

# **SERIES 1 TRUST DEED**

**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 up to ₦10,000,000,000.00 (Ten Billion Naira)] Series 1 Senior  
Guaranteed Fixed Rate Bonds due 2027 issued by Viathan Funding Plc under the  
₦50,000,000,000.00 (Fifty Billion Naira) Medium Term Bond Programme**

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**THIS SERIES 1 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** (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 registered 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 as a “**Party**” and collectively as the “**Parties**”.

## **BACKGROUND**

- A. This Deed is made further to the Programme Trust Deed dated on or about the date of this Agreement between the Issuer, the Co-Obligors and the Note Trustee constituting the Programme of the Issuer (the “**Programme Trust Deed**”).
- B. The Programme Trust Deed authorises the Issuer to issue Bonds in series ranking *pari passu* in all respects (or in all respects except for the first payment of coupon) with any outstanding series of Bonds.
- C. By virtue of Clause 3(1) of the Issuer’s Memorandum and Articles of Association, a resolution of its shareholders passed on 10<sup>th</sup> July 2017, and a board resolution of the Issuer dated 10<sup>th</sup> July 2017, the Issuer resolved to issue up to ₦10, 000, 000,000.00 (Ten Billion Naira) senior guaranteed Fixed Rate Bonds due 2027, comprising ten million (10, 000, 000) units of senior guaranteed fixed rate redeemable bonds, each with a par value of ₦1, 000.00 (One Thousand Naira) (the “**Series 1 Bonds**”) to be issued by the Issuer under the Programme.
- D. In order to enhance the credit rating of the Series 1 Bonds, the Note Trustee and the Guarantor (defined below) have executed the Deed of Guarantee dated on or about the date of this Deed under which the Guarantor has agreed to provide a 100% irrevocable and unconditional guarantee for the obligations of the Issuer, in favour of the Note Trustee, for and on behalf of the Bondholders.
- E. The Note Trustee has agreed to act as trustee for the benefit of the Bondholders upon and subject to the terms and conditions of this Deed.

## IT IS HEREBY AGREED AS FOLLOWS

### 1. DEFINITIONS AND INTERPRETATION

To the extent to which the same are applicable and unless otherwise defined in this Deed, the definitions and provisions contained in Clause 1 of the Programme Trust Deed (*Definitions and Interpretations*) shall apply to and be incorporated in this Deed and any reference to a Schedule shall be a reference to a Schedule of the Programme Trust Deed.

#### 1.1 Definitions

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

“**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 Account Bank & Paying Agent Agreement with which the Payment Account 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;

“**Allotment Date**” means the date on which the Series 1 Bonds are allotted to successful investors;

“**Authorised Investments**” means, on any date, Naira investments in:

- (a) treasury bills issued by the Federal Republic of Nigeria;
- (b) demand or time deposits, certificates of deposit and short-term debt obligations (including commercial paper), (which may include deposits into any account which earns a rate of interest related to NIBOR or similar index); and
- (c) such other investments that the Note Trustee may instruct the Account Bank to make,

PROVIDED ALWAYS THAT all such investments as are made under (a) to (c) above shall (i) have a maturity date of ninety (90) days or less, and mature on or before the next following Payment Date; (ii) constitute the short-term unsecured, unguaranteed and unsubordinated debt obligations of the issuing or guaranteeing entity and, in the case of (b), the entity with which the demand or time deposits are made being an authorised institution under the BOFIA; and (iii) have a minimum rating of AA+ (or its equivalent) assigned by the Rating Agency, or other rating agency registered with or recognised by the SEC;

“**Bond**” or “**Bonds**” means the bonds of the Issuer constituted under the Programme Trust Deed;

**“Bondholder(s)”** means a person or persons in whose name a Series 1 Bond is issued under this Deed and registered in the Register;

**“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;

**“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 the terms and conditions in the form set out in Schedule 2 of this Deed;

**“Co-Obligors”** means each of the following:

- (a) Akute Power Limited;
- (b) Gasco Marine Limited;
- (c) Island Power Limited;
- (d) Lisabi Power Limited;
- (e) Marine Power Limited;
- (f) PIPP LVI Genco Limited;
- (g) Tofu Energy and Power Company Limited; and
- (h) Viathan Engineering Limited;

**“Coupon Commencement Date”** means **15<sup>th</sup> December 2017** from which coupon on the Series 1 Bonds begin to accrue;

**“Coupon Payment Date”** means June and December occurring on a semi-annual basis in each year with the first Coupon Payment Date being **June 2018**;

**“Coupon Rate”** means 16%;

**“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 Actual/Actual;

**“Deed or this Deed”** means this ₦10, 000, 000, 000.00 (Ten Billion Naira) Series 1 Senior Guaranteed Fixed Rate Bonds due 2027, Trust Deed;

**“Deed of Guarantee”** means the Deed of Guarantee executed by the Guarantor and the Note Trustee and dated on or about the date of this Deed;

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

**“Event of Default”** means the events of default, which are particularly described in Condition 14 of the Second Schedule of this Deed;

**“Extraordinary Resolution”** means a resolution of the Bondholders passed in accordance with the provisions contained in the Second Schedule;

