

**PARTICIPATION AGREEMENT FOR THE
TRANSITIONAL STAGE ELECTRICITY
MARKET**

APPROVED BY NERC

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This Market Participation Agreement (hereinafter called this Agreement) is made on -----
- of ----- 20 ----- at Abuja, Nigeria

BETWEEN:

1. The Transmission Company of Nigeria (hereinafter called TCN, which expression shall include its successors and/or permitted assigns), a company having its principal offices at Plot 441, Zambezi Crescent, Maitama, Abuja in Nigeria, incorporated under the Companies and Allied Matters Act 2004; and
2. _____, a company having its principal office at _____
_____ in Nigeria, incorporated under the Companies and Allied Act 2004, (hereinafter called the **Applicant Participant**, which expression shall include its successors and/or permitted assigns)

Each of the parties hereto being a Party to this Agreement, and the term Parties shall be construed accordingly.

WHEREAS:

- A. This Agreement is entered into pursuant to the Market Rules and shall be read as being governed by it.
- B. It is understood that this agreement is made by TCN on behalf of its unincorporated Market Operations Sector or Division.
- C. The rights and obligations of TCN under this Agreement and the Market Rules are properly ascribed to and will be executed by the Market Operator under the Market Rules.
- D. The Market Rules specify that no person may be registered as a Participant unless the **Market Operator** is satisfied that the person has complied with all relevant requirements and has executed a Market Participation Agreement.
- E. The **Applicant Participant** wishes to be registered in the Electricity Market under the Market rules and has submitted an Admission Application to participate as a (Distributor, or Generator, or Trader, or Eligible Customer);
- F. The **Market Operator** has approved the Admission Application in accordance with the Market Rules; and

G. The **Applicant Participant** and the TCN wish to enter into this Agreement pursuant to the said Market Rules.

NOW THEREFORE IT IS HEREBY AGREED AS FOLLOWS:

1.0 DEFINITIONS AND INTERPRETATION

1.1 Definitions

Any word or expression defined in the Act, the Market Rules or the Grid Code and that is not defined otherwise in this Agreement shall have, unless the contrary intention appears, the same meaning and interpretation when used in this Agreement, including its Annexes.

When applying the provisions contained in this Agreement, and unless otherwise specified or the context otherwise requires, the following words and expressions shall have the meaning:

- **“Act”** means the Electric Power Sector Reform Act, 2005, as may be amended from time to time, or any other legislation that replaces such Act;
- **“Admission Date”** means the date the Applicant Participant has been admitted as Participant of the Electricity Market and shall be the date on which this Agreement is made;
- **“Agreement”** means this Market Participation Agreement (including the Annexes), as may be amended from time to time;
- **“Admission Application” or “Application”** means the application for admission submitted by the **Applicant Participant** to participate in the Electricity Market;
- **“Clause”** means a clause of this Agreement;
- **“Commission”** means the Nigerian Electricity Regulatory Commission (NERC) created by the Act;
- **“Connection Point”** means the physical point where the Participant’s plant is joined to the Transmission System;

- “**Electricity Market**” means the wholesale electricity market of Nigeria administered by the **Market Operator**;
- “**Grid Code**” has the meaning defined in the Act;
- “**Market Operator**” means the office holder within TCN on whom is conferred responsibility for supervising and directing TCN’s licensed function of administering the wholesale electricity market under S.66(1)(f) of the Act; and any reference to TCN in this Agreement shall be construed to be a reference to the Market Operator;
- “**Market Procedures**” means the details of data exchange, methodologies and procedures for market administration, to implement the Market Rules;
- “**Market Rules**” means the document titled “Market Rules for Transitional and Medium Term Stages of the Nigerian Electrical Power Sector, 2010” that defines the market organisation and trading arrangements for the Nigerian power sector; the Market Procedures Manual shall be regarded as an integral part of the Market Rules;
- “**Metering**” means the metering system and all associated equipment as established in the Market Rules and Metering Market Procedure;
- “**Metering Market Procedures**” means the Market Procedure that sets out the standards and procedures for the metering at the boundaries between different participants and between a participant and the transmission system;
- “**Participant**” means any person who has signed the Market Participation Agreement, with the Market Operator;
- “**Suspension Notice**” means the notice issued by the **Market Operator** suspending the **Applicant Participant’s** authorization to participate in the Electricity Market; and
- “**System Operator**” means the division of Transmission Company of Nigeria (TCN) responsible for the provision services pursuant to Section 66 of the Act;
- “**Termination Order**” means the order issued by the **Market Operator** ending the **Applicant Participants** authorization and rights to participate in the Electricity Market.

