a General Change in Law each Party shall bear its own costs; and no compensation shall be payable, unless otherwise expressly provided in this Agreement.

14.4 In the event of a Specific or Discriminatory Change in Law which results in a material adverse effect on the Concessionaire:

- (a) the Parties shall, within thirty [30] days of notice, consult in good faith with a view to agreeing measures to restore the economic equilibrium of the Project;
- (b) such measures may include:
 - (i) adjustment of tariffs, user charges, or fees;
 - (ii) extension of the Concession Period;
 - (iii) direct compensation or
 - (iv) a combination of the above;
- (c) all such adjustments shall be determined in accordance with the Base Case Financial Model.

14.5 Where the Parties are unable to agree on the required adjustments within [60] days:

- (a) the matter shall be referred to an Independent Expert for determination; and
- (b) pending such determination, the Concessionaire shall continue to perform its obligations to the extent reasonably practicable.

14.6 Where a Change in Law results in:

- (a) the Project becoming unlawful; or
- (b) a sustained and material adverse effect which cannot be adequately mitigated or compensated in accordance with this Clause,

either Party may, following consultation, terminate this Agreement in accordance with the Termination provisions

CLAUSE 15

DOCUMENTATION AND AUDIT

(Specifies the amount of records to be kept, the frequency of audits, the responsibilities of the auditor and the audited and the content of the audit records.)

- ✓ Maintenance of Books and Records: The Concessionaire shall prepare and maintain registers, books, records and other means of recording information in the quality and quantity required for facilitating efficient management and supervision of the Concession Property, for providing information to the Grantor, and for informing the public and its customers of the quality and performance of its Operations.

- ✓ Records on the Concession Assets: the Concessionaire shall prepare and maintain current records of the Concession Assets in sufficient detail as required by the Grantor to provide a full understanding of the location and state of the Concession Property. Such records shall be comprised of physical drawings, databases and calculation sheets along with historical records relating to their design, approvals, licenses/permits, construction, purchase, repairs, and maintenance, tests, including all works carried out as replacements, rehabilitation and maintenance, Physical plans for buildings and other structures shall clearly identify and describe the as built profiles, operating manuals, protocols and maintenance requirements, and records of staff shall indicate Nigerian and non-Nigerian staff.
- ✓ All other relevant reports and records as may be required by the Grantor and/or the ICRC
- ✓ Copies of Records: The Concessionaire shall provide the Grantor and the ICRC with copies of the foregoing records as requested by them from time to time
[Reporting to the Infrastructure Concession Regulatory Commission (ICRC)]
 - Obligation to Report: The Concessionaire shall submit periodic reports to the Infrastructure Concession Regulatory Commission (ICRC) in accordance with the provisions of the ICRC Act and any guidelines issued by the Commission. The reports shall cover, but not be limited to, the financial, operational, and technical performance of the Project.
 - Frequency of Reports: The Concessionaire shall provide annual reports detailing the progress of implementation, compliance with contractual obligations, challenges encountered, and any material risks affecting the Project.
 - Grantor's Reporting Responsibility: The Grantor shall also submit reports to the ICRC as required under the ICRC Act, particularly in respect of project oversight, regulatory compliance, and any issues requiring intervention or guidance from the Commission.
 - Format and Submission: All reports shall be prepared in the format prescribed by the ICRC and submitted through the designated reporting channels specified by the Commission.
 - Compliance Monitoring: The ICRC may, at its discretion, request additional information, conduct inspections, or require audits to ensure compliance with the terms of this Agreement and applicable laws. The Concessionaire shall cooperate fully with all such requests.

CLAUSE 16

DEFAULTS AND CONCESSIONAIRE EVENTS OF DEFAULT

- 16.1** For the purposes of this Agreement, any failure or non-compliance by the Concessionaire with its obligations under this Agreement shall constitute a Default. A Default shall not, of itself, entitle the Grantor to terminate this Agreement.
- 16.2. Without prejudice to the generality of the foregoing, Defaults shall include,
- (a) minor or first-time failure to comply with operational or performance obligations;
 - (b) delays in performance which do not result in a Material Adverse Effect;
 - (c) administrative, procedural, or reporting non-compliance; and
 - (d) any breach expressly designated elsewhere in this Agreement as a Contract Breach.

16.3 EVENTS OF DEFAULT

16.3.1 The occurrence of any of the following shall constitute a Concessionaire Event of Default if not remedied within the applicable Cure Period:

16.3.2 Material and continuing breach of any obligation under this Agreement not remedied within the Cure Period;

16.3.3 Failure to proceed with the Project in accordance with this Agreement, or abandonment, suspension, or cessation of Project activities without lawful excuse or prior written approval of the Grantor;

16.3.4 Failure to rectify any defect or deficiency where such failure materially and adversely affects the performance, safety, or functionality of the Project;

16.3.5 Failure to provide, renew, or maintain the Performance Guarantee or any other security required under this Agreement;

16.3.6 Any execution, attachment, distress, or enforcement proceeding against the Concessionaire's assets which materially and adversely affects its ability to perform its obligations under this Agreement;

16.3.7 The Concessionaire becomes insolvent, bankrupt, or unable to pay its debts as they fall due, or a receiver, administrator, trustee, or similar officer is appointed over the whole or a substantial part of its assets;

16.3.8 The Concessionaire enters into liquidation, dissolution, winding-up, restructuring, or reorganization (other than a permitted restructuring that does not adversely affect performance and is approved by the Grantor);

16.3.9 Any resolution is passed or order made for the winding-up of the Concessionaire, which is not discharged, stayed, or set aside within ninety (90) days, subject to permitted restructuring conditions under this Agreement;

16.3.10 Any representation or warranty made by the Concessionaire in this Agreement proves to be materially false, misleading, or incorrect when made or when deemed repeated;

16.3.11 The Concessionaire submits or causes to be submitted any materially false, misleading, or fraudulent statement, document, or information to the Grantor which adversely affects the Grantor's rights or interests under this Agreement;

16.4 Upon the occurrence of a Concessionaire Event of Default, and without prejudice to any other rights or remedies available to the Grantor under this Agreement or Applicable Law:

(a) the Grantor shall issue a written notice (an "Event of Default Notice") to the Concessionaire specifying the nature of the default;

(b) the Grantor may exercise its rights, including:

(i) step-in rights (where applicable);

(ii) suspension of the Concessionaire's rights; and/or

(iii) termination of this Agreement;

(d) prior to issuing a Termination Notice, the Grantor shall provide the Concessionaire with not less than fourteen (14) days' written notice of its intention to terminate and afford the Concessionaire an opportunity to make representations.

- 16.5** Notwithstanding the foregoing, no Concessionaire Event of Default shall be deemed to have occurred to the extent that the relevant failure or non-performance arises directly from:
- (a) a breach by the Grantor of its obligations under this Agreement; or
 - (b) a Force Majeure Event, subject to the provisions of Clause 12

CLAUSE 17

DEFAULTS AND GRANTOR EVENTS OF DEFAULT

17.1 For the purposes of this Agreement, any failure by the Grantor to perform its obligations under this Agreement shall constitute a Default. A Default shall not, of itself, entitle the Concessionaire to terminate this Agreement.

17.2 Without prejudice to the generality of Clause 17.1 Defaults shall include:

- (a) delays in performing administrative or procedural obligations;
- (b) delays in payment obligations not exceeding the period specified in this Agreement (if any);
- (c) delays in the issuance or facilitation of permits, approvals, or consents, which do not result in a Material Adverse Effect on the Concessionaire; and
- (d) any breach expressly designated as a Default under this Agreement.

17.3 A Default constitute an Event of Default only if:

- (a) it is of a type specified in Clause 17.2; and
- (b) where capable of remedy, it is not remedied within the applicable Cure Period

17.4 GRANTOR EVENTS OF DEFAULT

17.4.1 The occurrence of any of the following shall constitute a Grantor Event of Default if not remedied within the applicable Cure Period:

17.4.2 Material breach by the Grantor of any provision of this Agreement which is not remedied within the Cure Period and which materially and adversely affects the Concessionaire;

17.4.3 Failure by the Grantor to make any payment due and payable to the Concessionaire within the period specified in this Agreement, and such failure continues beyond any applicable Cure Period;

17.4.4 Failure by the Grantor to procure or maintain any Applicable Permits required to be obtained by it under this Agreement within the time specified, where such failure materially affects Project implementation;

17.4.5 Unlawful, unauthorised, or unjustified refusal, delay, withdrawal, or revocation of any clearance, licence, permit, consent, approval, or exemption required by the Concessionaire or its Sub-Contractors to perform their obligations, provided that such failure is not attributable to any act or omission of the Concessionaire or its Sub-Contractors;

17.4.6 Repudiation of this Agreement by the Grantor, or any act or omission which evidences an intention not to be bound by this Agreement;

17.4.7 Expropriation, compulsory acquisition, nationalization, or any similar act by the Grantor or any Government Authority affecting the Project or the Concessionaire's rights under this Agreement;

17.4.8 Unilateral termination, cancellation, or unlawful revocation of this Agreement or any material Project right without due process or in breach of this Agreement

17.5 Upon the occurrence of a Grantor Event of Default, and without prejudice to any other rights or remedies available to the Concessionaire under this Agreement or Applicable Law:

(a) the Concessionaire shall issue a written notice (a "Event of Default Notice") to the Grantor specifying the nature of the default;

(b) following which, the Concessionaire may exercise its rights, including:

- (i) suspension of its obligations (to the extent permitted);
- (ii) entitlement to compensation (where applicable); and/or
- (iii) termination of this Agreement;

(c) prior to issuing a Termination Notice, the Concessionaire shall provide the Grantor with not less than fourteen (14) days' written notice of its intention to terminate and an opportunity to make representations.