**“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 (f) 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;

**“Following Business Day Convention”** means that the Payment Dates that fall on a Federal Government declared public holiday in Nigeria, Saturday or Sunday shall roll forward to the next Business Day;

**“Guarantee”** means the guarantee given in favour of the Bondholders by the Guarantor under the terms of the Deed of Guarantee;

**“Guaranteed Amount”** means, with respect to any due date, the sum of (without double counting) the scheduled Redemption Amount and Coupon due and payable on the Series 1 Bonds;

**“Guarantor”** means Infrastructure Credit Guarantee Company Limited, a company duly incorporated in Nigeria with RC Number 1368639, trading under the name and style of "InfraCredit" and having its principal place of business at 17 Sanusi Fafunwa Street, Victoria Island, Lagos, more particularly defined in the Deed of Guarantee;

**“Insurance Act”** means the Insurance Act Cap I17 Laws of the Federation of Nigeria 2004,

**“Issue Date”** means **15<sup>th</sup> December 2017**;

**“Issue Documents”** means the documents required to be executed and delivered in connection with the issue of the Series 1 Bonds and including but not limited to the:

- (a) Programme Trust Deed;
- (b) Series 1 Trust Deed;
- (c) Account Bank and Paying Agent Agreement;
- (d) Vending Agreement;
- (e) Shelf Prospectus;
- (f) Pricing Supplement; and
- (g) Deed of Guarantee;

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

“**Maturity Date**” means **14<sup>th</sup> December 2027** on which the final Redemption Amount is payable as specified in the Third Schedule;

“**Moratorium Period**” means the period, in respect of which only coupon is payable on the Series 1 Bonds, beginning on (and including) the Issue Date and ending on (but excluding) the following Payment Date occurring 24 months after the Issue Date;

“**Payment Account**” means the account of the same name maintained by the Issuer in accordance with clause 12;

“**Payment Date**” means **June** and **December** occurring on a semi-annual basis in each year upon which coupon and/or principal are due and payable in respect of the Series 1 Bonds;

“**Pension Reform Act**” means the Pension Reform Act Cap P4 Laws of the Federation of Nigeria 2004;

“**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;

“**Pricing Supplement**” means the supplementary shelf prospectus dated 15<sup>th</sup> December 2017 issued by the Issuer, and setting out the final terms of the Series 1 Bonds;

“**Principal Amount Outstanding**” means, on any day in relation to the Series 1 Bonds, the principal amount of the Series 1 Bonds in issue less the aggregate of all principal payments that have become due and payable in respect of that Bond and have been paid on or prior to that day;

“**Proceeds**” means the proceeds from the sale of the Series 1 Bonds;

“**Purpose**” means the purpose to which the proceeds of the Series 1 Bonds shall be applied as specified in Clause 6 of this Deed;

**“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 Rating Company Limited or any rating agency for the time being appointed by the Issuer;

**“Redemption Amount”** means, the principal amount in respect of the Series 1 Bonds payable on the Scheduled Redemption Dates specified in the Third Schedule;

**“Register”** means the Bond 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 Series 1 Bonds held by each Bondholder;

**“Registrar”** means Veritas Registrars 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 1 Bonds”** has the meaning given to the term in paragraph C of the Recitals to this Deed;

**“Series 1 Trust Deed”** means this trust deed made between the Issuer and the Note Trustee;

**“Scheduled Redemption Date”** means the semi-annual dates commencing on **15<sup>th</sup> June 2020** and **15<sup>th</sup> December 2020** until the Maturity Date (each a “Payment Date”) as shown in the Third Schedule;

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

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

**“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; and

## 1.2 Interpretation

1.2.1 Headings and sub-headings are for ease of reference only and shall not affect the construction of any provision of this Deed.

1.2.2 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.

1.2.3 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.

## **2. Appointment of the Note Trustee**

- 2.1 Subject to the terms and conditions of this Deed, the Issuer 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 in trust in accordance with the provisions of this Deed.
- 2.2 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.
- 2.3 The Note Trustee shall have no duty, responsibility or obligation for the issuance of the Series 1 Bonds or for the validity or exactness of the Bond, 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 created by this Deed shall remain in full force and effect until the date all Series 1 Bonds issued pursuant to this Deed are redeemed and the:
  - 3.2.1 Note Trustee receives an unconditional confirmation in writing from the Registrar that there is no principal amount or Coupon outstanding in respect of the Bond; and
  - 3.2.2 the Issuer receives an unconditional release in writing from the Note Trustee from all of its obligations under this Deed.

## **4. Trust Deed Binding**

- 4.1 The provisions of this Deed are binding on the Issuer, the Co-Obligors, the Note Trustee and the Bondholders and all persons claiming through them respectively as if such Bondholders, the Issuer, the Co-Obligors, the Note Trustee and the persons claiming through them 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.
- 4.3 Unless otherwise expressly stated, all the provisions of the Programme Trust

Deed including its schedules shall remain in full force and effect in accordance with their respective terms and shall apply to this Deed and the Series 1 Bonds.

## 5. Issuance of the Series 1 Bonds

5.1 The aggregate principal amount of the Series 1 Bonds is up to ₦10, 000, 000, 000.00 (Ten Billion Naira) issued at par.

