

# PROGRAMME TRUST DEED

DATED

THIS ..... DAY OF ..... 2017

BETWEEN

**VIATHAN FUNDING PLC**

**RC 1418760**  
*(the "Issuer")*

AND

**THE COMPANIES LISTED IN THE FIRST SCHEDULE**

*(the "Co-Obligors")*

AND

**UTL TRUST MANAGEMENT SERVICES LIMITED**

**RC No. 4834**  
*(the "Note Trustee")*

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**IN RESPECT OF THE ₦50,000,000,000.00 (FIFTY BILLION NAIRA)  
MEDIUM TERM NOTE PROGRAMME**

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**THIS PROGRAMME TRUST DEED** (“Deed”) is made this \_\_\_\_\_ day of \_\_\_\_\_ 2017 (the “Effective Date”).

## **PARTIES**

1. **VIATHAN FUNDING PLC**, a public limited liability company registered under the laws of the Federal Republic of Nigeria and having its registered office at 17B, Chibo Ofodile Close, Off Ladipo Latinwo Crescent, Lekki Phase 1, Lagos (“Viathan” or the “Issuer”).
2. **THE COMPANIES WHOSE NAMES AND ADDRESSES ARE LISTED IN THE FIRST SCHEDULE OF THIS DEED** (the “Co-Obligors”).
3. **UTL TRUST MANAGEMENT SERVICES LIMITED**, a limited liability company registered under the laws of the Federal Republic of Nigeria with its business address at 2<sup>nd</sup> Floor, ED Building, 47 Marina, Lagos (the “Note Trustee”).

The Issuer, the Co-Obligors and the Note Trustee are individually referred to as a “**Party**” and collectively as the “**Parties**”.

## **BACKGROUND**

- A. By virtue of Clause 3 (1) of the Issuer’s Memorandum and Articles of Association, the Issuer is authorised to raise capital by way of debt securities.
- B. By a resolution of the board of directors of the Issuer dated 10<sup>th</sup> July 2017 and a resolution of the shareholders of the Issuer, dated 10<sup>th</sup> July 2017 the Issuer has authorised the creation of a medium term note programme through which Bonds (as defined below) up to a maximum nominal amount of **₦50,000,000, 000.00 (Fifty Billion Naira)** may be issued by the Issuer (the “Programme”).
- C. In connection with the Programme, the Issuer has appointed the Note Trustee and the Note Trustee has agreed to act as the Trustee of the Programme for the benefit of the Bondholders of the Bonds, on the terms and conditions contained in this Deed.

## **IT IS HEREBY AGREED AS FOLLOWS**

### **1. Definitions and interpretation**

#### **1.1 Definitions**

In this Deed the following words and expressions shall have the meanings assigned to them, except where the context otherwise requires:

“**Accession Agreement**” is as set out in the Fourth Schedule to this Deed;

“**Account Bank**” means the bank (and its successors-in-title and assigns or any other bank so appointed pursuant to this Deed) specified by the Parties

in the applicable Final Terms, with which the Payment Account and Minimum Reserve Account (where applicable) will be domiciled and through which payments due to the Bondholders shall be paid as and when due;

**“Account Bank & Paying Agent Agreement”** means the agreement to be entered into by the Issuer, the Note Trustee, the Account Bank and the Paying Agent;

**“Affiliate”** means with respect to any person, any corporation, partnership, trust or other entity or organization that, directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with such person where “control” means the ability to direct or cause the direction of the business, affairs and management policies or practices of a person;

**“Aggregate Principal Amount”** means an aggregate of up to ₦50, 000, 000, 000.00 (Fifty Billion Naira);

**“Assets”** means all monies, investments, property, rights or powers, which are, at any time, transferred, paid to or vested in the Note Trustee as a result of the Note Trustee’s administration of the trust created by this Deed;

**“Applicable Law”** means any law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any regulatory authority, delegated or subordinate legislation or notice of any regulatory authority, which is binding and enforceable on or against the Issuer or the subject matter of, or any party to any of the Issue Documents;

**“Auditors”** means Pricewaterhouse Coopers whose principal office address is Landmark Towers, 5B, Water Corporation Road, Victoria Island, Lagos;

**“Bond” or “Bonds”** means the debt instruments issued by the Issuer under the Programme by which the Issuer is obligated to repay the Bondholders the Principal Amount and Coupon on specified dates after the date of issue;

**“Bondholder(s)”** means a person or persons in whose name a Bond is registered in the Register and/or in the records of the CSCS as the holder of a particular principal amount of Bonds);

**“Business Day”** means any day (other than a Saturday, Sunday or public holiday declared by the Federal Government of Nigeria) on which banks are open for business in Lagos and Abuja, Nigeria;

**“Closing Date”** means the date stipulated as such in the Shelf Prospectus;

**“Companies and Allied Matters Act” or “CAMA”** means the Companies and Allied Matters Act, Cap C20, Laws of the Federation of Nigeria 2004;

**“Commission” or “SEC”** means the Securities and Exchange Commission established pursuant to the ISA;

“**Conditions**” means in relation to the Bonds of any Series, the terms and conditions in accordance with which the Bonds will be issued, as set out in the section headed “Terms and Conditions of the Bonds” in the Series Trust Deed or as may otherwise be endorsed on or incorporated by reference into the Bonds constituting such Series and which is in the form or substantially the same, form specified in the Second Schedule to this Deed; having regard to the terms of the Bonds of the Series, as may be agreed between the Issuer and the Note Trustee, in each case as from time to time modified in accordance with this Deed;

“**Coupon**” means the interest payable on any Bonds being payable in the amount and on the dates specified in the Series Trust Deed;

“**Coupon Commencement Date**” means the date for any particular series of Bonds as may be defined in the applicable Final Terms from which interest on the Bonds begin to accrue;

“**Coupon Payment Date**” means any date set out in the Final Terms on which the Coupon becomes payable;

“**Coupon Determination Date**” means the date falling no later than two (2) Business Days prior to the Interest Payment Date when the Note Trustee determines the interest rate applicable to a floating rate Bond;

“**Coupon Period**” means the period from (and including) an Interest Payment Date to (but excluding) the next Interest Payment Date;

“**CSCS**” means the Central Securities Clearing System Plc., which expression shall include its successors or any additional or alternative clearing system approved by the Issuer;

“**Day Count Fraction**” means in respect of the calculation of an amount for any period of time (the "Calculation Period"), such day count fraction as may be specified in these conditions or the relevant Final Terms and:

- i. if "Actual/365" or "Actual/Actual" is so specified, means the actual number of days in the Calculation Period divided by 365 (or, if any portion of the Calculation Period falls in a leap year, the sum of (A) the actual number of days in that portion of the Calculation Period falling in a leap year divided by 366 and (B) the actual number of days in that portion of the Calculation Period falling in a non-leap year divided by 365);
- ii. if "Actual/365 (Fixed)" is so specified, means the actual number of days in the Calculation Period divided by 365;
- iii. if "Actual/360" is so specified, means the actual number of days in the Calculation Period divided by 360; and

- iv. if "30/360" is so specified, means the number of days in the Calculation Period divided by 360 (the number of days to be calculated on the basis of a year of 360 days with 12 30-day months (unless (i) the last day of the Calculation Period is the 31st day of a month but the first day of the Calculation Period is a day other than the 30th or 31st day of a month, in which case the month that includes that last day shall not be considered to be shortened to a 30-day month, or (ii) the last day of the Calculation Period is the last day of the month of February, in which case the month of February shall not be considered to be lengthened to a 30-day month).

“**Directors**” means the Board of Directors of the Issuer;

“**Duties and Charges**” means all stamp and other duties, taxes, governmental charges, agents fees, brokerage fees, bank charges, transfer fees, registration fees, and other charges or deductions which may or have become payable in respect of or prior to or upon the occasion of any transaction or dealing;

“**Encumbrance**” means any interest or equity of any person (including any right to acquire, option or right of pre-emption or conversion) or any mortgage, charge, pledge, lien, assignment, hypothecation, security interest, title retention or any other security agreement or arrangement or any agreement to create any of the above;

“**Event of Default**” means the events of default, particularly described in Condition 15 of the Second Schedule of this Deed;

“**Extraordinary Resolution**” means a resolution of the Bondholders passed in accordance with the provisions contained in the Third Schedule to this Deed;

“**Final Terms**” means the relevant Series Trust Deed, Supplementary Shelf Prospectus and/or Pricing Supplement specifying the final terms applicable to a Series of Bonds; provided that, in the event of inconsistency between the Series Trust Deed, supplementary Shelf Prospectus and/or Pricing Supplement, the relevant term shall have the meaning specified in the relevant document ranking the highest in the following order of priority:  
(i) firstly, the Series Trust Deed  
(ii) secondly, the supplementary Shelf Prospectus and/or Pricing Supplement;

“**Financial Indebtedness**” means any obligation for the payment or repayment of money, whether as principal or as surety and whether present or future, actual or contingent, incurred in respect of: (a) money borrowed or raised, (b) any bond, note, loan stock, debenture or similar instrument, (c) acceptance or documentary credit facilities, (d) foreign exchange options, (e) rental payments, underleases and hire purchase agreements and instalments under conditional sale agreements (in all cases whether in respect of land, machinery, equipment or otherwise) entered into primarily as a method of

raising finance or of financing the acquisition or use of the asset concerned, (f) any other transaction (including any forward sale or purchase agreement) which has the commercial effect of a borrowing); and (g) guarantees, indemnities, bonds, standby letters of credit or other instruments issued in connection with the performance of contracts and or in respect of the indebtedness of any other person, provided that any amounts owed to trade creditors in the ordinary course of business shall be excluded;

“**Force Majeure**” means any event or circumstance (or combination of events or circumstances) that is beyond the control of the Issuer and the Note Trustee which materially adversely affects the ability of either Party to perform its obligations under this Deed including but not limited to explosion, flood, lightening, tempest, fire, accident, hostilities, rebellion, revolution, insurrection, riot, civil commotion or disorder, acts, restrictions, regulations, by-laws, refusals to grant any licenses or permissions, and acts of governments;

“**FMDQ**” means FMDQ OTC Securities Exchange, the securities exchange and self-regulatory organisation licensed by the Commission to provide a platform for listing, quotation, registration and trading of debt securities amongst others;

“**Group**” means the Issuer, its subsidiaries (where applicable) and the Co-Obligors;

“**IFRS**” means the International Financial Reporting Standards promulgated by the International Accounting Standards Board (IASB) as may be amended from time to time;

“**ISA**” means the Investments and Securities Act, 2007;

“**Issue Date**” means, in relation to each Series, the date specified in the relevant Final Terms on which the Bonds are issued in accordance with this Deed;

“**Interest Commencement Date**” means the date on which the bonds begin to accrue interest for any particular Series of Bonds or such other date as may be specified in the applicable Supplementary Shelf Prospectus/Pricing Supplement issued in connection with the Bonds from which interest on the Bonds begins to accrue;

“**Issue Documents**” means the documents required to be executed and delivered in connection with the issue of the Bonds and includes:

- i. Programme Trust Deed;
- ii. Series Trust Deed
- iii. Vending Agreement;
- iv. Shelf Prospectus;
- v. Supplementary Shelf Prospectus/Pricing Supplement;
- vi. Deed of Guarantee (where applicable);
- vii. Series Trust Deed; and

- viii. Account Bank & Paying Agent Agreement; and
- ix. Master Intercompany Loan Agreement (where applicable);

“**Majority Bondholders**” means at any time after the issue of the Bond, Bondholders representing more than seventy-five percent (75%) of the Principal Amount Outstanding at any particular time;

“**Material Adverse Effect**” means for as long as the Bond is outstanding, any event or circumstance which (when taken alone or together with any previous event or circumstance) has or could reasonably be expected to have a materially adverse effect on the ability of the Issuer to perform its obligations under this Deed, or the rights of the Bondholders under this Deed;

“**Maturity Date**” means the maturity date of any Bond or Series as provided in the Series Trust Deed constituting that Series;

“**Minimum Reserve Account**” means an account (other than the reserve account maintained by the Guarantor’s security trustee for the benefit of the Guarantor), which the Issuer may establish for a Series pursuant to the relevant Final Terms and which shall be managed by the Note Trustee or such other trustee specified in the Final Terms;

“**Offer**” means the offer of the Bonds to the Bondholders by the Issuer;

“**Payment Account**” means, in relation to a Series of Bonds, an account opened by the Issuer, in the name of, managed and controlled by the Note Trustee and into which the Issuer shall make payments in accordance with the terms of that Series;

“**Payment Date**” means in respect of each Series, the dates specified as such in the applicable Final Terms upon which interest and/or principal are due and payable in respect of the Bonds of that Series;

“**Permitted Securities**” means the all assets debenture or any other security created by the Co-Obligors in favour of the Guarantor pursuant to the Programme;

“**Potential Event of Default**” means any condition, event or act which, with the lapse of time and or the issue, making or giving of any notice, certification, declaration, demand, determination and or request and or the taking of any similar action and or the fulfilment of any similar condition, would constitute an Event of Default;

“**Pricing Supplement**” or “**Supplementary Shelf Prospectus**” means a memorandum issued in relation to a Series of Bonds, specifying the relevant issue details in relation to that Series of Bonds, setting out such additional and or other terms and conditions in such form as described in the section of the Shelf Prospectus headed “Form of Pricing Supplement”;

“**Principal Amount Outstanding**” means, on any day in relation to a Bond, the principal amount of that Bond, less the aggregate of all principal payments that have been made in respect of that Bond on or prior to that day;

“**Shelf Prospectus**” means the document issued in accordance with the SEC Rules, which details the aggregate size and broad terms and conditions of the Programme;

“**Rating Agency**” means Global Credit Rating Company Limited or any rating agency for the time being appointed by the Issuer;

“**Redemption Amount**” means the aggregate principal amount outstanding in respect of the Bonds on the Maturity Date;

“**Redemption Date**” means the date on which the outstanding principal and accrued interest, if any, due and payable on the Bond, must be redeemed in full;

“**Register**” means the register kept at the specified office of the Registrar containing the names and addresses of each Bondholder and the particulars, transfers and redemption of the Bonds held by each Bondholder for each Series;

“**Registrar**” means Veritas Registrars Limited or any other person or entity for the time being appointed registrar by the Issuer;

“**SEC Rules**” means the rules and regulations issued by the Commission pursuant to the provisions of the ISA;

“**Series**” means a Tranche of the Bonds, together with any further Tranche(s) of Bonds, that are expressed to be consolidated and form a single series and are identical in all respects (including as to listing) except for their issue price, issue date and or Interest Commencement Date;

“**Series Trust Deed**” means the trust deed made between the Issuer and the Note Trustee in relation to a specific Series under the Programme;

“**Shelf Prospectus**” means the base shelf prospectus covering the Programme and registered with the SEC pursuant to the SEC Rules and includes any Supplementary Shelf Prospectus issued pursuant to the Shelf Prospectus;

“**Taxes**” means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any related penalty or interest);

“**Tranche**” means all Bonds which are identical in all respects;

“**Trust**” means the trust as constituted by this Deed;

“**Trustees Investment Act**” means Trustees Investment Act, Cap T2, Laws of the Federation of Nigeria 2004 as amended from time to time; and

“**VAT**” means Value Added Tax pursuant to the Value Added Tax Act, Cap V1, LFN 2004 as amended by the Value Added Tax (Amendment) Act 2007 and as may be amended from time to time and any other tax of a similar nature.

