

COAL SUPPLY AGREEMENT
FOR FUELING THE 10.2 MWH INTEGRATED GASIFICATION
COMBINED CYCLE (IGCC) POWER PLANT IN THE ENUGU FREE
TRADE ZONE, 9TH MILE CORNER, ENUGU STATE, FEDERAL REPUBLIC
OF NIGERIA

No. CSA/IGCC-10.2MWH/XENERGI-EFTZ-NIG-2022

Between

XENERGI LIMITED
(XENERGI)

and

GOALMARKSUPERJET INTERNATIONAL LIMITED
(GOALMARKSUPERJET)

Date of: _____, January 2022

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THIS COAL SALE AGREEMENT is made this _____ day of _____, 2015

BETWEEN:

1. **XENERGI LIMITED**, a Company incorporated under the laws of Nigeria, with its registered office at Plot 282b Trans-Amadi Industrial Estate, Port Harcourt, Rivers State, Federal Republic of Nigeria (which expression shall, wherever the context so admits, include its successors-in-title and permitted assigns) of the first part.
2. **GOALMARKSUPERJET INTERNATIONAL LIMITED**, a Company incorporated under the laws of the Federal Republic of Nigeria, with its registered office at Plot C18 Ugwunchi Layout, Along Airport Road, Emene Enugu, Enugu State, Federal Republic of Nigeria (which expression shall, wherever the context so admits, include its successors-in-title and permitted assigns) of the second part.

XENERG LIMITED is herein referred to as “**Buyer**” and GOALMARKSUPERJET INTERNATIONAL LIMITED is herein referred to as “**Seller**”.

PREAMBLE:

WHEREAS, the Buyer, hereinafter referred to as XENERGI LIMITED, plans to develop, construct, own, operate and maintain an **embedded 10.2 MWh Integrated Gasification Combine Cycle Power Plant** in the Enpower Free Trade Zone (EFTZ), 9th Mile Corner, Enugu State, Federal Republic of Nigeria. The embedded generated power output of cca. 10.2 MWh shall be distributed to the registered free trade zone companies and enterprises of Enpower Free Trade.

WHEREAS, Seller, hereinafter referred to as GOALMARKSUPERJET INTERNATIONAL LIMITED is a sustainable and flexible coal mining and supplying Company operating both in the Enugu. It is supported by a network of partner subcontractors and its own manufacturing plants, offering a wide portfolio of energy products and commodities. As an added value, the Company offers its long-term tradition and business know-how in the field of Coal supply, disposal and treatment.

WHEREAS, the Buyer wishes to buy a total quantity of **87,591.24 Metric Ton Per Year (MTPY)** with the quality specifications provided in *SCHEDULE A* and take delivery of Coal from the Seller for use as primary fuel for its IGCC Power Plant, located in the EFTZ of Enugu, Enugu State, Federal Republic Nigeria. The Coal shall be delivered under Freight on Board (FOB) basis to the Coal storage at the power plant at a cost of **US\$46 /MT**.

Pursuant to the Offer No. **RC1151003**, dated **18 June 2021**, issued by the Seller to the Buyer, the Seller will make certain quantities of Coal available to the Buyer’s indicated Delivery Point, hereinafter referred to as the coal storage hall of the power plant, where the coal is weighted, stored and treated to the right size and quality before usage for gasification in accordance with the embedded power production and operations management of the Plant.

WHEREAS, the delivery of the Coal to the power plant by the Seller should not, in any way, disturb or violate the operations and environmental policies and regulation of the plant and the Free Trade Zone (FTZ). The delivery technologies of the Seller shall be provided with the quality standard and monitoring system, preventing possible damages, accidents, and the transportation of harmful materials to the site.

WHEREAS, the Seller shall sell Coal and the Buyer shall purchase and take delivery of Coal in accordance with the terms and conditions of this Agreement.

IN CONSIDERATION OF THE MUTUAL RIGHTS, INTERESTS, COVENANTS AND OBLIGATIONS CONTAINED HEREIN, IT IS HEREBY AGREED BETWEEN THE PARTIES AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Except where expressly provided to the contrary in this Agreement the following terms and expressions shall have the following meanings:

Acceptable Range	The permissible range of variations in quality parameters for Coal delivered under this Agreement as set forth in <i>SCHEDULE B</i> .
Agent	The meaning given in this Agreement.
Agreement	This Coal Supply Agreement, together with all SCHEDULEs and all annexes and tables attached hereto, dated _____june, 2021 between the Buyer and the Seller as may be amended by the Parties from time to time.
Agreement Year	The meaning given in this Agreement.
Annual Contract Quantity	For each Year during the Term, the maximum quantity of Coal that can be ordered by the Buyer for delivery by the Seller at the Loading Point, as provided in <i>SCHEDULE B</i> .
Applicable Standards and Procedures	The standards and procedures to be used for the sampling and testing of Coal hereunder, which standards and procedures are provided in <i>SCHEDULE B</i> , and shall be calculated on an As Received Basis.
As Received Basis	Analysis data calculated to the moisture condition of the Loading Point sample as collected by the surveyor pursuant to Section 6.3 and before any sample processing or conditioning.
Ash Adjustment	The meaning given in <i>Section 6.3</i> .
Available Capacity	The meaning given in the Power Purchase Agreement (PPA)
BTU	British thermal unit, defined as the quantity of heat required to raise the temperature of 0.45 kg (1lb) of pure 14.72°C–15.28°C (58.5°F–59.5°F) at a constant pressure of 101,559.77 Pa (14.73 psia)
Business Day	A day on which banks in Enugu State, Nigeria are legally permitted to be open for business.

Change in Law	The adoption, promulgation, repeal, modification or reinterpretation after the date of this Agreement by any Public Sector Entity of any Law of Nigeria; (b) the imposition by a Public Sector Entity of any material condition in connection with the issuance, renewal, extension, replacement or modification of any Consent after the date of this Agreement; or (c) the imposition by a Public Sector Entity of any additional Consent that in the case of each of subsection (a), (b) or (c) above establishes either a material change in cost or revenue as a consequence of any requirement for the design, construction, operation or maintenance of the Complex that is materially more restrictive than the most restrictive requirements (i) in effect as of the date of this Agreement, (ii) specified in any applications, or other documents filed in connection with such applications, for any Consent filed by the Company on or before the Commercial Operations Date, or (iii) agreed to by the Buyer in any agreement in the Security Package
Coal	Coal having quality parameters that conform to the Coal Specifications as provided in <i>SCHEDULE B</i> of this Agreement, except as otherwise provided herein.
Coal Price Payment	The meaning given in <i>Section 10.1.</i> and in <i>SCHEDULE A</i> of this Agreement.
Coal Specifications	Acceptable range of quality parameters for Coal delivered under this Agreement as set forth in <i>SCHEDULE B</i> .
Commercial Delivery Period	The period of time that begins on the Commercial Delivery Start Date and ends on the Expiry Date or the earlier termination of this Agreement
Commercial Delivery Start Date	The earlier of the SCHEDULED Commercial Delivery Date or the Commercial Operations Date
Commissioning Period's Coal Supply Deposit	The meaning given in <i>Section 9.3(a)</i> .
Commercial Operations Date	The meaning given in the Power Purchase Agreement.
Day	Each 24-hour period beginning and ending at 12:00 midnight Nigerian Standard Time
Delivery Period's Coal Supply Deposit	The meaning given in <i>Section 9.3(b)</i> .
Dispute	Any dispute, disagreement or difference arising under out of or in connection with this Agreement including, without limitation, any dispute or difference concerning the existence, legality, validity or enforceability of this Agreement or any provision hereof or the obligations or performance of a Party under any provision hereof.
Disputed Amount	The meaning given in <i>section 10.5 (a)</i> .
Due and Payable Date	The meaning given in <i>Section 10.4 (a)(C)(iii)</i> .

Emergency	Condition or situation that in the reasonable opinion of the Party experiencing such condition or situation causes or is likely to cause material damage or harm to such Party's facilities or the property of third parties or jeopardize the safety of its personnel or the general public.
EPC Contractor	Abbreviation for Engineering, Procurement and Construction. It has the meaning as defined in <i>section 10.3(a)(i)</i> of this Agreement and in the Power Purchase Agreement.
Expert	The meaning given in <i>Section 10.6 (a)</i> and in <i>Section 16.2(a)</i> .
Expiry Date	The expiration date for the Term as defined in this Agreement, Six (6) month after the last delivery date (01.06.2016); provided, however that no extension of the Term by the Buyer shall extend the Expiry Date unless such extension is expressly agreed to by the Seller
Force Majeure Event	The meaning given in <i>Section 13</i> .
Guaranteed Heating Value	The meaning given in <i>SCHEDULE B</i> .
Heating Value	The gross calorific value of Coal expressed in BTU per kilogram or in kilojoule per kilogram on an "As Received Basis"
Loading Point	The Seller's stockyard(s), the location(s) of which will be notified by the Seller including notification of any additional location(s) or changes to existing location(s) where the Seller will deliver the Coal to the Buyer by loading the Coal into the Buyer's Transportation Facilities for transportation by the Buyer to the Complex.
Loading Point Certificate	The meaning given in <i>Sections 6, 7 and 11</i> .
Loss	Any loss, damage, liability, payment and obligation (excluding any indirect or consequential loss, damage, liability, payment or obligation), and all expenses (including without limitation reasonable legal fees).
Master Agreement	It simply designates a legal or contractual document between two or more parties and whereby the broad terms applicable to one or several transactions are described. For instance, a master agreement can be signed in relation with derivatives or loans. In our case, it consists of this Coal Supply Agreement or Coal Sale and Purchase Agreement.
Measuring Equipment	All measuring devices, including weighing scales owned or operated by the Seller used to measure Coal at the Loading Point as described in <i>SCHEDULE D</i> .
MT	Abbreviation and symbol for Metric Ton . It is a metric unit of mass and is equal to 1,000 kg (2,204.62 lbs). It is the established spelling alternative to tonne .
Pass-Through Item	Certain costs or charges identified as pass-through items as per <i>SCHEDULE B</i> .