5.2 The Series 1 Bonds shall be issued in minimum denominations of ₦20, 000, 000.00 (Twenty Million Naira) and integral multiples of ₦5, 000, 000.00 (Five Million Naira) each, at ₦1, 000.00 (One Thousand Naira) per unit.

5.3 The Series 1 Bonds shall have a tenor of ten (10) years.

### 5.4 *Status of the Series 1 Bonds*

5.4.1 The Series 1 Bonds constitute senior direct and unsubordinated obligations of the Issuer and Co-Obligors and shall at all times rank *parri passu* and rateably without preference among them and at least *pari passu* with all other claims of all other Series of Bonds issued by the Issuer both present and future.

5.4.2 The payment obligations of the Issuer in respect of the Bonds and of the Guarantor under the Deed of Guarantee shall, save for such exceptions as may be provided by Applicable Law, at all times rank at least *pari passu* with all other unsubordinated indebtedness and monetary obligations of the Issuer and the Guarantor respectively, both present and future.

5.4.3 The Bonds qualify as securities in which trustees, insurance companies, and pension fund administrators may invest under the Trustees Investment Act, the Insurance Act, and the Pension Reform Act respectively.

5.4.4 The Guarantor has, unconditionally and irrevocably, guaranteed the due payment of the outstanding principal amount expressed to be payable by the Issuer under this Deed up to the Guaranteed Amount specified under and in accordance with the terms of the Deed of Guarantee dated on or about the date of this Deed.

### 5.5 *Coupon Payment*

Coupon shall be payable on the Series 1 Bonds in accordance with Condition 6 of this Deed.

### 5.6 *Principal Repayment*

The Series 1 Bonds shall be repaid in instalments and at the intervals on each Scheduled Redemption Date specified in the Second Schedule. The scheduled Redemption Amount shall be allocated on a pro rata basis amongst the Bondholders on the relevant Scheduled Redemption Date. The first Scheduled Redemption Date shall be the next Payment Date occurring

at the end of the Moratorium Period. The Note Trustee shall maintain a repayment schedule in the form set out in the Third Schedule.

5.7. *Source of Payment/Repayment*

The Issuer shall pay the Coupon and repay the Principal Amount Outstanding from the Payment Account.

5.8. *Guarantee*

5.8.1 The Guarantor has irrevocably and unconditionally guaranteed to the Note Trustee, for and on behalf of the Bondholders, by way of continuing guarantee, the due and punctual observance and performance by the Issuer of all of payment obligations in respect of all scheduled principal and coupon due and payable by the Issuer under or in relation to the Series 1 Bonds in accordance with the terms of the Deed of Guarantee.

5.8.2 In the case of a claim under the Guarantee in respect of the Bonds, payments of all amounts due under the Guarantee shall be paid to the Payment Account for the benefit of the Note Trustee no later than the next due Payment Date(s), and only in the scheduled repayment instalments specified in the Third Schedule.

5.8.3 Upon the Guarantor making any payment in respect of any guaranteed obligation(s) pursuant to the Deed of Guarantee (“**Affected Guaranteed Obligations**”), the Guarantor shall, to the extent of any such payment, be fully and automatically subrogated pursuant to applicable law to all of the Note Trustee's and the Bondholders' rights to payment of any amounts payable in respect of such Guaranteed Obligation (including without limitation (i) any rights and benefits attached to, and any security conferred or granted by law, contract or otherwise in respect of, the Affected Guaranteed Obligations and (ii) any default interest on any of the Affected Guaranteed Obligations accrued pursuant to the Trust Deed after the date of payment by the Guarantor).

5.8.4 The Guarantor shall, notwithstanding the provisions of sub-clause 5.8.3 above, have the right to receive notice of, and to attend, all meetings of the Bondholders and to receive all other documents and correspondence sent by the Note Trustee to the Bondholders.

6. **Application of the Proceeds of the Series 1 Bonds**

6.1 The proceeds of the Series 1 Bonds will be passed-through by the Issuer to the Co-Obligors pursuant to this Deed and utilised in the manner disclosed in the Pricing Supplement.

6.2 Without prejudice to the generality of the provisions of this Deed, the Note Trustee shall not be bound to enquire as to the application of the Proceeds.

7. **Use of the Proceeds of the Series 1 Bonds by the Co-Obligors**

The Co-Obligors jointly and severally acknowledge receipt of the proceeds of the Series 1 Bonds in the manner specified in the Pricing Supplement. Each Co-Obligor jointly and severally undertakes to the Note Trustee that it shall utilise the issue proceeds of the Series 1 Bonds in accordance with the Pricing Supplement, and shall jointly and severally repay the scheduled principal and coupon in accordance with the Third Schedule to this Deed.

8. **Covenants of the Issuer**

The covenants and obligations of the Issuer in Clause 7 (*Covenants of the Issuer*) of the Programme Trust Deed shall be read as part of this Deed and apply to the Series 1 Bonds.

9. **Issuer's Lending and Borrowing Powers**

9.1 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:

9.1.1 lend, advance or pass through the proceeds of all Bonds issued under Series 1 Trust Deed, exclusively for the benefit of the Co-Obligors.

9.1.2 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.

10. **Liability of the Co-Obligors**

10.1 The Parties agree that all the obligations of the Co-Obligors in this Deed shall be the joint and several obligations of each of the Co-Obligors without preferences or distinction among them (**the "Obligations"**).