## 1.2 Interpretation

- (a) Headings and sub-headings are for ease of reference only and shall not affect the construction of any provision of this Deed.
- (b) All references in this Deed to an agreement, instrument or other document shall be construed as a reference to that agreement, instrument or other document as the same may be amended, supplemented, replaced or novated from time to time.
- (c) Any reference in this Deed to any legislation (whether primary legislation or regulations or other subsidiary legislation made pursuant to primary legislation) shall be construed as a reference to such legislation as the same may have been, or may from time to time be, amended or re-enacted.
- (d) Where an expression is stated to have the meaning given in the relevant Final Terms, but the relevant Final Terms give no such meaning or specify that such expression is "not applicable" then such expression is not applicable to the relevant Series of Bonds;

## 2. Appointment of Note Trustee

- 2.1 The Issuer hereby creates and establishes a Trust for the benefit of the Bondholders.
- 2.2 Subject to the terms and conditions of this Deed, the Issuer hereby appoints the Note Trustee to act on behalf of the Bondholders, to hold the benefit of the covenants and other obligations of the Issuer on behalf of the Bondholders and itself. Any sums received by the Note Trustee from the Issuer shall be received on trust in accordance with the provisions of this Deed.
- 2.3 By execution of this Deed, the Note Trustee has accepted and agreed to enforce the powers and perform the duties and obligations of the Note Trustee specifically set out in this Deed and generally provided for in the Trustees Investment Act.
- 2.4 The Note Trustee shall have no duty, responsibility or obligation for the issuance of the Bonds or for the validity or exactness of the same, or of any documents relating to such issuance.

### **3. Declaration and Duration Of Trust**

- 3.1 The Note Trustee hereby declares itself trustee for the Bondholders with effect from the date of this Deed to hold the benefit of the Issuer's covenants and other obligations in this Deed in trust for the Bondholders according to their respective interests and subject to the terms of this Deed.
- 3.2 The Trust shall remain in full force and effect until the date all Bonds issued pursuant to the Programme are redeemed and the:
  - i. Note Trustee receives an unconditional confirmation in writing from the Registrar that there is no principal amount or Coupon outstanding in respect of the Bonds; and/or
  - ii. the Issuer receives an unconditional release in writing from the Note Trustee from all of its obligations under this Deed.
- 3.3 The Issuer shall use the net proceeds from the issue of a Series (after deduction of the costs and expenses incurred in connection with the issuance of such Series) in accordance with the provisions of the Final Terms.

### **4. Programme Trust Deed Binding**

- 4.1. The provisions of this Deed or any supplemental deed created pursuant to this Deed shall be binding on the Issuer, the Co-Obligors the Note Trustee and the Bondholders and all persons claiming through them respectively as if such Bondholders and persons are parties to this Deed.
- 4.2. Subject to the provisions of this Deed and Section 176 (2) of CAMA, a Bondholder or a person claiming through a Bondholder shall have no right to sue the Issuer or the Note Trustee (either jointly or severally) for the enforcement of any benefit conferred on a Bondholder by virtue of this Deed or any Series Trust Deed.

### **5. Issuance of Bonds**

- 5.1 The Issuer shall issue and offer the Bonds in Series in an aggregate nominal amount from time to time up to and not exceeding the Aggregate Principal Amount in accordance with the terms of this Deed. Any Bond issued in accordance with this Deed shall be constituted by this Deed without further formality.
- 5.2 Any Series, as and when issued, shall constitute a single class and shall be direct and unconditional obligations of the Issuer as provided in the relevant Series Trust Deed and the ranking shall be as specified in the relevant Series Trust Deed.
- 5.3 The Bonds constitute an irrevocable obligation of the Issuer and Co-Obligors.

- 5.4 The Bonds shall be issued by way of an offer for subscription, auction or private placement through a book building process and or any other such methods as set out more particularly in the relevant Supplementary Shelf Prospectus or Pricing Supplement.
- 5.5 Each issue of Bonds shall form a separate Series. The provisions of this Deed shall apply *mutatis mutandis*, separately and independently to the Bonds of each Series. Each Series shall be constituted by a separate trust created by a Series Trust Deed under which the Note Trustee shall hold the benefit of the covenant in Clause 7.3 (*Covenant to Repay and to Pay Coupon on the Bonds*) in this Deed in trust for the Bondholders of the particular Series. The provisions contained in any other Series Trust Deed shall apply only in relation to the Series to which it relates.
- 5.6 The name of each Series will commence with the word “Series” and will be followed by a number in consecutive order of issuance of the Series.
- 5.7 If there is any conflict between the provisions of a Series Trust Deed relating to a Series and the provisions of this Trust Deed, the provisions of the Series Trust Deed shall prevail over the provisions of this Trust Deed in respect of the relevant Series.
- 5.8 The Bonds shall be listed on FMDQ and issued in denominations as specified in the Series Trust Deed relating to the relevant Series. The tenor of the Bonds for each Series shall be specified in the relevant Series Trust Deed.
- 5.9 The Bonds shall be issued and transferable in units or amounts to be determined by the Issuer and stated in the relevant Conditions.
- 5.10 Other than as provided in this Deed, there are no restrictions on the transferability of the Bond.
- 5.11 *Purpose of the Bonds*
- 5.11.1. The purpose for which the proceeds of the Bonds are to be utilized shall be specified in the Final Terms.
- 5.12.1. Without prejudice to the generality of the previous and the subsequent provisions of this Deed, the Note Trustee shall not be bound to enquire as to the application of the proceeds of the Bonds.
- 5.12 *Form and Delivery of the Bonds*
- 5.12.1 The Bonds will be delivered in dematerialised form and held in separate CSCS accounts.
- 5.12.2 Title to the Bonds passes only upon registration in the Register.
- 5.12.3 Statements issued by the CSCS as to the aggregate number of

Bonds standing to the CSCS account of any Bondholder shall be conclusive and binding for all purposes except in the case of manifest error and such person (or his/her legal representatives) shall be treated by the Issuer, the Note Trustee and the Registrar as the legal and beneficial owner of such aggregate number of Bonds for all purposes.

5.12.4 The Bondholders shown in the records of CSCS (or their legal representatives) are entitled to the benefit of, are bound by, and are deemed to have notice of all the provisions of this Deed and any relevant Series Trust Deed.

5.13 *Transfer of Bonds*

Transfers of Bonds will be effected through the records of the CSCS and the respective participants in accordance with the rules and procedures of the CSCS and title to Bonds shall pass when such transfer is recorded in the Register.

5.14 *Conditions of the Bond*

The Issuer shall comply with, perform and observe all the provisions of this Deed and the Conditions. The Conditions shall be deemed to be incorporated in this Deed and shall be binding on the Issuer, the Note Trustee and the Bondholders and all persons claiming through or under them respectively.

5.15 *Ranking of the Bonds*

The ranking of the Bonds as and when issued shall be as specified in the relevant Final Terms.

5.14. *Status of the Bonds*

Each Bond in a Series constitutes a direct and unsubordinated (without prejudice to Condition 6) obligation of the Issuer and of the Guarantor and or Co-Obligors under the Guarantee (where applicable) and shall at all times rank *pari passu* and without any preference among themselves. The payment obligations of the Issuer under the Bonds and in respect of principal and any interest on the Bonds shall at all times rank at least equally with all unsecured obligations of the Issuer, present and future except for obligations mandatorily preferred by law applying to companies generally.

5.15. *Rights of Bondholders*

The Bondholders shall not have or acquire any right against the Note Trustee in respect of the Bonds except as expressly conferred upon them by this Deed or by law, regulation or court order and no person shall be recognized as a Bondholder except in respect of Bonds registered in his name in the Register.

## **6 Establishment of Transaction Accounts**

- 6.1. Subject to the applicable Final Terms, the Issuer shall, not later than the Issue Date for each Series, open with the Account Bank, a Account (where applicable) and a Payment Account for each Series in the name of the Note Trustee. The Note Trustee shall be the sole signatory to the Payment Account and Minimum Reserve Account (where applicable) and shall have access to such account for the purpose of making all payments due on the Bonds to Bondholders.
- 6.2. The Issuer shall pay or procure to be paid all sums or monies due on the Bonds into the Payment Account no later than 3.00pm on the day that is ten (10) Business Days before the next Interest Payment Date or the Redemption Date (as the case may be).
- 6.3. The Note Trustee shall ensure that the Account Bank utilizes funds in the Payment Account for purposes of effecting payments on the Bonds to Bondholders as and when due.

## **7 Issuer's Lending and Borrowing Powers**

- 7.1. The Issuer covenants with the Note Trustee that until such time when all outstanding Bonds have been fully redeemed and the Issuer's liability has been discharged, the Issuer shall:
  - 7.1.1 lend, advance or pass through the proceeds of all Bonds issued under this Programme Trust Deed and any Series Trust Deed, exclusively for the benefit of the Co-Obligors.
  - 7.1.2 not borrow or raise funds or procure any person to borrow or raise funds on its behalf, by any means whatsoever except by the issuance of bonds under this Programme Trust Deed or any Series Trust Deed.

## **8 Covenants of the Issuer**

The Issuer covenants to the Note Trustee that it shall:

- 8.1 comply with and perform all the obligations expressed to be undertaken by it under this Deed and the Bonds. The Note Trustee shall be entitled to enforce the obligations of the Issuer under the Bonds as if the same were set out and contained in the Deed, which shall be read and construed as one document with the terms of the Conditions;
- 8.2 to the extent that any Bonds are constituted under the relevant Series Trust Deed and issued, be indebted to the Bondholders up to the principal amount of the Bonds specified in such Series Trust Deed in respect of the relevant Series and undertakes to the Note Trustee that the Bonds, to the extent constituted and issued, shall be redeemed together with any outstanding interest and other monies on the Redemption Date in the relevant currency (or earlier on an amortised basis) provided for in the relevant Final Terms or such earlier date as the same or any part may become due and repayable;

- 8.3 pay to the Note Trustee in immediately available funds, the full principal amount of the Bond and or such part of the Bonds as ought to be redeemed on the Redemption Date as may be payable, and shall in the meantime and until such date (both before and after any judgment or other order of a court of competent jurisdiction) pay unconditionally to or to the order of the Note Trustee, interest (which shall accrue from day to day) on the principal amount of the Bonds;
- 8.4 in the event the Issuer fails to make payment to the Note Trustee on or before the due date or improperly withholds or refuses to make such payment, interest shall continue to accrue on the principal amount so withheld or refused (both before and after any judgment or order of a court of competent jurisdiction) at the Coupon rate up to and including the date on which payment is eventually made to the Bondholders;
- 8.5 every payment of principal and or interest on the Bonds will be made free of all costs, commissions, charges, fees, or other payments or deductions, other than any tax on income which the Issuer may by any Applicable Laws be required to deduct;
- 8.6 obtain and keep in full force and effect all authorisations required for the validity and enforceability of the Issue Documents against the Issuer;
- 8.7 promptly inform the Note Trustee of any Event of Default or as soon as it becomes aware of such event;
- 8.8 comply in all respects with all Applicable Laws, permits, and licences to which it may be subject and which in each case is material to its business and its obligations under the Issue Documents for as long as any Bonds are outstanding under the Programme, and shall obtain and maintain such permits and licences except where such non-compliance will not result in a Material Adverse Effect on its business or its obligations under the Issue Documents;
- 8.9 furnish the Note Trustee with a copy of its quarterly financial statements and the Co-Obligors quarterly financial statements within ten (10) Business Days of sending the same to the SEC, or where the Co-Obligor is a private company, within ten (10) business days from the end of the relevant quarter;
- 8.10 furnish the Note Trustee with five (5) copies of its and the Co-Obligors audited financial statements, including their Statements of Financial Position as at the close of that fiscal year and the Statements of Financial Position and statements of sources and application of funds for that fiscal year, prepared in accordance with IFRS and confirmed by the Auditors as fairly representing the financial condition of the Issuer and the Co-Obligors as at the close of that fiscal year, at the same time as such statements are being sent to the Issuer and each of the Co-Obligors respectively;
- 8.11 for as long as any Bonds are outstanding, subject to obtaining the prior written consent of the Note Trustee (such consent not to be unreasonably

withheld), be entitled to enter into any amalgamation, de-merger, merger, consolidation or corporate restructuring or enter into any transaction which effect would be similar to that of a merger, consolidation or corporate reconstruction, provided that:

- 8.11.1 no consolidation, corporate restructuring, merger or other change in the status of the Issuer shall be interpreted to avoid the Issuer's obligations imposed by this Deed and in the event of any change in status of the Issuer, the successor or successors-in-title of the Issuer shall be held and deemed responsible for the due performance of the obligations intended by this Deed;
  - 8.11.2 immediately before and after giving effect to such consolidation or merger, no Event of Default shall have occurred and be continuing; and
  - 8.11.3 the Issuer or its successor-in-title, as the case may be, shall have delivered to the Note Trustee, a certificate signed by two (2) of its directors stating that the consolidation or merger complies with the provisions of subparagraphs (i) and (ii) above.
- 8.12 unless with the prior written consent of the Note Trustee first had and obtained (which consent shall not be unreasonably withheld), not reduce its issued share capital or otherwise amend or change its share capital in a manner which, in the Note Trustee's reasonable opinion would adversely affect its ability or obligation to pay the principal and or interest on Bonds and or any monies payable under this Deed except such amendment is required by an Applicable Law;
- 8.13 in any other case of alteration of capital, and or amendment of its Memorandum and Articles of Association, it shall, inform the Note Trustee in writing no later than ten (10) Business Days upon completion, giving full particulars of the status of its share capital as altered, and or amendment of its Memorandum and Articles of Association accompanied with a formal representation by the Issuer confirming that such alteration or amendment shall not adversely affect its ability or obligation to pay principal and or interest on the Bonds issued under this Deed. In addition, the Issuer shall give answers to any reasonable queries of the Note Trustee in respect of such alteration or amendments;
- 8.14 retain a reputable firm of auditors as its auditors at all times;
- 8.15 duly and punctually pay and discharge all Taxes for which: (a) it reasonably believes it is liable, pursuant to any self-assessment procedure; and (b) assessed upon it or its assets under any Applicable Law within the time period allowed, without incurring penalties, except:
- 8.15.1 such payment is being contested in good faith;
  - 8.15.2 adequate reserves are maintained for those Taxes and any interest or

penalties; and

8.15.3 such payment can be lawfully withheld;

- 8.16 bear and pay any Stamp Duties and charges (including interest and penalties, payable or imposed by any authority or government agency in Nigeria), in connection with the execution, delivery and performance of this Deed, and shall indemnify each Bondholder against any claim, demand, action, liability, damages, cost, loss or expense (including, without limitation, any properly incurred legal fees and any applicable value added tax) which it incurs as a result or arising out of or in relation to any failure to pay or delay in paying any of the same;
- 8.17 ensure that it maintains its legal status and complies with all Applicable Laws required to maintain such status;
- 8.18 ensure the information it makes available to the Bondholders directly or through any of its directors, officers, employees, or representatives in connection with the transactions contemplated by this Deed shall be complete and correct in all material respects; and not contain any untrue statement of a material fact or omit to state a material fact;
- 8.19 keep proper books of account and, at any time after an Event of Default has occurred or if the Note Trustee reasonably believes that an Event of Default may have occurred or may be about to occur, allow the Note Trustee and the Auditor free access to such books of accounts at all reasonable times during normal business hours, until such Event of Default ceases;
- 8.20 for as long as any Bonds are outstanding and, without the prior written consent of the Note Trustee (such consent not to be unreasonably withheld), procure that its holding company (where applicable) does not divest its majority interest in the Issuer and or any of its Affiliates;
- 8.21 notify the Note Trustee of any divestment or restructuring of its parent company or any of its Affiliates;
- 8.22 establish a Minimum Reserve Account in a manner as may be provided for under the relevant Final Terms;
- 8.23 not declare or pay any dividend in cash or otherwise or make a distribution (whether by way of redemption, acquisition or otherwise) in respect of its share capital if a Potential Event of Default or an Event of Default has occurred and is continuing;
- 8.24 use its best endeavours to maintain the quotation or listing on the relevant securities market or exchange on which the Bonds are quoted or listed or, if it is unable to do so having used such endeavours, use its best endeavours to obtain and maintain a quotation or listing of such Bonds on such other stock exchange or securities market as the Issuer may decide and upon obtaining a quotation or listing of such Bonds issued by it on such other stock exchange or exchanges or securities market or markets, enter into a deed supplemental

to this Deed or the relevant Series Trust Deed to effect such consequential amendments as shall be necessary to comply with the requirements of any such stock exchange or securities market. Provided that the Issuer shall be able to delist the Bonds from any exchange for any reason whatsoever with the prior approval of the Majority Bondholders;

- 8.25 provide the Note Trustee with all documents and information the Note Trustee may reasonably require in connection with the performance of its obligations under this Deed, within fifteen (15) Business Days of receipt of a written request from the Note Trustee or, in the event that the Issuer may require a longer period to obtain such documents or information from third parties, as soon as is reasonably practicable after such request and in any event by such longer period as may be agreed with the Note Trustee; and
- 8.26 by 31<sup>st</sup> December in each year in which any part of the principal amount on the Bonds and accrued interest are outstanding, issue a certificate stating that:
- a.) all arrangements required during the next financial year to meet the payment obligations of the Issuer have been put in place by the Issuer; and
  - b.) to the best of its knowledge, it is not aware of any facts or circumstances in the ordinary course of its business that will affect its ability to meet its payments obligations as and when due.
- 8.27 ensure that all payments due to the Bondholders shall be paid to the Payment Account(s) as provided in the relevant Final Terms.
- 8.28 where the day on which a payment is due to be made is not a Business Day, that payment shall be effected on or by the next succeeding Business Day unless that succeeding Business Day falls in a different month in which case payment shall be made on or by the immediately preceding Business Day.