Person	Any person, firm, company, corporation, society, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the foregoing.
PPA	Abbreviation for Power Purchase Agreement.
Price	The price, as specified in SCHEDULE B and as adjusted from time to time in accordance with this Agreement to be paid by the Seller to the Buyer during the Commissioning Period and the Commercial Delivery Period for Coal delivered to the Buyer at the Loading Point by the Seller pursuant to the terms and conditions of this Agreement.
Public Sector Entity	The department, authority, instrumentality, agency or other relevant entity from which a Consent is to be obtained from time to time and any authority body or other person having jurisdiction under the Laws of Nigeria with respect to the Buyer the Seller, the Project or this Agreement as the case may be.
Rejection Parameters	The Coal Specifications for [Heating Value and Sulphur]
Shortfall Quantity	The meaning given in <i>Section 3.3(b)</i> .
Site	The land, waterways, roads, wells and any rights acquired or to be acquired by the Buyer for the purposes of the Complex on, through above or below the ground on which all or on any part of the Complex is to be built, (including, without limitation, any working areas required by the Buyer and the contractors, villages, townships and camps for the accommodation of the employees of the Buyer and the contractors and all rights of way and access from public highways and where applicable, railway and seaward access) and as further described in <i>SCHEDULE D</i> .
Standards	The environmental guidelines and occupational health and safety standards of the World Bank as in effect on the date hereof.
Survey	The independent inspection agency selected by the Seller and approved by the Buyer who shall inter alia certify the weight and quality parameters of Coal at the Loading Point.
Term	The meaning given in <i>Section 2.1</i> .
Termination Notice	A written notice of termination of this Agreement issued by the Seller or the Buyer as the case may be, pursuant to <i>Section 15.3</i> .
Tolerance Limit	The permitted measurement tolerances or variations in measurement pursuant to International Standards Organisation (ISO) standards or where a measurement tolerance of variation is not provided under ISO standards for a particular parameter pursuant to the American Standards for Testing and Materials (ASTM) standards.

1.2 Interpretation

Except where expressly provided to the contrary in this Agreement:

- a) the schedules and the Appendices form part of this Agreement and in the event of any conflict between the main body of this Agreement and a schedule the main body of this Agreement shall prevail; and in the event of any conflict between the main body of this Agreement, the provisions of this Agreement shall prevail.
- b) reference to any Party or any Person includes such Party's or such Person's successors and permitted assigns.
- c) reference to any consent not to be unreasonably withheld is deemed to be qualified by the requirement that such consent shall not be unreasonably conditioned or delayed.
- d) reference to include and including is deemed to be qualified by the additional term without limitation.
- e) reference to any publication, statute, rule, regulation, instrument or standard means the same as amended, supplemented or replaced from time to time.
- f) reference to any agreement means the same as amended, supplemented or replaced from time to time.
- g) in the computation of periods of time from a specified day to a later specified day:
 - (i) “from” means from and including and “until” and “to” means to and including; and
 - (ii) any requirement that an action may or shall be taken within a specified number of days means that such action may or shall be taken within the number of days so specified starting at 00:00 hours on the day on which the requirement to take such action arose;
- h) Not Used.
- i) reference to Articles, schedules and Sections means reference to Articles, schedules of and Sections of schedules of this Agreement.
- j) headings are inserted for ease of reference only and shall not affect interpretation nor have any legal effect.
- k) unless the context requires otherwise, words denoting the singular include the plural and vice versa and words denoting any gender include all genders.
- l) any remedy which provides for the payment of liquidated damages by a Party represents a genuine pre-estimate of the likely or possible loss or damage which might otherwise be suffered by the Party to whom such liquidated damages are payable in consequence of the act or omission of the Party liable to pay such liquidated damages and shall not in any way be construed as a penalty.

- m) any good faith best estimate which is given by a Party when required in accordance with this Agreement is non-binding and given for information only and the Party giving such good faith best estimate shall have no liability to the other Party for any inaccuracy therein.

2. TERM OF AGREEMENT

2.1 Term

The term of this Agreement (the "Term") shall be effective on the date of signature of this Agreement and shall continue in full force and effect unless terminated earlier by either Party upon thirty (30) days prior written notice and in accordance with the provisions of this Agreement; provided, however, that such termination shall not affect or excuse the performance of any Party under any provision of this Master Agreement that by its terms survives any such termination, and this Master Agreement and any relevant Confirmations shall remain in effect with respect to any Transaction(s) entered into on or prior to the date of the termination until each Party has fulfilled all of its obligations with respect to all such Transaction(s).

2.2 Extension of Term

Following the end of the 2nd Agreement Year, at the request of either Party, the Buyer and the Seller agree to enter into good faith negotiations for a renewal of this Agreement for an additional term (the "Additional Term") on terms and conditions mutually agreed to by the Parties. If the Parties fail to agree on the terms and conditions on which this Agreement will be extended, this Agreement will terminate on the Expiry Date. Upon such termination Section 10 shall apply for the avoidance of doubt any failure to agree on the terms and conditions for the extension of this Agreement shall not be a Dispute hereunder.

3 COAL QUANTITY

3.1 Purchase and Supply

Subject to and in accordance with the provisions of this Agreement, the Buyer shall purchase from the Seller, and the Seller shall sell to the Buyer. Annual Contract Quantity of Coal, and except as expressly set forth herein, all such Coal delivered and sold hereunder shall conform in all respects to the Coal Specifications. The Buyer irrevocably agrees that the Buyer shall not at any time during the Term be permitted:

- a) To use any fuel other than Coal delivered by the Seller to generate Gross Electrical Output (as defined in the Power Purchase Agreement) at the Complex, except where and to the extent that Coal is not available from the Seller in quantities required herein, including the reason of a Force Majeure Event affecting the Seller.
- b) To sell/divert and/or transfer the Coal to any third party for any purpose whatsoever and the same shall be treated as material breach of the Agreement.

3.2 Scheduling of Coal Quantities and Delivery

- a) During the Commissioning Period. Not less than **forty-five (45) days** prior to the Scheduled Commissioning Period Start Date, the Buyer shall notify to the Seller the quantity of Coal required for each Month (or part thereof) during the Commissioning

Period, which quantity, for any Month of the Commissioning Period, shall not exceed **7,299.27 MT** and the Seller shall deliver the notified quantities of Coal with ($\pm 5\%$) variation in such notified quantity, provided that such variation shall be requested by the Buyer not later than **fifteen (15) days prior to planned delivery of Coal for the respective Month of the Commissioning Period.**

b) During the Commercial Delivery Period.

- (i) The Buyer shall not later than **Sixty (60) days** after the Commissioning Period Start Date, notify the Seller of the estimated quantity of Coal to be delivered at the **Loading Point** for the remainder of the Year following the Commercial Delivery Start Date not to exceed the Annual Contract Quantity prorated for part of the said Year.
- (ii) On or before **One Hundred and Twenty (120) Days** prior to the start of each year following the year in which the Commercial Delivery Start Date occurs (or if the Commercial Delivery Start Date occurs less than One Hundred and Twenty (120) Days prior to the beginning of a Year, within Thirty (30) days after the Commercial Delivery Start Date and, in any event prior to the start of the next year) the Buyer shall notify the Seller of the estimated quantity of Coal to be delivered at the Loading Point during the relevant Year not to exceed the Annual Contract Quantity for the relevant Year.
- (iii) On or before **Thirty (30) days** prior to the start of each year following the year in which the Commercial Delivery Start Date occurs (or if the Commercial Delivery Start Date occurs less than Thirty (30) days prior to the beginning of a year, within Ten (10) days after the Commercial Delivery Start Date occurs and, in any event prior to the start of the next Year), the Buyer shall specify in a notice to the Seller the amount of Coal, being not less than Seventy Five percent (75%) of the Annual Contract Quantity and not exceeding the Annual Contract Quantity subject to the adjustments and variations thereof as provided in this *Section 3*, specifying the quantities to be delivered at the Loading Point by the Seller during each month of the relevant year (with the notified quantity for each month termed "Monthly Scheduled Quantity" and cumulatively termed the "Annual Scheduled Quantity") and during each quarter of such year (the "Quarterly Scheduled Quantity");
- (iv) provided, however, that for the remainder of the Year following the Commercial Delivery Start Date, the Buyer shall specify in a written notice to the Seller, issued not more than thirty (30) Days prior to Commercial Delivery Start Date, the amount of Coal (not less than Seventy Five percent (75%) of the Annual Contract Quantity prorated for the remaining number of Days in the then-Year) specifying the quantities to be delivered by the Seller during each Month of the remainder of the then-Year and during each Quarter of such Year (or prorated therefor);
- (v) provided, further, that subject to *Section 3.3*, the Buyer on not less than Forty-Five (45) Days prior notice to the Seller, may increase or decrease the Annual Scheduled Quantity and Quarterly Scheduled Quantities, as the case may be, up to 20% (twenty percent) per annum provided always that that the sum of the four revised Quarterly Scheduled Quantities for the relevant Year shall

equal the revised Annual Scheduled Quantity for such Year. The revised Annual Scheduled Quantity shall not exceed the Annual Contract Quantity or be less than 75% of the Annual Contract Quantity. The Quarterly Scheduled Quantities in any given Year need not be equal.

- (vi) To the extent of any shortfalls in quantities of Coal ordered by the Buyer in accordance with the terms of this Agreement and required to be delivered by the Seller at the Loading Point, the Seller shall pay the Buyer liquidated damages as provided in *Section 10.3*.

3.3 Minimum Take Quantity

During the Commercial Delivery Period, except where a shortfall in the quantity of Coal required to be purchased by the Buyer in terms of this sub-clause and in terms of the provisions of this Agreement results from a delivery shortfall or a breach or default or non-performance by the Seller of its obligations hereunder, including a rejection of a shipment or shipments of Non-Conforming Coal pursuant to *Section 7* a Force Majeure Event experienced by either the Seller or the Buyer or during any period where Power Purchaser defaults in payment to the Buyer under the Power Purchase Agreement, the Buyer shall have an obligation to purchase from the Seller a minimum of Ninety percent (90%) of the Annual Scheduled Quantity subject to the provisions below.