10.2 Each Co-Obligor, jointly and severally, irrevocably and unconditionally accepts as primary obligor and co-debtor, joint and several liability with the Issuer to the Note Trustee, in respect of:

10.2.1 the due and punctual payment of the principal and coupon on the Series 1 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 Issue Document, or any other circumstance whatsoever.
- 10.6 For as long as the Bonds are outstanding under this Series Trust Deed, the Co-Obligors shall not issue debt securities by any means whatsoever except through the Issuer.
- 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 Series 1 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 pursuant to this Deed shall be in satisfaction of the relevant covenant to pay by the Issuer pursuant to Condition 12. Coupon 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 Condition 12.
  - 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 in cash. 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 Trustee and be paid over to the 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 Defences*

- 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 Series 1 Bonds, of any successor of any Co-Obligor (the “Substitute Co-Obligor”) subject to such conditions as the Note Trustee may require, provided that:

- (i) the prior approval of the Guarantor and the Commission shall first be obtained;
- (ii) 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 Series 1 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 Issue Documents and on the Series 1 Bonds as a Co-Obligor to the Issuer;
- (iii) 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;
- (iv) 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;
- (v) 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;
- (vi) 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 the Series 1 Bonds; and
- (vii) 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 10.11.1(ii), 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. Cancellation of the Guarantee

### 11.1 *Cancellation of Guarantee*

The Issuer shall not be entitled to cancel and/or reduce the Guarantor's liability under the Guarantee unless (i) the prior written consent of the Note Trustee is obtained; (ii) a replacement guarantor acceptable to the Rating Agency is appointed on or before such date, (iii) written confirmation is received from the Rating Agency confirming that such cancellation shall not result in a withdrawal or downgrade of the credit rating of the Series 1 Bonds.

### 11.2 *Cash Advance Deposit Upon Cancellation of Guarantee*

The Issuer undertakes that in the event that no replacement guarantor would be appointed upon the cancellation of the Guarantee, the full cash amount of the Guarantee payable under the Deed of Guarantee shall be funded in the Payment Account no later than two (2) Business Days prior to such cancellation date.

## 12. Establishment and Funding of Payment Account

### 12.1 *Payment Account*

12.1.1 The Issuer shall on or before the Issue Date of the Series 1 Bonds, maintain a Payment Account in the name and under the sole control of the Note Trustee with the Account Bank.

12.1.2 The Issuer shall pay or cause to be paid into the Payment Account such amounts equal in aggregate to the next scheduled Coupon and/or Redemption Amount such that the Payment Account shall be funded with:

- (i) 50% of next scheduled Coupon and or Redemption Amount due payable on the Series 1 Bonds not later than one (1) month before the next Payment Date, and
- (ii) 50% of next scheduled Coupon and/or Redemption Amount due payable on the Series 1 Bonds (less coupon accrued on the Payment Account since the last Payment Date) not later than ten (10) Business Days before the next Payment Date,

bringing total funding to not less than 100% of the scheduled Coupon and/or Redemption Amount due payable on the Series 1 Bonds on such Payment Date.

#### 12.2 *Trust of Payment Account*

The Issuer irrevocably acknowledges and accepts that the monies in the Payment Account, and any other account opened by the Issuer (or the Note Trustee as the case may be), either in addition or replacement of the Payment Account from time to time in accordance with the terms of this Deed, shall be held by, or assigned by way of security to the Note Trustee, for itself and the Bondholders, upon similar trusts to those held by the Note Trustee under this Deed.

### 13. **Amendment of the Deed**

13.1 Subject to Clause 26 (Modification of Terms) of the Programme Trust Deed, the Parties may amend, add to or revoke any provision of this Deed, (including this clause 13) if the amendment, addition, revocation in the opinion of the Parties is:

13.1.1 necessary or expedient to comply with the provisions of any Applicable Law;

13.1.2 made to correct a manifest error or is of a formal, technical or administrative nature only;

13.1.3 desirable for any reason.

13.2 If in the reasonable opinion of the Note Trustee, any amendment, addition or revocation is likely to be prejudicial to the interests of all Bondholders, the amendment, addition or revocation may only be effected if the Bondholders pass an Extraordinary Resolution approving such amendment, addition or revocation.

13.3 The Parties will not amend, add or revoke any provision of this Deed unless, (except in relation to Sub Clause 13.1.3.):

13.3.1 ten (10) Business Days prior written notice was given to the Rating Agency in relation to the Series 1 Bonds to be affected by the amendment, addition or revocation; and

13.3.2 at the expiration of the above mentioned notice period, the Rating Agency has not advised the Note Trustee that the amendment, addition or revocation if executed will cause the then credit rating assigned to the Series 1 Bonds to be withdrawn or downgraded

### 14. **Note 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 Series 1 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:

- 14.1 it is so directed by an Extraordinary Resolution of the Bondholders; or
- 14.2 it is requested to do so in writing by the Majority Bondholders; and
- 14.3 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.

**15. 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 this Deed. 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.

**16. 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 Note Trustee in the Schedules shall be in addition to any powers, which may from time to time be vested in it by Applicable Law or by the Bondholders.

**17. Notice of Breach to the Commission**

The Note 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 Note Trustee has actual knowledge of the breach.

