

EPC Contract

for

**Nigeria Banner Energy 260MW Gas Fired
Power Plant Project**

2021

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Contract Agreement

This Agreement was made and entered into on the 4TH day of June, 2021 between: **Banner Energy Limited**, a company duly incorporated under the Laws of the Federal Republic of Nigeria and having its office at Plot 6 Babafemi Osoba Crescent, Lekki Phase 1, Lagos, Nigeria (hereinafter called "the Employer" which expression shall unless repugnant to context or meaning thereof be deemed to include its successors and authorised assignees) of the one part,

and

Sinohydro Corporation Limited, a company incorporated and existing under the laws of the People's Republic of China, with company registration number [insert], and whose place of business is at Building 23, No. 17 Xicui Road, Haidian District, Beijing 100036, the People's Republic of China (hereinafter called "Contractor" which expression shall unless repugnant to context or meaning thereof be deemed to include its successors and authorised assignees) of the other part.

("the Employer" and "the Contractor" may individually be referred to as "Party" and jointly referred to as "Parties")

Whereas:

(A) The Employer intends to build, own and operate a 260MW Gas Fired Power Plant Project, located in the Ikoti Abasi area of Akwa Ibom State, Nigeria, on the banks of the Imo River.

(B) The Employer requires the Contractor to execute and complete Works (including but not limited to engineering, procurement, construction, testing, commissioning) and remedy any defects therein and therefore has entered into this Contract.

The Parties hereto agree as follows:

1. In this Contract Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract hereinafter referred to.
2. The following documents shall be deemed to form and be read and construed as constituting this Contract (as defined in the Conditions of Contract) between the Parties, and shall be interpreted in the following order of priority:
 - a) Any supplementary documents which both Parties agree to be incorporated into the Contract,
 - b) This Contract Agreement,



- c) The Particular Conditions of Contract,
 - d) The General Conditions of Contract,
 - e) The Technical Agreement.
3. In consideration of the payment of the Contract Price to be made by the Employer to the Contractor as hereinafter mentioned, the Contractor hereby covenants with the Employer to complete the Works and remedy the defects therein in conformity with the provisions of the Contract.
4. The Employer hereby covenants to pay the Contractor, in consideration of the Engineering, Procurement, Construction of the Works and the remedying of defects therein, the lump sum US\$300,000,000 (US dollar Three Hundred Million Only) subject to such adjustments (if any), at the times and in the manner prescribed by the Contract (the "Contract Price").
5. The Parties agree that this Agreement and the documents forming the Contract as listed in Clause 2 above shall come into effect on the date that all these documents are signed by the Parties and in the event that these contract documents are not signed simultaneously, the date of the last signature shall prevail.
6. The "**Contract Commencement Date**" as defined in Clause 1.1.3.13 of the Particular Conditions of Contract is the date all the following Conditions Precedent have been satisfied:
- (a) The Employer has finished land acquisition of the Site and obtained all the necessary permits in order to provide the Contractor with access to and use of the Site as required by Sub-Clause 2.1 of the Conditions of the Contract;
 - (b) The Contractor has received the Advance Payment under Sub-Clause 14.2 provided that the corresponding Advance Payment Guarantee of the same amount has been delivered to the Employer.
 - (c) the Performance Security has been provided to the Employer by the Contractor in accordance with Sub-Clause 4.2 of the Particular Conditions of the Contract;
 - (d) The Employer has handed over the Site to the Contractor and the Contractor has accepted such hand-over;
 - (e) The Employer has provided reasonable evidence that financial arrangements have been made and are being maintained which will enable the Employer to pay the Contract Price.

Upon the fulfilment of all above conditions, the Employer shall provide the Contractor with a Notice to Proceed stating the Commencement Date.

7. This Contract Agreement and the documents comprising the Contract, as listed in Clause 2 above, constitute the entire agreement between the Parties with respect to the subject matter of this Contract Agreement, and supersede all prior negotiations, agreements and understandings with respect thereto. This Contract may only be amended by a written document duly executed by all Parties.
8. In addition to the general obligations stated in the Sub-Clause 4.1 of the General Conditions, Contractor shall:
 - (a) assist the Employer in looking for development partners to support with funding all outstanding pre-development activities, looking for equity and debt financing partners, leading to financial close;
 - (b) assist the Employer to complete PPA negotiations;
 - (c) collaborate with the Employer for the provision O&M services for the Project.

In Witness whereof the parties hereto have caused this Contract Agreement to be executed the day and year first before written in accordance with their respective laws.

For Employer

For Contractor

Signed by

**In the
presence of**

Witness:

Witness:

General Conditions

Conditions of Contract for EPC/Turnkey projects, first Edition 1999, published by the Federation Internationale Des Ingenieurs-Conseils (FIDIC), and the following "Particular Conditions" which include amendments and additions to such General Conditions.

These General Conditions are subject to the variations and additions set out in the following "Particular Conditions."



Particular Conditions of Contract

1 General Provisions

1.1 Definitions

1.1.1.3 Delete and Substitute: **“Technical Agreement”** means the document agreed by parties, as included in the Contract, and any additions and modifications to such document in accordance with the Contract. Such document specifies the purpose, scope, and/or design and/or other technical criteria, for the Works. Wherever **“Employer’s requirements”** or **“Tender”** occurs in these Conditions, **“Technical Agreement”** shall be substituted for **them**.

1.1.1.4 Delete

1.1.1.6 Insert a new definition as follows: **“Affiliate”** means in relation to any person, any holding company or any subsidiary of that person or any subsidiary of the holding company save that for the purposes of determining whether one entity is an Affiliate of another any transfer of shares by way of security or to a nominee of the transferer shall be disregarded.

1.1.1.7 Insert a new definition as follows: **“Gas Supplier”** means each counter party (other than the Employer) to the agreement(s) providing for the supply of gas to the Project and its successors and/or assigns.

1.1.1.8 Insert a new definition as follows: **“PPA Buyer”** means ALSCON aluminum plant and its successors and permitted assignees for sale and purchase of electricity generated by the Works pursuant to a Power Purchase Agreement relating thereto.

1.1.3.1 **“Base Date”** means the date 28 days prior to the date for signing the Contract.

1.1.3.7 **“Defects Notification Period”** means the period (365 days) for notifying defects

in Section 1 or Section 2, calculated from the date on which Section 1 or Section 2 is completed as certified under Sub-Clause 10.1(Taking Over of the Works and Sections).