- a) If the Buyer desires to purchase less than the Monthly Scheduled Quantity for any Month during the relevant Year as a result of change in Buyer's requirement of Coal or otherwise, for any reason other than a delivery shortfall or a breach or default or non-performance by the Seller of its obligations hereunder, including a rejection of the shipment or shipments of Coal by the Buyer pursuant to *Section 7*, a Force Majeure Event experienced by either the Buyer or the Seller, the Buyer shall notify the Seller as soon as possible and, in any event, not less than thirty (30) Days prior to the start of each Month.
- b) During the Commercial Delivery Period, at the end of each Year in the event that the Buyer accepts less Coal than the Minimum Take Quantity (as determined at the end of the relevant Year) for any reason other than a delivery shortfall or a breach or non-performance by the Seller of its obligations hereunder including a rejection of shipment of Non-Conforming Coal by the Buyer pursuant to *Section 7*, or a Force Majeure Event experienced by either the Seller or the Buyer, the Buyer shall have the right to either accept delivery of all or any portion of the difference between the Minimum Take Quantity and the actual quantity accepted by the Buyer (the "Shortfall Quantity"), or pay to the Seller in full satisfaction of its obligation under *Section 3.3(d)* an amount equivalent to the Shortfall Quantity of Coal multiplied by [0.30] multiplied by the Commodity Component of Price, which election the Buyer shall notify to the Seller within thirty (30) days of being notified of the Shortfall Quantity if any, by the Seller. The Seller shall calculate and notify the Shortfall Quantity for any particular Year to the Buyer not more than 30 days after the commencement of the following Year.
- c) In the event the Buyer elects to take delivery of all or any portion of the Shortfall Quantity of Coal, the Seller shall deliver, in accordance with this Agreement, the Shortfall Quantity of Coal or any portion thereof as elected by the Buyer, to be delivered, within 180 Days of receiving notice from the Buyer of its election

pursuant to *Section 3.3(b)* on a schedule to be agreed by the Parties: provided, however, in any event, the Buyer shall pay the Seller the Price of such Shortfall Quantity of Coal as the Buyer elects to take delivery of within Thirty (30) days of notifying the Seller of its election.

- d) In the event the Buyer elects not to take delivery of all or any portion of the Shortfall Quantity of Coal the Seller shall be entitled, as full satisfaction by the Buyer of its obligations with respect to such Shortfall Quantity under this *Section 3.3*, to claim from the Buyer the amount specified in *Section 3.3(b)* above, which amount the Buyer shall pay to the Seller within thirty (30) days of the delivery to the Buyer of an invoice, therefore.
- e) Notwithstanding anything else contained in this Agreement, the specification of Annual Scheduled Quantity or the Quarterly Scheduled Quantity or the Monthly Schedule Quantity shall not create any obligation to purchase Coal from the Seller under this Agreement (or to make payment to the Seller therefor or in lieu thereof) except as expressly provided in this *Section 3*.
- f) For the purposes of this Section, in any Year during which there occurs a Force Majeure Event affecting the Seller or the Buyer the revised Minimum Take Quantity shall equal the following:

the Minimum Take Quantity, as provided above, multiplied by (A) the quotient of (Y) 365, minus (Z) the sum of the number of days each such Force Majeure Event (including the effects thereof) was in effect multiplied by the quotient of the Available Capacity as determined by testing immediately following the Force Majeure Event, divided by (B) 365 multiplied by the Contract Capacity.

3.4 Transportation of Coal

- a) The Seller shall deliver the Coal sold and purchased pursuant to this Agreement to the Buyer, at the Loading Point. The Seller shall be responsible for loading the Coal at the Loading Point in the Buyer's Transportation Facilities and the Buyer shall be responsible for the transportation of the Coal from the Loading Point to the Complex. The Seller shall load Coal at its expense in accordance with the loading and tonnage limitations, if any of the Buyer's Transportation Facilities.
- b) The Buyer shall make timely arrangements for ordering and placement of suitable fit and clean Buyer's Transportation Facilities, including **trucks**.
- c) The Seller shall grant to the Buyer all easements and rights-of-way reasonably necessary at the Loading Point to facilitate the transportation of Coal and the Buyer shall ensure that at all times when the Buyer's employees or agents are present at the Loading Point they shall (i) comply with the Seller's applicable safety regulations and procedures and comply with the reasonable instructions and directions of the Seller's representatives including, where required by the Seller, having a Seller's representative observe or accompany the Buyer's employees or agents while present at the Loading Point and (ii) act in such a way that no disruption in the operation and maintenance of the Seller's Equipment is caused and that no reasonably avoidable inconvenience is caused to the Seller. For all times while the Buyer's employees

and/or agents are present at the Loading Point. the Buyer shall indemnify and hold the Seller harmless for any Loss suffered or sustained by the Seller as a result of the presence of the Buyer's employees or agents at the Loading Point.

4 OPERATING PROCEDURES

4.1 Establishment of Operating Committee

- a) Not later than Two Hundred and Ten (210) days prior to the Scheduled Commissioning Period Start Date the Parties shall establish, in the manner as given hereunder, the Operating Committee to finalize the Operating Procedures addressing all operational interfaces between the Buyer and the Seller as given under *Section 4.2 (a)(i)*. The Operating Committee shall be organized as follows:
 - (i) The Operating Committee shall be comprised of Six (06) members. Each Party shall designate Three (03) members to represent it on the Operating Committee, and either Party may replace any of its Operating Committee members at any time upon notice to the other Party.
 - (ii) The Operating Committee shall develop procedures for the holding of meetings the keeping of minutes of meetings and the appointment and operation of sub-committees.
 - (iii) Decision of the Operating Committee shall require the unanimous approval of the members present at a meeting of the Operating Committee where a quorum of the Operating Committee members is present. A quorum of the members of the Operating Committee shall be deemed to be present where at least Two (2) members representing the Buyer and Two (2) members representing the Seller are present at such meeting.

4.2 Operating Procedures

- a) The Operating Procedures shall encompass the following procedures and provisions:
 - (i) an overall operating plan and procedures for the implementation of this Agreement including any special plans or procedures that apply solely to the period between the anticipated Commissioning Period Start Date and the Commercial Operations Date.
 - (ii) the format, content and acceptable means of communications of but not limited to Annual Scheduled Quantity and Quarterly Scheduled Quantity.
 - (iii) steps to be taken in the case of an Emergency or a Force Majeure Event.
 - (iv) planning and coordination procedures for Scheduled and unscheduled maintenance on the Parties' facilities.
 - (v) when the operations or actions of the employees or contractors of one Party may affect the operations or safety of the facilities employees or contractors of the Party safety rules and operating procedures.

- (vi) such other matters as the Parties may agree that are necessary or desirable to facilitate operations, communications safety or other matters of mutual interest or concern.
- b) The Operating Procedures shall be completed and made available for use to either Party not later than thirty (30) days prior to the Scheduled Commissioning Period Start Date. The procedure for development and finalizing the Operating Procedures shall be as follows:
- (i) Within Forty-Five (45) days following the establishment of the Operating Committee the Seller shall deliver to the Buyer in writing proposed draft Operating Procedures.
 - (ii) The Buyer shall provide comments in writing on the draft Operating Procedures within Twenty-Five (25) days following the date the draft Operating Procedures are delivered by the Seller to the Buyer and each Party shall make a representative available to meet in Nigeria within Fifteen (15) Business Days following the end of such Twenty-Five (25) days period to review the draft comments on the draft Operating Procedures.
 - (iii) As soon as practicable after the meeting referred to in *Section 4.2 (b) (ii)* but in any event within thirty (30) days following the end of such meeting the Seller shall provide the Buyer with proposed final draft Operating Procedures incorporating to the extent agreed upon between the Buyer and the Seller each of the Party's proposed changes to the Seller's draft Operating Procedures.
 - (iv) The Buyer shall provide final comments on the final draft Operating Procedures within fifteen (15) Business Days after its receipt by the Buyer and within five (5) Business Days after a request from the Seller whichever is earlier. Within seven (07) Business Days from the receipt of final comments the Buyer shall make its representatives available in Prague to meet and review its comments and proposed changes with Seller.
 - (v) The Seller shall revise the draft Operating Procedures to incorporate such additions or modifications agreed upon by the Parties and shall provide a final draft to the Buyer as soon as practicable and in any event within Ten (10) Business Days following meeting referred under *Section 4.2 (b) (iv)*. Any Dispute between the Parties as to whether any matter should be included in or excluded from or modified in the way it is then treated in the draft Operating Procedures shall be determined in accordance with Section 16, which shall be final and binding with respect of the resolution of such Dispute.
 - (vi) Following the finalization of the Operating Procedures pursuant to *Section 4.2 (b)* either Party may propose changes to the Operating Procedures from time to time as changes in events and circumstances may reasonably require. Such proposals shall be delivered in writing by a proposing Party to the other Party. The Parties shall meet and discuss such proposed changes in good faith and incorporate such changes as are agreed by the Parties within Ninety (90) days of the delivery of such proposed amendment. Any Disputes between the Parties as to whether any matter should be included in or removed from or modified in the way it is then treated in the Operating Procedures shall be

determined in accordance with Section 16, which shall be final and binding with respect the resolution of such Dispute.

4.3 Conflict with Agreement

In the event of any conflict between this Agreement and the Operating Procedures developed pursuant to this Section 4 the provisions of this Agreement shall be in all respects controlling.

5 WEIGHT DETERMINATION

5.1 Weighing at the Loading Point

The weight of each Consignment of Coal supplied under this Agreement shall be determined by the Measuring Equipment at the Loading Point with the weighing being conducted and the results thereof certified by the Surveyor. The Buyer shall be entitled to have a representative present at the Loading Point during any loading or measuring pursuant to this Agreement. The weight of Coal for each Consignment shall be certified by the Surveyor at the Loading Point and shall be accepted as the quantity of Coal for which invoices are to be rendered and payment made in accordance with this Agreement.