17.6 Notwithstanding the foregoing, no Grantor Event of Default shall be deemed to have occurred to the extent that the relevant failure arises from:

- (a) a breach of this Agreement by the Concessionaire; or
- (b) a Force Majeure Event, subject to the provisions of this Agreement

CLAUSE 18

LENDERS STEP IN RIGHTS

The rights of the Lender(s) to cure any default of the Concessionaire and to step-in to assume, or procure the assumption of, the Concessionaire's rights and obligations under this Agreement shall be governed by and exercised strictly in accordance with the provisions of the Direct Agreement to be entered into among the Grantor, the Concessionaire, and the Lender(s) (the "Direct Agreement"):

18.1 Cure Rights

Without prejudice to the provisions of this Agreement, the Lender(s) shall, pursuant to the Direct Agreement, have the right (but not the obligation) to cure any Material Breach by the Concessionaire within such extended cure period as may be specified therein, following the expiry of the Cure Period provided under this Agreement.

18.2 Step-In Rights

Where the Concessionaire fails to remedy a Material Breach within the applicable Cure Period, the Lender(s) shall be entitled, in accordance with the Direct Agreement, to step-in, whether directly or through a nominee or substitute entity, for the purpose of remedying such breach and ensuring the continued performance of the Concessionaire's obligations under this Agreement. During such step-in period, the Lender(s) or their nominee shall exercise such rights and perform such obligations of the Concessionaire as are necessary to cure the default, and the Concessionaire shall provide all required cooperation.

18.3 Any substitute entity nominated by the Lenders shall be subject to the Grantor's reasonable

approval, which shall not be unreasonably withheld.

- 18.4** Upon the remedy of the relevant Material Breach, the Lender(s) shall, in accordance with the Direct Agreement, step-out of the performance of the Concessionaire's obligations, and all rights and obligations shall revert to the Concessionaire for the remainder of the Concession Period.
- 18.5** In the event of any inconsistency between the provisions of this Clause and the Direct Agreement, the provisions of the Direct Agreement shall prevail to the extent of such inconsistency.

CLAUSE 19
TERMINATION

- 19.1** Subject to Clause 19.2, this Agreement may be terminated in any of the following ways:
- a) Expiration of the Concession Term;
 - b) Upon the occurrence of an Event of Default;
 - c) Upon the occurrence of an Event of Force Majeure.

19.2 Termination Procedures

19.2.1 Expiration of the Concession Term:

Within thirty-six (36) months prior to the expiration of the Concession Term, the Parties shall follow the Hand back procedures as outlined in Clause 19.7 of this Agreement.

19.2.2 Upon occurrence of an Event of Default:

Upon the occurrence of any Default, the Non-Defaulting Party shall issue a written notice to the Defaulting Party (the "Default Notice") specifying in reasonable detail the nature of the Default. Within fifteen (15) Business Days of receipt of the Default Notice, the Defaulting Party shall submit a written response setting out:

- (a) whether it disputes the Default; and/or
- (b) if not disputed, the proposed measures and timeline to remedy the Default.

19.2.2.1 Cure Period

Following delivery of the Default Notice, the Defaulting Party shall remedy the Default within:

- (a) the cure period expressly specified in this Agreement for such Default; or
- (b) if no specific cure period is specified, a reasonable period not exceeding thirty (30) Days, or such longer period as may be reasonably required where the Default is capable of cure but not within such period, provided that the Defaulting Party is diligently pursuing such cure.

Failure by the Defaulting Party to respond within the fifteen (15) Business Day period referred to in Clause [X].1 shall not relieve it of its obligation to remedy the Default within the applicable cure period.

19.2.2.2 Consequences of Event of Default

19.2.2.2.1 Upon the occurrence of a Concessionaire Event of Default, and without prejudice to any other rights or remedies available to the Grantor under this Agreement or Applicable Law:

- (a) the Grantor may issue a written notice to the Concessionaire specifying that an Event of Default has occurred (an "Event of Default Notice");
- (b) the Grantor may, at any time thereafter, exercise one or more of the following rights:
 - (i) exercise step-in rights (where applicable);
 - (ii) suspend the Concessionaire's rights under this Agreement; and/or
 - (iii) terminate this Agreement;
- (c) prior to issuing a Termination Notice, the Grantor shall give not less than fourteen (14) Days'

written notice of its intention to terminate and afford the Concessionaire an opportunity to make representations.

19.2.2.2.2 Upon the occurrence of a Grantor Event of Default, and without prejudice to any other rights or remedies available to the Concessionaire under this Agreement or Applicable Law:

- (a) the Concessionaire shall issue a written notice (a “Event of Default Notice”) to the Grantor specifying the nature of the default;
- (c) following which, the Concessionaire may exercise its rights, including:
 - (i) suspension of its obligations (to the extent permitted);
 - (ii) entitlement to compensation (where applicable); and/or
 - (iii) termination of this Agreement;
- (d) prior to issuing a Termination Notice, the Concessionaire shall provide the Grantor with not less than fourteen (14) days’ written notice of its intention to terminate and an opportunity to make representations.

19.2.3 Occurrence of a Force Majeure Event:

Termination for Force Majeure shall only be exercised after both Parties have exhausted reasonable efforts to mitigate the effects of the Force Majeure Event. The Grantor may not terminate the Agreement solely due to an event outside the Concessionaire’s control that materially affects performance.

19.3 Continuity of Operations

The Concessionaire shall ensure the smooth operation and provision of services throughout the period spanning its receipt of any termination notice of this Agreement until the Termination Date or during the last year of the Concession Term, if no such termination notice is served. The Parties agree to minimize disruptions, if any, to the Project during the said periods.

19.4 Intellectual Property

Upon termination of this Agreement, the Grantor shall have irrevocable, unlimited, and unrestricted access to the Intellectual Property rights in the Project, including all individual components, software, ancillary infrastructure, and materials thereof. The Concessionaire shall cooperate with the Grantor in fully implementing this provision during the term of this Agreement and upon its termination.

19.5 Cooperation and Exchange of Information

The Concessionaire shall act in good faith to enable the Grantor to assume responsibilities for the Project on or soon after the Termination Date. This cooperation shall include the provision of all relevant documentation and information held or used by the Concessionaire relating to the Project, including any associated Intellectual Property Rights.

19.6 Accrual of Rights

Termination shall be without prejudice to the accrued rights and liabilities of the Parties as of the Termination Date or which may accrue in respect of any act or omission occurring prior to termination. Termination shall not affect provisions of this Agreement expressly intended to remain in force thereafter.

19.7 Handback

19.7.1 Handback and Transfer of Facilities

- a) The Concessionaire shall transfer possession of the Project to the Grantor at the end of the Concession Period, free and clear of all debts, liens, encumbrances, mortgages, security interests, environmental contamination, and claims, except routine encumbrances that do not materially and adversely affect the Project’s value or operations.

- b) The Concessionaire shall deliver to the Grantor all operations and maintenance manuals, logs, registers, design drawings, technology, and know-how necessary for the Project's continued operation.
- c) At its cost, the Concessionaire shall remove all items it owns that are not included within the Agreement's scope.
- d) Thirty-six (36) months before this Agreement's expiration, the Parties shall form a Handback Steering Committee to conduct an initial inspection of the Project.
- e) The Handback Steering Committee shall consist of representatives appointed by each Party.
- f) If any defects are detected during the inspection, the Committee shall notify both Parties and require the Concessionaire to remedy the defects within a reasonable timeframe.
- g) The Concessionaire shall remedy the defects at its cost.
- h) If the Concessionaire fails to remedy the defects within the specified timeframe, the Grantor may remedy them directly or engage a third party, with the Concessionaire reimbursing the costs incurred within thirty (30) days of the Grantor's request for payment.

19.7.2 Transfer of Project Assets

On the Handback Date, the Concessionaire shall transfer all rights, title, and interests in the Project Assets to the Grantor in accordance with this Agreement, executing necessary deeds and completing all required legal formalities.