1.1.3.10 Insert a new definition as follows: “Trial Operation” has the meaning as described in the Technical Agreement which for the avoidance of doubt shall be 72 hours of continuous operation.

1.1.3.11 Insert a new definition as follows: “Contract Effective Date” is the date that the Contract is signed and executed by the Employer and Contractor and in the event that the contract is not signed simultaneously, the date of the last signature shall prevail.

1.1.3.12 Insert a new definition as follows: “Programme” means a time schedule which details how and when the Contractor proposes to carry out each stage of the Works as set out in the Technical Agreement.

1.1.4.4“**Foreign Currency**”means United States Dollar Which is the official currency of the United States.

1.1.5.8 “Works” mean the Permanent Works and the Temporary Works, including

(a) relocation of equipment (detailed list referring to Attachment-5) from the power plant of Nantian Power Co., Ltd. located in Shenzhen City, China to the Site;

(b) engineering, procurement, construction, testing, commissioning etc works to finally set up a 260MW gas-fired combined cycle power plant on the Site.

Replace the original Clauses with:

1.1.6.2 “Country” means the country in which the Site (or most of it) is located, where the Permanent Works are to be executed being the Federal Republic of Nigeria.

1.1.6.6 “Performance Security” means a performance guarantee from a reputable bank agreed by both Parties. The performance guarantee shall have a value of 10% of the Contract Price, and shall be expressed in the currency in which the Contract Price is payable. The format shall follow the Attachment-2.



1.1.6.9 Insert a new definition as follows: "Interim Milestone" means the achievement of Functional Completion in respect of any stage defined as such in terms of the Programme as stated in the Technical Agreement.

1.1.6.10 Insert a new definition as follows: "Interim Milestone Time for Completion" means the period in respect of the Interim Milestone with any extension under Sub-Clause 8.4. [Extension of Time for Completion] and calculated from the Commencement Date.

1.1.6.11 Insert a new definition as follows: "Shipping Documents" means commercial invoice, Packing List, Bill of Lading or Airway Bill (as the case may be), Certificate of Origin (country of origin) and Insurance Policy and any other document used for the purposes of transportation or shipping. For the avoidance of doubt and in the event of any ambiguity, the consignee for the purposes of the documents stated in this sub clause shall be the Employer as defined in the Contract.

1.1.6.12 Insert a new definition as follows: "LIBOR Interest Rate" means the interest rate for US Dollars for a period of six months published in the Financial Times of London, United Kingdom. If such reference ceases to be available, the Employer and the Contractor shall agree a replacement reference for the appropriate rate. In the absence of such agreement, the replacement reference for the appropriate rate shall be determined by the Dispute Adjudication Board.

1.2 Interpretation

of the Cost.

1.3 Communications

At the end of Sub-Clause 1.3, insert: The electronic system of communication used shall be electronic mail to the following address:

The Employer's contact and delivery address shall be as follows:



To be specified later

To: Banner Energy Ltd
Plot 6 Babafemi Osoba Crescent,
Lekki Phase 1, Lagos.

Email: nuhu.y@bannerenergy.net

Telephone: +23408036701755

cc:

Email: chudi@bannerenergy.net

Telephone: +23408033247797

The Contractor's contract and delivery address shall be as follows, subject to formal written notice later if any changes occurs:

To: Sinohydro Corporation Limited
Building 23, No. 17 Xicui Road, Haidian District, Beijing 100048, the People's
Republic of China

Email: tkn@powerchina-hb.com

Telephone: +2349094784369

Cc:

Email: mafeng@powechina-intl.com

Telephone: +2347048338315

1.4 Law and Language

The governing law of the Contract shall be of the laws of Federal Republic of Nigeria.



The ruling language and the language for communication shall be English. All documentation and other information required under or in connection with the Contract (including, without limitation, all and any technical information and results) shall be provided in English.

1.5 Priority of documents

Delete the second sentence of Sub-Clause 1.5 and replace with the following:

“For the purposes of interpretation, the priority of the documents forming the Contract shall be as set out in Clause 2 of the Contract Agreement.

If the Contractor finds any discrepancy, ambiguity or inconsistency in or between any of the documents forming the Contract which is not resolved by applying the other provisions of this Sub-Clause 1.5, the Contractor shall immediately notify the Employer giving details thereof and after receiving this notice the Employer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine such matters.”

1.6 Contract Agreement

Delete Clause 1.6 and replace with:

“1.6 The Parties agree that:

(a) this Contract together with any other document referred to in this Contract (together the “Contractual Documents”) constitutes the entire agreement between the parties and any prior agreements between the parties relating to the subject matter of this Contract are hereby superseded/terminated and of no further effect without liability on the part of any Party thereto;

(b) neither of them have been induced to enter into any Contractual Document in reliance upon, nor have they been given, any warranty, representation, statement, agreement or undertaking of any nature whatsoever other than as are expressly set out in the Contractual Documents and, to the extent that either of them have been so induced, the relevant Party unconditionally and irrevocably waives any claims, rights or remedies which it might otherwise have had in relation thereto;

(c) the only remedies available to them in respect of the Contractual Documents are damages for breach of contract and those remedies set out in the Contract and, neither Party shall have any further right to rescind or terminate any Contractual Document

whether for breach of contract or for negligent or innocent misrepresentation or otherwise;

provided that this Clause shall not exclude any liability which any Party would otherwise have to the other Party or any right which either of them may have to the extent that in each case cannot be excluded in accordance with the governing law of the Contract."

1.8 Care and Supply Documents

Delete the words, "Unless otherwise stated in the Contract, the Contractor shall supply to the Employer six copies of each of the Contractors Documents." and replace them with words "The Contractor shall supply to the Employer the number of copies of each of the Contractor's Documents as required to comply with the Technical Agreement."

2.12.1 Right of Access to the Site

Replace the second paragraph with following:

" 14 days before the date on which works commence in accordance with the Programme at the Site, the Employer shall provide right of access to, and possession of, the Site. "

Insert a new sixth and seventh paragraph as follows:

"The Employer shall indemnify and hold the Contractor harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from any claim made by a third party in relation to the obligations of the Employer to grant to the Contractor the right of access to, and possession of the Site (such as in relation to land acquisition and compensation to such third parties) in accordance with this Sub-Clause 2.1.

