
PARTICIPATION AGREEMENT

FOR THE

NIGERIAN ELECTRICITY MARKET

BETWEEN

THE MARKET OPERATOR
(A BUSINESS UNIT UNDER TRANSMISSION
COMPANY OF NIGERIA)

AND

.....

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This participation Agreement for the Nigerian Electricity Market (hereinafter called the Agreement) is entered into on the _____ of _____, 20.....

Between

MARKET OPERATOR, a business unit under Transmission Company of Nigeria (TCN), which is a Public Limited Liability Company incorporated under the Laws of Federal Republic of Nigeria with its corporate headquarters at Plot 14, Zambezi Crescent, Maitama, Abuja, Nigeria (hereinafter referred to as the "MO"); of the first part;

And

.....
.....a Private Limited Liability Company incorporated under the Laws of Federal Republic of Nigeria with its head office at.....
.....Nigeria (hereinafter referred to as "Participant") which expression shall include its agents, successors in title and assigns) of the second part.

The Parties are hereinafter referred to individually as a "Party" and collectively as "Parties".

WHEREAS:

- A. It is understood that this agreement is made by MO, a business unit under TCN.
- B. MO is a creation of the Market Rules and cannot contract, sue or be sued in its name; it is therefore understood that this Agreement is made by TCN on behalf of MO.
- C. Consistent with the provisions of section 10(1) of the Market Rules, the MO is mandated to administer, implement and operate the Nigerian Electricity Market in a manner that guarantees efficiency, transparency and non-discriminatory market administration services to all participants.
- D. Pursuant to the provisions of the Market Rules, the Market Participation Agreement shall have the effect of a contract between the Participant and the MO by virtue of the execution by the MO and the participant, of a Market Participation Agreement under which the MO and the Participant shall agree to observe and perform the requirements of the Market Rules so far as they are applicable to the MO and the Participant.
- E. In accordance with the provisions of the Market Rules, the rights and obligations of MO under this Agreement are herein ascribed to and will be executed by the MO in compliance with the Market Rules.
- F. The Applicant Participant wishes to be registered in the Electricity Market as required by the Market Rules and has submitted an application to participate as a generator and eligible customer.

- G. The MO has approved the Admission Application, having reviewed it and is satisfied that the Participant has complied with relevant requirements in accordance with the Market Rules.
- H. The Applicant Participant wishes to be registered as a market participant and MO is willing to admit the Applicant Participant into the Nigerian Electricity Market on the terms and conditions contained in this Agreement.
- I. The Applicant Participant and the MO wishes to enter into this Agreement pursuant to the said Market Rules and relevant codes.

CLAUSE 1 – DEFINITIONS AND INTERPRETATIONS

Clause 1.1 Definitions

In this Agreement and the recitals, the following expressions shall have the meanings stated, unless the context otherwise requires:

- 1 “**Act**” means the Electricity Power Sector Reform Act, 2005, as may be amended from time to time, or any other legislation which replaces it.
- 2 “**Admission Date**” means the date the Applicant Participant was admitted as a participant of the Nigerian Electricity Market and shall be the Effective Date of this Agreement.
- 3 “**Admission Application**” “**Application**” means the application for admission submitted by the Applicant Participant to the MO as prescribed by the MO.
- 4 “**Admission**” means registration of a participant upon fulfilment of the MO's conditions for registration.
- 5 “**Affiliate**” means, a company or other entity which directly, or indirectly, through one or more intermediaries controls, or is controlled by, or is under common control with a Party, it being understood that control shall mean ownership by one company or entity of fifty percent (50%) or more of: (1) the voting stock if the company is a corporation issuing stock; or (!) the controlling rights or interests if the entity is not a corporation.
- 6 “**Business Day**” means a day (Other than a Saturday or Sunday or Public Holiday) on which banks are open for the transaction of normal business in Nigeria.
- 7 “**Clause**” means a paragraph in this Agreement.
- 8 “**Connection Point**” means a physical point where the participant's network or plant is joined to the Transmission System.
- 9 “**Consent**” means any licences, permits, concessions, waivers, approvals, and/or agreements required by MO or the Participant from or with any relevant authority in respect of the activities of MO or the Participant.
- 10 “**Disclosing Party**” means the Party that discloses Confidential Information to the Receiving Party.