**18. Compliance with the ISA**

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

**19. Notices**

- 19.1 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 each case, any notice given to any Series 1 Bondholder, by way of publication in two Nigerian National Dailies will suffice as sufficient notice.

- 19.2 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, which shall be deemed to have been served at 9.00 am on the next Business Day.
- 19.3 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.
- 19.4 Registered address means, in the case of a Bondholder, an address supplied by him to the Issuer or Note Trustee for the purpose of giving notice to him.
- 19.5 A notice may be given by the Note 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.
- 19.6 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.
- 19.7 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:**

**Viathan Funding Plc**

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:**

**UTL Trust Management Services Limited**

Name: Olufunke Aiyepola (Mrs) Managing Director

Address: 2<sup>nd</sup> Floor, ED Building, 47, Marina, Lagos

Phone: 08122243847

Email: [ooaiyepola@uniontrusteeslimited.com](mailto:ooaiyepola@uniontrusteeslimited.com);

[eaumossoh@uniontrusteeslimited.com](mailto:eaumossoh@uniontrusteeslimited.com)

Attention: Managing Director

**20. Endorsement of Programme Trust Deed**

The Issuer and Note Trustee shall endorse a memorandum of the execution of this Deed on the Programme Trust Deed.

**21. Miscellaneous**

21.1 No failure or delay by the Note 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.

21.2 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.

21.3 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.

**22. Governing Law and Jurisdiction.**

The provisions of Clause 34 (Governing Law and Jurisdiction) of the Programme Trust Deed shall apply to the Series 1 Bonds.

**23. Dispute Resolution**

The provisions of Clause 35 (Dispute Resolution) of the Programme Trust Deed shall apply to the Series 1 Bonds.

**24. 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

### Terms and Conditions of the Series 1 Bonds

*The following is the text of the terms and conditions, which will be endorsed on or attached to the Certificates issued in respect of the Series 1 Bonds. Certain provisions of these terms and conditions are summaries of, and are subject to, the detailed provisions of the Programme Trust Deed.*

The shareholders and the Board of directors of Viathan Funding Plc. (the “Issuer”), passed resolutions dated 10<sup>th</sup> July 2017 authorising the establishment of the ₦50, 000, 000, 000.00 (Fifty Billion Naira) Medium Term Note Programme (the “Programme”) for the issuance of bonds (the “**Bonds**”).

The Series 1 Bonds are constituted by a trust deed dated **15<sup>th</sup> December 2017** (the “**Series 1 Trust Deed**”) between Viathan Funding Plc (“the Issuer”), the Co-Obligors and UTL Trust Management Services Limited (the “Note Trustee”), which expression shall include any person or persons for the time being appointed as the trustee under the Series 1 Trust Deed as trustee for the holders (as defined below) of the Series 1 Bonds (the “**Bondholders**”).

The Bondholders are entitled to the benefit of, are bound by, and are deemed to have notice of, all the provisions of the Series 1 Trust Deed and those applicable to them under the Programme Trust Deed dated **15<sup>th</sup> December 2017**. Copies of the Series 1 Trust Deed are available for inspection at the office of the Note Trustee, at 2nd Floor, ED Building, 47, Marina, Lagos, and at the specified offices of the Registrar at Plot 89A, Ajose-Adeogun Street, Victoria Island, Lagos. The Programme Trust Deed and the Series 1 Trust Deed are collectively referred to as the “Trust Deeds”.

Words and expressions defined in the Series 1 Trust Deed (as the same has been and may be amended, varied or supplemented from time to time with the consent of the Parties) are expressly and specifically incorporated to and shall apply to these Conditions.

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

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

- 1.1. The Series 1 Bonds will be issued in uncertificated (dematerialised or book-entry) form, which shall be registered with a separate securities identification code with the CSCS.
- 1.2. The Series 1 Bonds will be listed on the FMDQ or on such other or further securities exchange(s) as may be determined by the Issuer, subject to any Applicable Law).
- 1.3. Title to the Series 1 Bonds 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.

#### 2. **Redemption**

- 2.1 The Principal Amount Outstanding of the Series 1 Bonds shall be redeemed on an amortising basis as shown in schedule 3 on page 34 commencing from June 2018 (after the expiration of the Moratorium Period) until fully redeemed on the Maturity Date (each a “Payment Date”).
- 2.2 The Issuer shall redeem the Series 1 Bonds on a pro rate basis at the Redemption Amount on the relevant Scheduled Redemption Date. The Principal Amount Outstanding shall be reduced by the Redemption Amount for all purposes from the related Scheduled Redemption Date, unless payment of the Redemption Amount is improperly withheld or refused, in which case, such amount shall remain outstanding until the relevant date relating to such Redemption Amount. The Registrar shall update the Register to reflect the Principal Amount Outstanding within five (5) Business Days of any Redemption Date.
- 2.3 Unless previously redeemed or purchased and cancelled, the Issuer shall redeem the Series 1 Bonds in one bullet payment at the final Redemption Amount (which, unless otherwise stated, is the Principal Amount Outstanding) at the Maturity Date.

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

The Issuer may at any time and from time to time purchase any part of the Series 1 Bonds through the FMDQ, or by tender (available to all Series 1 Bondholders alike) but not otherwise. Any Bond so purchased will be cancelled and will not be available for re-issue.