[Explanatory Note: *immovable assets shall revert to the Grantor upon expiry of the concession; and movable assets shall be expressly addressed in the contract, stating whether they revert to Government, remain with the Concessionaire, or may be transferred to Government at an agreed valuation.*]

19.7.3 Inspection Prior to Handback

Following the initial inspection in Clause 18.7.1(d), the Parties shall conduct a joint inspection of the Project Sites and Assets. Within twenty-eight (28) Business Days of the inspection, the Grantor shall issue the Concessionaire a list of Project Assets requiring maintenance to meet Handback requirements.

19.7.4 Scope of Handback

- a) The Concessionaire shall transfer to the Grantor all rights, title, and interests in the Project Assets free of all debts, liens, encumbrances, and claims.
- b) The Concessionaire shall deliver all operation manuals, design drawings, upgrade procedures, confidential information, and any other documentation necessary for the Project's continued operation.

19.7.5 Transfer of Insurance and Warranties

The Concessionaire shall assign to the Grantor all unexpired guarantees, warranties, and insurance policies from contractors, agents, and representatives.

19.7.6 Early Termination

If this Agreement is terminated earlier than the specified duration, the Grantor shall secure the Project Assets to avoid value attrition and ensure the Concessionaire does not engage in asset stripping.

Explanatory Note: Where the Project is a Build-Operate-Own, the draft below should be adopted for the Hand back provision)

19.7.7 END OF TERM ARRANGEMENTS (FOR BUILD-OPERATE-OWN STRUCTURE)

19.7.7.1 No Transfer of Ownership

The Parties acknowledge that this Agreement is structured on a Build–Operate–Own (BOO) basis and, accordingly, the Concessionaire shall retain legal and beneficial ownership of the Project Assets at all times, including upon the expiry or termination of this Agreement.

For the avoidance of doubt, no transfer of title, ownership, or proprietary interest in the Project Assets shall occur in favor of the Grantor at the end of the Concession Period, except as may be expressly provided under this Agreement or required by Applicable Law.

19.7.2 Continuity of Service Obligations

Upon the expiry of the Concession Period, the Concessionaire shall:

(a) continue to operate and maintain the Project in accordance with Applicable Law and Good Industry Practice, unless otherwise directed by the Grantor or a competent Government Authority; or

(b) where required by the Grantor, cooperate in good faith to ensure an orderly transition of service provision to a successor operator or alternative arrangement determined by the Grantor.

19.7.3 Transitional Support

Where the Grantor elects to appoint a successor operator or implement an alternative service delivery arrangement, the Concessionaire shall, for a reasonable transition period not exceeding [X] months:

(a) provide all reasonable technical, operational, and administrative assistance required to ensure continuity of service;

(b) make available relevant operational data, records, and non-proprietary information necessary for the continued provision of the Project services; and

(c) permit reasonable access to the Project Site and facilities, subject to agreed commercial terms where applicable.

19.7.4 Asset Integrity and Non-Deterioration

The Concessionaire shall ensure that, as at the expiry or termination of this Agreement, the Project Assets are maintained in a condition consistent with Good Industry Practice, fair wear and tear excepted, and shall not undertake any action that would materially diminish the value, integrity, or operational capability of the Project.

19.7.5 Third-Party Rights and Encumbrances

The Concessionaire shall ensure that any financing, security interests, or encumbrances over the Project Assets do not prevent or materially impair:

(a) the continued operation of the Project; or

(b) the implementation of any transition arrangements contemplated under this Clause.

19.7.6 Early Termination

In the event of early termination of this Agreement:

(a) ownership of the Project Assets shall remain with the Concessionaire, subject to the rights of lenders and Applicable Law;

(b) the Grantor shall have the right, where necessary to ensure continuity of service, to exercise step-in rights or designate a successor operator in accordance with this Agreement and any Direct Agreement; and

(c) the Concessionaire shall cooperate with the Grantor and any successor operator to prevent disruption of services and deterioration of the Project.

CLAUSE 20

OVERRIDING PUBLIC INTEREST OR NATIONAL INTEREST TERMINATION

20.1 The Grantor may, acting reasonably and in good faith, terminate this Agreement for reasons of overriding public interest or national interest provided that:

- a) such termination is not exercised arbitrarily and is supported by a demonstrable public or national interest justification;
- b) the Grantor shall, prior to issuing a Termination Notice, engage in consultations with the Concessionaire and, where applicable, the Lender(s), with a view to exploring alternatives to termination, including restructuring of the Project;
- c) the Grantor shall comply with all Applicable Laws and due process requirements; and
- d) such termination shall be subject to the payment of Termination Compensation in accordance with Clause 20.3.

For the avoidance of doubt, termination under this Clause shall not relieve the Grantor of its obligation to pay full Termination Compensation.

20.2 Where a Direct Agreement has been executed, the Grantor shall, prior to effecting termination under this Clause, notify the Lender(s) and allow them to exercise their rights, including cure or step-in rights, in accordance with the Direct Agreement.

20.3 Requirements Upon Termination

Upon termination of this Agreement pursuant to this Clause, the Concessionaire shall:

- (a) transfer to the Grantor all Project Assets, together with all relevant records, reports, data, Intellectual Property (to the extent required for continued operation of the Project), and operational documentation;
- (b) assign or transfer all Applicable Permits to the extent permissible under Applicable Law;
- (c) comply with the agreed Termination Exit Plan and provide all reasonable assistance to ensure an orderly transition and continuity of the Project; and

(d) ensure that the Project is handed back in accordance with the Hand back Requirements under this Agreement

20.4 Termination Compensation

20.4.1 Upon termination of this Agreement pursuant to this Clause, the Grantor shall pay to the Concessionaire (or as may be directed under the Financing Agreements) an amount equal to:

- (a) one hundred percent (100%) of the Outstanding Senior Debt;
- (b) one hundred percent (100%) of any Subordinated Debt to the extent subordinated to Senior Debt;
- (c) an amount equal to [X]% of the Adjusted Equity (or Shareholders' Funds); and
- (d) any unpaid amounts due and payable to the Concessionaire under this Agreement as at the Termination Date.

20.4.2 All payments under this Clause shall be made within one hundred and eight [180] days of the Termination Date and shall be applied in accordance with the payment waterfall set out in the Financing Agreements.

20.4.3 The amount of Termination Compensation shall be determined and, where required, verified by an Independent Expert or auditor appointed in accordance with this Agreement.

20.4.4 The Concessionaire shall not be entitled to recover any amount to the extent that such amount has already been recovered through insurance proceeds or other compensation mechanisms under this Agreement.

20.4.5 Upon payment in full of the Termination Compensation in accordance with this Clause, such payment shall constitute full and final settlement of all claims of the Concessionaire arising from such termination, except for any antecedent breaches or amounts accrued prior to the Termination Date.

CLAUSE 21 COMPENSATION

21.1 Compensation upon Force Majeure

Each Party shall bear its costs incurred due to an event of Force Majeure, and neither Party shall be required to compensate the other for any losses, damages, or expenses arising therefrom, except as expressly provided in this Agreement.

21.1.1 Extension of Time

If the performance of the Concessionaire's obligations is delayed due to Force Majeure, the Grantor may grant an extension of the Concession Term equivalent to the duration of the disruption, provided that such extension does not exceed [insert duration] months.

21.1.2 Termination Due to Prolonged Force Majeure

(a) If a Force Majeure event continues for a period exceeding [insert duration] months and renders the performance of this Agreement impossible or impracticable, either Party may elect to terminate this Agreement.

(b) Upon termination due to Force Majeure, the Concessionaire shall be entitled to receive compensation limited to:

- i) Payment of outstanding debt owed to lenders, subject to verification.
- ii) The unrecovered equity investment, [where applicable]

21.1.3 Insurance Proceeds

Each Party shall take all reasonable steps to mitigate losses, including utilizing available

insurance proceeds, before making any claim for compensation.

21.2 Compensation on Termination Due to Concessionaire Event of Default

21.2.1 Upon the occurrence of a Concessionaire Event of Default which is not remedied within the applicable Cure Period, the Grantor may terminate this Agreement.

Prior to such termination, the Grantor shall:

- i. issue a Termination Notice; and
- ii. allow Lenders the opportunity to exercise step-in rights in accordance with the Direct Agreement.

21.2.2 Subject to the rights of the Finance Parties under the Lenders Direct Agreement, if the termination is due to a Concessionaire Event of Default, the Grantor shall acquire the Project for an amount equal to the outstanding Senior Debt:

- a) less all insurance claims received by the Finance Parties provided that any such insurance proceeds received by the Finance Parties which have been used prior to termination to rectify any damage shall not be deducted from outstanding Senior Debt)
- a) any penalties or damages payable by the Concessionaire

21.3 Compensation on Termination due to a Grantor Event of Default

Upon the occurrence of a Grantor Event of Default which is not remedied within the applicable Cure Period, the Concessionaire may terminate this Agreement. Where the termination is due to a Grantor Event of Default, the compensation payable by the Grantor shall be the aggregate of:

- a) The outstanding Senior Debt (less all insurance claims received by the Finance Parties provided that any such insurance proceeds received by the Finance Parties which have been used prior to termination to rectify any damage shall not be deducted from outstanding Senior Debt); plus
- b) accrued but unpaid interest;
- c) The unrecovered equity investment plus
- d) a return on equity calculated at [agreed IRR].
- e) Redundancy payments for employees of the Concessionaire that have been or will be reasonably incurred by the Concessionaire as a direct result of termination of this Agreement, plus
- f) Any Sub-Contractor Breakage Costs; plus

This compensation is without prejudice to any other rights or remedies available to the Concessionaire under this Agreement or applicable law, including the right to pursue additional damages or legal recourse for any undue harm caused by the wrongful termination.