11. **“Effective Date”** means the first date indicated above.
12. **“Grid Code”** has the meaning defined in the Act.
13. **“Independent System Operator” or “ISO”** has the meaning as defined in the Act.
14. **“Market Procedure”** means the details outlining the activities of the MO in administering the Market and to implement Market Rules provision
15. **“Market Rules” means the document titled “Market Rules for the Transitional and Medium Term stages of Nigerian Electricity Market, 2014 or its amendments from time to time.**
16. **“Metering”** means metering system including all associated equipment as established in the Metering Market Procedure.
17. **“Metering Market Procedure”** means the procedure developed by the MO that sets out the standards and specifications for the Participants' metering in Nigerian Electricity Market pursuant to Market Rules.
18. **“MW”** means megawatts.
19. **“Operations Procedure”** means the document developed by System Operator that outlined the actions, measures and instructions issued by the System Operator to ensure the availability and stability of the Grid and how to implement this Grid Code.
20. **“Participant”** means any person or entity who has signed the Market Participation Agreement with the MO.
21. **“Receiving Party”** means the Party who receives Confidential Information from the Disclosing Party.
22. **“Relevant Rules”** means The Act, Grid Code, Metering Code, Market Rules, Market Procedures, Operation Procedures, Orders/Regulations by NERC and any other directives by the Federal Government.
23. **“Term”** means duration of this Agreement as defined under clause 4.
24. **“The Commission”** means the Nigerian Electricity Regulatory Commission (NERC).
25. **“The Parties”** mean MO and the Participant.
26. **“The Schedules”** mean any document or correspondence exchanged in writing between the parties, be it in original or copy form for the purpose of this agreement.
27. **“The Market Operator” or “MO”** means the company or entity licensed to carry on system operation under the Act, in so far as such company or entity is engaged in the administration of the Wholesale Electricity Market, including making, publishing, amending, administering and or enforcing the Market Rules, Settlement and Payments among Participants pursuant to its Licence.
28. **“The System Operator” or “SO”** means the company or entity licensed to provide system operation service under the Act, in so far as the company or entity is engage in system operative activities other than the administration of the Wholesale Electricity Market, pursuant to its License.

29. **This Agreement"** means this Market Participation Agreement as it may be amended or supplemented from time to time, including any schedules and annexure thereto.

Clause 1.2 – Rules of Interpretation

In this Agreement:

- 1.2.1 The headings and table of contents are for convenience only and shall be ignored in construing this Agreement;
- 1.2.2 Except where the context determines otherwise, the singular includes the plural and vice versa and the masculine gender includes the feminine;
- 1.2.3 References to Clauses, Recitals and Schedules are, unless otherwise specified, references to Clauses of, and Schedules and Recitals to this Agreement;
- 1.2.4 A reference to any publication, statute, rule, code, regulation, instrument or standard means the same as amended, supplemented or re-enacted from time to time;
- 1.2.5 A reference to any agreement means the same as amended, supplemented or replaced from time to time;
- 1.2.6 Unless otherwise provided herein, whenever a consent or approval is required by one Party from the other Party, such consent or approval shall be in writing and shall not be unreasonably withheld, conditioned or delayed;
- 1.2.7 The words "include," "including," and "in particular" are used by way of illustration only, and shall not be construed as, nor shall they have the effect of, limiting the generality of the preceding words;
- 1.2.8 References to a Party are references to a party to this Agreement, including that Party's assigns or transferees permitted in accordance with the terms of this Agreement; its agents and successors in title;
- 1.2.9 The Schedules (and if any schedules or tables thereto) to this Agreement forms part of this Agreement, and capitalized terms and abbreviations used in the Schedules (and if any schedules or tables thereto) which are not defined therein shall have the meanings given to them in Clause 1.1 of this Agreement and in the event of any conflict between the main body of this Agreement and Schedule, the main body of this Agreement shall prevail over the provisions of the Schedule;
- 1.2.10 If a period of time is specified as from a given day, or from the day of an act or event, it shall be calculated exclusive of that day;
- 1.2.11 A reference to any notice or notification means a notice or notification made in writing or as otherwise expressly provided in this Agreement; and
- 1.2.12 A reference to "day" means a calendar day.