## 9 Creation of Additional Series

- 9.1 Subject to Clause 5.1, the Issuer shall be at liberty from time to time without the consent of the Bondholders, to create and issue additional Series pursuant to the Programme either: (i) ranking *pari passu* in all respects (except for the first payment of Coupon, issue price, issue dates and principal amount) with outstanding Series, or (ii) upon such terms as to ranking, interest, conversion, redemption and otherwise as the Issuer may at the time of issue determine. For the avoidance of doubt, any further issuance of Bonds may have the same terms and conditions as the Bonds of any Series (except for the amount and date of the first payment of interest, issue price, issue dates and Principal Amount) so that the same shall be consolidated and form a single class with the outstanding Bonds of a particular Series.
- 9.2 Any Series created pursuant to the provisions of Clause 9.1 shall be constituted by a trust deed supplemental to this Deed (“a **Supplemental Trust Deed**”). In any such case the Issuer, may make such consequential

modifications to this Deed as the Note Trustee shall require in order to give effect to such issue of a Series.

- 9.3 The Note Trustee shall hold the benefit of the payment obligations of the Issuer in trust for the Bondholders of a Series in accordance with the terms and conditions of the applicable Series Trust Deed.
- 9.4 Every Supplemental Trust Deed as well as counterparts of this Deed shall be executed by the Issuer, the Co-Obligors, and the Note Trustee and a memorandum of any Supplemental Trust Deed shall be attached to this Deed and any counterparts of the same.
- 9.5 A memorandum of every Series Trust Deed shall be endorsed by the Note Trustee on this Deed and by the Issuer on counterparts of this Deed.
- 9.6 The provisions of this Deed except as otherwise varied in the relevant Series Trust Deed shall be incorporated by reference in the Series Trust Deed relating to any Series created pursuant to this Deed.

## **10 Guarantee of Co-Obligors**

- 10.1 The Parties agree that all the obligations of the Co-Obligors shall be joint and several of each other without preferences or distinction among them (**the “Obligations”**).
- 10.2 Each Co-Obligor, jointly and severally, guarantees to the Note Trustee:
  - 10.2.1 the due and punctual payment of the principal and interest on the Bonds and of any other amount payable by the Issuer under this Deed (in immediately available funds, without any deduction, set-off, counterclaim or withholding of any kind (including without limitation, on account of taxes); and
  - 10.2.2 the due and punctual performance and observance by the Issuer of its obligations which it may from time to time be obliged to perform under or pursuant to this Deed.
- 10.3 The obligations of the Co-Obligors shall include monetary damages arising out of any failure by the Issuer to perform its obligations under this Deed or any other Issue Document, to the extent that any failure to perform such obligations gives rise to monetary damages.
- 10.4 Where any of the Co-Obligors fails to make any payment with respect to any of the Obligations as and when due, or to perform any of the Obligations in accordance with the terms of this Deed, then, in each case the other Co-Obligors will make such payment with respect to, or perform, such Obligation.
- 10.5 The Obligations of each of the Co-Obligors under the provisions of this Clause 10 constitute the full Obligations of each Co-Obligor and is

enforceable against each Co-Obligor to the full extent of its properties and assets, irrespective of the reliability or enforceability of this Deed or any other Transaction Document, or any other circumstance whatsoever.

- 10.6 For as long as the Bonds are outstanding under this Programme Trust Deed and any Series Trust Deed, the Co-Obligors shall not issue debt securities by any means whatsoever except through the Issuer under the Programme.
- 10.7 The Obligations of each Co-Obligor under this Deed are continuing obligations and shall extend to the balance of all sums payable by the Issuer under this Deed and the Bonds, regardless of any intermediate payment or discharge in whole or in part.

#### *10.8 Payments*

10.8.1 Any payment made by any Co-Obligor shall be in satisfaction of the relevant covenant to pay by the Issuer pursuant to Clause 8.3 (except to the extent where there is a default in a subsequent payment). Interest shall accrue on any payment made after the due date, up to and including the date payment is made. All payments made by any of the Co-Obligors under this Deed shall be subject to Clause 8.5.

10.8.2 Each Co-Obligor agrees that the payment of any amounts due with respect to any indebtedness owed by the Issuer or any Co-Obligor to any other Co-Obligor is hereby subordinated to the prior payment of the Obligations in full.

10.8.3 Each Co-Obligor agrees that after an Event of Default has occurred and during its continuance, such Co-Obligor will not demand, sue for or otherwise attempt to collect any indebtedness of any other Co-Obligor or the Issuer, owed to such Co-Obligor until the Obligations shall have been paid in full. Where, notwithstanding the above, any Co-Obligor collects, enforces or receives any amounts in respect of such indebtedness, such amounts collected, enforced and or received by such Co-Obligor would have been collected, enforced or received as trustee for the Note Trustee and be paid over to the Note Trustee to be applied to repay the Obligations.

#### *10.9 Indemnity*

As an independent and primary obligation, each Co-Obligor unconditionally and irrevocably agrees to indemnify, and keep the Note Trustee indemnified, from and against all and any cost and liabilities suffered or incurred by it arising from any failure of the Issuer to pay any sum due and payable by it on the due date and in the manner prescribed in this Deed, or through any payment obligation of the Issuer becoming unenforceable, invalid or illegal on any grounds, whether known to the Note Trustee or not.

#### *10.10 Waiver of Defenses*

10.10.1 Each Co-Obligor waives all defences that may be available to it by virtue of any valuation, stay, moratorium law or other similar law now or effective in the future, any right to require the ranking of assets of the Co-Obligors and any other entity or person primarily or secondarily liable with respect to any of the Obligations, and all suretyship defences generally.

10.10.2 Each Co-Obligor agrees that its Obligations shall not be released or discharged, in whole or in part, or otherwise affected by, the adequacy of any rights which the Note Trustee may have against any security or other means of obtaining repayment of any of the Obligations.

10.10.3 The Obligations of each Co-Obligor under this Clause 10 shall not be diminished or rendered unenforceable by any winding up, reorganization, arrangement, liquidation, reconstruction or similar proceeding regarding any reconstruction or similar proceeding with respect to any other Co-Obligor. The joint and several liability of the Co-Obligors shall continue in full force and effect notwithstanding any absorption, merger, amalgamation or any other change whatsoever in the name, ownership, membership, constitution of any Co-Obligor, the Issuer or the Note Trustee.

10.10.4 The provisions of this Clause 10 are made for the benefit of the Note Trustee and its respective permitted successors and assigns, and may be enforced by it or them from time to time against any or all of the Co-Obligors and without requirement on the part of the Note Trustee or any of its agents first to exercise any of its rights against the other Co-Obligors or to exhaust any remedies available to it against any other Co-Obligor or to resort to any other source or means of obtaining payment of any of the Obligations or to elect any other remedy.

10.10.5 The provisions of this Clause 10 shall remain in effect until all of the Obligations shall have been paid in full or otherwise fully satisfied.

#### *10.11 Addition and or Substitution of Co-Obligors*

10.11.1 The Note Trustee may without the consent of the Bondholders agree to the addition of one or more direct or indirect Affiliates of the Issuer to become an additional Co-Obligor under this Deed (the "Additional Co-Obligor"), and or, the substitution of any Co-Obligor as a Co-Obligor under this Deed, and any other agreement in respect of the Bonds, of any successor of any Co-Obligor (the "Substitute Co-Obligor") subject to such conditions as the Note Trustee may require, provided that:

- 10.11.1.1 the prior approval of the Commission shall first be obtained;
- 10.11.1.2 a supplemental trust deed between the Issuer, the Note Trustee, and the Co-Obligors shall be executed by the Substitute Co-Obligor and or Additional Co-Obligor in a form and manner satisfactory to the Note Trustee, agreeing to be bound by the terms of this Deed, the Bonds and any consequential amendments which the Note Trustee may deem appropriate, as if the Substitute Co-Obligor and or Additional Co-Obligor had been an initial party to this Deed, the Transaction Documents and on the Bonds as a Co-Obligor to the Issuer;
- 9.10.1.3. any authorised officer of the Issuer or (as the case may be) the Substitute Co-Obligor and or Additional Co-Obligor shall certify to the Note Trustee that the Substitute Co-Obligor and or Additional Co-Obligor will be solvent immediately after the said substitution and or addition is to be effected;
- 10.11.1.3 In the case of a substitution of Co-Obligor, the Issuer shall demonstrate to the satisfaction of the Note Trustee that by virtue of the assets, business, financial condition and any other relevant circumstance of the Substitute Co-Obligor, the substitution sought will be more advantageous to the interest of Bondholders than otherwise;
- 10.11.1.4 the Note Trustee shall be satisfied that the Substitute Co-Obligor and or Additional Co-Obligor has obtained all necessary consents necessary for its assumption of liability as a Co-Obligor under this Deed and such approval are at the time of substitution and or addition in full force and effect;
- 10.11.1.5 the Rating Agency must have notified the Note Trustee in writing that such substitution and or addition shall not result in the withdrawal or reduction of its rating(s) with respect to any Series; and
- 10.11.1.6 the Issuer and the Substitute Co-Obligor and or Additional Co-Obligor (or any previous Substitute Co-Obligor and or Additional Co-Obligor under this clause) shall execute any relevant Issue

Documents, and instruments as the Note Trustee may require in order that such substitution and or addition is fully effective and comply with such other requirements in the interest of the Bondholders as the Note Trustee may direct.

10.11.2 On the execution of the supplemental trust deed referred to in Clause 10.9.1.2, the Substitute Co-Obligor and/or Additional Co-Obligor shall be deemed to be named in this Deed as a Co-Obligor in addition to the existing Co-Obligors, and this Deed shall be deemed to be amended to give effect to the substitution and or addition. References to the Co-Obligors in this Deed shall be deemed to be references to the Substitute Co-Obligor and or Additional Co-Obligor where applicable.

## **11 Credit Enhancement**

There may be, in respect of the Bonds issued in each Series, credit enhancement measures to be specified in the applicable Final Terms instruments), collateral, insurance policies and third party guarantees.

## **12 Representations and Warranties**

### *Representations and Warranties of the Issuer*

12.1 The Issuer hereby undertakes, represents and warrants to the Note Trustee that, as of the date of this Deed and to the Note Trustee and the Bondholders of the relevant Series as at the Issue Date of any Series that:

12.1.1 it is a public limited liability company duly incorporated under the laws of Nigeria and has full power and authority to issue the Bonds;

12.1.2 it will give full effect to the Bonds when issued as provided under the Issue Documents;

12.1.3 it has obtained all government licences, authorisations, registrations, consents and approvals, to enter into, execute, deliver and perform its obligations under the Issue Documents;

12.1.4 its execution and delivery of the Issue Documents and its performance of this Deed:

12.1.4.1 have been duly authorised by all necessary corporate action;

12.1.4.2 will not contravene any Applicable Law;

12.1.4.3 will not contravene or constitute a default under any contractual obligation, judgment, injunction, order or decree binding upon it or its assets; and

12.1.4.4 will not contravene other agreements and any of the provisions of the Issuer's constitution documents;

- 12.1.5 each of the documents required to be executed and delivered in connection with the issue of the Bonds has been or will be duly executed and delivered by it and constitutes its legal, valid and binding obligation, enforceable against it (subject to corporate insolvency and similar exceptions) in accordance with its terms;
- 12.1.6 it is in material compliance with all Applicable Laws including those in relation to its obligations under the Programme;
- 12.1.7 neither the Issuer nor any of its assets has any right of immunity on the ground of sovereignty or otherwise, from any jurisdiction, attachment (before or after judgment) or execution in respect of any action or proceeding relating in any way to the Issue Documents that may be brought in the courts of the Federal Republic of Nigeria or any relevant jurisdiction and where any such right is conveyed while the Bonds are outstanding, the Issuer hereby waives such right;
- 12.1.8 the obligations of the Issuer under the Issue Documents are direct, general and unconditional obligations of the Issuer and rank *pari passu* with all other present and future unsecured Financial Indebtedness of the Issuer;
- 12.1.9 it is able to pay its debts as they fall due and has not suspended making payments on any of its debts or, by reason of actual financial difficulties, commenced negotiations with one or more of its creditors with a view to rescheduling any of its Financial Indebtedness;
- 12.1.10 the value of its assets is not less than its actual liabilities; and
- 12.1.11 except as may be otherwise disclosed in the Shelf Prospectus, no litigation, arbitration or administrative proceedings before any court, arbitral body or agency which, if adversely determined, might reasonably be expected to have a Material Adverse Effect has (to the best of its knowledge and belief) been commenced or threatened against it or any companies within its Group.

*Representations and Warranties of the Note Trustee*

- 12.2 The Note Trustee undertakes, represents and warrants to the Issuer that, as of the date of this Deed and as at the Issue Date of any Series of the Bonds:
  - 12.2.1 it is a company duly registered under the laws of the Federal Republic of Nigeria;
  - 12.2.2 it is duly registered and authorised by the Commission to act as a trustee in connection with capital market transactions;
  - 12.2.3 it has the full power, consent and authority to enter into this Deed, exercise its rights and perform its obligations under this Deed and

such authorisations and consent are in full force and effect;

- 12.2.4 it has the resources, capacity and expertise to act on behalf of the Bondholders with regard to every issue of Bonds under the Programme and it shall comply with the provisions of the ISA, the Trustees Investment Act, this Deed and the relevant Series Trust Deeds in the performance of its obligations;
- 12.2.5 the obligations expressed to be assumed by it under this Deed are legal and valid obligations binding on it in accordance with their terms;
- 12.2.6 it shall provide any information that the Commission or the Issuer may require in connection with its obligations to act on behalf of the Bondholders;
- 12.2.7 it shall not allow any conflicts to occur between its obligations in connection with the Bonds and its commercial interests;
- 12.2.8 it does not have any subsisting and undisclosed fiduciary relationship with the Issuer; and
- 12.2.9 it shall comply with its obligations under this Deed and the terms and conditions specified in this Deed.

### **13 Enforcement**

The rights and duties of the Note Trustee and Bondholders, in respect of recovery of amounts owing on the Bonds and the Coupons are set out in Condition 15 (*Events of Default*) of the Second Schedule.