The Employer shall also make available to the Contractor areas of land to be used for the erection of temporary accommodation and construction facilities as well as laydown of construction materials. Such land shall form part of the Site under the Contract for the purposes of Sub-Clause 4.23 [Contractor's Operations on Site] and are the "additional areas" referred to in such Sub-Clause."

2.2 Permit, Licences or Approvals

In sub-paragraph (a), after words "Laws of the Country", add the words "codes or standards in force in the Country, in each case."

Insert a new sub-paragraph at the end of the sub-clause as follows:

“(d)Employer for the Contractor to obtain such working visas as required for the Contractor’s Personnel under the laws of the Country to enable the Contractor’s Personnel to work on the Site as provided for in the Programme.

The Employer and the Contractor shall respectively be responsible for obtaining required permits, licences and approvals as are detailed in the Attachment-3.

If the Contractor suffers delay and/or incurs Cost from the Employer failing to obtain the required permits, licences and approvals, the Contractor shall be entitled subject to Sub-Clause 20.1[Contractor’ s Claims] to:

(a)an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion],and

(b)payment of any such Cost, which shall be added to the Contract Price.”

4. The Contractor

4.2 Performance Security

Delete the First paragraph of Sub-Clause 4.2 and substitute:

“The Contractor shall provide the Employer with a Performance Guarantee in the amount of ten percent (10%) of the total Contract Price, which shall be in accordance with Attachment-2.”

In the second paragraph delete the words "28 days after both Parties have signed the Contract Agreement" and replace them with "28 days after the Employer has provided reasonable evidence for his financial arrangements according to Clause 6 of the Contract Agreement."

Replace the last paragraph of Sub-Clause 4.2 with “The Employer shall return the Performance Security to the Contractor within 21 days after the Contractor has become entitled to receive the Taking-over Certificate. If a Taking-Over Certificate is issued for a Section, the relevant percentage of the Performance Security amount shall be reduced when Taking-Over Certificate for the Section is issued. The relevant percentage for each Section shall be the percentage value of the Section as stated in the Contract.”

4.5 Nominated Subcontractors

Delete the original Sub-Clause and replace with following:

In this Sub-Clause, “nominated Subcontractor” means Nantian Power Co., Ltd, who supplies the equipment stated in Attachment-5 of the Particular Conditions.

The performance guarantees provided in the Technical Agreement is based on those parameter guarantee provided by the nominated Subcontractor. If the Contractor fails to meet the performance guarantees stated in the Technical Agreement and such failure is due to the nominated Subcontractor, the Contractor shall not be liable for such failure and the Employer shall not withhold or refuse to issue the Taking-Over Certificate or Performance Certificate to the Contractor for such failure. ”

If the Works, or a Section fail to pass the Tests on Completion under Sub-Clause 9.4 as a result of the defect, quality problems of the equipment supplied by the nominated Subcontractor or as of other reasons caused by the nominated Subcontractor, then the Contractor shall be under no obligation to the Employer for such failure under the Contract.

The Contractor shall be under no obligation to the Employer under Sub-Clause 11 [Defect Liability] for any defects or damage caused by the nominated Subcontractor.

The Contractor shall not make any payment to the nominated Subcontractor for the works done by him unless the Contractor has obtained the related payment from the Employer.

4.12 Unforeseeable Difficulties

Replace (c) with following:

The contractor shall exercise reasonable care, prudence and diligence in planning for the Work, and the Contract Price shall be adjusted to take account of unpredictable difficulties or costs.

4.15 Access Route

Replace the following words from sub-paragraph (b) of Sub-Clause 4.15 “and shall obtain any permission which may be required from the relevant authorities for his use of routes, signs and directions” with “The Employer shall (where he is in a position to do so) provide reasonable assistance to the Contractor.” with “The Employer shall (where he is in a position to do so) provide reasonable assistance to the Contractor.”

4.19 Electricity, Water and Gas

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Delete the second paragraph of Sub-Clause 4.19 and replace with the following:

In all cases the Contractor shall, at his risk and cost, provide any apparatus necessary for his use of these services and, in the case of services provided at the area for temporary accommodation, for measuring the quantities consumed and shall be responsible for all and any damage caused as result or in the course of using such services.”

4.20 Employer’s Equipment and Free-Issue Material

Delete the Clause and replace it with the following:

“4.20 Back Feed Power and Utilities

Subject to the Contractor providing to the Employer (i) the requirements for such back feed power after the detailed design stage but no later than 6 months prior to the date of the commencement of the pre-commissioning of the first Power Unit and (ii) notice of the date on which any such back feed power is required of at least 28 days in advance of the date on which it is required, the Employer shall be responsible for providing back-feed power to each Power Unit from the Grid.

Subject to the Contractor providing to the Employer (i) the requirements for such Fuel, including gas and light diesel oil, water after the detailed design stage but no later than 6 months prior to the date of the commencement of the pre-commissioning of the Power Unit and (ii) notice of the date on which the same is required in each case of at least 28 days in advance, the Employer agrees to provide or bear the cost of fuel (gas and light diesel oil), water, electricity reasonably required by the Contractor for the purposes of commissioning, start-up, trial operation and testing of the Power Plant as required for each Section until such Section achieves taking over in accordance with Sub-Clause 10.1 [Taking Over of the Works and Sections];”

4.22 Security of the Site

Replace “the Contractor” with “the Employer” in the sub-paragraph (a).

Insert a new Sub-clause 4.25 as follows:

4.25 Grid Synchronisation/De-synchronisation

As and when requested by the Contractor by giving notice to the Employer of at least



28 days in advance of the date on which such synchronisation or de-synchronisation is required, the Employer shall allow for the synchronisation or de-synchronisation of the Grid as required for subject to approval to be obtained from TCN and other stakeholders.:

- (a) Commissioning and testing of the Works or any part thereof in accordance with the Contract;
- (b) the supply of electricity for the operation of the auxiliary equipment forming part of the Works during commissioning and testing of any such part of the Works; and
- (c) the delivery of electricity generated by the Works or any part thereof prior to the relevant date of Taking Over.

The generation revenues, from total cumulative Trial Operation and/or other generation including that specified in Clause 10.4 [Operation Prior to Taking Over], will belong to the Employer.

During the trial operation, commissioning and testing of the Works or any part thereof in accordance with the Contract shall not be interfered with or interrupted unreasonably by the Employer. If any delay or cost incurred due to the reason other than the Contractor's responsibility, the Contractor shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and b) payment of any such cost, which shall be added to the Contract Price.