5.2 Measuring Equipment

The Surveyor shall ensure that the Measuring Equipment at the Loading Point is at all times calibrated as per the equipment manufacturer's standards. If the Measuring Equipment is inoperative or declared to be inaccurate by the Surveyor the weight of any applicable Consignment of Coal under this Agreement shall be determined by one of the following alternative methods:

- a) in the event of a failure of the Measuring Equipment at the Loading Point the weight of any applicable Consignment of Coal under this Agreement shall be determined by "Batch Weighing" scales, if available, which weight of Coal supplied shall be certified by the Surveyor (with a copy of each such certificate delivered to the Buyer and the Seller);
- b) to the extent that the weighing method described in Sections 5.2 (a) is unavailable: the weight of any applicable Consignment of Coal under this Agreement shall be conclusively deemed to be equal to the average weight of the last three Coal Consignments in similar trucks/transportation vehicles, loaded and weighed pursuant to this Agreement at the Loading Point. In the event that less than three Coal Consignments have been loaded at the Loading Point the Parties shall use the average weight of all previous Coal Consignments. The calculated weights together with all relevant calculations shall be certified and furnished by the Surveyor, to both Parties immediately after the loading of each Consignment.

5.3 Seller's Measuring Equipment

The Seller shall at its own cost, provide the Measuring Equipment at the Loading Point and keep the same in good working order. The maintenance of Measuring Equipment shall be ensured in accordance with the maintenance and calibration recommendations by the equipment manufacturer and in line with the prevailing standards and applicable laws. The Seller shall inform the Buyer in writing Seven (07) days prior to any SCHEDULED

maintenance or re-calibration of the Measuring of an Equipment and the Buyer shall be entitled to have, at its election, its representative present during any such scheduled maintenance or re-calibration. The Surveyor shall also be present at all scheduled maintenance and re-calibration of the Measuring Equipment who shall approve such maintenance and re-calibration.

6 COAL QUALITY

6.1 Conformance with Coal Specifications

Subject to the provisions of this Section 6 the Seller shall tender, deliver and sell Coal to the Buyer under the terms of this Agreement in full conformance with the Coal Specifications as set forth in the *SCHEDULE B*.

6.2 Coal Specifications

The Coal sold by Seller and purchased by the Buyer hereunder shall be blended in accordance with the Applicable Standards and Procedures and such blend shall be (i) reasonably consistent for each Consignment, and (ii) shall be reasonably free of bone, shale, rock, dirt, and clay, and free of extraneous materials that shall include, but not be limited to plastic, rubber, iron, steel, wood, and other waste materials. The Seller shall inspect and remove any extraneous material from each Identified Heap prior to loading at the Loading Point. The Seller shall indemnify and hold the Buyer harmless for any foreseeable damage caused to the Buyer's equipment by any extraneous material that is proven to be loaded with the Coal by the Seller. The Surveyor shall at the time of loading of each Consignment at the Loading Point satisfy himself that the Coal delivered is free from any extraneous materials including but not be limited to plastic, Rubber, iron, steel, wood and other waste materials and shall include such finding in its Loading Point Certificate.

6.3 Adjustments for Quality Variation

The Parties acknowledge that the failure of Seller to tender coal for delivery that satisfies the Coal Specifications may cause the Buyer's normal operation of the Complex to violate certain Laws of Nigeria or may increase the Buyer's costs of operating the Complex. The Seller shall use all reasonable means to ensure that all Coal supplied hereunder meets the Coal Specifications and the Price shall be adjusted as follows for any non-conformance as certified by the Surveyor with the Coal Specifications resulting from Heating Value, Ash, and/or sulphur content. Such adjustments shall be cumulative and apply to each Consignment of Non-Conforming Coal.

- a) Heating Value Adjustment: If the actual Heating Value (AHV) of the Coal (or Non-Conforming Coal) tendered for delivery by the Seller differs from the Guaranteed Heating Value (GHV) then the Commodity Component (CC) of the Price per ton shall be adjusted (prior to the application of other adjustments or indexation) if the AHV for a Consignment (of Non-Conforming Coal) is greater or less than the GHV but within the Acceptable Range of heating Value as follows:

$$CC \times \frac{AHV}{GHV}$$

Notwithstanding any provisions to the contrary in this Agreement. Non- Conforming Coal tendered for delivery by the Seller with a Heating Value falling outside the Acceptable Range shall be subject to rejection by the Seller.

- b) Ash Adjustment. In addition to (but prior to the application of) other indexation or adjustments, the Commodity Component of the Price to be paid by the Buyer for Non-Conforming Coal tendered for delivery by the Seller shall be adjusted for the difference between the As Received Basis of actual ash content for each Consignment and the guaranteed maximum ash content measured in percent (the "Ash Adjustment"), where such difference is greater or less than the Guaranteed Maximum Ash Content but is within the Acceptable Range, as set forth in ***SCHEDULE B (the "Variation")*** the amount in United State Dollars (US\$) or Euro (€) per ton of the adjustment for Variation in the ash content shall be calculated as follows:

On every 1% Variation of the Ash content, deduction or addition, as the case may be of 1% of the Commodity Component (CC) of the Price will be made.

Sulphur Adjustment. For each Consignment tendered by the Seller that contains, on As Received Basis, sulphur content different from the guaranteed sulphur content for such variation from the guaranteed sulphur content that is within the Acceptable Range of Sulphur, as set forth in ***SCHEDULE B (the "Variation")*** the Commodity Component of the Price to be paid by the Buyer shall be adjusted (prior to the application of other adjustments or indexation) (the "Sulphur Adjustment") as follows:

On every Variation of 0.1% deduction or addition of 0.1% will be made in the Commodity Component (CC) of the price.

Notwithstanding any provisions to the contrary in this Agreement, Non-conforming Coal tendered for delivery by the Seller with a sulphur content falling outside the Acceptable Range shall be subject to rejection by the Buyer.

6.4 Termination of Agreement for Coal Quality Deficiencies

In addition to and without limitation upon other rights of the Buyer if during any Sixty (60) consecutive day period following notice to the Seller of failure to comply with the Coal Specifications pursuant to this Section 6 Fifty percent (50%) or more of the Consignments of Coal tendered for delivery by the Seller continue to fail to comply with any of the Coal Specifications by falling outside the Acceptable Range as stated in ***SCHEDULE B***, the Seller shall be in material breach of this Agreement and the Buyer shall have the right to terminate this Agreement in accordance with Section 15 below

7 REJECTION AND EFFECT OF REJECTION

7.1 Rejection of Coal

Subject to *Section 7.2* if the Loading Point Certificate for any Consignment shows that one or more of the Rejection Parameters of such Consignment does not fall within the Acceptable Range of the Coal Specifications the Buyer shall notwithstanding anything to the contrary in this Agreement, be entitled to reject such Consignment of Non-Conforming Coal. The Buyer shall inform the Seller of such rejection [immediately] after receipt of the Loading Point

Certificate from the Surveyor for such Consignment of Non-Conforming Coal. In the event of such rejection the Buyer shall have the right to exercise any of its rights and remedies provided in this *Section 7* and elsewhere in this Agreement.

7.2 Acceptance of Non-Conforming Coal

The Buyer may at its sole election accept any Consignment of Non-Conforming Coal tendered for delivery by the Seller, which the Buyer is entitled to reject pursuant to *Section 7.1* without prejudice to the other provisions of this Agreement and the remedies provided herein at a price to be agreed between the Parties, which price shall be the price payable for such Non-Conforming Coal.

7.3 Effect of Rejection.

If any Consignment of Non-conforming Coal is rejected by the Buyer pursuant to *Section 7.1* the Seller may tender for delivery a replacement for such rejected Consignment on a time schedule approved by the Buyer. However, the Seller must notify the Buyer of its intent and ability to tender for delivery such replacement Coal within Three (3) Business Days of any rejection of a Consignment of Non-conforming Coal by the Buyer on a time schedule acceptable to the Buyer. The additional cost incurred by the Buyer for the replacement of Coal. Including but not limited to any additional legal financing, and currency conversion fees and expenses shall be borne solely by the Seller. The terms of this Agreement shall apply with full force and effect to the replaced Coal. If the Seller fails to deliver the notice provided in this *Section 7.3* or fails to secure approval of the Buyer to a time schedule within Three (3) Business Days of the Seller communicating its intent to tender for delivery the replacement Coal as well as the proposed schedule for delivery or thereafter fails to tender for delivery the replacement Coal within the agreed time period then the Buyer shall be entitled to arrange for the replacement coal or secondary fuel I from any alternative source of supply in substitution for the quantity of the coal rejected by the Buyer. The additional cost reasonably incurred by the Buyer for arranging the alternative supply of Coal including, but not limited to any additional cost legal fees and currency conversion fees, and expenses shall be borne solely by the Seller.

8 SAMPLING AND ANALYSIS

8.1 Standards

The Coal tendered by the Seller to the Buyer pursuant to this Agreement shall be sampled and analysed in accordance with the Applicable Standards and Procedures.

8.2 Sampling

The Sampling Person shall be Seller or Seller's designee, and shall perform sampling and analysis of the Coal pursuant to a Transaction at Seller's expense. The Sampling Person shall cause a representative Coal sample to be taken by mechanical sampler that is in working condition and that has been dynamically bias tested within twelve (12) months prior to delivery by an independent certified third party. In the event the Sampling Person is not able to obtain a sample with biased tested equipment in proper working condition, the Parties shall confer for purposes of reaching agreement as to an alternative means of sampling. Samples shall be taken on an "as-loaded" basis, and analysed on an "as-received" basis and

all sampling, sample preparation and analysis shall be performed in accordance with then current published applicable ASTM standards.