21.4 Compensation Upon Termination of a Build-Operate-Own Structure (This would only apply where the arrangement between the Parties is a BOO)

21.4.1 Upon termination of this Agreement for any reason, the Concessionaire shall be entitled to receive Termination Compensation in accordance with this Clause, taking into account that the Project is structured on a Build-Operate-Own basis and ownership of the Project Assets remains vested in the Concessionaire.

21.4.2 Termination for Grantor Default / Political Event

In the event of termination arising from:

- (a) a Grantor Default; or*
- (b) a Political Force Majeure Event;*

the Grantor shall pay to the Concessionaire (or as directed by the Lenders):

- (i) 100% of Outstanding Senior Debt;*
- (ii) accrued but unpaid interest thereon;*
- (iii) 100% of Subordinated Debt (to the extent permitted by Financing Agreements);*
- (iv) Adjusted Equity;*

21.4.3 Termination for Concessionaire Default

In the event of termination arising from a Concessionaire Default the Grantor shall pay an amount equal to:

- (i) the lower of Outstanding Senior Debt and Fair Market Value of the Project;*
- (ii) less any deductions for damages, penalties, or unpaid amounts.*

21.4.4 *Upon termination, ownership of the Project Assets shall remain with the Concessionaire, subject to the rights of Lenders. Where the Grantor chooses to assume control of the Project for continuity of service, such assumption shall:*

- (i) be subject to payment of Termination Compensation; and*
- (ii) not constitute unlawful expropriation;*

The Grantor may, subject to payment, choose to purchase the Project Assets or designate a successor operator.

21.4.5 *Termination Compensation under this structure shall:*

- (a) be paid within [90] days;*
- (b) be applied in accordance with the Financing Agreements waterfall;*
- (c) be verified by an Independent Expert.*

21.5 Optional Transfer Mechanism (Put and Call Option)

Explanatory Note: *This Clause provides an optional mechanism for the transfer or acquisition of the Project upon termination of this Agreement, including in circumstances such as prolonged Force Majeure or default by either Party. It is intended to facilitate an orderly exit, ensure continuity of service, and provide certainty to the Parties and Lenders, particularly where automatic transfer of assets is not provided for. The mechanism shall apply only where the relevant option is duly exercised in accordance with Applicable Law and this Agreement*

21.5.1 *Upon the termination of this Agreement for any reason; or termination arising from a prolonged Force Majeure Event pursuant to Clause 20.1.2, either Party shall have the right to exercise the option rights set out in this Clause 21.5.*

21.5.2 *The Concessionaire may, by written notice to the Grantor, require the Grantor to purchase all of the Concessionaire's rights, title, and interest in and to the Project Assets and the Project (the "Put Option").*

21.5.3 *The Grantor may, by written notice to the Concessionaire, require the Concessionaire to transfer all of its rights, title, and interest in and to the Project Assets and the Project (the "Call Option").*

21.5.4 *Any Put Option or Call Option shall be exercised by written notice within ninety (90) days from the Termination Date, failing which such option shall lapse.*

21.5.5 *The price payable upon the valid exercise of a Put Option or Call Option (the "Option*

Price”) shall be:

(a) the Termination Compensation determined in accordance with this Clause 21; or
(b) where expressly applicable, the Fair Market Value of the Project,
as determined by reference to the Financial Model or, where required, by an Independent Expert
appointed in accordance with this Agreement.

21.5.6 Upon the exercise of a Put Option or Call Option:

(a) the Grantor shall pay the Option Price within [ninety (90)] days of such exercise;

(b) the Concessionaire shall, upon receipt of such payment (or simultaneously against
payment), transfer and assign to the Grantor or its nominee all of its rights, title, and
interest in and to the Project Assets and the Project, free and clear of all encumbrances,
subject only to the discharge or settlement of outstanding financing obligations; and

(c) the Parties shall give effect to such transfer in accordance with the Termination Plan
and execute all necessary documents to perfect the transfer.

21.5.7 The exercise of any Put Option or Call Option shall be subject to the rights of the Lenders
under the Direct Agreement, including any step-in, substitution, or cure rights available to the
Lenders.

21.5.8 The payment of the Option Price upon the exercise of a Put Option or Call Option shall
constitute full and final settlement of all claims arising out of or in connection with the termination
of this Agreement, and no further compensation shall be payable by either Party, except as
expressly provided in this Agreement.

21.6. Payment Mechanics

21.6.1 Termination Compensation shall be:

- a) paid directly to the Lenders in priority to all other claims
- b) determined within (X) days,
- c) certified by an Independent Expert;
- d) paid within (X) days thereafter.

CLAUSE 22

PERIODIC REVIEW

22.1 The Parties may undertake a structured review of the Agreement at *agreed intervals*
pursuant to modalities agreed by the parties. The periodic review shall be conducted for the
purpose of:

(a) assessing the performance of the Concessionaire against the Minimum Performance
Standards and applicable Key Performance Indicators;

(b) evaluating whether the Project continues to deliver value for money and optimal public
benefit; and

(c) determining whether any adjustments are required to preserve the economic equilibrium
of the Project, having regard to the Base Case Financial Model.

22.1.2 The periodic review may give rise to a renegotiation of this Agreement and shall be limited strictly to the matters set out in this Clause.

22.2 Initiation and Submission of Reports

22.2.1 Not less than thirty (30) days prior to a proposed review Date between the parties, the Concessionaire shall submit to the Grantor a comprehensive technical, operational, and financial report (the “Review Report”), including details of:

- (a) performance against contractual obligations;
- (b) lifecycle condition of Project Assets;
- (c) actual financial performance as compared with the Financial Model; and
- (d) any material deviations, risks, or constraints affecting Project performance.

22.2.2 Upon receipt of the Review Report, the Grantor shall, within seven(7) Business Days, notify the Infrastructure Concession Regulatory Commission (“ICRC”) of the commencement of the Review and shall invite the ICRC to participate in and provide guidance on the process in accordance with Applicable Law.

22.3 Review Committee

22.3.1 The Parties shall establish a Review Committee comprising an equal number of representatives from each Party to be chaired by a representative of the Grantor.

22.3.2 The Committee may appoint independent technical, financial, or legal experts, where necessary, to support its evaluation.

22.3.3 In carrying out the Review, the Committee shall consider, among other matters:

- (a) compliance with the Project Compliance Certificate issued by the ICRC;
- (b) service performance and asset condition;
- (c) whether the allocation of risks under this Agreement remains appropriate;
- (d) whether any material and sustained deviation from the Financial Model has occurred; and
- (e) whether any adjustments are necessary to maintain Project sustainability without undermining value for money.

22.4 Any adjustment arising from the Review shall be guided by the following principles:

- (a) maintenance of value for money for the Grantor and users;
- (b) restoration, and not enhancement, of the economic equilibrium of the Project and
- (c) consistency with the Financial Model, as updated where applicable.

22.5 Adjustments shall only be made where there is clear evidence of:

- (a) a material and sustained change in Project conditions; or
- (b) a material deviation from the assumptions underpinning the Financial Model.

22.6 Subject to Clause 22.5, permissible adjustments may include:

- (a) modification of tariffs or user charges;

(Explanatory Note: The tariff adjustment mechanisms under the Agreement shall be transparent and objective, clearly defined in the contract, subject to the relevant regulatory

oversight, and aligned with affordability and public interest considerations)

- (b) extension of the Concession Period;
- (c) refinement of service levels or technical standards; or
- (d) such other limited adjustments as may be necessary to preserve Project viability.

provided that no such adjustment shall:

- (i) fundamentally alter the nature or scope of the Project; or
- (ii) result in an undue financial advantage to either Party.

22.7 Any amendment arising from the Review shall be subject to:

- (a) further review by the Infrastructure Concession Regulatory Commission and the issuance of a No-Objection or updated Compliance Certificate; and
- (b) approval by the Federal Executive Council, where required under Applicable Law.

22.8 Upon receipt of all required approvals, the Parties shall execute an Addendum to this Agreement to give effect to such review and amendments.

22.9 No amendment resulting from this Review shall adversely affect the rights of the Lenders or be implemented in a manner inconsistent with the Financing Agreements.

22.10 Where the Parties are unable to agree on any proposed adjustment following the Review, this Agreement shall continue in full force and effect without modification, unless otherwise resolved in accordance with the Dispute Resolution provisions of this Agreement.