### **14. Trust of Receipts**

- 14.1. All monies received by the Note Trustee under this Deed shall be held by the Note Trustee (subject to the payment of any money having priority to the Bonds) upon trust to apply such funds for the following purposes and in the following order of priority:
  - 14.1.1. costs, charges, expenses and liabilities incurred and payments made in or about the execution of the trusts of this Deed including all remuneration payable to the Note Trustee with interest on such sums as provided in Clause 14.2 of this Deed;
  - 14.1.2. any sum due or owing upon the Bonds (other than principal sum) *pari passu* and without preference or priority; and
  - 14.1.3. the principal sum owing upon the Bonds *pari passu* and without preference or priority.

The surplus (if any) shall be paid to the Issuer or to the person or persons entitled to such surplus.

- 14.2. The Issuer shall pay to the Note Trustee, its attorney, agent or other person appointed in writing by the Note Trustee pursuant to this Deed as and when due every sum of money which shall from time to time be payable to any such person under any provisions of this Deed. The Issuer will on demand pay and satisfy or obtain the release of such person from any liabilities incurred by him pursuant to this Deed.

## **15. Payment of Principal, Coupon and Premium**

- 15.1. Payment of principal, Coupon and premium (if any) for the time being owing or due on all or any part of the Bonds will be credited electronically to the nominated bank account of the Bondholder made available to the Registrar, for this purpose (or in the case of joint registered Bondholders, by the joint Bondholders).

Provided that where a Bondholder has not nominated any bank account the Note Trustee will notify the Bondholder and pending the time the Bondholder provides the account details, the Note Trustee will withhold payment of such amount. For the avoidance of doubt, no coupon shall accrue from the period commencing on date of notification of the Bondholder to the date on which the Bondholder provides the account details.

- 15.2. Without prejudice to the provisions of the Final Terms, the receipt by each Bondholder or in the case of joint Bondholders by any one of such joint Bondholders of any principal or coupon payable in respect of Bond(s) held by such Bondholder or joint Bondholders shall constitute a discharge of the payment obligations of the Issuer to pay such principal or coupon.

## **16. Priority of Payments**

- 16.1. Subject to the Final Terms of any Series, all moneys received by the Note Trustee in respect of the Bonds or amounts payable under such Series or the Guarantee (where applicable) shall be held by the Note Trustee on trust and shall be applied by the Note Trustee in the following order:
- (a) payment in full of all costs, charges, expenses and liabilities incurred and payments made in or about the execution of the relevant Series trust deed (including remuneration of the Note Trustee);
  - (b) payment of the interest and premium (where applicable) owing on the Bonds *pari passu*, in proportion to the amount due to the Bondholders respectively, and without preference or priority;
  - (c) payment of the Principal Amount Outstanding on the Bonds *pari passu* in proportion to the amount of Bonds held by each Bondholder and without preference or priority; and

- (d) the excess cash flow (if any) shall be paid to the Issuer, provided that the Minimum Reserve Account (where applicable) has been maintained in accordance with the applicable Final Terms.

16.2. If the Note Trustee holds any moneys in respect of Bonds which have become void, or in respect of which claims have become prescribed, the Note Trustee shall apply them in accordance with the order of payment set out above.

## **17. Trustee to act on Instructions of Bondholders**

The Note Trustee is not bound to take any proceedings or any other action in relation to this Deed, the Bonds or any documents executed pursuant to the Deed or any of the other Issue Documents to which the Note Trustee is a party unless:

- 17.1. it is so directed by an Extraordinary Resolution of the Bondholders;
- 17.2. it is requested to do so in writing by the Majority Bondholders; or
- 17.3. in either case, the Note Trustee (and every attorney, delegate, manager, agent or other person appointed by the Note Trustee) shall be entitled to be indemnified by the Bondholders and or secured to its satisfaction in respect of all liabilities, proceedings, claims, demands, costs, charges and expenses to which the Note Trustee may become liable or which may be incurred by it (or any of the above-mentioned parties so appointed by the Note Trustee) in connection with this Deed, provided that the Note Trustee shall not be held liable for the consequence of taking any such action.

## **18. Exclusive Right of the Note Trustee**

None of the Bondholders shall have any independent power to enforce any right or to exercise any rights, discretions or powers or to grant any consents or releases under or pursuant to any of the Issue Documents. Any power or right of the Bondholders under this Deed may be exercised only by the Note Trustee or any delegate appointed by the Note Trustee in accordance with the terms of this Deed.

## **19. Powers, Duties, and Indemnities of Note Trustee**

- 19.1. Subject to the provisions of this Deed, the Note Trustee shall enjoy all powers, reliefs and indemnities granted to it, and perform the obligations imposed on it pursuant to the Trustees Investment Act and all Applicable Laws for the time being in force.
- 19.2. The Note Trustee shall have the power to do any act in accordance with this Deed, the relevant Series Trust Deed, the ISA and any Applicable Law which shall be on behalf of and for the benefit of the Bondholders.
- 19.3. The Note Trustee shall have the following duties and responsibilities:
  - 19.3.1. to act in accordance with the provisions of this Deed, the relevant

Series Trust Deed, the ISA, the Trustees Investment Act and any Applicable Laws and safeguard the rights of the Bondholders for the Issuer's obligations under the Programme;

- 19.3.2. to summon, as and when necessary, meetings of all Bondholders of a Series where necessary matters and business will be presented to and determined by Bondholders; and
- 19.3.3. not to enter into contracts or other arrangements that would amount to a conflict of interest in the performance of its obligations under this Deed, or any other customary obligations of a trustee.
- 19.4. The Note Trustee shall make payments of coupon and principal in respect of the Bonds in accordance with the Conditions and this Deed and for so long as the Bonds are evidenced by records confirmed by the Registrar.
- 19.5. The Note Trustee shall not make any payment of coupon or principal in respect of any Series in an amount which is greater than the amount of interest or principal payable in accordance with the Conditions in respect of such Series and determined or calculated by the Note Trustee.
- 19.6. Prior to an Event of Default and after curing or waiving all Events of Default which may have occurred, the Note Trustee shall not be liable except for the performance of its duties as specifically set out in this Deed or as required under any Applicable Law or regulation which applies to the Note Trustee.
- 19.7. The Note Trustee shall make copies of this Deed and the latest consolidated audited financial statements of the Issuer and the Co-Obligors available for inspection by Bondholders between the hours of 10:00am and 4:00pm on any Business Day, at its specified office.
- 19.8. The duties and obligations of the Note Trustee shall be determined solely by the express provisions of this Deed, and no implied powers, duties or obligations of the Note Trustee, except as provided by the ISA or any other Applicable Law shall be construed into this Deed.
- 19.9. Upon the occurrence of an Event of Default, the Note Trustee shall, subject to the provisions of this Deed, exercise such rights and utilise such powers vested in it under this Deed, and the ISA, and shall use the required degree of care and skill in the exercise of its duties.
- 19.10. The Note Trustee shall not be required to expend, or risk its own funds, or otherwise incur any liability in the performance of its duties, or in the exercise of its rights or powers as Note Trustee, except where such liability arises from its negligence, default and or misconduct.
- 19.11. Notwithstanding any other provisions of this Deed, the Note Trustee shall have no liability for: (a) an error of judgment made in good faith by any officer or employees, unless it shall be proved that the Note Trustee was

negligent in ascertaining the pertinent facts and in such instance, any resulting liability shall be borne by the Note Trustee; or (b) action taken or omitted to be taken by it in good faith in accordance with the lawful direction of the Majority Bondholders.

19.12. The Note Trustee may accept a certificate from the Issuer that the entire Bond has been redeemed or relating to any matter primarily within the knowledge of the Issuer as sufficient evidence of such matter and any such certificate shall be a complete protection to the Note Trustee acting upon such certificate.

19.13. It is hereby expressly agreed and declared as follows:

19.13.1. the Note Trustee may in relation to this Deed, act on the opinion or advice of or any information from any professional adviser(s), including solicitor, valuer, surveyor, broker, auctioneer, accountant, or other expert, whether obtained by the Issuer or by the Note Trustee, and shall not be responsible for any loss occasioned by so acting provided that (i) it has used its best efforts to ensure that such persons are competent (ii) it has exercised due care and diligence in the selection of such professional adviser(s); and any such advice, opinion or information may be obtained or sent by letter or electronic mail, and the Trustee shall not be liable for acting on any advice, opinion or information purporting to be so conveyed; Provided that the Issuer shall bear the fees and reasonable costs and expenses incurred by the Note Trustee in the appointment of any solicitor, valuer, surveyor, broker, auctioneer, accountant or any other agent, expert or professional in respect of the trust and agreed in advance in writing by the Issuer. The Issuer hereby agrees to pay to the Note Trustee such fees and expenses within fifteen (15) working days on a full indemnity basis together with any VAT or similar tax payable in connection with the engagement of any such agent, expert or professional upon receipt of the Note Trustee's written request;

19.13.2. the Note Trustee shall not be bound to give notice to any person or persons of the execution of this Deed or of any acts or deeds made or done by virtue of this Deed or to see to the registration of this Deed in any registry or to any other formalities (except to the due execution by it of this Deed);

19.13.3. except as otherwise provided, the Note Trustee shall not be bound to take any steps to ascertain whether any event has happened upon the occurrence of which the Bond may be declared immediately repayable;

19.13.4. except as otherwise expressly provided, the Note Trustee in the exercise of all trusts, powers, authorities and discretions vested in it and in the absence of fraud, negligence, or misconduct, shall not be responsible for any loss, costs, damages, expenses or

inconvenience that may result from the exercise or non-exercise of its powers, and in particular, the Note Trustee shall not be bound to act at the request or discretion of the Bondholders under any provision of this Deed unless the Note Trustee shall first be indemnified to its satisfaction by the Bondholders against all costs, charges, expenses and liability which may be incurred in complying with such request or discretion;

19.13.5. the Note Trustee shall not be responsible for the monies subscribed by applicants for the Bonds;

19.13.6. the Note Trustee shall be at liberty to accept:

19.13.6.1. a certificate signed by any two (2) Directors of the Issuer or as appropriate any two (2) Directors of an Affiliate as to any fact or matter on which the Trustee may need or wish to be satisfied as sufficient evidence of such fact or matter including the certification that any properties or assets in the opinion of such people have a particular value or produce a particular income or are suitable for such Issuer's (or Affiliate's) purposes as sufficient evidence that they have that value or produce a particular income or are so suitable; and

19.13.6.2. the Note Trustee shall not be bound in such case to call for further evidence or be responsible for any loss that may be occasioned by its failing to do so or by its acting on any such certificate;

19.13.7. the Note Trustee shall not be responsible for having acted upon any resolution purporting to have been passed at any meeting of the Bondholders where minutes have been made and signed, even though it is subsequently found that there was some defect in the constitution of the meeting or the passing of the resolution with the effect that the resolution was not valid or binding upon the Bondholders except where the Note Trustee had knowledge of such defect prior to taking such action;

19.13.8. the Note Trustee shall not be bound to declare any Series immediately repayable or to take any steps to enforce payment or any of the provisions of this Deed unless and until in any of such cases the Trustee is required to do so in writing by Majority Bondholders or by an Extraordinary Resolution passed at a duly convened meeting of the Bondholders; provided that the Note Trustee shall in any case inform the Bondholders of the happening of any Event of Default that comes to its knowledge;

without prejudice to the right of indemnity by law given to the Note Trustee, the Trustee and every attorney, manager, agent or other person appointed by it pursuant to this Deed, shall be entitled to be indemnified by the Issuer in respect of all liabilities

and reasonable expenses incurred by the Note Trustee in the execution or purported execution of the powers and trusts or of any powers, authorities or discretions vested in it pursuant to this Deed. Provided that (a) the Note Trustee, its attorney, agent or manager or other person appointed by the Trustee has not acted negligently or in default of its powers, duty and obligations, and the Trustee may retain and pay out of any monies in its hands upon the trusts of these, the amount of any such liabilities and expenses and also the remuneration of the Trustee; and

19.13.9. the Note Trustee shall not be liable for any thing except only a breach of trust committed by it. Provided nevertheless that nothing contained in this Clause 19 shall exempt the Trustee from indemnifying the Issuer or Bondholders against any liability for negligence or breach of trust where the Trustee fails to show the degree of care and diligence required of it having regard to the provisions of this Deed and any Applicable Law conferring on it powers, authorities or discretions.

*19.14. Power to Delegate or Appoint Agents*

19.14.1. Instead of acting personally, the Note Trustee may employ and pay an agent (whether a solicitor or other professional person), to transact or conduct or carryout all acts required to be done by the Note Trustee, including the receipt and payment of money, in connection with this Deed, provided however, that the Trustee shall not delegate all its powers to an agent before seeking the prior approval of the Issuer and notifying the Commission of such delegation.

19.14.2. It is hereby agreed that, for the purpose of liability, where the Trustee appoints:

- a) professional adviser(s), it will not be liable for the acts or omissions of such professional advisers provided that the Trustee exercised due care and diligence in the selection of such professional adviser(s);
- b) agents and has delegated its trust powers and functions to agent(s), the Trustee will be liable for the acts and omissions of such agent(s).

*19.15. Dealings with the Issuer and its Securities*

19.15.1. Subject to the provisions of the ISA, and Section 188 of CAMA, the Trustee under this Deed shall be at liberty in the ordinary course of its business, and every director, other officer or servant of the Trustee shall be at liberty, to enter into contracts with or hold any office for profit under the Issuer or any Affiliate of the Issuer and to hold, purchase, sell, underwrite or otherwise deal with any of

the Bonds or any other securities and other obligations of the Issuer or of any such Affiliate and to act as trustee of any other securities or obligations of the Issuer or of any such Affiliate without being accountable for any receipt, profits, interest charges, commissions, fees or other remuneration arising from such actions.

19.15.2. Without prejudice to the generality of sub-clause 19.15.1, it is expressly declared that such contracts, transactions or arrangements may include:

19.15.2.1. any contract for the purchase or leasing to the Trustee of the whole or any part of the property of the Issuer or of any property or assets formerly included in such property of the Issuer; or any contract for the sale or leasing by the Trustee of any property or assets on the basis that such property or assets will become part of the property of the Issuer or will be paid for out of capital money or exchanged for all or part of the property of the Issuer or otherwise; or any other dealing with or in relation to property or assets subject to the trusts of this Deed whether similar to those contracts or not;

19.15.2.2. any contract, transaction or arrangement for or in relation to the placing, underwriting, purchasing, subscribing for or dealing with or lending money upon the Bonds or any other bond, shares, debenture bond, debentures or other securities of the Issuer or an Affiliate or any contracts of insurance with the Issuer or any of its subsidiaries; and

19.15.2.3. the Trustee acting as trustee of any other securities or obligations of the Issuer, or its Affiliates.

19.15.3. The Trustee shall not be accountable to the Issuer, or any of its Affiliates or to the Bondholders for any profits or benefits resulting or arising from any contract, transaction or arrangement as is mentioned in this Clause and the Trustee shall also be at liberty to retain for its own benefit and shall be in no way accountable to the Issuer, or any Affiliate or to the Bondholder for any benefits or profits or any fees, commissions, discount or share of brokerage paid to it by bankers, brokers or other parties in relation to or otherwise arising out of any contract, transaction or arrangement (including any dealing with the Bonds or the property of the Issuer) permitted by or effected under or in connection with this Deed.

*19.16. Authorisation of the Trustee*

Each Bondholder authorises the Trustee (whether or not by or through employees or agents):

- 19.16.1. to exercise such rights, remedies, powers and discretions which are specifically delegated to or conferred upon the Trustee by this Deed together with such powers and discretions as are reasonably incidental to the powers; and
- 19.16.2. to take such action on its behalf as may from time to time be authorised under or in accordance with this Deed.