Now, therefore, in view of the foregoing premises and in consideration of the mutual benefits to be derived and the representation, warranties, covenants, assurances and agreements contained herein, and other good and valuable considerations, the sufficiency of which is hereby acknowledged, and intending to be legally bound, the Parties hereby agree as follows:

CLAUSE 2 – PURPOSE AND INTENT

Clause 2.1 – Purpose

The purpose of this Agreement is to –

- 1) Establish a framework by which Participants in Nigerian Electricity Market will comply with the rules as necessary to enable the MO administer the Electricity Market efficiently pursuant to Market Rules; and created by this Agreement, and establish certain rights and obligations of the Participants
- 2) Set forth the rights and obligations of the Parties with respect to the Participants' processes with respect to MO and vice versa.

Clause 2.2 – Intent of the Parties

It is the intent of the Parties that the MO provides the Participation process in compliance with the provisions of the Market Rules, Metering Code, Grid Code, and Market Procedures and the Participant on its part complies with its obligations as spelt out in the various rules and code as outlined, paying all necessary fees promptly.

CLAUSE 3 – OBLIGATIONS OF THE PARTIES

3.1 – The MO

The MO Shall-

- 1) Guarantee an efficient, transparent and non-discriminatory market administration service to all Participants.
- 2) Facilitate the development of a sustainable competitive market.
- 3) Adapt to regional markets or regional electricity trading agreements.
- 4) Centralise the information required for market administration.
- 5) Organise and maintain the related data bases.
- 6) Verify that each Connection Point where a Participant injects or extracts energy has proper commercial metering.
- 7) Verify that the commercial metering system is adequate and in compliance with the metering procedure.
- 8) Calculate and recover payment for ancillary services, administer the market settlement process and market payment system.
- 9) Calculate and settle payments in respect of transmission charges.
- 10) Calculate and settle payments in respect of ancillary services and other cost of operating the system and administering the market.
- 11) Receive contract information and maintain contract register for the purpose of generating Generation Adequacy Report.
- 12) Calculate Contracted Imbalance Quantities.
- 13) Other obligations as outlined in the Market Rules.

3.2 – The Participant

Metering Code, the Operating Procedures and the Market Procedures be compliant at all

- 1) The Participant shall in accordance with the provisions of the Market Rules, Grid Code, times, particularly by:
 - a. Providing metering information in a timely manner and in the approved format in accordance with the metering code, Operating Procedures and the Market Procedures.
 - b. Maintain Security Deposit when so required of an amount established by the Market Operator to serve as a form of guarantee of payment for all amounts due from the Applicant Participant to the Market Operator.
 - c. Settling in a timely manner any payment due.
- 2) The Participant acknowledges that admission and participation in the Nigerian Electricity Market is subject to compliance with all relevant requirements presented and established by the MO.
- 3) The Participant shall inform the MO promptly of any change in any condition and information submitted in its Admission Application.
- 4) The Participant undertakes to:
 - a. Construct, maintain and operate any equipment, system or facility connected to the transmission system in compliance with the Grid Code; for the time being in force; and
 - b. Provide all information required by the MO and System Operator in a timely manner and in established formats.

CLAUSE 4 – DURATION/TENURE OF AGREEMENT

This Agreement shall, following the execution by the Parties become effective as of the Effective Date and shall continue until terminated in accordance with CLAUSE 10 of this Agreement.