CLAUSE 23

GENERAL LIABILITIES AND INDEMNITIES

23.1. Indemnity

- 23.1.1.** Each Party hereby undertakes and agrees to hold harmless and to indemnify the other Party its affiliates and any officer, director or employee of the Party (each an "Indemnified Party"), in full from and against all direct liabilities, damages, losses and expenses (including legal expenses and reasonable attorneys' fees) ("Losses"), whether or not incurred as a consequence of third-party claims, arising from or connected with any negligence, breach of any term, obligation, undertaking, covenant, warranty or representation made under this Agreement by the indemnifying Party or its affiliates, officers, directors, or employees. The indemnifying Party's obligations under this Clause shall not apply to claims, actions, or Losses to the extent caused by the act, omission, or gross negligence of the Indemnified Party.
- 23.1.2.** Each Party shall also compensate and indemnify the other Party for any intellectual property or privacy rights or an allegation of infringement of any of those rights by any third-party consequent upon anything prepared or supplied under this Agreement, including but not limited to the Project or any component or ancillary infrastructure or material thereof.
- 23.1.3.** Notwithstanding any contrary provision in this Agreement, no Party or its affiliates shall be liable for any indirect, collateral, incidental, or consequential damages of any kind or nature whatsoever (including without limitation, loss of goodwill, loss of profit or revenue, or loss of savings, whether based on contract, warranty, tort (including negligence), strict liability or otherwise, arising out of or in connection with this Agreement.

CLAUSE 24
INTELLECTUAL PROPERTY

24.1 Ownership of Intellectual Property

24.1.1 All Intellectual Property Rights existing prior to the Execution Date or independently developed outside the scope of the Project (“**Background IP**”) shall remain vested in the Party that owns such rights.

24.1.2. All Intellectual Property Rights developed specifically for the design, development, implementation, or operation of the Project (“**Project IP**”) shall vest in the Grantor upon creation to the extent permitted by Applicable Law and third-party rights or shall be irrevocably assigned to the Grantor, on terms set out in this Agreement.

24.1.3. Notwithstanding the foregoing, any proprietary tools, platforms, frameworks, or pre-existing software of the Concessionaire or third parties used in connection with the Project shall remain the property of their respective owners.

24.2 Licence to Grantor and Successor Operators

24.2.1 The Concessionaire hereby grants an irrevocable, perpetual, royalty-free, sub-licensable, and non-exclusive licence of Background IP to the Grantor to use, operate, maintain, modify, adapt, and interface with all software, systems, and Intellectual Property required for the Project. Such licence shall extend to:

- (a) the Grantor;
 - (b) any successor operator or contractor appointed by the Grantor; and
 - (c) any Finance Party exercising step-in or substitution rights under the Direct Agreement,
- for the purpose of ensuring uninterrupted operation and continuity of the Project.

24.2.2 The exercise of the Grantor’s rights under this Clause shall not be subject to any license fees, subscription fees or any other recurring payments following the termination or expiry of this Agreement.

24.3. Technology Transfer Obligations

24.3.1 The Concessionaire shall ensure full and effective technology transfer to the Grantor, including:

- (a) delivery of source code, object code, executable code, and system architecture;
- (b) provision of complete technical, operational, maintenance, and user documentation;
- (c) structured training programmes for the Grantor’s personnel;
- (d) transfer of know-how and technical capability required for independent operation and maintenance;
- (e) provision of tools, access credentials, and configuration data required to operate the system; and
- (f) provision of transitional technical support for a period of eighteen [18] months following termination or handover.

24.3.2 The Concessionaire shall demonstrate, to the reasonable satisfaction of the Grantor, the effectiveness of such technology transfer.

24.4 Third-Party Software and Licensing

The Concessionaire shall procure that all third-party software, systems, and services used in connection with the Project:

- (a) are validly licensed for the duration of the Concession Term;
- (b) include rights enabling continued use by the Grantor and any successor operator upon termination or expiry;
- (c) do not impose restrictions that would prevent continuity of service; and
- (d) do not expose the Grantor to any infringement, suspension, or termination risk.

24.5 The Concessionaire shall defend, indemnify, and hold harmless the Grantor, its agents, and representatives against all claims, losses, damages, or liabilities arising from any infringement or alleged infringement of Intellectual Property Rights in connection with the Project.

24.6 Data Ownership and Protection

24.6.1 All data generated, processed, stored, or transmitted in connection with the Project shall be the exclusive property of the Grantor in line with the Nigeria Data Protection Act and other Applicable Laws.

24.6.2 The Concessionaire shall have no rights in such data except to the extent necessary to perform its obligations under this Agreement.

24.6.3 The Concessionaire shall implement appropriate technical and organisational measures to ensure the security, confidentiality, integrity, and availability of such data

24.7 Source Code Escrow and Access

The Concessionaire shall establish and maintain a source code escrow arrangement with an independent escrow agent acceptable to the Grantor.

(a) The escrow shall include all source code, documentation, and related materials necessary to operate and maintain the Project systems.

(b) The escrow arrangement shall provide for automatic release of such materials to the Grantor upon the occurrence of trigger events, including:

- (i) termination of this Agreement;
- (ii) Concessionaire Default;
- (iii) failure of the Concessionaire to provide required support; or
- (iv) insolvency or inability of the Concessionaire to perform.

(c) The Grantor shall have conditional access rights to verify escrow deposits during the Concession Term

24.8 The Concessionaire shall ensure that the design, architecture, and implementation of the Project systems:

- (a) are based on open standards or widely accepted technologies where reasonably practicable; and

(b) do not create undue dependency on proprietary systems that would prevent the Grantor or a successor operator from independently operating, maintaining, upgrading, or replacing the system.

24.9 The Concessionaire shall maintain comprehensive version control, configuration management, and change management records, including full documentation of all system updates, modifications, and enhancements, and shall provide the Grantor with continuous access to such records.

24.10 The provisions of this Clause shall survive the expiry or termination of this Agreement and shall continue in full force and effect for so long as the Project systems, data, or Intellectual Property are required for the operation, maintenance, modification, or transition of the Project by the Grantor, any successor operator, or any Finance Party exercising its rights under the Direct Agreement.

CLAUSE 25

GOVERNING LAW AND DISPUTE RESOLUTION

25.1. Governing Law

This Agreement shall be governed by, construed, and enforced in accordance with the laws of the Federal Republic of Nigeria and the provisions of this Clause 25 shall survive this Agreement.

25.2. Dispute Resolution

Any dispute between the Parties under this Agreement shall be resolved as follows:

25.2.1 Notice of Dispute

Where any Dispute arises between the Parties, the Party wishing to declare a Dispute shall deliver to the other Party a notice in writing identifying the issue in Dispute.

25.3 Mutual Consultation and Negotiation

Upon the issuance of a Notice of Dispute, the Parties shall, within thirty (30) days, engage in mutual consultations and negotiations, through their duly authorised representatives, with a view to resolving the Dispute amicably.

During mutual consultations and negotiation, the Parties may appoint an independent expert to facilitate the resolution of the Dispute.

25.4 Intervention by the PPP Regulator

25.4.1 Where parties fail or are unable to resolve any dispute, controversy, or claim arising out of or relating to this Concession Agreement, including its interpretation, performance, or termination through mutual consultation and negotiation, either party shall submit the matter to voluntary intervention by the PPP Regulatory Authority.

- 25.4.2 Where a dispute is submitted to the PPP Regulatory Authority for intervention it shall be confidential and without prejudice to the rights of the Parties.
- 25.4.3 Where the dispute is not resolved within 60 days from the commencement of the intervention either Party may refer the dispute to arbitration in accordance with the Arbitration and Mediation Act, 2023

25.5. Arbitration

Where the Parties fail to resolve the dispute under Articles 25.3 & 25.4, either Party may refer the dispute, difference, or claim to Arbitration.

- 25.5.1 The arbitration procedure shall be governed by the rules of arbitration contained in the Arbitration and Mediation Act, 2023 (“the AMA”) or any amendment, modification, or re-enactment subject to the following modifications:
- a) The Arbitral tribunal shall consist of three arbitrators, at least one of whom shall be experienced in -----(state the area of specialization intended e.g, ports management and/or Operations depending on the nature of the project) and another, a qualified Public-Private Partnership professional both of whom must be so experienced and qualified for a period not less than 10 years;
 - b) The Parties shall appoint one Arbitrator each and the third and presiding arbitrator shall be appointed by the two arbitrators;
 - c) Where either party fails or is unable to appoint an arbitrator, or the two arbitrators are unable to appoint the third arbitrator, the appointment shall be made by----- (insert preferred Arbitral Institution);
 - d) The seat of the arbitration shall be Abuja, Nigeria;
 - e) The language of the arbitration shall be English;
 - f) The arbitral proceedings shall be for a period of ----years/months/weeks commencing on the ----- day.
 - g) The arbitral award shall be in writing and shall be the final and binding decision between the Parties from the date they were made without the right of appeal, except where there is manifest error or fraud.
 - h) The fees and expenses of the arbitrators and all other expenses of the arbitration shall be borne equally by the Parties while each party takes care of its cost.
 - i) The tribunal shall have powers to consolidate two or more references relating to or connected with the Concession including references emanating from sub-concessionaires, Concessionaires, and or sub-Concessionaires of the Concessionaire, provided further that the arbitral tribunal may in deserving circumstances apply the doctrine of equity.
 - j) The party against whom an Arbitral proceeding has been initiated is at liberty, before submitting to arbitration or not later than before the award is made, make good its defaults, to the satisfaction of the initiator of the proceedings, and the initiator of the Arbitral proceedings shall consequently take immediate steps to terminate the proceedings accordingly.