5.2 Contractor's Documents

At the end of the first paragraph, insert the following "The list of Contractor's Documents set out in the Contractor's Proposal is an initial list and, after the Commencement Date, the Parties shall discuss and no later than 3 months after the Commencement Date agree upon a full list of such documents which shall then be included in the Contractor's Proposal. In the absence of an agreement on any part(s) of such list by such date, Sub-Clause 3.5 [Determinations] shall apply in respect thereof.

At the end of the fourth paragraph, insert the following:

The Employer shall raise all comments on the contractor's documents within 14 days after the submission. The revised documents shall be submitted within 3 (three) days after the EPC Contractor received the comments. The total approval period shall not exceed 21 days after the submission from Contractor. Otherwise, the documents shall be deemed to be approved in any case.

In the second sentence of the fifth paragraph, after the word "resubmitted", insert the words "by the Contractor within 10 days (or such other period as the Parties may agree



having regard to the nature and content of the relevant Contractor's Document) of receipt of the notice from the Employer" and after the word "reviewed", insert the words "within 10 days (or such other period as the Parties may agree having regard to the content of the relevant Contractor's Document) of receipt thereof by the Employer".

At end of the fifth paragraph, insert "At all times, the duration for the Employer's review will take into consideration any urgency and timely implementation of the Project Schedule."

At the end of the Sub-Clause, insert the following:

"If the Employer fails to comply with its obligations under this Sub-Clause 5.2 and the Contractor suffers delay as a result, the Contractor shall give notice to the Employer and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion]."

5.4 Technical Standards and Regulations

Delete the first and the second paragraphs, replace with the following:

"The design, the Contractor's Document, the execution and the completed Works shall comply with the technical standards stipulated in the Technical Agreement.

All these standards shall, in respect of the Works and each Section, be those prevailing when the Works or Section are taken over by the Employer under Clause 10 [Employer's Taking Over]. References in the Contract to published standards shall be understood to be references to the edition applicable on the Base Date, unless stated otherwise."

7.4 Testing

Add a new paragraph at the end of the sub-clause as follows:

"The Contractor acknowledges and agrees that the Financing Parties ,the Gas Supplier(s) and/or the PPA Buyer(s) and/or their respective representatives, agents, consultants and/or advisers shall be entitled, at their own respective and complete expense, to attend all and any tests referred to in this Sub-Clause 7.4 [Testing]".

7.6 Remedial Work

Replace the (a) (b) paragraphs with following:

"(a)remove from the Site and replace any Plant or Materials which is not in accordance with the Contract and which in accordance is caused by the Contractor;

(b)remove and re-execute any other work which is not in accordance with the Contract

and which inaccordance is caused by the Contractor, and”

8 Commencement, Delays and Suspension

8.1 Commencement of the Works

Delete the first paragraph of Sub-Clause 8.1 [Commencement of Works] and replace with the following:

“The Employer shall give the Contractor a notice specifying the Commencement Date (the “Notice to Proceed” or “NTP”), date of which shall be no earlier than the date of the issue of the Commencement Date Notice.

The Commencement Date shall be as defined in Clause 6 of the Contract Agreement.”

8.7 Delay Damages

Insert a new paragraph at the end of the Sub-Clause as follows:

The delay damages shall be for each day as Delay Damages in respect of the Section 2, and for the Works of the whole Plant, the delay damages cap is 5% of the Contract price.

8.11 Prolonged Suspension

Replace “84 days” with “45 days”;

Replace”28 days” with “15 days”.

9.1 Contractor’s Obligations

Delete the fourth paragraph of this Sub-clause and substitute as follows:

“During Trial Operation, when the Works are operating under stable conditions, the Contractor shall give notice to the Employer that the Works are ready for any other Tests on Completion, including Reliability Run Test as stated in Sub-clause 9.5 and Performance Test as stated in Sub-clause 9.6.”



9.3 Retesting

Insert the following by the end of the Sub-Clause:

“If the requirement from the Employer for such test to be repeated arise as a result of a reason for which the Employer is responsible under the Contract and the Contractor suffers delay and/or incurs Cost, the Contractor shall give notice to the Employer and shall be entitled, subject to Sub-Clause 20.1 [Contractor’s Claims], to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion]; and/or
- (b) payment of any such Cost, which shall be added to the Contract Price.

After receiving such notice, the Employer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree to determine these matters.”

9.4 Failure to Pass Tests on Completion

In sub-paragraph (b), after the word “failure” add the words “is caused by reason for which the Contractor is responsible under the Contract and”.

9.5 Reliability Run

Add a new Sub-Clause 9.5 as follows:

“For the determination of the period of the Reliability Run the time of actual operation shall be measured. In case the duration of actual continuous operation during the test period as per the Technical Agreement is discontinued for causes attributable to the Employer, the Contractor would have been deemed to have operated the Unit(s) or the Power Station at the required load during such period of discontinuation. However, in such cases, the Employer can, at its option, require the period of the test to be extended appropriately in which case the Contractor would be eligible for an extension of the relevant Milestone Date or Time for Completion by an equivalent period and any additional costs reasonably incurred by the Contractor for such extension shall be reimbursed.

However, should any test that is part of the Reliability Run be discontinued due to any default of the Contractor or any Subcontractor, such test shall be conducted again. Should any failure (other than that of an entirely minor nature) due to or arising out of faulty design, materials, or workmanship or omissions, incorrect erection or improper operating instructions occur in any part or all of the respective Unit or the Power Station,

as the case may be, in a manner that prevents safe commercial use of the respective Unit or the Power Station, as the case may be, a new Reliability Run shall be conducted after the defect has been remedied, the method of which shall refer to the Technical Agreement."

9.6 Performance Test

Add a new Sub-Clause 9.6 as follows: "The Performance Test would be conducted to determine the level of achievement of the Performance.

The Employer shall respond to the Performance Test Report submitted by the Contractor within fourteen (14) days of receipt of such Performance Test Report.

In case the Employer does not respond to such test reports submitted by the Contractor within such period, the Contractor shall be entitled to an extension of the Project Schedule and shall be reimbursed at actuals any additional Costs incurred by the Contractor on account of such delay by the Employer in responding to the test reports.

Finishing the Performance Test according to the Contract shall mean that the Contractor has passed the Performance Test.

The detailed performance guarantee parameters shall refer to the Technical Agreement."