*19.17. Note Trustee's Authority to Execute Documents*

- 19.17.1. The Note Trustee is authorised to enter into and execute any further document(s), which is required to be executed with respect to the Bond.
- 19.17.2. In each and every case, the Note Trustee agrees to hold the rights and benefits created under this Deed for the benefit of the Bondholders in the manner contemplated by this Deed.

*19.18. Covenant of Compliance*

The Note Trustee covenants with the Issuer that it shall comply with and perform all the provisions of this Deed which are binding on it.

*19.19. Note Trustee's Indemnity*

Nothing in this Deed shall, in any case in which the Trustee has failed to show the degree of care and diligence required of it as trustee, exempt the Trustee from indemnifying any party who has suffered any loss as a result of the act or omission of the Note Trustee against any liability for negligence, default, breach of duty or breach of trust in relation to its duties under this Deed.

**20. Appointment of the Registrar**

The Registrar shall be appointed by the Issuer but shall be responsible to the Trustee.

*The Bond Register*

- 20.1. The Registrar shall at all times keep in its designated office in Lagos for the time being or at such other place in Nigeria as the Note Trustee may approve, an accurate Bond Register showing the amount of the Bond for the time being issued and fully paid; the date of registration and all subsequent transfers or changes of ownership; the name and address and any other necessary description of each Bondholder and any person deriving title under him/it, such information to be obtained by the Registrar.
- 20.2. The Note Trustee and the Bondholders or any of them and any persons authorised in writing by any of them shall be at liberty to inspect the Bond Register and to take copies of and extracts from the same or any part

between the hours of 8.00am and 4.00pm on a Business Day. Provided that Bondholders shall only be entitled to information in relation to the Bonds, which they own. The Register may be closed at such times and for such periods as the Registrar may from time to time determine provided that it shall not be closed for more than thirty (30) consecutive days in any year.

20.3. The Registrar shall maintain and update the Bond Register until such time when all outstanding Bonds have been fully redeemed and the Issuer's liability has been discharged. The Registrar shall provide details of the Bond Register to the Note Trustee on a quarterly basis during the period in which the Bonds are outstanding.

20.4. Only Bondholders whose names appear in the Bond Register at the relevant record date for any payment shall be entitled to receive any payments of principal, and coupon or premium due on the Bonds.

## **21. Purchase of Bond by the Issuer**

The Issuer may at any time and from time to time purchase any part of the Bonds through the market or by tender (available to all Bondholders alike) but not otherwise. Any Bond so purchased will be cancelled and will not be available for re-issue.

## **22. Remuneration of Note Trustee**

22.1. During the continuance of this Trust and until the Trust is determined, the Note Trustee's remuneration shall be as documented in an engagement letter executed between it and the Issuer.

22.2. The remuneration in the engagement letter referred to in Clause 22.1.1 may be reviewed at the end of each year, by the mutual agreement of the Parties.

22.3. The Issuer shall pay the Note Trustee a mutually agreed sign-on fee and an annual trustee fee.

22.4. The Note Trustee shall be reimbursed for all invoiced costs, charges and expenses reasonably incurred by the Note Trustee in connection with the performance of its duties under this Deed. The Note Trustee shall however not incur any expenses in excess of the aggregate sum of ₦1, 000, 000.00 (One Million Naira) without the Issuer's prior written approval.

## **23. Exit and Entry of the Note Trustee**

### *23.1. Appointment of a Note Trustee*

23.1.1. For as long as any Bond is outstanding, the Issuer is vested with the power, subject to the notification and approval of the Commission, to appoint a new trustee (up to a maximum of two (2) trustees acting jointly), provided that such appointment must have been approved by an Extraordinary Resolution of the Bondholders for the time being.

## 23.2. *Retirement of a Note Trustee*

23.2.1. The Note Trustee shall be required to retire from its position as Trustee in the event of any of the following happening:

23.2.1.1. except for voluntary liquidation for the purpose of amalgamation or reconstruction, if it goes into liquidation or if a receiver is appointed over the undertaking of the Note Trustee or if a public authority shall take over the undertaking of the Trustee or any substantial part of it; or

23.2.1.2. if the Note Trustee has been fraudulent or has acted with misconduct in the performance of its duties under this Deed; and if for good and sufficient reason the Issuer is of the opinion that a change of Trustee is desirable in the interests of the Bondholders and notifies the Note Trustee in writing accordingly;

23.3. In the event of the occurrence of any of the events stipulated in Clause 23.2 above, the Note Trustee's retirement shall take effect immediately the Issuer appoints a new trustee, provided that such appointment must have been approved by an Extraordinary Resolution of the Bondholders for the time being, subject to the approval of the Commission.

## 23.4. *Voluntary Retirement of a Note Trustee*

23.4.1. The Note Trustee shall have the right to voluntarily retire upon giving the Issuer ninety (90) days written notice of its intention to do so.

23.4.2. Where there is no other subsisting trustee at the time of the Note Trustee's retirement, the said retirement shall not take effect until the Issuer has, subject to the Commission's approval, appointed a successor note trustee and the Commission shall be promptly notified. In such event, the successor trustee shall cause notice of its appointment to be issued to the existing Bondholders.

23.4.3. The Note Trustee shall not be responsible for any cost occasioned by its retirement, except for the cost of physically transferring all documents related to this Deed to a new note trustee, and the cost of notifying the Bondholders of the appointment of a successor trustee.

23.4.4. In the event of the retirement of the Note Trustee in accordance with this Clause 23, the Note Trustee shall immediately account for and deliver up all of the Assets, to its appointed successor. In addition, the Note Trustee undertakes to refund the unearned portion of the annual fees for the year that it retires.

## **24. Indemnity Relating to Applications to the Court**

The Issuer shall indemnify the Trustee in respect of all reasonable costs and expenses lawfully incurred by the Trustee in relation to or arising out of any application made to any court (either in Nigeria or any other country where any assets of the Issuer are situated) by the Trustee or any of the Bondholders for an order that the Trust may be carried out under the direction of the court or for an order of declaration relating to the administration of the Trust or the enforcement of the rights under this Deed or the construction of this Deed.

## **25. Power to Recoup Money Owed to the Note Trustee**

25.1. Without prejudice to the right of indemnity by law given to trustees, the Trustee shall be entitled to be indemnified out of the property or assets of the Issuer in respect of:

25.1.1. all liabilities, costs, charges and expenses incurred by it in relation to this Deed or to the preparation and execution or purported execution of this Deed;

25.1.2. the performance of the trusteeship duties in accordance with the provisions of this Deed; and

25.1.3. the exercise of any trusts powers or discretion vested in it pursuant to this Deed.

25.2. In priority to any payments to the Bondholders, the Trustee may retain and pay out of any funds in its possession arising from the Trusts, all sums necessary to effect such indemnity and also the remuneration of the Trustee as provided in this Deed.

## **26. Modification of Terms of The Deed**

26.1. Subject to the approval of the Commission, and without prejudice to the powers of the Bondholders exercisable by an Extraordinary Resolution, the Note Trustee and Issuer may at any time without the sanction of an Extraordinary Resolution make any modification to this Deed as may be agreed between the Parties where the Trustee is of the opinion that such modification will not be materially prejudicial to the interests of the Bondholders or that the modification is intended to correct a manifest error or omission or that in its opinion, the modification is of a formal, minor or technical nature. Any such modification shall be binding on the Bondholders and any such modification shall be notified by the Trustee to the Bondholders as soon as possible.

26.2. The Issuer will not, without the prior written consent of the Note Trustee or an Extraordinary Resolution of the Bondholders, agree to any amendments to or any modification of, or waiver of the terms of any outstanding Bonds and will act at all times in accordance with any instructions of the Note Trustee from time to time with respect to any outstanding Bonds. Any such amendment, modification, waiver or authorisation made with the consent of

the Note Trustee shall be binding on the Bondholders, and unless the Trustee agrees otherwise, any such amendment or modification shall be notified by the Issuer to the Bondholders in accordance with Condition 16 (*Notices*).

26.3. No consolidation, modification, alteration or addition shall impose any further payment on the Bondholders in respect of the Bonds held by them or any liability in connection with the Programme.

## **27. Issuer's Waiver of Defences**

27.1. The obligations of the Issuer under this Deed shall not be affected by any act, omission, matter or thing which might operate to release or otherwise exonerate the Issuer from its obligations under this Deed in whole or in part, including, whether or not known to the Issuer or the Trustee:

27.1.1. any time, indulgence or waiver granted to or composition with the Issuer or any other person;

27.1.2. the taking, variation, compromise, renewal or release of, or refusal or neglect to perfect, take up or enforce any rights, remedies or securities against the Issuer or any other person, non-observance of any formality or other requirement in respect of any instruments; or

27.1.3. any legal limitation, disability, incapacity or other circumstances relating to the Issuer or any other person.

## **28. Incorporation of Schedules**

The provisions contained in the Schedules to this Deed shall have full effect in the same manner as if such provisions were set forth in the body of this Deed. The powers conferred upon the Trustee in the Schedules shall be in addition to any powers, which may from time to time be vested on it by any Applicable Law or by the Bondholders.

## **29. Notice of Breach to the Commission**

The Trustee shall inform the Commission whenever it becomes necessary to enforce the terms of this Deed and of any breach of the terms and conditions of the Deed, not later than ten (10) Business Days after the Trustee has actual knowledge of the breach.

## **29. Compliance with the ISA**

The Trustee in exercise of the powers and discretions vested in it pursuant to this Deed shall comply with the provisions of the ISA.

## **30. Notices**

30.1. All notices required to be given in connection with this Deed shall be in writing, either delivered by hand, pre-paid post or courier to the respective

Parties registered address, or by dispatching the same by electronic mail transmission, provided that in case of Bondholders of any Series, any notice given by way of publication in two Nigerian National Dailies will suffice as sufficient notice.

- 30.2. Service shall be deemed to have been made at the time of actual receipt, except in the case of any electronic mail transmission sent after 4.30 pm, it shall be deemed to have been served at 9.00 am on the next Business Day.
- 30.3. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, preparing and posting a letter containing the notice.
- 30.4. Registered address means, in the case of a Bondholder, an address supplied by him to the Registrar/Note Trustee/Issuer for the giving of notice to him.
- 30.5. A notice may be given by the Not Trustee to the persons entitled to the interest of a Bondholder in consequence of the death of such Bondholder by sending it through the post in a prepaid letter to representatives of the deceased, or by any like description, at the address, if any within Nigeria supplied for the purpose by the person claiming to be so entitled, or until such an address has been so supplied, by giving the notice in any manner in which the same might have been given if the death had not occurred.
- 30.6. In the case of joint registered Bondholders, a notice given to the holder whose name stands first in the Register in respect of such Bond shall be sufficient notice to all the joint holders of the Bond.
- 30.7. All notices shall be effective when received at the addresses specified for the service by the relevant Party or as amended from time to time in writing as set out below:

**For the Issuer:**

Name: Viathan Funding Plc  
Address: 17B Chibo Ofodile Close, Off Ladipo Latinwo Crescent, Lekki  
Attention: Managing Director  
Telephone: 016312913  
Email: [info@viathan-ng.com](mailto:info@viathan-ng.com)

**For the Note Trustee**

Name: **UTL Trust Management Services Limited**  
Address 2nd Floor, ED Building, 47 Marina, Lagos  
Phone: 08122243847  
Email: [ooaiyepola@uniontrusteeslimited.com](mailto:ooaiyepola@uniontrusteeslimited.com);  
[eaumossoh@uniontrusteeslimited.com](mailto:eaumossoh@uniontrusteeslimited.com)  
Attention: Olufunke Aiyepola (Mrs)

**31. Miscellaneous**

- 31.1. No failure or delay by the Trustee in exercising any right or remedy shall operate as a waiver of such right or remedy, nor shall any single or any partial exercise or waiver of any right or remedy preclude its further exercise or the exercise of any other right or remedy.
- 31.2. Each clause of this Deed is severable and distinct from the others and if at any time one clause is or becomes invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining clauses shall not in any way be affected or impaired by such illegality or invalidity.
- 31.3. No amalgamation, reconstruction or other change in the status of the Issuer shall be interpreted to avoid the obligations imposed on the Issuer by this Deed, and in the event (if any) of any change in the status of the Issuer as earlier stated, the successor or successors-in-title of the Issuer shall be held and deemed responsible for the due performance of the obligations intended by this Deed.

### **32. Force Majeure**

Neither the Issuer nor the Trustee shall be liable to the other for failure or delay in the performance of a required obligation under this Deed, if such failure or delay is caused by a "Force Majeure" event. Provided that such Party gives prompt written notice of such condition, the steps being taken or proposed to be taken in relation to such event, and resumes the performance of its obligations as soon as reasonably possible after the cessation of such condition, the said condition not extending beyond a period of thirty (30) days. Provided also that the other party is reasonably satisfied that such condition impedes the relevant party's ability to discharge its obligations under this Deed.

### **33. Governing Law and Jurisdiction**

This Deed shall be governed by, and construed in accordance with laws of the Federal Republic of Nigeria.

### **34. Dispute Resolution**

- 34.1. In the event of any dispute arising out of or in relation to this Agreement, such dispute shall be communicated by any of the Parties involved in the dispute to the SEC within 5 (five) Business Days of the onset of the dispute.
- 34.2. The Parties shall endeavour to resolve the same by mutual consultation with each other, within ten (10) working days of the declaration in writing of the dispute.
- 34.3. Any dispute, which is not mutually resolved by the Parties in accordance with Clause 34.2 above, shall be referred to arbitration in accordance with the provisions of the Arbitration and Conciliation Act Cap A18 Laws of the Federation of Nigeria 2004 or any statutory re-enactment or modification of the same.

- 34.4. The Arbitration Tribunal shall consist of three (3) Arbitrators, one appointed by the Trustee, a second appointed jointly by the Issuer and the Co-Obligors, and the third Arbitrator who shall preside over the Panel, shall be appointed by the two (2) Arbitrators so appointed. In the event that the two Arbitrators appointed by the Issuer and the Co-Obligors respectively do not agree on the appointment of such third Arbitrator, or if the Issuer or the Co-Obligors fail to appoint their respective Arbitrator within ten (10) Business Days after the declaration of a dispute, then such Arbitrator shall be appointed by the Chairman of the Chartered Institute of Arbitrators UK (Nigeria Branch) on the application of any Party and when appointed the third Arbitrator shall convene an arbitrators meeting and act as Chairman at the same. The arbitral proceedings shall be held in Lagos, Nigeria, and shall be conducted in English language.
- 34.5. The arbitration rules and procedures and award shall be binding on the parties to the dispute. The cost of the arbitration shall be borne as determined by the arbitral award. Each Party shall however, bears its lawyer's fees. The award shall include consequential, indirect or punitive damages.
- 34.6. The Arbitrators shall resolve the dispute within twenty-five (25) days after the exchange of pleadings by the Parties. In the event the Parties are not satisfied with the decision of the Arbitral Tribunal, the dispute shall be referred to the SEC for resolution.
- 34.7. Any Party aggrieved by the decision of the SEC, may then refer the matter to the Investment and Securities Tribunal established in accordance with the provisions of the ISA, for resolution.

### **35. Assignments and Transfers**

- 35.1. The Trustee may assign or transfer any of its rights, interests or obligations under or in respect of this Deed to any successor as trustee subject to the provisions of this Deed, provided that it gives the Issuer prior notification of such transfer.
- 35.2. The Issuer may not assign or transfer any of its rights, interests or obligations under or in respect of this Deed to any person, without the express written consent of the Trustee.

### **36. Counterparts**

This Deed may be executed simultaneously in any number of counterparts, each of which shall be deemed to be an original, but all of which taken together, shall constitute one and the same instrument.

**FIRST SCHEDULE**  
**List of Co- Obligors**

1. **Akute Power Limited**  
.....
2. **Gasco Marine Limited**  
.....
3. **Island Power Limited**  
.....
4. **Lisabi Power Limited**  
.....
5. **Marine Power Limited**  
.....
6. **PIPP LVI Genco Limited**  
.....
7. **Tofu Energy and Power Company Limited**  
.....
8. **Viathan Engineering Limited**  
.....