(Explanatory Note: This is just a guide for the parties on the components of the Arbitration Clause and should not be construed as mandatory drafting)

25.5.2 Confidentiality of Arbitral Proceedings

The Parties undertake to keep confidential all awards in any arbitration, together with all materials in the proceedings created for the purpose of the arbitration and all other documents produced by another party in the proceedings not otherwise in the public domain save and to the extent that disclosure may be required of a party by legal duty, to protect or

pursue a legal right, or to enforce or challenge an award in bona fide legal proceedings before a state court or other judicial Grantor.

25.6 Continued Performance

25.6.1 Pending resolution of any Dispute, the Parties shall continue to perform their obligations under this Agreement; and the Concessionaire shall continue to operate the Project, except where performance is impossible or otherwise agreed.

25.7 Lender Rights

25.7.1 The Grantor shall notify Lenders of any material Dispute.

25.7.2 Lenders shall have the right to participate in dispute resolution processes where their interests are affected; and shall be consulted prior to any settlement that materially impacts the Project.

CLAUSE 26

CONFIDENTIALITY

26.1. Each Party and its employees, contractors, consultants, and agents shall use its reasonable endeavours to keep confidential, the contents of this Agreement and any documents or other form of information provided under it, including electronic communications, marked as confidential by or on behalf of the Party providing it.

26.2. Each Party shall use its reasonable endeavours to ensure that all information obtained by it under this Agreement shall only be made available to and used by its employees or staff having a need for such information in order to permit the Party to perform its obligations and exercise its rights under this Agreement and shall not publish or otherwise disclose the same to third parties, except as may be required by any Law or Relevant Authority other than the Government.

26.3. Either Party shall be entitled to disclose the content of this Agreement and any data acquired by it under or pursuant to this Agreement without the prior consent of the other Party, only if such disclosure is made in good faith:

26.3.1. in the case of the Concessionaire, to its Affiliate with a need to know and upon obtaining from such Affiliate an undertaking of confidentiality equivalent to that contained in this clause 26;

26.3.2. to any external professional consultants or advisers engaged by or on behalf of such Party and acting in that capacity upon obtaining from such consultants or advisers an undertaking of confidentiality equivalent to that contained in this Clause 26;

26.3.3. to the Lenders, any security agent or trustee, any bank or other financial institution and its advisers from which such Party is seeking or obtaining finance, upon obtaining from the Lenders, such security agent or trustee and such bank or other institution and its advisers an undertaking or confidentiality equivalent to that contained in this Clause 26;

26.3.4. to the extent required for a Governmental Approval or as a binding requirement of any relevant regulator or Public Sector Entity or the rules of a recognised stock exchange;

26.3.5. to the extent required by law or pursuant to any order of any court of competent jurisdiction;

26.3.6. to the directors, employees, and officers of such Party, and where it is reasonably necessary to enable such Party to perform this Agreement or to protect or enforce its rights under this Agreement.

Provided that the disclosing Party shall within 24 hours of receiving the request for the Confidential Information inform the other Party of the request in writing, without prejudice to the preceding provisions of this Clause 26.3.

26.4. The duty of confidentiality under this clause shall not apply to:

- (i) any information in the public domain otherwise than by a breach of this confidentiality Clause by the same Party;
- (ii) information in the possession of a Party before divulgence that was not obtained under an obligation of confidentiality;
- (iii) information obtained from a third party that was free to divulge such information to other third parties and that was not obtained by either Party under an obligation of confidentiality; or
- (iv) information contained in a document that has been reviewed and cleared for public disclosure by the non-disclosing Party.

26.5 For the purpose of this Agreement, Confidential information shall mean:

- (a) any and all information relating or connected howsoever to the Project and/or the operations and activities of the Grantor, without any limitation whatsoever and howsoever defined, which gets into the possession or knowledge of the Concessionaire and/or its Affiliates by virtue of this Agreement and the implementation of the Project
- (b) any information disclosed by any Party to the other Party in connection with the operations, the assets and/or business of the disclosing Party or the other Party or their respective affiliated companies or entities, in any form including, but not limited to, proprietary information and trade secrets, whether or not protected under any patent, copyright or other intellectual property laws, in any oral, photographic or electronic form, whether contained on computer hard disks or floppy diskettes or otherwise;
- (c) any information developed by either Party concerning its business that is not in the public domain;
- (d) pricing information developed for or provided in connection with the business of either Party; and
- (e) any information that has been identified by any disclosing Party or its Affiliate as Confidential Information.

26.6. This confidentiality Clause shall survive this Agreement

CLAUSE 27

WAIVER OF SOVEREIGN IMMUNITY

27.1 The Grantor expressly reserves all rights and privileges of sovereign immunity to which it is entitled under applicable Nigerian law, international conventions, and customary international law, including immunity from suit, execution, attachment, or any other legal process in respect of its assets and property, wherever located.

27.2. Notwithstanding the foregoing, the Grantor irrevocably and unconditionally agrees to a limited waiver of its sovereign immunity solely to the extent necessary to:

- a) permit legal proceedings, enforcement, or execution against the Project Assets that are specifically and unambiguously designated in writing in this Agreement as subject to execution; and

b) where such assets are used or intended for use primarily for a commercial purpose, arising directly from obligations expressly undertaken by the Grantor under this Agreement and subject to the forces of regular market conditions.

27.3 No waiver of immunity shall extend to:

- a) any military, diplomatic, or consular assets or property;
- b) assets of the Central Bank of Nigeria (CBN) or the Nigeria Sovereign Investment Authority (NSIA);
- c) any other property allocated to public service functions or otherwise exempt under Nigerian law or public policy.

27.4 This waiver shall be construed per the indemnification clause below and the provisions of the Circular Ref. No. SGF/OP/1/S.3/X/1737 dated 11th August 2018, which are incorporated herein by reference. This clause is without prejudice to any mandatory provisions of Nigerian law or applicable public policy regarding the immunity of State property and is intended to be interpreted consistently with such laws and policies.

27.5 INDEMNIFICATION PURSUANT TO WAIVER OF SOVEREIGN IMMUNITY

27.5.1 The Concessionaire shall indemnify and hold harmless the Grantor against any and all claims, suits, actions, liabilities, losses, damages, costs, and expenses (including reasonable legal fees) arising out of or in connection with:

- a) the Concessionaire's wrongful conduct, negligence, bad faith, or violation of applicable laws in the performance of this Agreement;
- b) any claim, enforcement, or execution of rights against the Indemnitees in a foreign jurisdiction under permissive legislation, including but not limited to the United Kingdom's State Immunity Act 1978, the Civil Jurisdiction and Judgments Act 1982, or any similar legislation elsewhere, to the extent such claims seek to attach or enforce against assets or property of the Grantor that are not expressly designated herein as being subject to execution.

27.5.2. The Concessionaire acknowledges that the Grantor assume no responsibility or liability for the Concessionaire's actions under this Agreement and that the Grantor desires protection against any personal or institutional liability arising from their participation in the transactions contemplated hereby.

27.5.3. The Concessionaire agrees that it shall not seek enforcement of any award, judgment, or claim against the Grantor in any foreign jurisdiction in a manner inconsistent with the terms of this clause.

CLAUSE 28

ASSIGNMENT AND NOVATION

28.1. Consent Required

Subject to the provisions of this Clause, neither Party shall assign, novate, transfer, or otherwise dispose of any of its rights or obligations under this Agreement without the prior written consent of the other Party and the Infrastructure Concession Regulatory

Commission (“ICRC”).

28.2 Notwithstanding Clause 28.1, the Concessionaire may, without requiring further consent (but subject to notice), assign, create security over, or otherwise transfer its rights, interests, and receivables under this Agreement in favour of its lenders as security for financing the Project.

28.2.1 The Parties acknowledge and agree that the Lenders shall have the benefit of:

(a) the right to take security over the Concessionaire’s rights under this Agreement;

(b) step-in rights in accordance with the Direct Agreement; and

(c) the right to procure the substitution of the Concessionaire with a suitable replacement entity, subject to the consent of the Grantor (such consent not to be unreasonably withheld or delayed) and compliance with Applicable Law.

28.2.2 Any such substitution shall be effected in accordance with the terms of the Direct Agreement and shall not constitute a breach of this Agreement.