8.3 Analysis

- a) ***Analysis Procedures.*** The Analysis Person shall be an independent certified laboratory. The Analysis Person shall be chosen by good faith agreement of the Parties, and if the Parties fail to agree as to the Analysis Person, then Seller shall select the Analysis Person. The Analysis Person shall, at Seller's expense, perform a short proximate analysis on an "as-received" basis, which shall include total moisture, ash, Btu, sulphur and, other data as required by the applicable Confirmation
- b) ***Analysis Splits.*** The Sampling Person's samples of Coal representing each Shipment and the analysis thereof shall be used to determine quality adjustments pursuant to *Article 6* and any rejection or suspension rights pursuant to *Article 7*. Each sample shall be divided into three (3) parts in accordance with then current ASTM standards and placed in separate airtight containers. One (1) part of each sample will be analysed by the Analysis Person; one (1) part shall be retained by the Sampling Person for a period of Forty Five (45) days or shipped as Buyer directs; and one (1) part shall be retained by the Sampling Person for a period of Forty Five (45) days to be used for a referee analysis, if necessary.
- c) ***Analysis Objections.*** At the request of either Buyer or Seller, and at the expense of the requesting Party, additional analyses may be performed. The Sampling Person shall or shall cause the results of the short proximate analysis to be reported to Buyer and Seller, along with Shipment I.D. number, weight and shipping data ("Shipping Report") by fax, telephone (to be confirmed promptly by fax) or other electronic means as soon as available, but in any event within Twenty Four (24) hours (Forty Eight (48) hours for given Sources) of the completion of the loading of each Shipment. By notice to the Sampling Person within Twenty Four (24) hours after delivery of the Shipping Report and in any event prior to unloading of the Coal at the destination, Buyer or Seller may object to the analysis (the "Objecting Person"), and if so, the Sampling Person shall submit the retained sample to an independent testing laboratory selected by and unaffiliated with the Objecting Person for an independent analysis. If the results of the independent analysis are within ASTM (interlaboratory) Reproducibility Limits, the original short proximate and, any other specification as required in the applicable Confirmation, as appropriate, sodium analysis shall control and the costs of the independent analysis shall be paid by the Objecting Person. If such results for any Specification are not within such Reproducibility Limits, the results of the independent analysis shall control and the costs of the independent analysis shall be borne by the non-Objecting Person. All analyses shall be performed in accordance with then current published applicable ASTM standards.

9 COAL PRICE

9.1 Price

US\$ 46 per Metric Ton CIF to Storage Hall at the plant site, 9th Mile Corner, Enugu, Enugu State, Nigeria.

9.2 Change in Price, Index or Rate

[_____]

9.3 Coal Supply Deposit

- a) Within Fifteen (15) days after delivery of notice to the Seller under *Section 3.2 (a)*, the Buyer shall deposit with the Seller an amount equivalent to Fifty percent (50 %) of the Commodity Component prevalent on the date of deposit multiplied by the sum of the Coal quantities that shall have been notified by the Buyer for each Month under *Section 3.2 (a)* (the "Commissioning Period's Coal Supply Deposit"); which deposit shall not bear any mark-up.
- b) Not later than Thirty (30) days prior to the Commercial Delivery Start Date the Buyer shall deposit with the Seller an amount equivalent to Fifty percent (50 %) of the Commodity Component prevalent on the date of deposit, multiplied by the Annual Contract Quantity for the first Year of the Term (the "Delivery Period's Coal Supply Deposit"): which deposit shall not bear any mark-up.
- c) Within Thirty (30) days prior to each anniversary of the Commercial Delivery Start Date during the Term either party may serve a demand upon the other to suitably increase/decrease the value of the Delivery Period's Coal Supply Deposit to match with the prevailing Commodity Component on the 30th day prior to each anniversary of the Commercial Delivery Start Date.
- d) The Buyer shall maintain the Delivery Period's Coal Supply Deposit with the Seller continuously during the Term. The Parties shall adjust the value of Delivery Period's Coal Supply Deposit upward or downward, as the case may be, within 30 days following receipt of demand from either Party under *Section 9.1(c)*.
- e) The Seller shall return the Commissioning Period's Coal Supply Deposit to the Buyer within ten (10) days of the Commercial Delivery Start Date or the termination of this Agreement in the event that such termination occurs prior to the Commercial Delivery Start Date, subject to adjustment of all claims of the Seller arising out of this Agreement. Any delay in payment by the Seller to the Buyer from the due date mentioned hereunder shall bear mark-up at the Delayed Payment Rate.
- f) The Seller shall return the Delivery Period's Coal Supply Deposit to the Buyer within ten (10) days of the Expiry Date or the termination of this Agreement in the event that such termination occurs prior to the Expiry Date, subject to adjustment of all claims of the Seller arising out of this Agreement. Any delay in return of the Delivery Period's Coal Supply Deposit by the Seller in the time period mentioned above shall bear mark-up at the Delayed Payment Rate.

10 BILLING AND PAYMENT**10.1 Payments for Delivery of Coal**

Subject to this Agreement, the Buyer shall make payments of the Price to the Seller for the quantity of Coal delivered to the Buyer at the Loading Point during the Commissioning Period and Commercial Delivery Period for each Month or (part-month), subject to any of the adjustments relating thereto under Section 6, and such calculations shall be made in

accordance with the procedures specified in *Section 10.4* and *SCHEDULE B* (the "Coal Price Payment").

10.2 Pass-Through Items

The Buyer shall pay to the Seller, in accordance with the procedures specified in *Section 10.4* such amount for the Pass-Through Item(s) stipulated in *SCHEDULE B*. Each invoice for the Pass-Through Items(s) delivered to the Buyer under this Section shall be accompanied by the invoices(s) or payment receipts to the Seller for which recovery from the Buyer is being sought.

10.3 Liquidated Damages

- a) If, except where excused due to the occurrence of a Force Majeure Event, from and after the Scheduled Commissioning Period Start Date and until the occurrence of the Commercial Operations Date the Seller fails to deliver Coal in the quantities required hereunder and as a direct result thereof to the exclusion of all other causes there is a delay of more than Ten (10) days in the Commercial Operations Date that the Buyer otherwise would have been able to achieve, the Seller shall pay to the Buyer the following liquidated damages from and after the date that can be reasonably demonstrated by the Buyer to the satisfaction of the Seller as the date at which the Buyer would have achieved the Commercial Operations Date but for the delay in performance or non-performance of the Seller:
 - (i) The additional costs becoming payable to the EPC Contractor by the Buyer due to the inability of the Buyer or the EPC Contractor to commence testing and Commissioning of the Complex by the Commissioning Period Start Date on account of the Seller's failure to deliver Coal in the quantities required hereunder.
 - (ii) any Fixed Operation & Maintenance and Insurance Cost Components (as defined in the Power Purchase Agreement) that would have been payable to the Buyer from the Power Purchaser under and pursuant to the Power Purchase Agreement (assuming an Available Capacity equal to Ninety percent (90%) of the Contract Capacity) if the Seller had not failed to perform under this Agreement.
 - (iii) Any liquidated damages actually paid to the Power Purchaser by the Buyer for its delay in achieving the Commercial Operations Date under the Power Purchase Agreement (based on the Contract Capacity) on account of the Seller's failure to perform under this Agreement provided, however, that, for the first Sixty (60) days of such delay in the Commercial Operations Date that the Buyer otherwise would have been able to achieve where such delay is attributable to the Seller the Seller's liability to the Buyer pursuant to this *Section 10.3(a)* shall not exceed the revenues that the Seller would have received under this Agreement for each Day of such period if it had delivered Ninety percent (90%) of the daily prorated [Monthly Scheduled Quantity] to the Buyer during each such day multiplied by the lesser of the number of Days of such delay or 60 days; provided, further, that the Seller has made a reasonable effort to remedy the cause of the delay as soon as possible.

- b) If following the occurrence of the Commercial Operations Date except where excused due to the occurrence of a Force Majeure Event the Seller fails to deliver Coal in the quantities required hereunder; the Seller shall pay to the Buyer liquidated damages as follows:
- (i) the Buyer's incremental or additional cost of replacement coal (obtained from unrelated third parties under terms arranged at arm's-length) for use in the Complex during the period of the Seller's failure to deliver Coal.
 - (ii) to the extent that the Buyer is unable to procure replacement coal in the required quantities pursuant to *Section 7.3* or in the event that the cost of replacement coal is greater than the related loss of Capacity Payments or portions of Capacity Payments any Capacity Payments or portions of Capacity Payments as substantiated by the Buyer to the satisfaction of the Seller that would have been payable by the Power Purchaser to the Buyer under the Power Purchase Agreement and that were not paid to the Buyer due to the failure by the Seller to deliver Coal as required under the terms and conditions of this Agreement
 - (iii) any liquidated damages actually paid to the Power Purchaser by the Buyer if the Buyer fails to comply with a Dispatch Instruction or a Revised Dispatch Instruction under the Power Purchase Agreement due to the non-delivery of Coal as required hereunder.

To determine the quantities of Coal that the Seller fails to deliver the quantities of Coal requested by the Buyer for the relevant period pursuant to this Agreement will be adjusted downward to reflect quantities of Coal actually delivered by the Seller during such period and any **replacement fuel quantities** for which the Seller reimburses the Buyer pursuant to *Section 7.3* provided, however, that the quantities of Coal that the Seller fails to deliver shall be deemed not to exceed Ninety Five percent (95%) of the Monthly Scheduled Quantity, prorated on a daily basis, on each such Day that the Seller so fails to deliver Coal in the quantities requested by the Buyer.

- c) Notwithstanding anything contained in *section 10.3(a)* and *10.3 (b)* above the Seller shall not be liable to compensate the Buyer for any cost damage, loss or penalty suffered by it regardless of the Seller's failure to deliver, to the extent that the Seller's failure is occasioned on account of the failure of the Buyer to meet its obligations under this Agreement or to the extent that the Buyer would have suffered such cost, damage, loss or penalty even if the Seller had performed. In addition and notwithstanding anything contained in *section 10.3(a)* and *10.3 (b)* the Seller shall not be liable to compensate the Buyer for any costs, damages, losses or penalties to the extent that the Buyer is compensated for such costs, damages, losses or penalties pursuant to any policy of insurance held by the Buyer or which the Buyer was required to obtain pursuant to the terms of the Power Purchase Agreement.
- d) Notwithstanding the provisions of *Section 10(a)*, *10(b)* and *10(c)* or anything else contained in this Agreement the Liquidated Damages payable by the Seller to the Buyer, under this Agreement for any Year shall not **exceed 10% of the Commodity Component value** of the Annual Scheduled Quantity for that Year.