CLAUSE 5 – VARIATIONS TO THIS AGREEMENT

The MO or the Participant may propose a variation or an amendment to this Agreement if it deems it necessary for the benefit of the market. The proposed amendment or variation may be relative to a change in law or amendment to the Market Rules, the Grid Code, or the TCN's license conditions as necessary to ensure that this agreement Operate in a manner which is consistent with the effect of the change in law or amendments to the afore mentioned documents. Such variation or amendment shall not be binding unless it is in writing and mutually agreed by the parties.

CLAUSE 6 – STATUS

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

CLAUSE 7 – REPRESENTATION AND WARRANTIES

7.1 – MO

The MO hereby represents and warrants to Participants as follows:

- 1) That it has the requisite corporate or other relevant powers to enter into and perform its obligations under this Agreement.
- 2) That the powers, rights and duties conferred on TCN herein are those exclusively to be exercised by the MO under the Market Rules and the System Operator under the Grid Code respectively as provided in the applicable license granted to TCN.
- 3) That it has been duly authorised by all necessary corporate, governmental and/or other action to enter into and perform the obligations set out in this Agreement.
- 4) That the individual executing this Agreement and any document in connection herewith, on its behalf has been duly authorised to execute this Agreement and any document in connection herewith, and has the full powers and authority to bind it

7.2 – PARTICIPANT

- 1) The Participant hereby represents and warrants to the MO and acknowledges and confirms that it is aware that MO is reliant on such representation and warranties relative to the Admission Application to become a market participant as follows:
 - a. That it has been duly authorised by all necessary corporate, governmental authority to enter into and perform under this Agreement;
 - b. That the individual executing this Agreement and any other document in connection herewith, on its behalf has been duly authorised to do so and has the full powers and authority to bind it.
 - c. That the information provided in its Admission Application is true, accurate and complete in all respects.

CLAUSE 8 – NOVATION

- 8.1 The Parties acknowledge that at the time this Agreement was entered into a division of TCN performs the roles of SO and/or MO. TCN therefore takes direct responsibility for performing those roles and complying fully with all of their obligations under this Agreement and Relevant Rules.
- 8.2 If TCN transfers the roles of either both SO and /or MO to another entity in accordance with section 26(7) of the Act; subject to prior written consent of the Participant, the Parties shall novate this Agreement so that this Agreement becomes trilateral and the entity to whom the role of SO and /or MO is transferred assumes the rights and obligations of TCN under this Agreement to the extent they relate to the role of the SO and/or MO (as appropriate).

CLAUSE 9 – ARBITRATION

- 9.1 Any dispute, conflict, differences, claims and controversies that may arise out of or in connection with the performance of this Agreement, shall first be resolved amicably by the parties. Where there is failure to reach an amicable settlement any Party shall have the right to refer the matter to arbitration in accordance with the provision of the Market Rules 2014 and any amendment made thereto.
- 9.2 **Notwithstanding, any dispute between the Parties, each Party shall continue to perform all of its obligations under this Agreement.**

CLAUSE 10 – TERMINATION

- 10.1 This Agreement shall automatically stand terminated upon expiry or the earlier of
- a. The date of the issuance to the Participant of a Termination Order by the MO; or
 - b. The date on which the Participant withdraws its participation or trading in the Electricity market in accordance with the withdrawal provisions as enshrined in the Market Rules.
- 10.2 Notwithstanding Clause 10.1 the Participant shall remain liable for all its obligations and liabilities as a participant which were incurred or arose under the Market Rules prior to the date referred to in 10.1(a) or 10.1(b) as the case may be regardless of the date on which any claim relating thereof may be made.
- 10.3 Notwithstanding Clause 10.1 the MO shall remain and subject to and be liable for all its obligations and liabilities owed to the Participant which was incurred or arose under the Market Rules prior to the date referred to in 10.1 (a) or 10.1(b) as the case may be regardless of the date on which any claim relating thereof may be made.
- 10.4 Notwithstanding any other provisions of this Agreement and for greater certainty, the provisions of 10.2 and 10.3 shall survive termination of this Agreement for any reason.