1.2 Interpretation

In this Agreement (including the Annexes), unless the context otherwise specifies or requires;

- 1.2.1 Capitalised words used shall have the meanings assigned to them in 1.1:
- 1.2.2 Words corresponding to persons or parties shall include any individual, firm, joint venture and corporation, and all references to persons shall include their legal successors and permitted assignees;
- 1.2.3 Words in singular only also include the plural and vice versa where the context requires;
- 1.2.4 Any reference to a day, month or year shall be construed as reference to a calendar day, month or year, as the case may be;
- 1.2.5 The headings shall not be deemed part of or be taken into consideration in the interpretation or construction of this Agreement and are included for ease of reference only;
- 1.2.6 Words in the masculine shall include the feminine and neutral and vice versa:
- 1.2.7 The word “include” or “including” shall be construed without limitation;
- 1.2.8 Where reference is made to an amount or sum, it is to an amount or sum denominated in Naira (N):
- 1.2.9 All references to a numbered clause is a reference to the clause bearing that number in this Agreement, unless indicated otherwise:
- 1.2.10 A reference to the Act, Market Rules, the Grid Code, Market Procedures or Operating Procedures shall be construed to refer to such Act, Market Rules, the Grid Code, Market Procedures or Operating Procedures as may have been modified or replaced from time to time.

1.4 Inconsistencies

- 1.4.1 In the event of any inconsistency between this Agreement and the Act or the licence of one of the Parties, the Act or the licence respectively shall prevail to the extent of such inconsistency.

1.4.2 In the event of any inconsistency between this Agreement and Market Rules or the Grid Code, the Market Rules or the Grid Code shall prevail to the extent of such inconsistency.

1.4.3 Any provision of this Agreement that is determined, by a court of competent jurisdiction, to be invalid or unenforceable shall be ineffective to the extent of that invalidity or unenforceability and shall be deemed severed from the remainder of this Agreement, all without affecting the validity or enforceability of the remaining provisions of this Agreement.

2.0 SCOPE

Upon execution of this Agreement and until its termination, the **Applicant Participant** shall be granted Market Participant status and the right to participate and trade in the Electricity Market.

3.0 DURATION OF AGREEMENT

3.1 Commencement

This Agreement shall commence and become effective on the Admission Date.

3.2 Termination

3.2.1 This Agreement shall automatically terminate on the earlier of:

a. The date of issuance to the **Applicant Participant** of a Termination Order by the **Market Operator**; or

b. The date on which the **Applicant Participant** withdraws its participation in the Electricity Market, in accordance with the withdrawal provisions established in the Market Rules.

3.2.2 Notwithstanding Clause 3.2.1, the **Applicant Participant** shall remain subject to and liable for all of its obligations and liabilities as a Participant which were incurred or arose under the Market Rules prior to the date referred to in 3.2.1 (a) or 3.2.1 (b), as the case may be, regardless of the date on which any claim relating thereto may be made.

3.2.3 Notwithstanding Clause 3.2.1, the **Market Operator** shall remain subject to and liable for any obligations and liabilities owed to the **Applicant Participant** which were incurred or arose under the Market Rules prior to the date referred to in section 3.2.1 (a) or 3.2.1 (b), as the case may be, regardless of the date on which any claim relating thereto may be made.

3.2.4 Notwithstanding, any other provision of this Agreement and, for greater certainty, the provisions of Clause 3.2.2 and 3.2.3 shall survive termination of this Agreement for any reason.

4.0 VARIATIONS TO THIS AGREEMENT

- 4.1 The **Market Operator** may propose a variation to this Agreement if it is required as a result of a change in law, or the Market Rules, or the Grid Code, or the SO Licence, to ensure that this Agreement operates in a manner which is consistent with the effect of the change in the legislation and licences in the power sector, and/or the amended Market Rules or Grid Code, as applicable, provided that any such amendment to this Agreement will be of no greater extent than is required by reason of the same.
- 4.2 Such changes shall have effect on the date upon which the legislation and/or licence and/or change in the Market Rules or the Grid Code is brought into force with such transitional arrangement as shall be reasonable and as are in compliance with the legislation and/or licence and/or the Market Rules or the Grid Code.
- 4.3 If any variation proposed under 4.1. has not been agreed by the Parties within ninety (90) days of it being proposed (the Parties acting as soon as reasonably practicable), either Party may refer to the NERC for determination and the Parties agree to abide by and to effect the NERC's determination.
- 4.4 Subject to Clauses 4.1., 4.2 and 4.3, no variation to this Agreement shall be effective unless it is made in writing and signed by both Parties.