28.3. Conditions for Assignment by the Concessionaire

Any assignment or novation by the Concessionaire (other than pursuant to Clause 28.2) shall be subject to:

(a) prior written consent of the Grantor (not to be unreasonably withheld or delayed);

(b) notification and approval of the Infrastructure Concession Regulatory Commission;

(c) satisfactory financial, legal, and technical due diligence on the proposed transferee; and

(d) the transferee demonstrating the capability to perform the obligations of the Concessionaire under this Agreement.

28.4 Binding Agreement

This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors, legal representatives, and assigns.

28.5 Consequences of Transfer, Novation or Assignment without Consent

Any assignment, transfer, novation, or disposal of rights in breach of this Clause shall be null and void and shall constitute a Concessionaire Event of Default.

For the purposes of this Clause, a transfer shall include any direct or indirect transfer of a majority shareholding or voting control in the Concessionaire, except as permitted under Clause 28.2 or 28.6

28.6 Change of Control

Any direct or indirect Change of Control of the Concessionaire shall require the prior written consent of the Grantor and the ICRC (such consent not to be unreasonably withheld or delayed), provided that:

(a) no such consent shall be required for changes resulting from enforcement of security or exercise of rights by Finance Parties in accordance with the Direct Agreement; and

(b) any replacement entity shall meet the technical, financial, and legal requirements provided under this Agreement.

28.7 Relationship of the Parties

- (a) Nothing in this Agreement shall be construed as creating a partnership, joint venture, or agency relationship between the Parties.
- (b) The Concessionaire shall be solely responsible for all employment obligations, including wages, taxes, and statutory contributions, and no personnel of the Concessionaire shall be deemed to be employees or agents of the Grantor or the Federal Government of Nigeria for any purpose.

CLAUSE 29 NOTICES

29.1. Any notice or communication under this Agreement shall be in writing and may be delivered by hand, courier, or email to the addresses specified by the Parties. Notices sent by email shall be valid and deemed received upon transmission, provided there is verifiable evidence of delivery to the recipient's designated email address. Where such transmission occurs outside normal business hours, receipt shall be deemed to occur on the next Business Day.

29.2. The addresses and contact details of the Parties are:

29.2.1. For the Grantor:

Honorable Minister/Permanent Secretary

[Designation of Contact person]

Name of MDA:

Address:

Email:

29.2.2. For the Concessionaire:

CEO/Director

[Designation of Contact person]:

Name of Company:

Address:

Email:

29.2.3. Any Party may change its contact details given under this Clause 29.2 (or where such contact details have not been provided by the Execution Date, provide such required contact details) by giving 5 (five) Days' prior notice to the other Party.

29.3. Except as otherwise expressly provided in this Agreement, all notices shall be deemed to be delivered:

- (i) when the notice is delivered by hand or by overnight courier and duly acknowledged by the other party; or
- (ii) if received during business hours on a Business Day for the receiving Party, when the notice is transmitted by email to the receiving Party's email address; and
- (iii) if received after business hours or on a day that is not a Business Day for the receiving Party, on the receiving Party's first Business Day following the date the notice was transmitted by email to the receiving Party's email address.

Any notice given by email shall be confirmed in writing, delivered by hand or sent by

courier and the acknowledgement receipt copy of such notice shall serve as evidence of its delivery.

29.4. Any Party may by notice, change the address, addressees and/or email address to which such notices and communications to it are to be delivered or mailed.

CLAUSE 30
MISCELLANEOUS

30.1. Expenses of the Parties

Each Party shall bear all costs and expenses, including all fees and expenses of agents, representatives, counsel and accountants employed by the Party or incurred by it in connection with this Agreement, and the other Party shall bear no liability whatsoever in respect thereof.

30.2. Sub-Contracting

Subject to such provisions for prior consent and/or approval as are stipulated in this Agreement, the Concessionaire may engage any contractor or sub-contractor possessing the requisite skill, expertise and capability to perform some, but not all, of its obligations under this Agreement provided that the Concessionaire shall, at all times, remain solely liable for its obligations under this Agreement and shall also be solely responsible for the actions, inactions and/or omissions of that contractor or sub-contractor and provided further that the Concessionaire shall not subcontract to a subcontractor any of its core Operations as may be deduced from this Agreement or determined by the Grantor.

30.3. Cumulative Remedies

All rights and remedies under this Agreement and all rights and remedies available to the Parties under Applicable Law shall be cumulative and concurrent. The exercise by either of its rights or remedies under this Agreement shall not operate as a waiver of that Party's rights and remedies under any Applicable Law.

30.4. Right to Specific Performance

If either Party fails to perform its obligations under this Agreement, the other Party shall have the right to require specific performance of the said obligation.

30.5. Further Assurances

The Parties may where necessary after the execution of this Agreement, execute any additional documents or take further action to carry out the intent of this Agreement. Any such additional documents shall be consistent with this Agreement and shall not impose any additional obligations on either Party.

30.6. Entire Agreement

This Agreement, together with the other Project Documents is intended by the

Parties to be the final expression of their agreement in relation to the Project and is intended also to be a complete and exhaustive statement of their agreement with respect to **[insert name of Project]**. The terms and provisions contained in this Agreement supersede all previous communications, representations, or agreements between the Parties, oral or written, with respect to the implementation of the **[insert name of Project]**.

30.7. Amendments

30.7.1 This Agreement shall not be amended or modified except by mutual consent of the Parties, and all such amendments shall be executed by way of a supplemental agreement executed by the authorised representatives of the Parties.

30.7.2 Notwithstanding the provisions of 30.7.1, such amendment shall only be effective upon the concurrence of the ICRC which shall be in writing.

30.8. Waiver

No waiver by either Party of any default by the other Party in the performance of any of the provisions of this Agreement shall be effective unless in writing and executed by the authorized representative of such Party neither shall it operate or be construed as a waiver of any other or further default or defaults whether of a like or different character.

30.9. The failure of a Party to enforce, on any occasion, the performance of any terms, conditions, or provisions of this Agreement, or the granting of time or any other indulgence by one Party to the other, shall not be construed as a waiver of such breach, an acceptance of any variation, or a relinquishment of any rights under this Agreement.

30.10. Counterparts

This Agreement shall be executed in **5 (five)** counterparts, and they would all have the same effect as if the signatures on the counterparts were on a single original of this Agreement.

30.11. Severability

If any provision of this Agreement is held by a court or other authority of competent jurisdiction to be illegal, invalid, void, and unenforceable or against the public interest, the affected provision shall be deemed severed without affecting the validity of the rest of this Agreement which shall remain in full force and effect. The Parties will negotiate in good faith to agree on the provision that shall be substituted, if necessary, for any provision held to be illegal, invalid, void, and unenforceable or against the public interest, if such substitution shall be required and/or appropriate to give full effect to the implementation of the Project and the interests of the Parties.

30.12 Anti-Corruption and Ethical Conduct

30.12.1 Each Party shall comply with all applicable anti-corruption, anti-bribery, and anti-money laundering laws in Nigeria and shall not, directly or indirectly, engage in any corrupt, fraudulent, collusive, coercive, or unethical practice in

connection with this Agreement.

- 30.12.2 Each Party shall ensure that its respective officers comply with this Clause and shall maintain adequate internal controls and procedures designed to prevent and detect such conduct.
- 30.12.3 Each Party shall promptly notify the other Party upon becoming aware of any actual or suspected breach of this Clause and shall cooperate in good faith with any investigation conducted by a competent Government Authority.
- 30.12.4 The Grantor shall have the right to audit the Concessionaire's relevant records to verify compliance with this Clause, and the Concessionaire shall provide reasonable assistance in connection with such audit.
- 30.12.5 Any material breach of this Clause by the Concessionaire shall constitute a Concessionaire Event of Default and shall entitle the Grantor to exercise its rights under this Agreement, including suspension of payments, replacement of affected personnel or Sub-Contractors, and termination. Where a material breach is attributable to the Grantor or any Government Authority, the Concessionaire shall be entitled to such relief as provided under this Agreement.
- 30.12.6 The Parties agree that any contract, arrangement, or benefit obtained through corrupt practices shall be void and shall give rise to termination, restitution, or other remedies in accordance with Applicable Law and this Agreement.
- 30.12.7 This Clause shall survive the expiry or termination of this Agreement.

30.13. Language

This Agreement is made and executed in English language.

THE OFFICIAL SEAL OF THE GRANTOR:

is hereto affixed

(seal)

Name: [Honorable Minister/Permanent Secretary/CEO/DG]

Signature:

In the presence of:

Name:

Designation:

Signature:

THE COMMON SEAL OF THE CONCESSIONAIRE

is hereto affixed

(seal)

In the presence of:

[•]

Director

[•]

Secretary

**SCHEDULES/APPENDICES AS MENTIONED IN THE
AGREEMENT**

SCHEDULE X: STEP-IN PROTOCOL

1. Purpose

This Step-In Protocol sets out the procedures, responsibilities, and operational arrangements applicable where the Grantor exercises its step-in rights under Clause [7.2] of this Agreement. The Grantor's Step-in Rights shall be strictly limited to emergency, safety, or service continuity circumstances, shall be exercised only to the extent necessary to address such circumstances, and shall not override or prejudice, the exercise of the Lenders' Step-in Rights.