9.7 Test Certificate

Add a new Sub-Clause 9.7 as follows:

If Reliability Run Test or the Performance Test has been finished in accordance with this Agreement, the Employer shall within five (5) days thereafter issue a certificate to that effect, which shall state the date on which the relevant Tests were passed. The Contractor may apply by notice to the Employer for a Taking-Over Certificate after Reliability Run Test Certificate and Performance Test Certificate have been issued.

11.3 Extension of Defects Notification Period

In the first sentence of the first paragraph, after the word "extension", insert the words "of up to 365 calendar days".

Insert a third paragraph as follows:

"Without prejudice to the first paragraph of this Sub-Clause 11.3 [Extension of the Defects Notification Period], the Defects Notification Period in respect of any major item of Plant or other major part of the Works that is remedied pursuant to Sub-Clause

11.1 [Completion of Outstanding Work and Remedying Defects] shall recommence in full in respect of such major item of Plant or major part of the Works from the date of completion of such remedial work provided that the Contractor's obligations under this Sub-Clause shall not apply to any defect(s) or damage occurring more than two years after the Defects Notification Period for such major item of Plant or major part of the

Works would otherwise have expired.”

12 Tests after Completion

Not used.

13 Variations and Adjustments

13.1 Right to Vary

Insert a sentence at the end of Sub-Clause 13.1, “The Contractor may also propose Variations in respect of a Section at any time prior to the issuance of the Taking-Over Certificate in respect of such Section.”

13.4 Payment in Applicable Currencies

Delete Sub-Clause 13.4 and substitute:

“ Any and all payments under this Contract shall be made in US Dollar.”

14 . Contract Price and Payment

14.2 Advance Payment

At the end of the second paragraph add the words:

“The amount of the Advance Payment shall be ten Percent(10%) of the Contract Price provided that the corresponding Advance Payment Guarantee of the same amount has been delivered to the Employer.

The format of the Advance Payment Guarantee shall follow the same format as enclosed as Attachment-1.

Repayment of the Advance Payment shall commence after the completed value of

Works has reached 30% of the Contract Price. The Repayment shall be achieved by deducting from each Interim Payment and shall be made at the amortisation rate of 10%. In any case the repayment shall be 100% achieved before the completed value of Works reaching 95% of the Contract Price.

After receipt by the Contractor of the notice of the Commencement Date from the Employer pursuant to Sub-Clause 8.1 [Commencement of the Works], the Contractor may provide the guarantee in respect of the Advance Payment prior to the Commencement Date, in which event the Advance Payment shall be payable in accordance with this Clause 14 [Contract Price and Payment].”

Delete the fourth and fifth paragraphs.

14.3 Application for Interim Payments

Add the following paragraphs after the last paragraph:

“The limit of Retention Money shall be 5% of the Contract Price. The Retention Money shall be deducted with a ratio of 5% from each amount paid to the Contractor (except the Advance Payment).”

14.4 Schedule of Payments

The Schedule of Payment shall be stated later which is based on milestone payment.

14.6 Interim Payments

Insert the following after the last paragraph:

“The Employer shall pay the Contract Price to the Contractor by T/T. Payments shall be affected directly from the financing bank to the Contractor’s account as per the Schedule of Payment.

The Contractor shall issue a valid invoice within 7 days after the Employer has approved and agreed on the Contractor’s payment application. The invoice shall have all the necessary details required by the governing Law of the Contract.”

14.7 Timing of Payment



Delete sub-paragraph (a) and replace with "(a) the Advance Payment within 21 days after the Employer received the Advance Payment Guarantee and Performance Security".

In sub-paragraph (b) of Sub-Clause 14.7, delete "56" and substitute with "28".

14.8 Delayed Payment

Substitute the second paragraph with the following:

"These financial charges shall be calculated at the annual rate of six percentage (.....) points above LIBOR Interest Rate."

14.9 Payment of Retention Money

Add the following after the last paragraph:

"Within 28 days after the Employer issue the Taking-Over Certificate, the Contractor shall be permitted to provide an acceptable Retention Guarantee, which shall reflect the required contractual retention amount(s), in lieu of the Employer retaining monies.

The Retention Guarantee shall be in the form and provided by an entity in both cases approved by the Employer and in an amount and currency equal to the required contractual retention amount(s). The Contractor shall ensure that the Retention Guarantee shall be valid and enforceable until the Contractor has executed and completed the Works and remedied any defects, as specified in Clause 11.

The Employer shall pay the remaining retention money which is 5% of the Contract Price to the Contractor within 28 days after receiving the Retention Money Guarantee."

14.13 Final Payment

After the first paragraph add the following: "The Contractor shall issue a valid invoice within 7 days after receiving notice by the Employer stating that the Employer agrees.

The invoice shall have all the necessary details required by the law governing the Contract."

15.5 Employer's Entitlement to Termination

Replace the wording "at any time for the Employer's convenience" in the first paragraph of this clause with wording of "in accordance with the conditions mentioned

in Clause 15.2”.

17.6 Limitation of Liability

Replace “shall not exceed the sum stated in the Particular Conditions or (if a sum is not so stated) the Contract Price stated in the Contract Agreement.” with “shall not exceed 10%(ten percent) of the Contract Price stated in the Contract Agreement.”

18 Insurance

18.1 General Requirements for Insurances

Add following after the first paragraph:

“ The insuring parties responsible for various insurances and each party’s responsibility shall refer to Attachment-4.”

18.2 Insurance for Works and Contractor’s Equipment

At the end of Sub-Clause 18.2, add the following sentence:

“The deductible amount per occurrence shall not exceed US Dollars Fifty Thousand (50,000) mentioned under section (d) of this Sub-Clause.”

18.3 Insurance against Injury to Persons and Damage to Property

Substitute the second paragraph with following:

“This insurance shall be for a limit per occurrence of not less than US Dollars Fifty Thousand (50,000), with no limit on the number of occurrences.”

18.5 Motor Vehicle and Statutory Requirements

Insert a new Sub-Clause:

Motor Vehicle and Statutory Requirements

The Contractor shall effect and maintain insurance in respect of personal injury or death and property damage relating to any and all motor vehicles used by the Contractor on such terms and in such amounts as may be required by any applicable Law.

The Contractor shall effect and maintain all other insurances which it is required to have by any applicable Law.



19.1 Definition of Force Majeure

Add a new sub-paragraph at the end of sub-clause 19.1 as follows:

“(vi) Any legal action by Government (federal or regional) which directly or indirectly have an adverse effect on the execution of the contract.