10.4 Billing

- a) At any time on or after the first Business Day of each Month, the Seller shall submit an invoice to the Buyer stated in Rupees for the following:
 - (i) The Coal Price Payment due in respect of the delivery of the Coal during the previous Month (or part-Month). Such invoice shall set forth for the relevant Month.
 - (A) The Price of the Coal (as determined in accordance with and *SCHEDULE B*);
 - (B) The quantity of Coal delivered to the Buyer at the Loading Point including any of the adjustments relating thereto under *Section 6*, and
 - (C) Such other information and calculations in reasonable detail, so as to enable the Buyer to confirm that the calculation of the amounts shown in the invoice comply with the provisions of this Agreement and *SCHEDULE B*.
 - (ii) Any Pass-Through Item and amount due in respect thereof for the Previous Month (or part-Month) in accordance with *SCHEDULE B*.
 - (iii) Any mark-up payable hereunder on an amount not paid by the Due and Payable Date, showing the calculation of such claimed mark-up in reasonable detail, together with such supporting information as may reasonably be necessary to substantiate the amounts claimed in the invoice.
- b) At any time on or after the first Business Day of each Month the Buyer may submit an invoice to the Seller stated in Rupees for the following:
 - (i) The amount of liquidated damages if any due to the Buyer for the previous Month (or part-Month). Such invoice shall set forth for the relevant Month:
 - (A) All relevant data used by the Buyer to determine the liquidated damages payable by the Seller under *Section 10.3*.
 - (B) The total amount of the Seller's liability hereunder for the previous Month (or part-Month).
 - (C) Such other information and calculations in reasonable detail, so as to enable the Seller to confirm to its satisfaction that the calculation of the amounts shown in the invoice comply with the provisions of this Agreement and *SCHEDULE B*.
 - (ii) Any mark-up payable hereunder on an amount not paid by the Due and Payable Date, showing the calculation of such claimed mark-up in reasonable detail together with such supporting information as may reasonably be necessary to substantiate the amounts claimed in the invoice.

- c) Any invoice delivered by a Party to the other Party under this Section shall state that the due date for payment of such invoice by the respective Party shall be the date Thirty (30) days following the date of delivery of such invoice (the "Due and Payable Date"). For the avoidance of doubt in each case if such **Due and Payable Date** is not a **Business Day** the **Due and Payable Date** shall be the next following **Business Day**.
- d) Either Party shall have the right to review an invoice or statement prepared by the other Party, and if it disagrees with the determination of the amount payable under such invoice or statement, may within Ten (10) days of the receipt of the invoice request clarification or substantiation of any amount included in an invoice or statement submitted under this Section by delivering notice of such requirement to the respective Party. The Party receiving such request shall provide the requested clarification and substantiation of such invoice or statement within five (5) Business Days of its receipt of such request. Neither Party shall waive the right to seek revision of an invoice and payment of the corrected amount unless such Party fails to deliver an Invoice Dispute Notice within the period provided in *Section 10.6* of this Agreement.
- e) After the invoices have been furnished and/or paid if the Seller or the Buyer within **360 days** after delivery of any invoice discovers any typographical, clerical and calculation errors or omissions in any such invoices due to any reason whatsoever, the Seller or the Buyer shall bring such discrepancies to the notice of the other and the Parties shall agree to adjust the invoices accordingly. Any invoice containing the aforementioned errors shall not entitle the Seller or Buyer to withhold payment of the invoice by the **Due and Payable Date**, other than amounts, which are subject to Dispute in accordance with *Section 10.6*. For the avoidance of doubt: any adjusted amount under this *Section 10.4 (e)* shall not attract any late payment charges.

10.5 Payment

- a) Subject to Section 10.5 of this Section:
 - (i) The Buyer shall pay to the Seller by the Due and Payable Date the amount shown on an invoice delivered in accordance with *Section 10.4 (a)*, less deductions for a Disputed Amount shown in the invoice.
 - (ii) The Seller shall pay to the Buyer by the Due and Payable Date the amount shown on an invoice delivered in accordance with *Section 10.4 (b)* less deductions for any Disputed Amount shown in the invoice.
- b) Any invoice delivered pursuant to this *Section 10* shall be paid in **Naira (N)**. All payments to be made by the Buyer to the Seller should be directly credited to the bank account of the Seller by the Buyer.
- c) Late payments of amounts due and payable under this Agreement shall bear mark-up at a rate per annum equal to the Delayed Payment Rate.
- d) Payments received by the Seller shall be applied against outstanding invoices on the "first in, first out" principle so that the invoices that have been outstanding the longest (in whole or in part) shall be paid first.

- e) A Party shall have no obligation to make payment of an invoice to the other Party under *Section 10.4*, unless the supporting information and data required there under are provided to it.

10.6 Payment Disputes

- a) At any time prior to Sixty (60) days after the date an invoice has been received by a Party, such receiving Party may serve notice (an Invoice Dispute Notice") on the other Party that the amount of such invoice (or part thereof) is in dispute. Each Invoice Dispute Notice shall specify the invoice concerned and the amount in dispute, giving reasons as complete and as detailed as reasonably possible for such dispute. A Party shall be entitled to submit any Dispute relating to an invoice to Dispute Resolution in accordance with Section 16 so long as it has delivered an Invoice Dispute Notice to the other Party in accordance with this *Section 10.6(a)*.

Provided that if a Party has raised an Invoice Dispute Notice in respect of a particular invoice for a disputed amount ("the Disputed Amount"). it need not raise an Invoice Dispute Notice in respect of subsequent invoices to the extent of the mark-up claimed on the Disputed Amount in such subsequent invoices. Should the Dispute be resolved in favour of the Party raising the Invoice Dispute Notice and the Disputed Amount is adjudged not to be payable any mark-up claimed on the Disputed Amount in the subsequent invoices shall also be deemed not to be payable.

- b) Upon resolution of the Dispute under *Section 16.1* or the determination of the Dispute by the Expert under *Section 16.2* and without prejudice to the right of either Party to refer a Dispute to arbitration any amounts disputed and not paid but determined to be owed by a Party or any amounts paid and determined not to be owed shall be paid or repaid to the other Party as the case may be within five (5) Business Days after such resolution or determination, together with markup thereon from the day following the date at which the amount was initially owed or paid up till the actual date of payment and/or repayment after such resolution, at the Delayed Payment Rate.

Following such resolution or determination by an Expert neither Party may refer a Dispute regarding such matter to arbitration under *Section 16.3* unless and until it has paid all amounts resolved or determined to be payable in accordance with *Section 10.6 (b)*.

10.7 No-Set Off

Notwithstanding anything else contained in this Agreement and without prejudice to the rights of either Party under this Agreement neither Party shall have the right to set-off any amount paid under this Agreement and subsequently disputed by a Party under *Section 10.6 (a)* against any and all amounts then due and payable by the Party raising the Dispute.

10.8 Suspension of Deliveries

Notwithstanding the mark-up payable on account of late payment as provided in this *Section 10* or any other provision in this Agreement if the Buyer fails to make payment within Ninety (90) days from the date of receipt of an invoice of any amount, which is not timely disputed

in accordance with *Section 10.6* the Seller shall be entitled to suspend deliveries of Coal by giving five (5) days written notice to the Buyer.

10.9 Mitigation

Subject only to the occurrence of a Force Majeure Event affecting the operation of the Complex the Buyer shall at all times maintain a Forty-Five (45) Day reserve of Coal (at full output on the Site) and replenish such reserve of Coal as and when it is diminished. Subject to the other terms of this Agreement, the Buyer agrees to use all reasonable efforts to mitigate the consequences of any breach of the Seller's obligations to the Buyer hereunder.

10.10 Supporting Data

- a) The Seller shall maintain accurate and complete records and data, as reasonably necessary to calculate or confirm the correctness of the Coal Price Payment any Pass-Through Items, and any other claims for payment or recovery of costs or expenses made by the Seller under this Agreement. All such records and data shall be maintained for a period of not less than Thirty-Six (36) months following the last date on which such data and information was relevant for claims by the Seller for payment by the Buyer.
- b) The Buyer shall maintain accurate and complete records and data as reasonably necessary to calculate or confirm the correctness of the invoices for liquidated damages and any other claims for payment or recovery of costs or expenses made by the Buyer under this Agreement. All such records and data shall be maintained for a period of not less than Thirty-Six (36) months following the last date on which such data and information was relevant for claims by the Buyer for payment by the Seller.

11 RISK OF LOSS, TITLE AND INDEMNIFICATION

11.1 Risk of Loss and Title

The Seller shall be responsible for all of the Seller's Equipment. The Buyer shall be responsible for all of the Buyer's Transportation Facilities and Equipment. The Seller shall be responsible for loading the Coal at the Loading Point in the Buyer's Transportation Facilities. Once a Consignment of Coal has been loaded and weighed at the Loading Point and a Loading Point Certificate has been provided to the Buyer's representative in respect of that Consignment, and the Buyer's representative does not [immediately] upon receipt of the Loading Point Certificate, communicate rejection of the Coal in the Consignment to the Seller, the risk of loss of and title to the Coal shall pass from the Seller to the Buyer for that Consignment.

11.2 Indemnification

Without prejudice to any other remedies that may be available to the Seller or the Buyer hereunder or pursuant to applicable law the following indemnification provisions shall apply:

- a) **The Seller.** The Seller shall be deemed to be in exclusive control and possession of all Coal delivered or tendered for delivery hereunder and shall be responsible for any reasonably foreseeable damage or injury caused thereby until the Coal has been delivered to the Buyer at the Loading Point. The Seller shall indemnify and hold the

Buyer its officers, directors and employees harmless from any foreseeable Losses resulting from property damage or injury to or death of persons arising from any negligent act or omission by the Seller's employees or agents with respect to Coal delivered by the Seller at the Loading Point. In addition, the Seller shall indemnify and hold the Buyer harmless from and against any and all claims arising out of the Seller's wrongful payment of, or failure to pay any person or entity from whom the Seller has procured coal for any interest in Coal delivered to the Buyer hereunder, and against all foreseeable Losses arising from or out of any adverse claims to or against title to such Coal to any interest therein or in the value thereof. Notwithstanding the foregoing nothing in this *Section 11.2 (a)* shall apply to any Loss in respect of and to the extent, which the Buyer receives proceeds from insurance policies or indemnification from another party or under the Implementation Agreement.