CLAUSE 11 – CONFIDENTIALITY

- 11.1 This Agreement and all information disclosed hereunder or in connection with this Agreement shall be treated as confidential and (except as provided in Clauses 11.2 and 11.3 below) such information shall not be disclosed in whole or in part by either Party without the prior written consent of the other party.
- 11.2 The Obligation to obtain consent, in accordance with Clause 1.1, does not apply to information that (when used or disclosed):
- (a) Has been made public other than through a breach of this Agreement or has been; or
 - (a) Could have been, lawfully acquired by the Party.
- 11.3 Notwithstanding the provisions of Clause 11.1 above, neither Party shall be required to obtain the prior consent of the other in respect of disclosure of information:
- 1) To directors and employees and Affiliates of such Party, provided that such Party shall take all reasonable steps to ensure that such directors, employees and Affiliates keep the disclosed information confidential on the same terms as are provided in this Clause.

- 2) To Persons professionally engaged by or on behalf of such Party; provided that such persons shall be required by such Party to undertake to keep such information confidential and that such Party shall take all reasonable steps to secure compliance with such undertaking.
- 3) To any government department or any governmental or regulatory agency having jurisdiction over such Party but only to the extent that such Party is required by law to make such disclosure.
- 4) Which it is required to disclose under the Laws of Nigeria, The Relevant Rules or its Licence.
- 5) To the following entities, subject to the relevant Party taking all reasonable steps to ensure that such institution or intended assignee or transferee first agrees with such party to be bound by confidentiality provisions substantially the same as those contained in this Clause 11;
 - a. Any lending or other financial institutions (and its professional advisers) in connection with the financing of such Party's operations.
 - b. Any bona fide intended assignee or transferee of the whole or any part of the rights and interests of the disclosing Party under this Agreement.
 - c. Any third party with a bona fide interest in acquiring all or part of a Party's share capital;
or
 - d. Any third party with a bona fide interest in acquiring all or part of the business carried on by a Party pursuant to its Licence
- 6) To any expert or arbitrator appointed pursuant to and under the terms of this Agreement or a related agreement

This Clause shall survive termination of this Agreement for a period of thirty six (36) months from the date of such termination.

CLAUSE 12 – MISCELLANEOUS PROVISIONS

Clause 12.1 – Language

This Agreement has been drafted in English Language and the English version shall prevail over any translations. All notices, certificates and other documents and communications (including copies) given or made under or in connection with this Agreement shall be in English Language.

Clause 12.2 – Governing Law

This Agreement and any dispute arising out of it in connection with it or its subject matter, existence, negotiation, validity, termination or enforceability (including non-contractual disputes or claims) shall be governed by and construed in accordance with the relevant laws of the Federal Republic of Nigeria.

Clause 12.3 – Successors and Assigns

The Participant may, upon delivery of 14 Days' prior notice to the MO, assign this Agreement or transfer its rights and obligation under this Agreement or any part thereof to its Affiliate or any

third party. This Agreement shall be binding upon, and inure to the benefit of, the Parties and their respective permitted successors and assigns.

Clause 12.4 – Entire Agreement

- 1) Each of the Parties to this Agreement confirms on behalf of itself and its Affiliates that this Agreement represents the entire understanding and constitutes the whole agreement, in relation to its subject matter and supersedes any previous agreement between the Parties with respect thereto and, without prejudice to the generality of the foregoing, excludes any warranty, condition or other undertakings implied at law or by custom, usage or course of dealing.
- 2) Each of the Parties confirms that, in entering into this Agreement, it has not relied on any representation, warranty, assurance, covenant, indemnity, undertaking or commitment which is not expressly set out or referred to in this Agreement.