(vii) Any nonfeasance conducts of the Government.

(viii) any epidemic, plague, pandemic, including but not limited to COVID-19.”

20.2 Appointment of the Dispute Adjudication Board

Delete 20.2 and replace with the following:

“All disputes arising under or in connection with the Contract shall be adjudicated by a DAB (as defined below) in accordance with Clause 20.4 (Obtaining Dispute Adjudication Board’s decision). Parties shall jointly appoint a standing dispute adjudication board within 28 days after the Commencement Date (a Standing DAB).

The DAB shall comprise of three suitably qualified persons (the members). Each Party shall nominate one member for the approval of the other Party. The Parties shall consult both these members and shall agree upon the third member, who shall be appointed to act as the chairman.

The agreement between the Parties and the three members (adjudicators) shall incorporate by reference to the General Conditions of Dispute Adjudication Agreement contained in the Appendix to the General Conditions, with such amendments as are agreed between them.

The terms of the remuneration of each of the three members shall be mutually agreed upon by the Parties when agreeing upon the terms of appointment. Each Party shall be responsible for paying one-half of his remuneration.

If at any time the Parties so agree, they may appoint a suitably qualified person or persons to replace any one or more members of the DAB. Unless the Parties agree otherwise, the appointment will come into effect if a member declines to act or is unable to act as a result of death, disability, resignation or termination of appointment. The replacement shall be appointed in the same manner as the replaced person was required to have been nominated or agreed upon, as described in this Clause 20.2.

The appointment of any member may be terminated by mutual agreement of both Parties, but not by the Employer or the Contractor acting alone. Unless otherwise agreed

by both Parties, the appointment of the Standing DAB (including each member) shall expire upon the issue of the Defects Liability Certificate.”

20.3 Failure to Agree Dispute Adjudication Board

Delete 20.3 and replace with the following:

If any of the following conditions apply, namely:

- (a) either Party fails to nominate a member (for approval by the other Party) of a DAB of three persons by the date required under Clause 20.2 (Appointment of the Dispute Adjudication Board);
- (b) the Parties fail to agree upon the appointment of the third member (to act as chairman) of the DAB by such date; or
- (c) the Parties fail to agree upon the appointment of a replacement person within 14 days after the date on which one of the three members declines to act or is unable to act as a result of death, disability, resignation or termination of appointment,

then the President of FIDIC or a person appointed by its President shall, upon the request of either or both of the Parties and after due consultation with both Parties, appoint this member of the DAB. This appointment shall be final and conclusive. Each Party shall be responsible for paying one-half of the remuneration of the appointing entity or official.

20.4 Obtaining Dispute Adjudication Board's Decision

Delete 20.4 and replace with the following:

Subject to Clause 20.2 (Appointment of the Dispute Adjudication Board) if a dispute (of any kind whatsoever) arises between the Parties in connection with, or arising out of, these Conditions or the execution of the Works, including any dispute as to any certificate, determination, instruction, opinion or valuation of the Employer, then after a DAB has been appointed pursuant to Clauses 20.2 (Appointment of the Dispute Adjudication Board) and 20.3 (Failure to agree Dispute Adjudication Board), either Party may refer the dispute in writing to the DAB for its decision, with a copy to the other Party. Such reference shall state that it is given under this Clause 20.4.

The DAB shall be deemed to have received such reference on the date when it is received by the chairman of the DAB.

Both Parties shall promptly make available to the DAB all information, access to the

Site, and appropriate facilities, as the DAB may require for the purposes of making a decision on such dispute. The DAB shall be deemed not to be acting as arbitrator(s).

Within 84 days after receiving such reference, or the advance payments referred to in Clause 6 of the Appendix-General Conditions of the Dispute Adjudication Agreement, whichever date is later, or within such other period as may be proposed by the DAB and approved by both Parties, the DAB shall give its decision, which shall be reasoned and shall state that it is given under this Clause 20.4. However, if neither of the Parties has paid in full the invoices submitted by each member pursuant to Clause 6 of the Appendix, the DAB shall not be obliged to give its decision until such invoices have been paid in full. The decision shall be binding on both Parties, who shall promptly give effect to it, and in any case within 28 days of such decision or such longer period as agreed between the Parties, unless and until it shall be revised in an amicable settlement or an arbitral award as described below. Unless the Contract has already been abandoned, repudiated or terminated, the Contractor shall continue to proceed with the Works in accordance with the Contract.

If either Party is dissatisfied with the DAB's decision, then either Party may, within 28 days after receiving the decision, give notice to the other Party of its dissatisfaction. If the DAB fails to give its decision within the period of 84 days (or as otherwise approved) after receiving such reference or such payment, then either Party may, within 28 days after this period has expired, give notice to the other Party of its dissatisfaction.

In either event, this notice of dissatisfaction shall state that it is given under this Clause 20.4, and shall set out the matter in dispute and the reason(s) for dissatisfaction. Except as stated in Clause 20.7 (Failure to comply with Dispute Adjudication Board's decision) and Clause 20.8 (Expiry of Dispute Adjudication Board's appointment), neither Party shall be entitled to commence arbitration of a dispute unless a notice of dissatisfaction has been given in accordance with this Clause 20.4.

For pending arbitration, neither Party shall be entitled to withhold performance under the earlier DAB's decision.

If the DAB has given its decision as to a matter in dispute to both Parties, and no notice of dissatisfaction has been given by either Party within 28 days after it received the DAB's decision, then the decision shall become final and binding upon both Parties.

20.5 Amicable Settlement

Where notice of dissatisfaction has been given under Clause 20.4 (Obtaining Dispute Adjudication Board's decision) above, both Parties shall attempt to settle the dispute amicably before the commencement of arbitration. However, unless both Parties agree

otherwise, arbitration may be commenced on or after the 56th day after the day on which notice of dissatisfaction was given, even if no attempt at amicable settlement has been made.