2. Step-In Triggers

2.1 Step-in may occur upon:

- (a) a Concessionaire Event of Default;
- (b) an Emergency;
- (c) failure of the Concessionaire to meet critical performance standards; or
- (d) any circumstance requiring intervention to ensure continuity of the Project.

2.2 Priority of Step-in Rights

Where both Grantor and Lender Step-in Rights arise, the following order of priority shall apply:

- a) The Lenders shall have the first right to exercise Step-in within the applicable cure period;
- b) The Grantor may exercise Step-in Rights only:
 - i. where an immediate risk to public safety or critical service continuity exists; or
 - ii. where the Lenders fail to exercise their Step-in Rights within the applicable cure period;
- c) Any Grantor Step-in shall be limited in scope and duration to what is strictly necessary to address the relevant circumstances and shall not unreasonably interfere with the subsequent exercise of Lenders' Step-in Rights.

3. Step-In Notice and Mobilisation

3.1 Notice Requirements

The Grantor shall issue a Step-In Notice in accordance with Clause [7.2], except in the case of an Emergency.

In an Emergency, notice shall be issued as soon as reasonably practicable after step-in.

3.2 Mobilization Period

The Grantor shall mobilize its personnel and/or appointed contractors within a reasonable timeframe, taking into account the nature of the step-in.

The Concessionaire shall immediately grant access to the Site, Systems, and relevant resources.

4. Step-In Team and Governance

4.1 Step-In Team

The Grantor may appoint internal personnel, third-party operators or technical advisors/contractors to form the Step-In Team.

4.2 Step-In Manager

The Grantor shall designate a Step-In Manager responsible for coordinating all step-in activities, liaising with the Concessionaire and Lender(s) ensuring continuity of operations.

4.3 Coordination Committee

A joint coordination team comprising representatives of the Grantor, Concessionaire, and (where applicable) Lender(s) shall be established to monitor progress, resolve operational issues and facilitate information flow.

5. Access and Control

5.1 During the Step-In Period, the Grantor shall be entitled to:

- (a) access and use the Site, facilities, and equipment;
- (b) access all operational data, software, systems, and records;
- (c) assume control of relevant contracts and subcontracts (to the extent permitted);
- (d) direct the Concessionaire's personnel, where necessary.

5.2 The Concessionaire shall ensure uninterrupted access, provide system credentials, manuals, and documentation and make key personnel available during the step in period.

6. Continuity of Services

The primary objective of step-in shall be to maintain safe, continuous, and efficient delivery of Project Services, minimize disruption to users and stakeholders and protect public interest and asset integrity.

7. Financial Arrangements

7.1 Costs of Step-In

Where step-in arises from a Concessionaire Event of Default, all costs incurred by the Grantor shall be borne by the Concessionaire. Such costs may be recovered as a debt.

7.2 Revenue Handling

During the Step-In Period, the Grantor shall be entitled to collect and apply Project Revenues solely for the purpose of:

- (i) operating the Project;
- (ii) covering Step-In costs; and
- (iii) maintaining the Project assets.

Any surplus (if applicable) shall be accounted for in accordance with the Agreement.

8. Interface with Lenders

8.1 The Grantor shall notify the Lender(s) prior to step-in (except in emergencies).

8.2 Where the Direct Agreement applies the Lender(s) shall have the opportunity to exercise cure or step-in rights and the Grantor shall coordinate with the Lender(s) to avoid conflict or duplication of actions.

9. Information and Reporting

The Step-In Manager shall maintain records of all actions taken, provide periodic reports to the Concessionaire and Lender(s) and document costs, operational decisions, and performance status.

10. Step-Out and Handover

10.1 Conditions for Step-Out

Step-out shall occur where the relevant breach has been remedied; or the circumstances necessitating step-in have ceased.

10.2 Handover Process

- a) The Grantor shall issue a Step-Out Notice.
- b) A joint inspection shall be conducted.

c) Updated operational records shall be transferred to the Concessionaire.

10.3 Resumption by Concessionaire

The Concessionaire shall resume full operations within twenty-four (24) hours or such other period as may be agreed between the Parties.

The Grantor shall provide reasonable assistance to ensure a smooth transition.

11. Liability and Indemnity

The Grantor shall not be liable for any losses of the Concessionaire arising from step-in, except to the extent caused by wilful misconduct or gross negligence.

The Concessionaire shall indemnify the Grantor for all costs arising from step-in due to its default.

12. No Waiver

The exercise of step-in rights shall not constitute a waiver of any rights of the Grantor; neither shall it prevent the Grantor from exercising its right to terminate the Agreement.

13. Survival

This Schedule shall survive any step-in and step-out and remain applicable throughout the Concession Period.

SCHEDULE X

CONTRACT MANAGEMENT, REPORTING AND PERFORMANCE MONITORING FRAMEWORK

1. Interpretation

In this Schedule, unless the context otherwise requires, capitalised terms shall have the meanings ascribed to them in the Agreement.

This Schedule shall be read together with the Agreement and, in the event of any inconsistency, the provisions of the Agreement shall prevail.

2. Purpose

This Schedule sets out the framework for the administration, monitoring, and management of the Project to ensure compliance with the Agreement, achievement of the Minimum Performance Standards and Key Performance Indicators, and delivery of value for money throughout the Concession Period.

3. Contract Management Arrangements

3.1 Appointment of Contract Managers

Each Party shall appoint a Contract Manager who shall be responsible for:

- (a) day-to-day administration of this Agreement;
- (b) coordination and communication between the Parties;
- (c) monitoring compliance with contractual obligations; and
- (d) escalation of issues in accordance with this Schedule.

3.2 Governance Structure

The Parties shall operate the following governance structure:

S/N	Level	Responsibility	Frequency
A.	Operational Level	Day-to-day coordination and issue resolution	Ongoing
B.	Contract Management Meetings	Performance monitoring and reporting review	Monthly or Quarterly
C.	Senior Management / Steering Committee	Strategic oversight and escalation	Quarterly or as required

4. Performance Monitoring

4.1 Performance Standards and KPIs

The Concessionaire shall perform the Project in accordance with the Minimum Performance Standards and Key Performance Indicators set out in Schedule [X (Performance Standards and KPIs).

4.2 Monitoring Mechanisms

The Grantor shall be entitled to monitor performance through:

- (a) periodic reports submitted by the Concessionaire;
- (b) inspections of the Project Site and Assets;
- (c) audits of systems, processes, and records; and
- (d) independent verification where provided under the Agreement.

5. Reporting Requirements

5.1 Periodic Reports

The Concessionaire shall submit the following reports to the Grantor: Operational Reports, Technical Reports, Financial Reports and Compliance Reports

S/N	Report	Content	Frequency
A.	Operational Report	Service delivery, uptime, incidents	Monthly
B.	Technical Report	Maintenance, system performance	Quarterly
C.	Financial Report	Revenue, costs vs Financial Model	Quarterly
D.	Compliance Report	Regulatory and contractual compliance	Quarterly

5.2 Ad Hoc Reports

The Concessionaire shall provide such additional reports as the Grantor may reasonably request from time to time.

6. Meetings and Reviews

The Parties shall hold regular meetings to:

- (a) review performance against agreed standards;
- (b) identify risks and operational issues;
- (c) agree corrective measures; and
- (d) monitor implementation of agreed actions.

7. Performance Failure and Corrective Measures

7.1 Where the Concessionaire fails to meet the required performance standards, the Grantor may issue a notice specifying the nature of such failure.

7.2 The Concessionaire shall, within [X] days of receipt of such notice, submit and implement a corrective action plan acceptable to the Grantor.

7.3 Where performance failures persist, the matter may be escalated in accordance with the governance structure set out in this Schedule and without prejudice to the rights of the Grantor under the Agreement.

8. Audit and Inspection

The Grantor, or its authorised representatives, shall have the right, upon reasonable notice, to:

- (a) inspect the Project Site and Assets;
- (b) audit relevant records, systems, and processes; and
- (c) verify compliance with the Agreement and this Schedule.

9. Records and Data Management

The Concessionaire shall:

- (a) maintain complete, accurate, and up-to-date records relating to the Project;
- (b) retain such records for a minimum period of three years or as required under Applicable Law; and
- (c) make such records available to the Grantor upon reasonable request.

10. Independent Monitoring (where applicable)

Where provided for in the Agreement, the Parties may appoint an Independent Expert to:

- (a) verify performance;
- (b) certify compliance; and
- (c) provide technical determinations where required.

11. The Concessionaire shall implement continuous improvement measures to enhance efficiency, service delivery, and value for money throughout the Concession Period.

12. The Parties shall cooperate with the Infrastructure Concession Regulatory Commission in the monitoring of Project performance and compliance with Applicable Law.

13. Amendment of this Schedule

This Schedule may be amended by agreement of the Parties, provided that no such amendment shall materially alter the rights and obligations of the Parties under the Agreement without any required approvals under Applicable Law.