## SECOND SCHEDULE

*The following is the text of the general terms and conditions which, subject to amendment and as completed, modified, supplemented, varied or replaced, in whole or in part, by the final terms which are set out in the relevant Series Trust Deed (the “**Final Terms**”) and, except for the italicised text, will apply to the Bonds and will be endorsed on the back of each Bond Certificate issued in respect of the Bonds.*

*The provisions of these terms and conditions set out below (the “**Conditions**”) which are applicable to the Bonds issued under the Programme shall be deemed to be completed by the information contained in the relevant Final Terms. Bonds may be issued in separate tranches which together with other tranches, may form a series of bonds. Any provision of the Final Terms modifying, supplementing or replacing, in whole or in part, the provisions of these Conditions shall be deemed to so modify, supplement or replace, in whole or in part, the provisions of these Conditions; alternative or optional provisions of these Conditions as to which the corresponding provisions of the Final Terms are not completed or are deleted shall be deemed to be deleted from these Conditions; and all provisions of these Conditions which are inapplicable to the Bonds shall be deemed to be deleted from these Conditions, as required to give effect to the terms of the relevant Final Terms.*

The Bonds are constituted by and under the Programme Trust Deed dated on or about the date of this Deed between Viathan Funding Plc (the “**Issuer**”), the parties described in the 1<sup>st</sup> Schedule as the Co-Obligators and UTL Trust Management Services Limited (the “**Trustee**”) as supplemented by the relevant Series Trust Deed between the Parties. The Bondholders are entitled to the benefit of and are bound by, and are deemed to have notice of, all the provisions of the Trust Deed and the relevant Series Trust Deeds applicable to them. Copies of the Trust Deed are available for inspection between the hours of 10:00am and 4:00pm on any Business Day at the designated office of the Trustee at 2nd Floor, ED Building, 47 Marina, Lagos and as specified in the Series Trust Deed.

Any Series of Bonds which is to be created and issued pursuant to the Programme Trust Deed shall be constituted by, be subject to and have the benefit of a Series Trust Deed (the “**Series Trust Deed**”) between the Issuer and the Trustee. The Issuer shall execute and deliver such Series Trust Deed to the Trustee containing such provisions (whether or not corresponding to any of the provisions contained in the Programme Trust Deed) as the Trustee may require. Each Series Trust Deed shall set out the form of the Series of Bonds to be so constituted.

These Conditions include summaries of, and are subject to the detailed provisions of the Programme Trust Deed and the relevant Series Trust Deed. The Bondholders are entitled to the benefit of and are bound by, and are deemed to have notice of, all the provisions of the Programme Trust Deed and the relevant Series Trust Deed applicable to them.

Words and expressions defined in the Trust Deed (as same may be amended, varied or supplemented from time to time with the consent of the Parties) are expressly and specifically incorporated into and shall apply to these Conditions.

Capitalised terms used but not defined in these Conditions shall have the meanings attributed to them in the Programme Trust Deed unless the context otherwise required or unless otherwise stated.

## 1. **Form, Denomination and Title**

- 1.1 Unless otherwise specified in any Supplementary Shelf Prospectus the Bonds shall be issued in registered form in denominations specified in the Series Trust Deed relating to the relevant Series. The Bonds issued under the Programme may be fixed rate bonds, floating rate bonds, discounted or a combination of such bonds.
- 1.2 The Bonds will be issued in uncertificated (dematerialised or book-entry) form, which shall be registered with a separate securities identification code with the CSCS.
- 1.3 A Series of Bonds may be listed on the FMDQ or on such other or further financial exchange(s) as may be determined by the Issuer, subject to any Applicable Laws. Unlisted Bonds may also be issued under the Programme. The applicable Pricing Supplement will specify whether or not a Series or Tranche of Bonds will be listed, on which financial exchange(s) they are to be listed (if applicable).
- 1.4 The title to the Bonds which will be issued in uncertificated form shall be effected in accordance with the rules governing transfer of title in securities held by CSCS. In these Conditions, Bondholders and (in relation to a Bond) holder means the person in whose name a Bond is registered in the Register of Bondholders.

## 2. **Repayment**

The principal on the Bonds will be repaid on the relevant Maturity Date or on an amortising basis in accordance with the terms of the relevant Series or such date as the Trustee in accordance with the Programme Trust Deed declares the Bonds to have become immediately repayable, together with such premium (if any) agreed in the relevant Series Trust Deed on such Bonds.

## 3. **Redemption**

- 3.1 Unless previously redeemed or purchased and cancelled, the Issuer will redeem the Bonds at their principal amount on such dates as specified in the Series Trust Deed.

### 3.2 *Redemption by Instalments*

The Bonds may be partially redeemed by instalments on such dates and at such amounts specified in the applicable Final Terms and the payments made in instalments shall reduce the Principal Amount Outstanding on such Bond until fully redeemed at the Maturity Date.

### 3.3 *Redemption prior to Maturity*

- 3.3.1 Subject to the terms of the relevant Series Trust Deed, the Issuer shall be entitled at anytime to redeem the whole or any part of the

Bond upon giving the holders of the Bonds to be redeemed, a minimum of twenty (20) days and maximum of sixty (60) days notice of its intention to do so.

- 3.3.2 The Issuer shall only redeem the Bonds on a Coupon Payment Date and not otherwise.
- 3.3.3 At the expiration of the notice in Clause 3.3.1 above, the Issuer shall be entitled and bound to redeem the Bonds in respect of which such notice has been given.
- 3.3.4 In the event the Issuer determines to redeem only part of the Bond for the time being outstanding, the particular Bond to be redeemed shall be selected by drawing to be made as provided in Condition 8 or at the option of the Issuer pro rata to holdings.
- 3.3.5 Early redemption shall take place on such terms as shall be agreed in the relevant Series Trust Deed or on such terms as shall be determined by the Bondholders or the relevant Bondholder whose Bond is to be redeemed at 11a.m on the date set for redemption.
- 3.3.6 In the case of redemptions made under this Condition, not less than twenty (20) days and not more than sixty (60) days previous notice in writing of the date fixed for redemption shall be given by the Issuer to each Bondholder any of whose Bond is to be redeemed. Such notice shall state the amount of the Bond due for redemption and the condition under which such redemption is to be effected.

#### **4. Purchase of Bond by the Issuer**

The Issuer may at any time and from time to time purchase any part of the Bonds through the FMDQ or such other exchange(s) on which the Bonds are listed, but not otherwise. Any Bond so purchased will be cancelled and will not be available for re-issue.

#### **5. Guarantee and Status of the Bonds**

##### *5.1 Guarantee*

The due payment of a specified proportion of any outstanding amount payable by the Issuer under the Bonds of any series may be unconditionally and irrevocably guaranteed in accordance with the terms provided in the applicable Final Terms and or Deed of Guarantee. The Guarantor's obligations in that respect (the "Guarantee") shall be specified in the Final Terms.

##### *5.2 Status of Bonds*

The Bonds are direct and unsubordinated obligations of the Issuer and of the Guarantor and or Co-Obligors under the Guarantee (where applicable) and shall at all times rank *pari passu* and without any preference among themselves. The payment obligations of the Issuer under the Bonds and in respect of principal and any interest on the Bonds shall at all times rank at least equally with all unsecured obligations of the Issuer, present and future except for obligations mandatorily preferred by law applying to companies generally.

### 5.3 *Liability of Co-Obligors*

Pursuant to the Programme Trust Deed, each of the Co-Obligors, jointly and severally, irrevocably and unconditionally guarantee the payment (immediately on demand, in immediately available funds, without any deduction, set-off, counterclaim or withholding of any kind (including without limitation, on account of taxes)), and performance of all of the obligations the Issuer may from time to time be obliged to fulfil under the Trust Deed, which obligations shall include monetary damages arising out of any failure by the Issuer to perform its obligations under the Programme Trust Deed to the extent that any failure to perform such obligations gives rise to monetary damages.

## 6. **Negative Pledge**

Except for the Permitted Securities, for as long as any of the Bonds are outstanding, the Issuer shall not, and shall procure that none of its Affiliates:

- 6.1. create (without the written consent of the Trustee, such consent not to be unreasonably withheld) any mortgage, charge, pledge, lien or any Encumbrance upon the whole or any part of its present or future undertaking, business, assets or revenue to secure any indebtedness, unless the Issuer's obligations under the Bonds are secured equally and rateably with the said obligations or have the benefit of such other security, guarantee, indemnity or other arrangement as the Trustee in its absolute discretion shall deem not to be materially less beneficial to the Bondholders; and
- 6.2. not directly or indirectly secure any other financial indebtedness represented by bonds or any other debt securities which are, or are capable of being, traded or listed on any stock exchange or over-the-counter or similar securities market without the prior consent of the Trustee.

## 7. **Coupon**

The Bonds of any Series will bear interest from the Coupon Commencement Date at the coupon rate(s) specified in, or determined in accordance with the specific Pricing Supplement and such coupon will be payable in respect of each Coupon Period on the Coupon Payment Date(s) specified in the Pricing Supplement. The coupon payable on the Bonds of any Series for a period other

than a full Interest Period shall be determined in accordance with the Pricing Supplement.

7.1. *Fixed Rate Bonds*

7.1.1 The Fixed Rate Bonds (being those Bonds that specify that interest is payable at a fixed rate) shall bear interest on the Principal Amount Outstanding at the coupon rate specified in the Final Terms from (and including) the Interest Commencement Date to (but excluding) the Maturity Date. Coupon shall be payable in arrears on the Interest Payment Date in each year.

7.1.2 If interest is required to be calculated for a period other than a full year, such interest shall be calculated on the basis of the actual number of days elapsed divided by three hundred and sixty-five (365) or such other method as described in the Pricing Supplement.

7.2. *Coupon on Floating Rate Bonds*

7.2.1. The Floating Rate Bonds (being those Bonds that specify that coupon is payable at a floating rate) shall bear Interest on its principal amount on such basis as may be described in the Prospectus or Series Trust Deed by reference to a specified floating rate benchmark plus a margin.

7.2.2. Coupon on the Floating Rate Bonds shall accrue from (and including) the Interest Commencement Date and the Coupon payable from time to time in respect of each of the Floating Rate Bonds will be determined in the manner specified in the Final Terms.

**8 Cancellation of Bonds**

Any part of the Bonds redeemed or purchased shall be cancelled and the Issuer shall not keep such Bond valid for the purpose of re-issue. For so long as the Bond is admitted to listing and or trading on the FMDQ and the rules of the FMDQ require, the Registrar shall promptly inform the FMDQ of the cancellation of any Bonds under this Condition 8.

**9 Trusts**

9.1 Except as required by law or as ordered by a court of competent jurisdiction the Issuer will recognise the Bondholder of any Bond as the absolute owner of such Bond and shall not be bound to take notice or see to the execution of any trust whether express, implied or constructive to which any Bond may be subject.

9.2 The receipt by a Bondholder for the time being of any Bond (or in the case of joint registered holders, the payment to the joint Bondholder whose name stands first in the Register) or the principal of such Bond or

of any other money payable in respect of the Bond shall be good discharge of the Issuer notwithstanding any notice it may have whether express or otherwise of the right, title, interest or claim of any other person to such principal, interest or other money. No notice of any trust whether express, implied or constructive shall (except as provided by statute or as required by a court of competent jurisdiction) be entered on the Register in respect of any Bond.

## 10 **Freedom from Equities**

Every Bondholder will be recognised by the Issuer as entitled to his Bond, free from any equities, set-off or cross-claim on the part of the Issuer against the original or any intermediate holder of the Bond.

## 11 **Registration and Transfer of Bonds**

### *11.1. Registration of Bonds*

11.1.1. A Register of the Bonds shall be kept by the Registrar at its office, and there shall be entered in such Register:-

- (i) The names and addresses of the holders for the time being of the Bonds;
- (ii) The amount of the units of Bonds held by every registered holder;
- (iii) The account number of the Bondholder; and
- (vi) The date at which the names of every registered holder is entered in respect of the Bond standing in his name.

### *11.2. Transfer of Bonds*

11.2.1. The Bond is transferable in amounts or integral multiples of an amount specified in the Series Trust Deed.

11.2.2. Transfers of the Bond shall be by an instrument in writing in the form approved by Issuer and the Trustee.

11.2.3. If the Bonds are listed, the Bonds shall be transferred on the FMDQ in accordance with its rules.

11.2.4. Every instrument of transfer must be signed by or on behalf of the transferor or where the transferor is a corporation, properly executed according to its constitutional documents, and the transferor shall be deemed to remain the owner of the Bonds until the name of the transferee is entered in the Register.

11.2.5. Every instrument of transfer must be left for registration at the place where the Register is kept accompanied by such evidence as the Issuer may require to prove the title of the transferor or his right to transfer the Bond and (if the instrument of transfer is

executed by some other person on his behalf) the authority of that person so to do.

11.2.6. The Issuer and Registrar shall retain all instruments of transfer after registration.

11.2.7. Registration of any Bond transfer shall not be carried out within fifteen (15) days ending on the due date for any payment of principal or Coupon on that Bond.

## 12 **Transmission**

12.1 In the case of the death of a Bondholder, the survivor(s) (where the deceased was a joint holder) and the executor or administrator of the deceased where he was a sole or only surviving holder shall be the only person(s) recognised by the Issuer as having any title to such Bond.

12.2 Any person becoming entitled to any Bond in consequence of the death or bankruptcy of any Bondholder or of any other event giving rise to the transmission of such Bond by operation of law may upon producing such evidence of his title as the Registrar(s) shall think sufficient, be registered as the holder of the Bond or subject to Condition 11 may transfer the Bond without being registered as the holder of such Bond.

## 13 **Method of Payment of Principal Money, Coupon and Premium**

13.1 Payment of the Principal, Coupon and premium (if any) due on all or any part of the Bond will be credited to the bank account nominated for this purpose by the Bondholder (or in the case of joint registered Bondholders) by the joint Bondholders.

13.2 Whenever any part of the Bond is redeemed, a proportionate part of each holding of the Bond shall be repaid to the Bondholders.

13.3 The Registrar shall give to the Bondholders not less than **[one (1) month's]** notice in writing of the time and mode for repayment of the Bonds to be redeemed and each such notice shall state the amount of the Bond for redemption.

13.4 At the time and place so fixed for redemption, each Bondholder shall, where applicable, deliver to the Registrar evidence of title to the Bonds issued by the CSCS in order that the same may be cancelled together with a receipt for the redemption moneys payable in respect of the Bonds, and upon such delivery, the Trustee acting through the Registrars shall pay the Bondholder the amount payable to him in respect of such redemption, together with all accrued coupon.

13.5 If, on the Maturity Date, any Bondholder whose Bonds are liable to be redeemed fails or refuses to accept payment of the redemption moneys payable in respect of the Bond, the moneys payable to such Bondholder shall be paid to the Note Trustee and the Trustee shall hold the moneys

in trust for such Bondholder and coupon on such Bonds shall cease to accrue as from the date fixed for redemption of the Bond and the Issuer shall subsequently be discharged from all obligations in connection with such Bonds. If the Note Trustee places the moneys so paid to it on deposit at a commercial bank or invests the same in the purchase of securities for the time being authorised by law for the investment of trust funds, the Note Trustee shall not be responsible for the safe custody of such moneys or for interest on the same, except such interest (if any) as the said money may earn whilst on deposit or invested, less any expenses incurred by the Note Trustee.

#### 14 **Receipts for Money Paid**

If several persons are entered in the Register as joint holders of any Bond, then the receipt by any such persons for any coupon or principal or other money payable on or in respect of such Bond shall be as effective a discharge to the Issuer as if the person signing such receipt were the sole registered holder of such Bond.