20.6 Arbitration

Delete 20.6 and replace with the following:

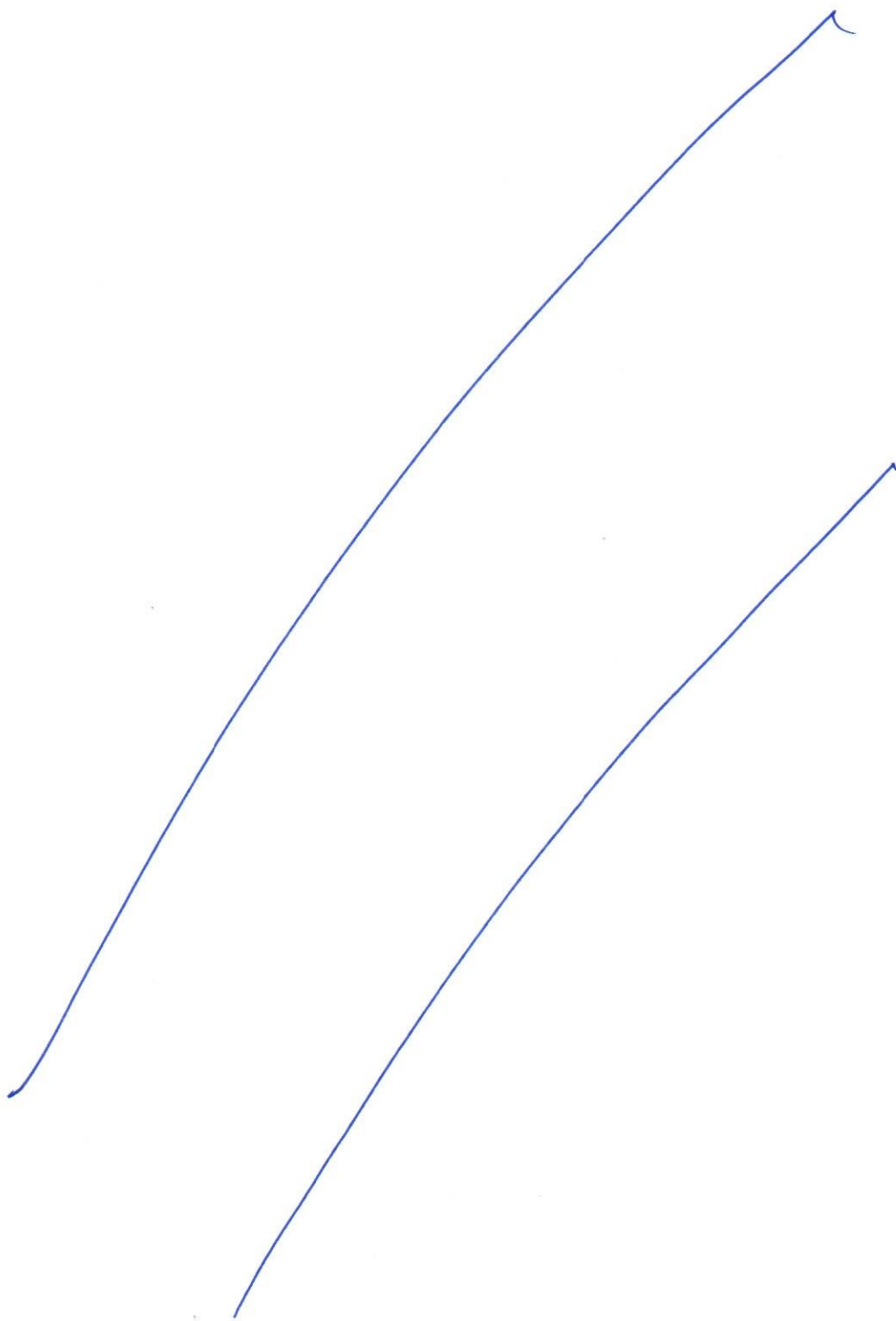
Unless settled amicably, any dispute in respect of which the DAB and the DAB's decision (if any) has not become final and binding or results in any of the situations in Clause 20.7 (Failure to Comply with Dispute Adjudication Board's decision) or Clause 20.8 (Expiry of Dispute Adjudication Board's appointment), shall be finally settled, under the provisions of the Rules of Arbitration of International Chamber of Commerce in force at the time the arbitration is commenced, by three arbitrators appointed under such Rules. The said arbitrators shall have full power to open up, review and revise any decision, opinion, instruction, determination, certificate or valuation of the Employer related to the dispute.

Neither Party shall be limited in the proceedings before such arbitrator(s) to the evidence or arguments put before the DAB for the purpose of obtaining its said decision pursuant to Clause 20.4 (Obtaining Dispute Adjudication Board's decision). No such decision shall disqualify the DAB from being called as a witness and giving evidence before the arbitrator(s) on any matter whatsoever relevant to the dispute.

Arbitration may be commenced prior to or after the completion of the Works, provided that the obligations of the Parties and the DAB shall not be altered by reason of the arbitration being conducted during the progress of the Works. The location and juridical seat of arbitration shall be Singapore and the language of arbitration shall be English. The Parties undertake to implement the arbitration award. The award rendered in any arbitration commenced hereunder shall be final and binding upon the Parties and judgment thereon may be entered into any court having jurisdiction for its enforcement.

Neither Party shall have any right to commence or maintain any suit or legal proceeding concerning a dispute hereunder until such dispute has been reasonably determined in accordance with the arbitration procedure provided for herein and then only to enforce or facilitate the execution of the award rendered in such arbitration.





Attachment-1

Advance Payment Guarantee

Beneficiary:

We have been informed that /// (hereinafter called "the Contractor") will enter into a Contract with you, for /// (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum of /// (Say /// Only) is to be made against an advance payment guarantee.

At the request of the Contractor, we, /// hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of /// (Say /// Only) upon our receipt of your first written demand in original paper form stating that stating that:

(a) the Contractor has failed to repay the advance payment in accordance with the conditions of the Contract, and

(b) the amount which the Contractor has failed to repay.

For the purpose of identification, any such demand in original paper form should be presented to us through your bank confirming that the signatures thereon are authentic and legally binding upon you.

It is a condition for any claim and payment under this guarantee to be made that the advance payment referred to above must have been received by the Contractor on their account number /// at Bank of ///.

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Contractor as indicated in copies of certified interim payment certificates upon presentation to us copies of such certificate. This guarantee shall expire, at the latest, upon our receipt of the interim payment certificate indicating that the Contractor has made full repayment of the amount of the advance payment, or on ///, whichever is earlier (the expiry date). Consequently, any demand for payment in paper under this guarantee must be received by us at the above-mentioned office on or before our business closing hours of the expiry date.

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC
Publication No. 758.

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Attachment-2

Performance Security

Issuing Date: //

Ref No: //

Beneficiary: //

////////

We have been informed that // (hereinafter called "the Contractor") will enter into Contract No.// with you, for the execution of // (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee is required.