- b) **The Buyer.** After delivery of Coal at the Loading Point the Buyer shall be deemed to be in exclusive control and possession of such Coal and shall be responsible for any reasonably foreseeable damage or injury caused thereby. The Buyer shall indemnify and hold the Seller, its officers, directors and employees harmless from any and all foreseeable Losses incurred suffered or sustained by the Seller its officers directors and employees resulting from property damage or injury to or death of persons arising from any negligent act or omission by the Buyer's employees or agents with respect to Coal delivered hereunder at the Loading Point. Notwithstanding the foregoing nothing in this *Section 11.2 (b)* shall apply to any Loss in respect of and to the extent, which the Seller receives proceeds from insurance policies or indemnification from another party.
- c) **Joint Negligence.** In the event injury or damage on account of property damage or injury to or death of persons results from the joint or concurrent negligent or intentional acts or omissions of the Parties each Party shall be liable to indemnify the other in proportion to its relative degree of fault. In the event of Dispute regarding the respective fault of each party determination of responsibility and payment due by each Party will be made pursuant to Section 16.
- d) **Survival.** The provisions of this *Section 11.2* shall survive for a period of five years following the termination of this Agreement.

11.3 Indemnification for Fines and Penalties.

Any fines or other penalties incurred by a Party for non-compliance with the laws of Nigeria shall be the sole responsibility of the non-complying Party.

11.4 Defence of Claims.

- a) The indemnifying Party shall be entitled at its option and expense and with counsel of its selection, to assume and control the defence of such claim, action, suit or proceeding brought by a third party subject to the prior approval of the indemnified Party: provided, however, it gives prompt notice of its intention to do so to the indemnified Party and reimburses the indemnified Party for the reasonable costs and expenses incurred by the indemnified Party in connection with the defence of such claim action suit or proceeding prior to the assumption by the indemnifying Party of such defence.

- b) Unless and until the indemnifying Party acknowledges in writing its obligation to indemnify the indemnified Party and assumes control of the defence of a claim, suit, action or proceeding in accordance with Section 11.4 (a) the indemnified Party shall have the right but not the obligation, to contest defend and litigate with counsel of its own selection, any claim, action suit or proceeding by any third party alleged or asserted against such indemnified Party in respect of resulting from related to or arising out of any matter for which it is entitled to be indemnified hereunder and the reasonable costs and expense thereof shall be subject to the indemnification obligations of the indemnifying Party hereunder.
- c) Upon assumption by the indemnifying Party of the control of the defence of a claim, suit, action or proceeding the indemnifying Party shall reimburse the indemnified Party for the reasonable costs and expenses of the indemnified Party in the defence of the claim, suit, action or proceeding prior to the indemnifying Party's acknowledgement of the indemnification and assumption of the defence.
- d) Following the acknowledgement of the indemnification and the assumption of the defence by the indemnifying Party, the indemnified Party shall have the right to employ its own counsel and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of such indemnified Party, when and as incurred, unless (i) the employment of counsel by such indemnified Party has been authorized in writing by the indemnifying Party; (ii) the indemnified Party shall have reasonably concluded that there may be a conflict of interest between the indemnifying Party and the indemnified Party in the conduct of the defence of such action; (iii) the indemnifying Party shall not in fact have employed independent counsel reasonably satisfactory to the indemnified Party to assume the defence of such action and shall have been so notified by the indemnified Party; or (iv) the indemnified Party shall have reasonably concluded and specifically notified the indemnifying Party either that there may be specific defences available to it which are different from or additional to those available to the indemnifying Party or that such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement. If clause (ii), (iii) or (iv) of the preceding sentence is applicable, then counsel for the indemnified Party shall have the right to direct the defence of such claim, action, suit or proceeding on behalf of the indemnified Party and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

11.5 Notice of Proceedings

Each Party shall promptly notify the other Party of any Loss or proceeding in respect of which it is or may be entitled to indemnification under this *Section 11*. Such notice shall be given as soon as reasonably practicable after the relevant Party becomes aware of the Loss or proceeding.

11.6 Settlement

Neither Party shall be entitled to settle or compromise any such claim, action, suit or proceeding without the prior written consent of the other Party (not to be unreasonably withheld or delayed); provided, however, that after agreeing in writing to indemnify the indemnified Party, the indemnifying Party may settle or compromise any claim without the approval of the indemnified Party. Except where such consent is unreasonably withheld or

delayed if a Party settles or comprises any claim, action, suit or proceeding in respect of which it would otherwise be entitled to be indemnified by the other Party without the prior written consent of the other Party, the other Party shall be excused from any obligation to indemnify the Party making such settlement or compromise in respect of such settlement or compromise.

11.7 Insurance

The Buyer, at its sole cost and expense, shall obtain and maintain during, the Term the policies of insurance set forth in the Power Purchase Agreement in the amounts and during the periods provided therein. The Seller, its directors, officers and employees shall be additionally insured under such policies With respect to claims arising out of or in connection with this Agreement.

12 REPRESENTATION, WARRANTIES AND COVENANTS

12.1 By the Seller

- a) The Seller hereby represents and warrants that:
 - (i) It has the title and right to sell all of the Coal to be delivered hereunder and the Coal will be free from any and all adverse claims, including without limitation, royalties and other interests or owners' claims related to the Measuring Equipment and the Seller's Equipment;
 - (ii) the entering into, and performance of, this Agreement by the Seller have been duly authorized by Federal Government of Nigeria as the case may be, to the extent required under the laws of Enugu State and the Federal Republic of Nigeria and the Seller and are in conformity with the laws of the Federal Republic of Nigeria as of the date hereof;
 - (iii) It is duly created in accordance with the laws of the Federal Republic of Nigeria and has so far as it is material to the Buyer's interests hereunder complied in all material respects with all applicable laws of Nigeria;
 - (iv) there are no proceedings pending or to the best of its knowledge threatened for the dissolution of the Seller or that would materially adversely affect the performance by the Seller of its obligations under this Agreement or any of the executed contracts for the financing, design, construction and operation of the Measuring Equipment and the Seller's Equipment; and
 - (v) this Agreement has been duly authorized, executed and delivered by the Seller and constitutes the legal valid and binding obligation of the Seller.
- b) The Seller hereby covenants as follows:
 - (i) it will (A) at all times maintain its corporate existence in compliance with the laws of Enugu State and the Federal Republic of Nigeria, (B) at all times, so far as it is material to the Buyer hereunder, comply with all Laws of the Enugu State and the Federal Republic of Nigeria applicable to the Seller, (C) procure and maintain in full force and effect as and when necessary all approvals,

consents, authorizations, grants or certificates of registration, notifications, licenses, concessions, acknowledgments, agreements, rights-of-way, permits, decisions and similar items or otherwise required for its performance under this Agreement, and (D) give all required notices and allow all required inspections, so far as it is material to the Buyer under all approvals, consents, authorizations, grants or certificates of registration, notifications, licenses, concessions, acknowledgments, agreements, rights-of-way, permits, decisions and similar items obtained, or applied for by the Seller in connection with the Seller Equipment and the Measuring Equipment;

- (ii) it will render reasonable assistance to the Buyer to enable the Buyer to obtain and maintain all Consents that are required by the Buyer to perform its obligations under this Agreement:
 - (iii) it will or, will cause its suppliers to develop and maintain sufficient supplies of Coal at all times following the Scheduled Commissioning Period Start Date to enable it to have in stock adequate coal to deliver at the Loading Point, requested by the Buyer under the terms of this Agreement.
 - (iv) it will design, construct, complete, operate and maintain (either by itself or through the use of experienced and reliable third-party , contractors) the Seller's Equipment and the Measuring Equipment, and, upon conveyance from the Seller, any and all additionally required facilities (A) in accordance with the Operating Procedures, (B) in accordance with the Laws of the Federal Republic of Nigeria and (if not inconsistent therewith) the Standards, (C) in accordance with all approvals, consents, authorizations, grants or certificates of registration, notifications, licenses, concessions, acknowledgments, agreements, rights-of-way, permits, decisions and similar items, (D) in a good workmanlike manner (only with materials and equipment that are new, petroleum industry grade and suitable for their intended use), (E) in such a manner as to provide that the useful life of the Seller's Equipment and the Measuring Equipment with proper operation and maintenance, will last at least until the Expiry Date, and (F') in accordance with internationally accepted standards of good industry practice; and
 - (v) it will use all reasonable efforts to complete the construction and installation activities with respect to the Seller's Equipment and the Measuring Equipment by the date specified for completion of each such activity in *SCHEDULE E*.
- c) At the execution and delivery of the Financing Documents, if requested by the Buyer, the Seller shall, at the cost and expense of the Buyer deliver a certificate, executed by a duly authorized representative of the Seller affirming the validity of the representations in *Section 12.1 (a)* and. to the best of his knowledge, the Seller's compliance with the covenants in *Section 12.1(h)* and the Seller shall cause its counsel to issue an opinion affirming the validity of the representations in *Section 12.1 (a)* and setting forth such further matters as the Buyer (or the Lenders acting through the Buyer) may reasonably request.