5.0 OBLIGATIONS

5.1 Obligations of Market Operator

The **Market Operator** undertakes to administer the Electricity Market in compliance with the Market Rules and its Market Procedures.

5.2 Obligations of the Participant

5.2.1 The **Applicant Participant** certifies that it is fully aware of and accepts the Market Rules, Grid Code, the Metering Code and the Market Procedures for the time being in force without any condition or reservation, and that it undertakes, among others, to pay the Market Operator fee.

5.2.1 The **Applicant Participant** agrees to comply with and be bound in all respects by the provisions of the Market Rules, as amended from time to time and as applicable to the **Applicant Participant**. In particular the **Applicant Participant** undertakes to:

- a. Provide metering information in a timely manner and adequate format in accordance with the Metering Market Procedures;
- b. Provide security cover when so required; and
- c. Settle in a timely manner any payment due.

5.2.2 The **Applicant Participant** acknowledges that admission to and participation in the Electricity Market is subject to compliance with all relevant requirements and it shall inform the **Market Operator** promptly of any change in any condition and information submitted in its Admission Application.

5.2.3 **The Applicant Participant** undertakes:

- a. To construct, maintain and operate any equipment, system or facility connected to the transmission system in compliance with the Grid Code; for the time being in force and
- b. To provide all relevant information to the System Operator in a timely manner and in the established formats.

6.0 **REPRESENTATIONS AND WARRANTIES**

6.1 **Representations and Warranties of TCN**

TCN hereby represents and warrants as follows to the **Applicant Participants** that:

- a. It has all the necessary corporate or other powers to enter into and perform its obligations under this Agreement;
- b. The powers, rights and duties conferred on TCN herein are those exclusively to be exercised by the Market Operator under the Market Rules and the System Operator under the Grid Code, which powers are conferred on the Market Operator and System Operator respectively under and by virtue of the System Operator Licence granted to TCN;
- c. It has been duly authorised by all necessary corporate, governmental and/or other action to enter into and perform under this Agreement;
- d. The individual executing this Agreement, and any document in connection herewith, on its behalf has been duly authorised to execute this Agreement and any document in connection herewith, and has the full power and authority to bind it; and
- e. The information provided in its Admission Application is true, accurate and complete in all respects.

7.0 **Representations and Warranties of the Applicant Participant**

The **Applicant Participant** hereby represents and warrants as follows to TCN and acknowledges and confirms that the **TCN** is relying on such representations and warranties in respect of the Admission Application to become registered as a Participant,

- a. That it has been duly authorised by all necessary corporate, governmental authority to enter into and perform under this Agreement;
- b. That the individual executing this Agreement, and any document in connection herewith, on its behalf has been duly authorised to execute this Agreement and any document in connection herewith, and has the full power and authority to bind it;
- c. That the information provided in its Admission Application is true, accurate and complete in all respects.

8.0 **OTHER PROVISIONS**

8.1 **Applicable Laws**

This Agreement shall be governed by and construed in accordance with the laws of Nigeria.

8.2 **Documents and Information**

Each Party shall promptly execute and deliver or cause to be executed and delivered all further documents in connection with this Agreement that the other Party may reasonably require for the purposes of giving effect to this Agreement.

8.3 **Waivers**

A waiver of any default, breach or non-compliance under this Agreement is not effective unless in writing and signed by the Party to be bound by the waiver.

8.4 Notices

8.4.1 Any notice, demand, consent, request or other communication required or permitted to be given or made under this Agreement shall:

- (a) Be given or made in the manner set forth in the Market Rules or the Grid Code, as applicable: and
- b. Be addressed to the **Applicant Participant** or the representatives identified in the Admission Application, or to any change to this representative as is noticed by the **Applicant Participant** to the **Market Operator**

8.4.2 Either Party may change its address and representative for notice by written notice to the other Party. Such change shall not constitute a Modification of this Agreement.

In witness whereof the Parties have, by their respective duly appointed and authorised representatives, executed this Agreement on the date set forth hereinabove.

Signature of Authorized Representative of Applicant Participant

Name: _____

Title: _____

Date: _____

Signature of Authorized Representative of TCN

Name: _____

Title: _____

Date: _____