At the request of the Contractor, we, [Bank Name] having our registered office [bank registered office location] hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of // upon our receipt of your first written demand in original paper form stating that:

- (a) the Contractor is in breach of its obligation(s) under the Contract, and
- (b) the respect in which the Contractor is in breach.

For the purpose of identification, any such demand in original paper form should be presented to us through your bank confirming that the signatures thereon are authentic and legally binding upon you.

This guarantee shall come into force from // and shall expire no later than // (hereinafter called "expiry date"). Consequently, any demand for payment in paper under this guarantee must be received by us at the above-mentioned office on or before

Ref.

B

our business closing hours of the expiry date.

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 758.

By.

By

Attachment-3

Permits, licences and approvals to be obtained by the Employer and the Contractor

1. To be obtained by the Employer

- Official land certificate and accurate zoning map
- All relevant Applicable Permits relating to Owner's Personnel entering into and working in Nigeria
- Generation License
- EIA licenses and permits
- Permit for water intake and discharge
- All relevant Applicable Permits (to the extent necessary) relating to importation of Plant and Materials included in the Permanent Works entering into Nigeria

2. To be obtained by the Contractor

- All relevant Applicable Permits relating to Contractor's Personnel entering into and working in Nigeria
- All relevant Applicable Permits (to the extent necessary) relating to importation of Contractor's Personnel entering into Nigeria
- All Applicable Permits required for temporary importation and exportation by Contractor of construction equipment, tools and consumables
- All relevant Applicable Permits (to the extent necessary) relating to the performance of construction Works as a contractor in Nigeria
- All relevant Applicable Permits (to the extent necessary) relating to the use of non-Nigeria Contractor's Personnel working in Nigeria



Attachment-4

Insurances to be obtained by the Employer and the Contractor

Insurance Policies to be obtained by the Contractor

The Contractor shall, at its sole cost and expense, obtain, maintain and keep in full force and effect, with reputable insurance carriers authorised to do business in the Republic of Nigeria the following insurance.

Unless otherwise specified below, such insurance shall be in effect at all times during the period from the Contractor mobilizing on the Site or such other date as may be mutually agreed among the Parties.

A.1 Construction/Erection All Risk Insurance

A.2 Marine Transit Insurance

A.3 Contractor' s Equipment

A.4 Third Party Liability Insurance

A.5 Professional Indemnity Insurance

All other insurances as may be required by the Law

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Attachment-5

Supply scope of the nominated Subcontractor

| | System | Sub-system | Equipment Name | Note |
|----|------------|------------|--|-------------------------------|
| 1 | Electrical | Primary | Gas turbine generator | |
| 2 | | | Steam turbine generator | |
| 3 | | | Main transformer for gas turbine | Applicable for 220kV or 110kV |
| 4 | | | Main transformer for steam turbine | Applicable for 220kV or 110kV |
| 5 | | | Generator circuit breaker | |
| 6 | | | HV switchgear for gas turbine main transformer | Applicable for 220kV or 110kV |
| 7 | | | HV switchgear for steam turbine main transformer | Applicable for 220kV or 110kV |
| 8 | | | 6kV switchgear | |
| 9 | | | 400V switchgear and panels | |
| 10 | | | Circulating water pump (2 sets) | |
| 11 | | | Motors | |
| 12 | | | Power cables | |
| 13 | | Secondary | Gas turbine generator protection | |
| 14 | | | Protection screen for main transformer (2 sets) | |
| 15 | | | Protection screen for lines | |

| | System | Sub-system | Equipment Name | Note |
|----|------------------------|---------------|--|------|
| 16 | | | Protection screen for bus | |
| 17 | | | Protection screen for HV station transformer | |
| 18 | | | RTU, metering/AVC/GPS | |
| 19 | | | Direct current, UPS system/fault recorder for the unit | |
| 20 | | | Gas turbine exciting screen | |
| 21 | | | Steam turbine exciting screen | |
| 22 | | | Cable between gas turbine and TCC bay | |
| 23 | | | Other cables for protection | |
| 24 | Instrument and Control | Gas turbine | MARKE VI panel | |
| 25 | | | Fire protection panel | |
| 26 | | | Vibration detection panel | |
| 27 | | | Instrument and Control components for gas turbine | |
| 28 | | | Cable from local to TCC bay | |
| 29 | | Steam turbine | DCS panels in the electronic room | |
| 30 | | | Control panels for the auxiliary equipment | |
| 31 | | | DCS control panel for network control and common use | |
| 32 | | | Control panels for steam turbine | |
| 33 | | Boiler | Control panels for boiler | |
| 34 | | | Instrument in dosing room and cables | |

| | System | Sub-system | Equipment Name | Note |
|----|---------------------------------------|-----------------------------|---|------|
| 35 | | others | I&C cables from instrument to local control panel | |
| 36 | | | I&C cables from local control panel to DCS panel | |
| 37 | Gas turbine, steam turbine and boiler | Steam turbine body | Rotor with blades | |
| 38 | | | Steam exhaust cylinder | |
| 39 | | | Upper and lower cylinders | |
| 40 | | | Condenser | |
| 41 | | Auxiliary for Steam turbine | Auxiliary equipment | |
| 42 | | | Circulating water pump | |
| 43 | | | Oil pump and vacuum pump | |
| 44 | | | Cooling tower fans | |
| 45 | | | Pipes and valves | |
| 46 | | Boiler | HP steam drum | |
| 47 | | | LP steam drum | |
| 48 | | | Dearator | |
| 49 | | | Heating pipes | |
| 50 | | | External pipes | |
| 51 | | | platforms | |
| 52 | | | valves | |
| 53 | | | Pump for boiler auxiliary | |
| 54 | | | stack | |

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| | System | Sub-system | Equipment Name | Note |
|----|---------------|-------------|---|------|
| 55 | | | Transition section | |
| 56 | | Gas turbine | Gas turbine body | |
| 57 | | | Gas turbine auxiliary | |
| 58 | | | Cooling water system | |
| 59 | | | APU system | |
| 60 | | | Local control equipment | |
| 61 | | | Intake system | |
| 62 | Public system | | Steel structure members from the power house | |
| 63 | | | Front system for gas turbine | |
| 64 | | | Bypass stack for gas turbine | |
| 65 | | | DCS system | |
| 66 | | | Equipment in boosting station and power evacuation lines (1km long) | |
| 67 | | | Cranes and rails | |

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