### 4. **Status of the Series 1 Bonds**

#### 4.1. *Guarantee and Status of Series 1 Bonds*

The Guarantor has, unconditionally and irrevocably, guaranteed the due payment of the outstanding principal amount expressed to be payable by the Issuer under this Deed up to the Guaranteed Amount specified under and in accordance with the terms of the Deed of Guarantee Dated on or about the date of this Deed.

The Series 1 Bonds are senior direct and unsubordinated obligations of the Issuer and shall at all times rank *pari passu* and without any preference among themselves. The payment obligations of the Issuer under the Series 1 Bonds and the Guarantor under the Deed of Guarantee shall at all times rank at least equally with all unsubordinated indebtedness and monetary obligations of the Issuer, present and future except for obligations mandatorily preferred by Applicable Law.

#### 4.2. *Liability of Co-Obligors*

Pursuant to the 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 Trust Deed or any other Issue Document to the extent that any failure to perform such obligations gives rise to monetary damages.

## 5. **Negative Pledge**

Except for the Permitted Securities, for as long as any of the Series 1 Bonds are outstanding, the Issuer shall not, and shall procure that none of its Affiliates:

- 5.1. create (without the written consent of the Note 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 Series 1 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 Note Trustee in its absolute discretion shall deem not to be materially less beneficial to the Bondholders; and
- 5.2. 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 written consent of the Note Trustee.

## 6. **Coupon**

- 6.1. The Series 1 Bonds will bear coupon from and including the Coupon Commencement Date up to but excluding the Maturity Date. The Coupon Rate shall be payable in arrears, on the Principal Amount Outstanding, on the Coupon Payment Date.
- 6.2. Each Series 1 Bond will cease to bear coupon from and including the Maturity Date unless, upon due presentation, payment of principal is improperly withheld or refused, in which event coupon will continue to accrue (both before and after any judgment or other order of a court of competent jurisdiction) at the Coupon Rate in the manner provided in this Condition.
- 6.3. The Coupon Rate payable in respect of each Series 1 Bond shall be **16%**.
- 6.4. The amount of coupon payable in respect of any Series 1 Bond for any period shall be calculated by multiplying the product of the Coupon Rate and the Principal Amount Outstanding of such Series 1 Bond by the Day Count Fraction and rounding the resulting figure to the nearest sub unit of the Naira.

7. **Cancellation of Series 1 Bonds**

Any part of the Series 1 Bonds redeemed or purchased in accordance with the Trust Deed 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 Series 1 Bonds under this Condition 7.

8. **Trusts**

8.1. 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.

8.2. The receipt by a Bondholder for the time being of any Series 1 Bonds (or in the case of joint registered holders, the payment to the joint Bondholder whose name stands first in the Register) of 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, coupon 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 Series 1 Bond.

9. **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.

10. **Registration and Transfer of Series 1 Bonds**

*10.1. Registration of the Series 1 Bonds*

10.1.1. A Register of the Series 1 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 Series 1 Bonds;
- (ii) The amount of the units of Series 1 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 Series 1 Bonds standing in his name.

## 10.2. *Transfer of the Series 1 Bonds*

- 10.2.1. The Series 1 Bonds are transferable in whole or in part in denominations of ₦1,000.00 (One Thousand Naira) and shall be transferred on the FMDQ in accordance with its rules.
- 10.2.2. Transfers of the Series 1 Bonds shall be by an instrument in writing in the form approved by Issuer and the Note Trustee and in accordance with the provisions of this Deed.
- 10.2.3. Every instrument of transfer must be signed by or on behalf of both the transferor or transferee. Where either party to the transfer is a corporation, the instrument must be properly executed according to its constitutional documents. The transferor shall be deemed to remain the owner of the Series Bonds until the name of the transferee is entered in the Register.
- 10.2.4. 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 Series 1 Bonds and (if the instrument of transfer is executed by some other person on his behalf) the authority of that person so to do.
- 10.2.5. The Issuer and Registrar shall retain all instruments of transfer after registration.
- 10.2.6. Registration of the transfer of any Series 1 Bonds shall not be carried out within fifteen (15) days of the due date for any payment of principal or coupon on such Bond.
- 10.2.7. Subject to the provisions of the Programme Trust Deed and the rules and regulations of the SEC, the Registrar may refuse to register any transfer of the Series 1 Bonds where Applicable Law permits or requires the Issuer to do so, or where the transfer is lodged after the Record Date.
- 10.2.8. Where registration of a transfer of the Series 1 Bonds is refused under Condition 10.2.7, the Registrar shall give written notice of the refusal and the precise reasons for the refusal to the party lodging the transfer, if any, within five (5) Business Days after the date on which the transfer was lodged. The failure to give such a notice will not invalidate the decision not to register the transfer.

## 11. **Transmission**

- 11.1 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.
- 11.2 Any person becoming entitled to any Series 1 Bonds in consequence of the death or bankruptcy of any Bondholder or of any other event giving

rise to the transmission of such Series 1 Bonds 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 Series 1 Bonds or subject to Condition 10 may transfer the Series 1 Bonds without being registered as the holder.