#### 15 **Events of Default**

If any of the following events stated in this Condition 15 (“Events of Default”) has occurred and is continuing in accordance with the time frame set out below, the Trustee may at its discretion or shall,

- i. if so requested in writing by the Majority Bondholders; or
- ii. if so directed by an Extraordinary Resolution of the Bondholders,

give written notice to the Issuer that the Bonds are immediately repayable, after which, subject to the applicable Final Terms, the Principal Amount Outstanding on the Bonds together with accrued Coupon shall become immediately due and repayable.

##### *15.1. Non-Payment*

If the Issuer and or Co-Obligors fail to pay any sums representing principal, coupon and premium (if any) on the Bonds or any fees or other sums within ten (10) Business Days after the Payment Date. Provided however, that where such non-payment is due to a Force Majeure event the Trustee may in its discretion (after consultation with the Issuer) determine that such Force Majeure event can be remedied within a reasonable period after the grace period referred to above in this Condition and extend the grace period.

##### *15.2. Cross Default*

If any Financial Indebtedness of the Issuer or any of the Co-Obligors of a value exceeding ₦1, 000, 000, 000.00 (One Billion Naira) (or its equivalent in any other currency) in aggregate (for the avoidance of

doubt, any amounts being contested in good faith shall not be counted towards such value) is not paid when due or within ten (10) Business Days of: (i) its due date; or (ii) the end of any applicable period of grace, whichever is the later.

15.3. *Insolvency*

If:

15.3.1 the Issuer and or any of the Co-Obligors are unable, for the purposes of CAMA, to pay their debts, or admit inability to pay its debts as they fall due, suspends making payments on any of its debts or, by reason of actual financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its Financial Indebtedness and for this purpose debt shall mean an amount not less than ₦1, 000, 000, 000.00 (One Billion Naira) (or its equivalent in any other currency);

15.3.2 a moratorium is declared in respect of any Financial Indebtedness of the Issuer or Co-Obligors, and such moratorium is not discharged within forty-five (45) Business Days after it was declared. Provided that the Issuer and or any of the Co-Obligors are able to show to the satisfaction of the Trustee within ten (10) Business days after such moratorium is declared that it is in good faith negotiating the lift of the moratorium;

15.3.3 any corporate action or legal proceeding is concluded and judgment of the High Court or Federal High Court or if that judgment is appealed, the judgment of the Court of Appeal, or Supreme Court as the case may be is given against the Issuer and or any of the Co-Obligors in relation to:

15.3.3.1 a moratorium of any Financial Indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Issuer and or the Co-Obligors other than a solvent liquidation or any reorganisation of the Issuer or any of the Co-Obligors;

15.3.3.2 the appointment of a liquidator (other than in respect of a solvent liquidation) receiver, administrator, administrative receiver or other similar officer in respect of the Issuer and or any of the Co-Obligors or any of their respective assets; or

15.3.3.3 any analogous procedure or step is taken in any jurisdiction, and such proceeding is not dismissed

or terminated on or before the forty-fifth (45<sup>th</sup>) Business Day (which would exclude days on which Nigerian courts are on vacation) after the order is made or if any such dismissal or stay ceases to be in effect (or such longer period as the Trustee may permit). Provided that the Issuer and or any of the Co-Obligors have within ten (10) Business Days filed in good faith legal proceedings in the relevant court for the order to be set aside, dismissed or stayed.

15.4. *Cessation of Business*

If the Issuer and or Co-Obligors cease to conduct all or substantially all of its business as it now conducts or changes all or substantially all of the nature of its business or merges or consolidates with any other entity without the prior written consent of the Trustee.

15.5. If a Material Adverse Effect has occurred;

15.6. *Enforcement Proceedings*

If any distress, execution or other process shall be levied or enforced upon or against any material assets of the Issuer or Co-Obligors and is not discharged, or stayed within ninety (90) days of service by the relevant officer of the court of such attachment, execution or other legal process, or if there is an encumbrance or a Receiver is appointed over any material assets of the Issuer and or the Co-Obligors and such event is certified in writing by the Trustee to be in its opinion materially prejudicial to the interests of the Bondholders. PROVIDED THAT the Issuer has filed good faith legal proceedings in the relevant court for application for dismissal within (10) Business Days of becoming aware of the order or action; or

15.7. *Breach of Other Obligations*

If the Issuer and or any of the Co-Obligors default in the performance or observance of any covenant, condition, provision or agreement including the representations and warranties, (other than any covenant for the payment of any sum owing on any part of the Bond) binding on them under this Deed, or required by the Issue Documents to which it is a party or any other document delivered in connection with the Bonds, and the Issuer fails to perform fully or make good the breach of such covenant, condition, provision or agreement within thirty (30) days from receipt of notice in writing by the Trustee.

15.8. *Seizure/Compulsory Acquisition of Assets*

If any step is taken by any person with a view to the seizure, compulsory acquisition, expropriation or nationalisation of all or a material part of the assets of the Issuer or any of the Co-Obligors;

## **16. Notices**

- 16.1.* Any notice or other document may be given to or served on any Bondholder either personally or by sending it by electronic mail or by post in a prepaid envelope or delivering it addressed to him at his registered address or (if he desires that notices shall be sent to some other persons or address) to the person at the address supplied by him to the Issuer for giving of notice to him. In addition to the provisions of this Condition 16.1, notices may also be publicised in any widely read newspaper.
- 16.2.* In the case of joint registered holders of any Bond, a notice given to the Bondholder whose name stands first in the Register shall be sufficient notice to all the joint holders.
- 16.3.* Any notice or other document duly served on or delivered to any Bondholder under these conditions shall (notwithstanding that such Bondholder is then dead or bankrupt or that any other event has occurred and whether or not the Issuer has notice of the death or the bankruptcy or other event) be deemed to have been duly served or delivered in respect of any Bond registered in the name of such Bondholder as sole or joint holder unless before the day of posting (or if it is not sent by post before the day of service or delivery) of the notice or document his name has been removed from the Register as the holder of the Bond and such service or delivery shall for all purposes be deemed a sufficient service or delivery of such notice or document on all persons interested (whether jointly with or claiming through or under him) in the Bond.
- 16.4.* Any notice shall be deemed to have been served on the 5<sup>th</sup> day following the day which the letter containing the notice is posted and in proving such service it shall be sufficient to prove that the envelope containing the notice or the notice itself was properly addressed, stamped and posted. Any notice given by delivery otherwise than by post shall be deemed given at the time it is delivered to the address specified.

## **17. Prescription**

Claims against the Issuer in respect of the Bonds shall be void unless presented for payment as required by Condition 13 within ten (10) years (in the case of principal) and five years (in the case of interest), from the due date for payment of any amount due on such Bonds.

## **18. Meetings of Bondholders**

The rights and duties of the Bondholders in respect of attendance at meetings of Bond holders are set out in the Third Schedule (Provisions for Meetings of Bondholders). Decisions taken at Bondholders meetings may only be exercised by the Trustee in accordance with the Programme Trust Deed or under these Conditions. For the avoidance of doubt, the Conditions of the Bond can only be amended with the consent of the Parties as that term is defined in the Programme Trust Deed.

## **19. Governing Law**

The Bonds are governed by, and shall be construed in accordance with the laws of the Federal Republic of Nigeria.

### **THIRD SCHEDULE** (Provisions for Meetings of Bondholders)

For the avoidance of doubt, all references to "nominal amount" in this Third Schedule shall be read to mean "Principal Amount Outstanding" in the case of Bonds that are redeemable on an amortising basis.

#### **1. Who may Convene Meetings**

- 1.1. Either the Issuer or Trustee may at any time at their discretion convene a meeting or meetings of the Bondholders, or the Bondholders of a Series in accordance with the provisions of this Schedule to discuss and determine any matter affecting their interests. The meeting shall be held at such place as the Trustee or Issuer shall determine or approve in writing.
- 1.2. The Trustee shall on the requisition in writing of the Bondholders holding not less than one-tenth (1/10) of the nominal amount of the Bond, or in the case of a matter affecting the interests of any Series, not less than one-tenth (1/10) of the nominal amount of the Bonds under that Series; and upon being indemnified to its satisfaction against all reasonable costs and expenses to be incurred, convene a meeting or meetings of the Bondholders, or the Bondholders of that Series in accordance with the provisions of this Schedule to discuss and determine any matter affecting their interests. The meeting shall be held at a place the Trustee determines or approves in writing.

#### **2. Notice of Meetings**

- 2.1 A meeting shall be convened by the giving of at least fourteen (14) clear days' written notice to all Bondholders (specifying the agenda of the meeting), and the said notice shall also be published in at least two (2) national newspapers. The procedure of and regulations for such a meeting of the Bondholders shall be in accordance with this Third Schedule.
- 2.2 A meeting may be called after giving shorter notice than that specified in paragraph 2.1 by obtaining the consent of Bondholders holding not less than sixty per cent (60%) of the nominal amount of the Bond, or if it is a matter affecting the interests of any Series, not less than sixty per cent (60%) of the nominal amount of the Bonds issued under that Series for the time being outstanding.

#### **3. Content and Manner of Service of Notice**

- 3.1 Every notice of a meeting shall specify the place and the day and hour of the meeting and shall contain a statement of the business to be transacted and the terms of every Extraordinary Resolution to be proposed at the meeting or state fully the effect on the Bondholders of the resolution, if passed. Provided that there shall be annexed to every notice convening a meeting of the Bondholders, a statement setting out the material facts concerning each item of business and where any item of business consists of granting approval to any document by the meeting, the time and place where the documents can be inspected shall be specified in the statement.
- 3.2 Notice of every meeting shall be given to:
  - 3.2.1 every Bondholder in the manner specified for the service of notices in Condition 16 of the Bond;
  - 3.2.2 the person entitled to a Bond Certificate in consequence of the death, bankruptcy, insolvency, winding-up or dissolution of a Bondholder, addressed by name or by the title of the representative of the deceased or assignee of the insolvent or by any like description to the address (if any) supplied for the purpose by the person claiming to be so entitled, or until such an address has been so supplied by giving the notice in any manner in which it might have been given if the death, insolvency, winding-up or dissolution had not occurred;
  - 3.2.3 the Registrar;
  - 3.2.4 each Co-Obligor;
  - 3.2.5 Issuer when the meeting is convened by the Trustee;
  - 3.2.6 Trustee when the meeting is convened by the Issuer; and
  - 3.2.7 The Guarantor (where applicable).
- 3.3 The accidental omission to give notice to or the non-receipt of notice by any Bondholder or other person to whom it should be given or an error or omission in a notice with respect to the place, date, time or general nature of the business of a meeting shall not invalidate the proceedings of the meeting, unless the officer responsible for the error or omission acted in bad faith or failed to exercise due care and diligence, provided that in the case of accidental error or omission, the officer responsible shall effect the necessary correction before or during the meeting.

#### 4. **Quorum for Meeting**

- 4.1 No businesses shall be transacted at any meeting unless the requisite quorum has been met and:
  - 4.1.1 the Trustee is present when the meeting proceeds to business; or

- 4.1.2 in the case of a meeting convened by the Issuer, the Issuer and the Trustee are present when the meeting proceeds to business.
- 4.2 Any two (2) or more persons present or represented by proxy and holding at least three-fifth (3/5) of the nominal amount of the Bond, or if it is a matter affecting the interest of any series, any two (2) or more persons presented or represented by proxy holding at least three-fifth (3/5) of the outstanding Bonds issued under the Series shall be a quorum for the meeting of the Bondholders.
- 4.3 Where the business of the meeting includes the consideration of an Extra Ordinary Resolution, the necessary quorum shall be two (2) or more persons present or represented by proxy and holding in aggregate at least three-fourth (3/4) of the nominal amount of the Bonds.
- 4.4 Where a meeting (whether a meeting to consider an ordinary resolution or an Extraordinary Resolution) is adjourned for lack of quorum, two or more persons present or represented by proxy and holding in aggregate not less than three-fifth (3/5) of the nominal amount of the Bonds shall remain the quorum for such a reconvened meeting.
- 4.5 If within half an hour from the time appointed for holding the meeting a quorum is not present, the meeting, if called upon by the requisition of the Bondholders, shall be dissolved. In any other case the meeting shall be adjourned to such day and time not being less than seven (7) days after and to such place as the Chairman may determine.
- 4.6 At least seven (7) days notice of any adjourned meeting shall be given in the same manner as for an original meeting, but it shall not be necessary to specify in such notice the business to be transacted at the adjourned meeting as the business of an adjourned meeting will be same as the original meeting.

## **5. Chairman of Meeting**

The Note Trustee shall in writing appoint its representative to be the chairman (the “Chairman”) at every meeting and if such nomination is not made or if at any meeting the person nominated is not present within fifteen (15) minutes after the time appointed for holding the meeting, the Note Trustee may appoint a Bondholder present at the meeting to act as chairman for that meeting.

## **6. Persons Entitled to Attend Meeting**

The Note Trustee, its lawyers and financial advisers and any director or officer of the Issuer (if invited by the Note Trustee), the Guarantor (where applicable) and any other person authorised in that behalf by the Trustee may attend and speak at any meeting but shall not be entitled to vote at the meeting.

## **7. Evidence of Passing of Resolution**

At any meeting a resolution, or any question put to the vote of the meeting shall be decided on a show of hands unless a poll is demanded in the manner subsequently mentioned, and unless a poll is so demanded, a declaration by the Chairman that on a show of hands the resolution has been carried either unanimously or by a particular majority or lost or not carried either unanimously or by a particular majority, and an entry to that effect in the books containing the minutes of the proceedings of the meeting, shall be conclusive evidence of that fact without proof of the number or proportion of the votes cast in favour of, or against such resolution.

## **8. Demand for Poll**

8.1 Before or on the declaration of the result of the voting on any point or question on a show of hands, a poll may be ordered to be taken by the Chairman of the meeting on his own motion, and shall be ordered to be taken by him on demand made by the Trustee or any Bondholder or his proxy having the right to vote on the resolution and present in person.

8.2 The demand for a poll may be withdrawn at any time by any person or persons who made the demand.

8.3 The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.

8.4 *Time of Taking Poll*

8.4.1 A poll demanded on a question of adjournment shall be taken immediately.

8.4.2 A poll demanded on any other question (other than a question relating to the election of a Chairman as provided for in Condition 5) shall be taken at once but where this is not practicable in this manner and at such time not being later than thirty (30) days from the time when the demand was made as the Chairman may direct.

## **9. Votes**

On a show of hands every Bondholder who (being an individual) is present in person or by proxy or (being a body corporate) is present by its duly authorised representative shall have one vote, and on a poll every Bondholder who is present in person or by proxy shall have one (1) vote in respect of every Bond of which he is the holder. In the case of joint Bondholders the vote of the one named first in the Register who tenders a vote whether in Person or by proxy shall be accepted to the exclusion of the votes of other joint holders.

## **10. Representatives of Corporate Bodies**

Any corporate body which is a Bondholder may by writing under the hand of a duly authorised officer authorise such person as it thinks fit to act as its

representative at any meeting of the Bondholders and the person so authorised shall be entitled to exercise the same powers on behalf of the body corporate which he represents as that body corporate could exercise if it were an individual Bondholder.