Clause 12.5 – Severability

If any Clause of this Agreement is determined by a court or other authority of competent jurisdiction to be invalid, void, illegal, unenforceable or against public policy, the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by such determination in any way.

Clause 12.6 – Further Assurance

Each Party agrees to use all reasonable efforts to take, or to cause to be taken, all actions, and to do, or to cause to be done, all things necessary, proper or advisable under Nigerian law or any applicable law to effectuate the intent of this Agreement.

In the event of any inconsistency between this Agreement Hierarchy and the Act, or the license or Market Rules or the Grid code, or the Market Procedures; the Act, or the license or Market Rules or the Grid code, or the Market Procedures respectively shall prevail to the extent of such inconsistency.

Clause 12.7 – Notices

- 1) Any notice, demand, consent, request or other communication required or permitted to be given or made under this Agreement shall:
- 2) Be given or made in the manner set forth in the Market Rules or the Grid Code, as applicable; and
- 3) Be addressed to the Participant or the representative identified in the Admission Application, or to any change to this representative as is notified by the Participant to the MO.
- 4) Provided that a Party may change the address to which notices are to be sent to it, by giving not less than thirty (30) days' prior written notice to the other Party.

5) All notices and other communications required or permitted to be given by a Party shall be in writing and either delivered personally or by courier or sent by electronic mail to the address of the other Party specified below:

(a) To MO:

Attention: The MO
Address: TCN Corporate Headquarters
Plot 14 Zambezi Crescent
Maitama, Abuja
Nigeria
Email: edmo@onem.gov.ng

To Participant:

Attention:;
Address:
.....

Clause 12.8 – Conflicts of Interest

- 1) No director, employee or agent of the MO shall give or receive any commission, fee, rebate, gift or entertainment of significant cost or value in connection with this Agreement, or enter into any business arrangement with any director, employee or agent of the Participant or any Affiliate other than as a representative of the Participant or its Affiliate, without prior written notification to the Participant.
- 2) No director, employee or agent of the Participant shall give or receive any commission, fee, rebate, gift or entertainment of significant cost or value in connection with this Agreement, or enter into any business arrangement with any director, employee or agent of the MO or any Affiliate other than as a representative of the MO or its Affiliate, without prior written notice thereof to the MO.
- 3) Each Party warrants that it has not paid, nor has it undertaken to pay, and it shall in the future not pay directly or indirectly, any bribe, pay-off, kickback or unlawful commission and that it has not in any other way or manner paid or promised to pay any sums, whether in Naira or foreign currency and whether in Nigeria or abroad, or in any other manner given or offered to give any commission, fee, rebate, gift or entertainment of significant cost or value in Nigeria or abroad to any public official (i.e any person holding a legislative, administrative or judicial office, including any person exercising a public function for a public agency, a public enterprise or a public international organization), candidate for political office, person or company, or any person or entity acting for or on behalf of or in trust for such public official, candidate for political office, person or company, in connection with this Agreement, where such commission, fee, rebate, gift or other items of value would violate the applicable laws of Nigeria in respect thereto and/or any other International Convention and/or Treaty to which Nigeria is a signatory.

A breach of this Clause 12.8 shall constitute a material breach of this Agreement and shall entitle the non-defaulting Party to terminate the Agreement forthwith upon notice to the Party in breach. The Party in breach shall be liable for the direct costs and expenses incurred by the non-defaulting Party as result of the breach of this clause.

IN WITNESS WHEREOF the parties have hereunto caused their Common Seals to be affixed hereunto

the day and year first above written:

Authorised Representative of MARKET OPERATION for and on behalf of MO

Name:-----Signature:-----

Title/Role-----Date-----

In the Presence of:

Name:-----Signature:-----

Title/Role-----Date-----

Authorised Representative of.....NIGERIA LIMITED

Name:-----Signature:-----

Title/Role-----Date-----

In the Presence of:

Name:-----Signature:-----

Title/Role-----Date-----