## 12. **Method of Payment of Principal Money, Coupon and Premium**

- 12.1. Payment of the Principal, Coupon and premium (if any) due on all or any part of the Series 1 Bonds will be credited to the bank account nominated for this purpose by the Bondholder (or in the case of joint registered Bondholders) or by the joint Bondholders.
- 12.2. All payments of principal, coupon and any other sum due in respect of the Series 1 Bonds shall be made free and clear of, and without withholding or deduction for, any taxes, duties, assessments or governmental charges of whatever nature imposed, levied, collected, withheld or assessed by or within the Federal Republic of Nigeria, unless such withholding or deduction is required by law. In that event, no additional amounts shall be paid to the Bondholders as a result of such deduction.
- 12.3. Whenever any part of the Series 1 Bonds is redeemed, a proportionate part of each holding of the Bond shall be repaid to the Bondholders.
- 12.4. 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 Series 1 Bonds to be redeemed and such notice shall state the amount of the Bond for redemption.
- 12.5. At the time and place so fixed for redemption, each Bondholder shall, where applicable, deliver to the Registrar evidence of title to the Series 1 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 Series 1 Bonds, and upon such delivery, the Note Trustee acting through the Registrars shall pay the Bondholder the amount payable to him in respect of such redemption, together with all coupon accrued.
- 12.6. If, on the Maturity Date, any Bondholder whose Series 1 Bonds are liable to be redeemed fails or refuses to accept payment of the redemption moneys payable in respect of the Series 1 Bond, the moneys payable to such Bondholder shall be paid to the Note Trustee and the Note Trustee shall hold the moneys in trust for such Bondholder and coupon on such Series 1 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 Series 1 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.

13. **Receipts for Money Paid**

If several persons are entered in the Register as joint holders of any Bond, then the receipt of 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.

14. **Events of Default**

14.1. If any of the following events stated in this Condition 14 (“Events of Default”) has occurred and is continuing in accordance with the time frame set out below, the Note 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 an Event of Default has occurred.

14.2. Following receipt of the Note Trustee’s written notice, the Issuer, and where applicable, the Guarantor, on behalf of the Issuer, shall continue to make the scheduled principal and coupon payments on the Series 1 Bonds in accordance with the Third Schedule. For avoidance of doubt, no payment in respect of the Series 1 Bonds shall be accelerated by the Note Trustee, the Bondholders, or any other person on the occurrence of an Event of Default; PROVIDED THAT at any time or from time to time following the occurrence of an Event of Default which is continuing, the Guarantor may decide in its absolute discretion, to make an Accelerated Payment under the Guarantee.

14.3. *Non-Payment*

If the Issuer and or any of the Co-Obligors fail to pay any sums representing principal, coupon and premium (if any) on the Series 1 Bonds or any fees or other sums within ten (10) Business Days of its due date (the “Grace Period”). Provided however, that where such non-payment is due to a Force Majeure event, the Note 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.

14.4. *Cross Default*

If any Financial Indebtedness of the Issuer and 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 later.

14.5. *Insolvency*

If:

- 14.5.1 the Issuer and or any of the Co-Obligors is 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;
- 14.5.2 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 Note Trustee within ten (10) Business days after such moratorium is declared that it is in good faith negotiating the lift of the moratorium;
- 14.5.3 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:
  - 14.5.3.1 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 any of the Co-Obligors other than a solvent liquidation or any reorganisation of the Issuer or any of the Co-Obligors;
  - 14.5.3.2 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
  - 14.5.3.3 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 Note 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.

14.6. *Cessation of Business*

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

14.7. *Material Adverse Effect*

If a Material Adverse Effect has occurred.

14.8. *Enforcement Proceedings*

If any distress, execution or other process shall be levied or enforced upon or against any material assets of the Issuer or any of the 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 any of the Co-Obligors and such event is certified in writing by the Note Trustee to be in its opinion materially prejudicial to the interests of the Bondholders. PROVIDED THAT the Issuer has filed in good faith, legal proceedings in the relevant court for application for dismissal within ten (10) Business Days of becoming aware of the order or action.

14.9. *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 Series 1 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 Series 1 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 Note Trustee.

14.10. *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;

15. **Notices**

15.1. 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 15.1, notices may also be publicised in any widely read

newspaper.

15.2. In the case of joint registered holders of any Series 1 Bond, a notice given to the Bondholder whose name stands first in the Register shall be sufficient notice to all the joint holders.

15.3. 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 Series 1 Bonds 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 Series 1 Bonds and such service or delivery shall for all purposes be deemed sufficient service or delivery of such notice or document on all persons interested (whether jointly with or claiming through or under him) in the Series 1 Bonds.

15.4. 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.

## 16. **Enforcement**

Only the Note Trustees may enforce the provisions of this Trust Deed. No Series 1 Bondholder shall be entitled to proceed directly against the Issuer to enforce the performance of any of the provisions of this Trust Deed unless the Note Trustee having become bound under this Deed to take proceedings fails to do so within ninety (90) days and such failure is continuing.

## 17. **Prescription**

Claims against the Issuer in respect of the Series 1 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 coupon), from the due date for payment of any amount due on the Series 1 Bonds.