## **11. Proxies**

- 11.1 The registered holder of the Bond or in case of joint holders the one named first in the Register shall be entitled to vote in respect of the Bond either in person or by proxy and in the latter case as if such joint holder was solely entitled to the Bond. A registered holder of the Bond shall be entitled to appoint another person (whether a Bondholder or not) as his proxy to attend and vote instead of himself.
- 11.2 In every notice calling a meeting of the Bondholders there shall appear with reasonable prominence a statement that a Bondholder entitled to attend and vote is entitled to appoint a proxy to attend and vote instead of himself and that a proxy need not be a Bondholder.
- 11.3 The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed, or a notarized copy of the power of attorney or other authority, shall be deposited at such place as may be specified in the notice convening the meeting or if no place is so specified then at the office of the Registrar, not less than forty-eight (48) hours before the time appointed for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote or in the case of a poll not less than twenty-four (24) hours before the time appointed for the taking of the poll and in default the instrument of proxy shall not be treated as valid.
- 11.4 The instrument appointing a proxy shall:
- 11.4.1 be an instrument in writing in English language and in usual common form or any other form as the Trustee may approve; and
  - 11.4.2 be signed by the appointing Bondholder or his attorney duly authorised in writing or if the appointing Bondholder is a body corporate be under its seal or be signed by an officer or any attorney duly authorised by it.
- 11.5 No instrument appointing a proxy shall be valid after the expiration of twelve (12) months from the date of its execution. An instrument appointing a proxy shall be deemed to confer authority to demand or to join in a demand for a poll.
- 11.6 Every Bondholder entitled to vote at a meeting of Bondholders or on any resolution to be moved at such meeting shall be entitled during a period commencing twenty-four (24) hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting, to inspect by himself or through a duly authorised person the proxies lodged at any time during the business hours of the Registrar, provided that not less than three (3) days notice in writing of the

intention to inspect is given to the Registrar.

- 11.7 A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the principal or the revocation of the proxy or of the authority under which the proxy was executed, provided that no intimation in writing of such death, insanity or revocation had been received by the Registrar at its registered office before the commencement of the meeting or adjourned meeting at which the proxy is used.

## **12. Entitlement of Bondholder to Vote Differently**

On a poll taken at a meeting of Bondholders, a Bondholder entitled to more than one (1) vote, or his proxy or other person entitled to vote for him as the case may be are entitled to cast the votes of the Bondholder in different ways.

## **13. Scrutineers at Poll**

- 13.1 Where a poll is to be taken, the Chairman of the meeting may appoint two (2) scrutineers to scrutinize the votes given on the poll and report to him.
- 13.2 The Chairman shall have power at any time before the result of the poll is declared to remove a scrutineer from office and to fill vacancies in the office of scrutineer arising from such removal or for any other cause.
- 13.3 Of the two (2) scrutineers appointed under this clause, one shall always be a Bondholder (not being an officer or employee of the Issuer) present at the meeting, provided that such a Bondholder is available and willing to be appointed.

## **14. Manner and Result of Poll**

The Chairman of the meeting shall have power to regulate the manner in which a poll shall be taken.

## **15. Power to Adjourn Meeting**

The Chairman of a meeting of the Bondholders may in case of a development requiring an adjournment, with the consent of (and shall if directed by) any such meeting at which a quorum is present, adjourn the same from time to time and from place to place, provided that no business shall be transacted at such adjourned meeting other than business which might lawfully have been transacted at the meeting from which the adjournment took place.

## **16. Casting Vote**

In the case of equality of votes whether on a show of hands or a poll, the Chairman of the meeting at which the show of hands takes place or at which the poll is demanded shall be entitled to a second or casting vote in addition to the votes to which he may be entitled as or on behalf of a Bondholder

## **17. Chairman to be Sole Judge**

The Chairman of any meeting shall be the sole judge of the validity of every vote tendered at such meeting, and the Chairman present at the taking of a poll shall be the sole judge of the validity of every vote tendered at such poll.

## **18. Meaning of Ordinary and Extraordinary Resolution**

### *18.1. Extraordinary Resolution*

18.1.1. A resolution shall be deemed an Extraordinary Resolution if the same shall be passed by a majority consisting of not less than three-fourth (3/4) of the persons present and voting at the meeting upon a show of hands, or if a poll is demanded, by Bondholders holding not less than three-fourth (3/4) in value of the Bonds held by the Bondholders present or represented by proxies at the meeting.

### *18.2. Ordinary Resolution*

An Ordinary Resolution means:

18.2.1. a resolution passed at a meeting duly convened and held in accordance with this Third Schedule by a majority consisting of not less than a simple majority of the Bondholders present or represented by proxies at the meeting and voting upon a show of hands;

18.2.2. where a poll is duly demanded in a meeting, the result of the poll shall be deemed to be an ordinary resolution if it has been passed by a majority consisting of not less than a simple majority in value of the total Bonds held by the Bondholders present or represented by proxies at the meeting;

18.2.3. a resolution in writing signed by or on behalf of the Bondholders of more than fifty percent (50%) of the nominal amount of the Bond which resolution may be contained in one document or in several documents in like form, each signed by the Bondholders holding more than fifty percent (50%) of the nominal amount of the Bond.

## **19. Power of the Bondholders' General Meeting**

A meeting of the Bondholders shall have the following powers exercisable by an Extraordinary Resolution:

- (a) sanction the release of the Issuer from all or any part of the principal monies and any other sums owing upon the Bond;

- (b) sanction any modification or compromise or any agreements in respect of the rights of the Bondholders against the Issuer whether such rights shall arise under this Deed or the Bond Certificate or otherwise;
- (c) assent to any modification of the provisions contained in the Programme Trust Deed or the Final Terms proposed or agreed by the Issuer;
- (d) authorise and empower the Trustee to concur in and execute and do all such deeds, instruments, acts and things as may be necessary to carry out and give effect to any Extraordinary Resolution; or
- (e) give any release to the Trustee in respect of anything done or omitted to be done by the Trustee under this Deed before the giving of the release.

## **20. Resolution Binding**

A resolution passed at a meeting of the Bondholders duly convened and held in accordance with this Deed shall be binding upon all the Bondholders whether present or not present at such meeting and whether or not voting, and each of the Bondholders shall be bound to give effect to such resolution accordingly, and the passing of the resolution shall be conclusive evidence that the circumstances justify the passing of the resolution, the intention being that it shall rest with the meeting to determine without appeal whether or not the circumstances justify the passing of such resolution. Notice of the result of any resolution duly considered by the Bondholders shall be published by the Trustee (with the approval of the Issuer) within fourteen (14) days of such result being known, provided that the non-publication of the notice shall not invalidate the result.

## **21. Minutes**

- 21.1. Minutes of all resolutions and proceedings at the meeting referenced above shall be made and duly entered in the minute book to be provided from time to time for that purpose by the Trustee at the expense of the Issuer.
- 21.2. If the minutes of all meetings are signed by the Chairman of that meeting or by the Chairman of the next succeeding meeting of the Bondholders, such signature shall be conclusive evidence of the proceedings of the said meetings, and until the contrary is proved such meetings shall be deemed to have been duly held and convened, and all resolutions passed or proceedings at the meetings are taken to have been duly passed and taken.

## **22. Resolution in Writing**

A Resolution in writing duly signed by the holders of all the Bonds for the time being outstanding, shall be as effective for all purposes as an Extraordinary Resolution duly passed at a meeting of the Bondholders. Such resolution in writing may be contained in one document or in several documents of like form duly signed by or on behalf of all of the Bondholders.

### 23. More than one series of Bonds

The following provisions shall apply where outstanding Bonds belong to more than one series:

- (a) a resolution which in the opinion of the Trustee affects only one series of Bonds shall be deemed to have been duly passed if passed at a separate meeting of the holders of the Bonds of that series;
- (b) a resolution which in the opinion of the Trustee affects more than one series of Bonds but does not give rise to a conflict of interest between the holder of Bonds of one such series and the holders of Bonds of any other such series shall be deemed to have been duly passed if passed at separate meetings of the holders of the Bonds of each such series or at a single meeting of the holders of the Bonds of all such series, as the Trustee shall in their absolute discretion determine;
- (c) a resolution which in the opinion of the Trustee affects the Bonds of more than one series and gives rise to a conflict of interest between the holders of Bonds of one such series and the holders of Bonds of any other such series shall be deemed to have been duly passed if passed at separate meetings of the holders of the Bonds of each such series; and
- (d) the preceding paragraphs of this Schedule shall be applied, *mutatis mutandis* as if references to the Bonds and Bondholders were to the Bonds of the relevant series and to the holders of such Bonds.

**FOURTH SCHEDULE**  
(Form of Accession Agreement)

This Deed of Accession is made on the [...] day of [...]

BY

[.....] (the "**Acceding Party**")

**Recital**

This Deed of Accession ("**Deed**") is supplemental to the Programme Trust Deed dated [.....] 2016 between Viathan Funding Plc. as Issuer, and UTL Trust Management Services Limited, as the Note Trustee (the "**Trust Deed**").

It is hereby agreed as follows:

**Definitions and Interpretation**

Words and expressions defined in the Programme Trust Deed shall have the same meaning when used in this Deed.

**Accession of Acceding Party**

By its execution of this Deed, the Acceding Party unconditionally and irrevocably undertakes, and agrees with each of the other Parties to this Deed, to observe and be bound by the terms and provisions of the Programme Trust Deed as if it were an original party to the same, in the capacity in which it is entering into this Deed.

Each of the Parties to this Deed, other than the Acceding Party, agree to the accession of the Acceding Party on the terms set out in this Deed and agree that the Trust Deed shall subsequently be read and construed as if the Acceding Party has been named in it as Note Trustee.

Except as amended by this Deed, all terms and conditions of the Trust Deed shall continue in full force and effect.

**Notices**

The address, telephone, electronic mail and contact address of the Acceding Party for notices and demands under the Trust Deed are as follows:

[.....]

**Delivery**

This Deed shall be treated as having been executed and delivered as a deed only upon being dated.

**Counterparts**

This Deed may be executed in any number of counterparts, all of which, taken together, shall constitute one and the same agreement and any Party may enter into this Deed by executing a counterpart.

**Third Party Rights**

Unless the right of enforcement is expressly granted, it is not intended that a third party should have the right to enforce a provision of this Deed.

**Governing Law and Dispute resolution**

The provisions of Clauses 32 (*Governing Law*) and 33 (*Dispute Resolution*) of the Programme Trust Deed shall apply to this Deed as if the same were set out in full in this Deed.

IN WITNESS OF WHICH the Parties have executed this Deed the day and year first above written.

EXECUTED (but not delivered until the )  
as a deed by [.....] [Acceding Party )

.....  
**Director**

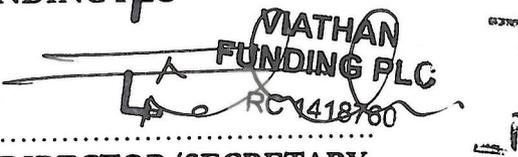
.....  
**Director/ Secretary**

THE PARTIES have caused their respective Common Seals to be fixed the day and year first above written.

**The ISSUER**

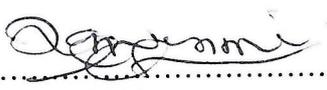
THE COMMON SEAL of VIATHAN FUNDING PFC  
Was affixed in the presence of:

  
.....  
DIRECTOR  
Oladimeji Sanni

  
.....  
DIRECTOR/SECRETARY  
Kunle Fabola

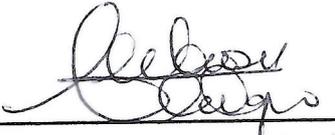
**The NOTE TRUSTEE**

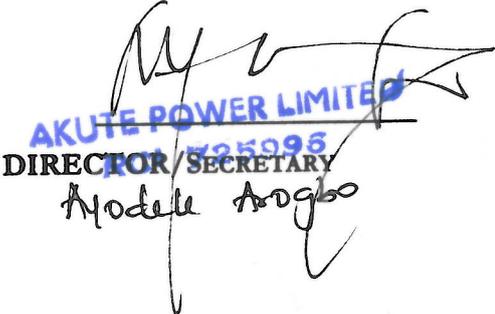
THE COMMON SEAL of UTL TRUST MANAGEMENT SERVICES LIMITED  
was affixed in the presence of:

  
.....  
DIRECTOR

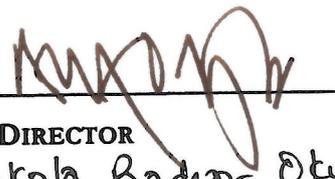
  
.....  
DIRECTOR/SECRETARY

THE COMMON SEAL of the Co-Obligor  
AKUTE POWER LIMITED  
was affixed in the presence of:-

  
.....  
DIRECTOR Habeeb Akibosoye

  
.....  
DIRECTOR/SECRETARY  
Modupe Akibosoye

THE COMMON SEAL of the Co-Obligor  
GASCO MARINE LIMITED  
was affixed in the presence of:-

  
.....  
DIRECTOR  
Bekola Bodejo-Otuwanya

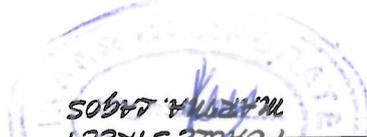
  
.....  
DIRECTOR/SECRETARY  
GASCO MARINE LIMITED

THE COMMON SEAL of the Co-Obligor

**ISLAND POWER LIMITED**

was affixed in the presence of:-

  
ISLAND POWER LIMITED  
RC 876330  
1 GARBE STREET  
WILMINGTON, DELAWARE  
DIRECTOR *[Signature]*

  
ISLAND POWER LIMITED  
1 GARBE STREET  
WILMINGTON, DELAWARE  
DIRECTOR/SECRETARY *[Signature]*

THE COMMON SEAL of the Co-Obligor

**LISABI POWER LIMITED**

was affixed in the presence of:-

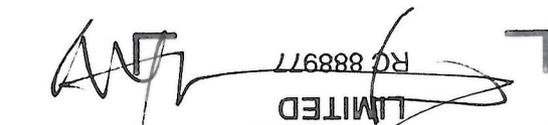
  
DIRECTOR  
Oladimeji Sanni

  
DIRECTOR/SECRETARY *[Signature]*

THE COMMON SEAL of the Co-Obligor

**MARINE POWER LIMITED**

was hereunto affixed in the presence of:-

  
MARINE POWER LIMITED  
RC 888977  
DIRECTOR *[Signature]*

  
MARINE POWER LIMITED  
RC 888977  
DIRECTOR/SECRETARY *[Signature]*

THE COMMON SEAL of the Co-Obligor

**PIPP LVI GENCO LIMITED**

was affixed in the presence of:-

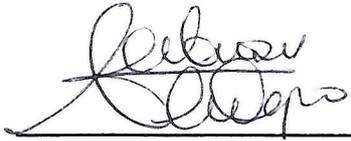
  
DIRECTOR Hakeeb Abiodun

  
PIPP LVI GENCO LIMITED  
RC 473186  
DIRECTOR/SECRETARY *[Signature]*

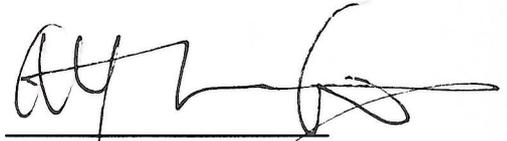
THE COMMON SEAL of the *Co-Obligor*

**TOFU ENERGY AND POWER COMPANY LIMITED**

was affixed in the presence of:-



DIRECTOR Habeeb Habson



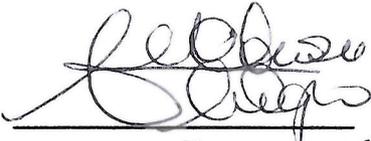
DIRECCTOR/SECRETARY



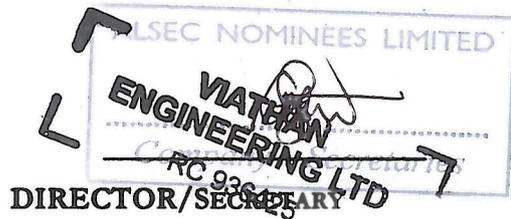
THE COMMON SEAL of the *Co-Obligor*

**VIATHAN ENGINEERING LIMITED**

was affixed in the presence of:-



DIRECTOR Habeeb Habson



ALSEC NOMINEES LIMITED  
VIATHAN  
ENGINEERING LTD  
RC 93625  
DIRECTOR/SECRETARY