## 18. **Meetings of Bondholders**

The rights and duties of the Bondholders in respect of attendance at meetings of Bondholders are set out in the Third Schedule (Provisions for Meetings of Bondholders) of the Programme Trust Deed. Decisions taken at Bondholders meetings may only be exercised by the Note Trustee in accordance with the Programme Trust Deed or under these Conditions. For the avoidance of doubt, the Conditions of the Series 1 Bonds can only be amended with the written consent of the Parties.

19. **Governing Law**

The Series 1 Bonds are governed by, and shall be construed in accordance with the laws of the Federal Republic of Nigeria.

### THIRD SCHEDULE

#### Coupon and Principal Payment Schedule

Payment Date	Redemption Amount	Coupon Payable (N'm)	Principal + Coupon (N'm)	Principal Amount Outstanding
Bond Issuance				10,000
June 2018	-	800	800	10,000
December 2018	-	800	800	10,000
June 2019	-	800	800	10,000
December 2019	-	800	800	10,000
June 2020	330	800	1,130	9,670
December 2020	356	774	1,130	9,314
June 2021	385	745	1,130	8,929
December 2021	415	714	1,130	8,514
June 2022	449	681	1,130	8,065
December 2022	485	645	1,130	7,581
June 2023	523	606	1,130	7,058
December 2023	565	565	1,130	6,492
June 2024	610	519	1,130	5,882
December 2024	659	471	1,130	5,223
June 2025	712	418	1,130	4,511
December 2025	769	361	1,130	3,742
June 2026	830	299	1,130	2,912
December 2026	897	233	1,130	2,015
June 2027	969	161	1,130	1,046
December 2027	1,046	84	1,130	-

IN WITNESS of which 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 PLC**

Was affixed in the presence of:

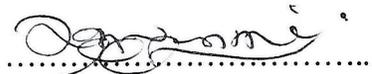
  
.....  
DIRECTOR  
LADI SANNI

  
VIATHAN  
FUNDING PLC  
RC 1418700  
DIRECTOR/SECRETARY  
KUNLE FALOLA

**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**

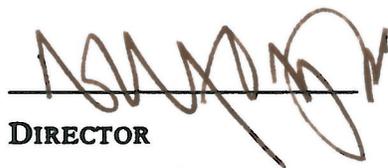
was affixed in the presence of:-

  
.....  
DIRECTOR Habes Alborosa

  
.....  
SECRETARY  
Ayodele Osofoba

**THE COMMON SEAL of the Co-Obligors  
GASCO MARINE LIMITED**

was affixed in the presence of:-

  
.....  
DIRECTOR  
Babara Baderu-Okusanya

  
.....  
SECRETARY

THE COMMON SEAL of the *Co-Obligor*

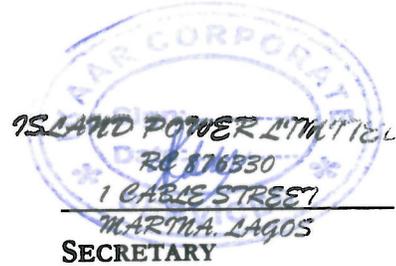
**ISLAND POWER LIMITED**

was affixed in the presence of:-



DIRECTOR

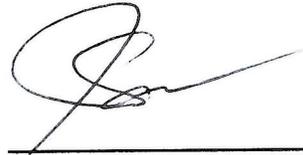
Apdelle Brogbo



THE COMMON SEAL of the *Co-Obligors*

**LISABI POWER LIMITED**

was affixed in the presence of:-



DIRECTOR Obadimeji Sanni



THE COMMON SEAL of the *Co-Obligors*

**MARINE POWER LIMITED**

was hereunto affixed in the presence of:-



DIRECTOR

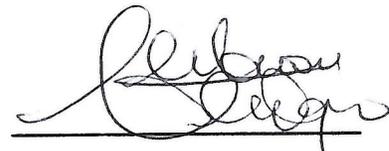
Apdelle Brogbo



THE COMMON SEAL of the *Co-Obligor*

**PIPP LVI GENCO LIMITED**

was affixed in the presence of:-



DIRECTOR

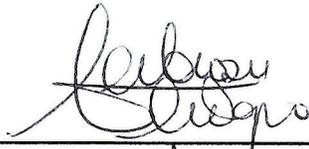
Habeeb Alebo 284

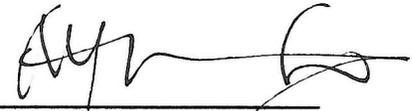


THE COMMON SEAL of the *Co-Obligor*

**TOFU ENERGY AND POWER COMPANY LIMITED**

was affixed in the presence of:-

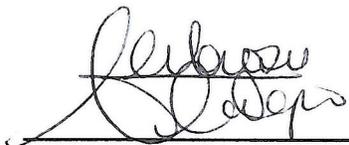
  
\_\_\_\_\_  
DIRECTOR Habees Aleboom

  
\_\_\_\_\_  
SECRETARY  
Ayodele Arogbo

THE COMMON SEAL of the *Co-Obligor*

**VIATHAN ENGINEERING LIMITED**

was affixed in the presence of:-

  
\_\_\_\_\_  
DIRECTOR Habees Aleboom

  
\_\_\_\_\_  
VIATHAN  
ENGINEERING LTD  
RC 936425  
SECRETARY  
Ayodele Arogbo