12.2 By the Buyer

- a) The Buyer hereby represents and warrants that:

- (i) upon the execution and delivery of the Power Purchase Agreement and subject to the fulfilment of any conditions precedent to the effectiveness of the Power Purchase Agreement the terms of the Power Purchase Agreement shall be the legal, valid and binding obligation of the Buyer;
 - (ii) the entering into, and performance of, this Agreement by the Buyer have been duly authorized by the Buyer and are in conformity with the existing laws of Nigeria;
 - (iii) it is duly incorporated, existing and in good standing under the laws of Nigeria, and has, so far as it is material to the Seller complied fully with all applicable laws of Nigeria as of the date hereof;
 - (iv) there are no proceedings pending or, to the best of its knowledge threatened, for the liquidation of the Buyer or that would materially adversely affect the performance by the Buyer of its obligations under this Agreement or the Construction Contract;
 - (v) this Agreement has been duly authorized, executed and delivered by the Buyer and constitutes the legal, valid and binding obligation of the Buyer; and
 - (vi) to the best of its knowledge, the execution and delivery of and, performance of its obligations under. this Agreement by the Buyer subject to the granting and maintenance of the requisite Consents, does not violate the existing laws of Nigeria.
- b) The Buyer hereby covenants as follows:
- (i) it will (A) at all times maintain its corporate existence in compliance with the laws of Nigeria (B) at all times so far as it is material to the Seller hereunder comply with all Laws of the Federal Republic of Nigeria applicable to the Buyer, (C) procure and maintain in full force and effect as and when necessary all Consents required for its performance under this Agreement, and (D) give all required notices and allow all required inspections under all Consents obtained, or applied for, by the Buyer in connection with the Complex;
 - (ii) it will render reasonable assistance to the Seller to enable the Seller to obtain and maintain all approvals, consents, authorizations, grants or certificates of registration, notifications, licenses, concessions, acknowledgments, agreements, rights-of-way, permits, decisions and similar items that are required by the Seller to perform its obligations under this Agreement;
 - (iii) it will develop, design, insure, construct and complete the Complex and the Buyer's Transportation Facilities, and operate and maintain the Complex and the Transportation Facilities (either by itself or through the use of experienced third-party internationally recognized contractors) (A) in accordance with the Operating Procedures, (B) in accordance with the Laws of Federal Republic of Nigeria and (if not inconsistent therewith) the Standards, (C) in accordance with all applicable Consents and rights-of-way and similar items, (D) in a good workmanlike manner (only with materials and equipment that are new and suitable for their intended use), (E) in such a manner as to provide that the

useful life of the Complex the Buyer's Transportation Facilities, with proper operation and maintenance, will last at least until the Expiry Date, and (F) in accordance with the Power Purchase Agreement;

- (iv) it will use all reasonable efforts to complete the construction and installation activities with respect to the Complex that are set forth in *SCHEDULE E* by the date specified for completion of each such activity;
 - (v) if at any time during the financing, development, design, insuring, construction and completion of the Complex, the Buyer determines that any material delay may occur in its meeting of the dates set forth in the milestone schedule in *SCHEDULE E*, the Buyer will notify the Seller of such expected delay and any required change in such schedule; and
 - (vi) it will ensure that it has adequate equity commitments and committed financing available from financial institutions to design, insure, construct and complete the Complex, the Buyer's Transportation Facilities in accordance with the projected capital requirements as of the date of execution and delivery of the Financing Documents.
- c) At the execution and delivery of the Financing Documents if requested by the Seller, the Buyer shall at no cost to the Seller deliver a certificate, executed by a duly authorized representative of the Buyer affirming the validity of the representations in *Section 12(e)(i)* and to the best of his knowledge, the Buyer's compliance with the covenants in *Section 12(e)(iv)* and the Buyer shall cause its counsel to issue an opinion affirming the validity of the representations in *Section 12(e)(i)* and setting forth such further matters as the Seller may reasonably request.

13 FORCE MAJEURE EVENT

13.1 Definition of Force Majeure

A "Force Majeure Event" shall mean any event or circumstance or combination of events or circumstances (including the effects thereof) that is beyond the reasonable control of a Party and that on or after the date of Financial Closing, materially and adversely affects the performance by such affected Party of its obligations under or pursuant to this Agreement (including a Party's ability to deliver or receive energy from the Complex): provided however that such material and adverse effect could not have been prevented, overcome or remedied by the affected Party through the exercise of diligence and reasonable care, it being understood and agreed that reasonable care includes acts and activities to protect the Complex from a casualty or other event that are reasonable in light of the probability of the occurrence of such event, the probable effect of such event if it should occur, and the likely efficacy of the protection measures. "Force Majeure Events" hereunder shall include each of the following events and circumstances (including the effects thereof) but only to the extent that each satisfies the above requirements:

- a) Following political events that occur inside or directly involve Nigeria:
 - (i) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, civil commotion or act or campaign of terrorism.

- (ii) any Lapse of Consent that (i) shall itself have existed for Fifteen (15) consecutive Days or more, (ii) together with any and all other Lapses of Consents that have occurred in the same Agreement Year shall have existed in the aggregate for Thirty (30) Days or more in such Agreement Year, or (iii) together with any and all other Lapses of Consents that have occurred in the same and in the two immediately preceding Agreement Years, shall have existed in the aggregate for Sixty (60) Days or more.
 - (iii) radioactive contamination or ionizing radiation originating from a source in Nigeria or resulting from a source outside Nigeria.
 - (iv) strikes, works to rule go-slows or other industrial action such as. by way of example and not limitation labour actions associated with or directed against a Nigerian political party, or those that are directed against the Buyer (or its contractors) or the Seller, which form part of a national strike or general or widespread industrial unrest or dispute and are not confined solely to the workers or employees of the Party claiming the occurrence of a Force Majeure Event, its contractors, subcontractors or suppliers.
- b) Changes in Law.
- c) Other events beyond the reasonable control of the affected Party. including. But not limited to:
 - (i) uncontrollable events including, but not limited to:
 - (A) typhoon, tornado, or locusts; lightning, fire, earthquake, tsunami, flood, storm, cyclone.
 - (B) fire, explosion or chemical contamination (other than resulting from an act referred to in *Section XI b)(i)*); and
 - (C) epidemic or plague.
- d) Force Majeure Events shall expressly not include the following conditions, except and to the extent that they result directly from a Force Majeure Event:
 - (i) late delivery or interruption in the delivery of machinery, equipment materials, spare parts or consumables (including fuel);
 - (ii) a delay in the performance of any Contractor;
 - (iii) normal wear and tear or random flaws in materials and equipment or breakdown in equipment; or
 - (iv) changes in prices or market conditions.

Any event or circumstance or combination of events or circumstances affecting the performance of a Contractor of a Party shall, when and to the extent it materially and adversely affects the performance by such Party of its obligations under or pursuant to this Agreement, constitute a Force Majeure Event of the affected Party hereunder if such event or

circumstance or combination of events or circumstances affecting such Contractor would constitute, *mutatis mutandis* a Force Majeure Event (as defined herein) if it directly affected such Parts.

13.2 Notification of Obligations.

- (a) If by reason of a Force Majeure Event a Party is wholly or partially unable to carry out its obligations under this Agreement, the affected Party shall (i) give the other Party notice of the Force Majeure Event as soon as practicable, but in any event, not later than the later of Forty Eight (48) hours after the affected Party becomes aware of the occurrence of the Force Majeure Event or Six (6) hours after the resumption of any means of providing notice between the Buyer and the Seller, whichever is later, and (ii) give the other Party a second notice, describing the Force Majeure Event in reasonable detail and, to the extent which can be reasonably determined at the time of such notice, providing a preliminary evaluation of the obligations affected, a preliminary estimate of the period of time that the affected Party shall be unable to perform such obligations and other relevant matters as soon as practicable, but in any event, not later than five (5) days after the initial notice of the occurrence of the Force Majeure Event is given by the affected Party. When appropriate or when reasonably requested to do so by the other Party the affected Party shall provide further notices to the other Party more fully describing the Force Majeure Event and its cause(s) and providing or updating information relating to the efforts of the affected Party to avoid and/or to mitigate the effect(s) thereof and estimates, to the extent practicable, of the time that the affected Party reasonably expects it shall be unable to carry out any of its affected obligations due to the Force Majeure Event.
- (b) The affected Party shall provide notice to the other Party of (i) with respect to an ongoing Force Majeure Event the cessation of the Force Majeure Event, and (ii) its ability to recommence performance of its obligations under this Agreement as soon as possible and in any event not later than five (5) days after the occurrence of each of clause (i) and (ii) above.
- (c) Failure by the affected Party to give written notice of a Force Majeure Event to the other Party within the Forty Eight (48) hour period or Six (6) hour period required by *Section 13.2 (a)* shall not prevent the affected Party from giving such notice at a later time; provided, however, that in such case the affected Party shall not be excused pursuant to *Section 13.4* for any failure or delay in complying with its obligations under or pursuant to this Agreement until such notice has been given. If such notice is given within the Forty-Eight (48) hour or Six (6) hour period required by *Section 13.2 (a)* the affected Party should be excused for such failure or delay pursuant to *Section 13.4* from the date of commencement of the relevant Force Majeure Event.

13.3 Duty to Mitigate.

The affected Party shall use all reasonable efforts (or shall ensure that its Contractors use all reasonable efforts) to mitigate the effects of a Force Majeure Event, including, but not limited to, the payment of reasonable sums of money by or on behalf of the affected Party (or such Contractor), which sums are reasonable in light of the likely efficacy of the mitigation measures in any jurisdiction to the giving of any relief or the issue of any process in connection with such proceedings (including the making, enforcement or execution against or in respect of any assets whatsoever irrespective of their use or intended use).

13.4 Delay Caused by Force Majeure

So long as the affected Party has at all times since the occurrence of the Force Majeure Event complied with the obligations of *Section 13.3* and continues to so comply then (a) the affected Party shall not be liable for any failure or delay in performing its obligations (other than an obligation to make a payment or provide security) under or pursuant to this Agreement during the existence of a Force Majeure Event, including, without limitation, in the case of the Seller the Seller's obligation to deliver Coal up to the Daily Contract Quantity and (h) any performance deadline that the affected Party is obligated to meet under this Agreement, including the Scheduled Commissioning Period Start Date and the Commercial Operations Date shall be extended; provided, however, that no relief, including the extension of performance deadlines, shall be granted to the affected Party pursuant to this *Section 13.4* to the extent that such failure or delay would have nevertheless been experienced by the affected Party had the Force Majeure Event not occurred. Other than for breaches of this Agreement by the other Party and without prejudice to the affected Party's right to indemnification pursuant to this Agreement, the other Party shall not bear any liability for any loss or expense suffered by the affected Party as a result of a Force Majeure Event.

13.5 Termination as a Result of Force Majeure

In the event that a Force Majeure Event excuses the failure or delay of performance by a Party of a material obligation under this Agreement for a period in excess of 365 Days then the other Party shall have the right to terminate this Agreement without any liability or obligation by delivering written notice thereof to the Party which has been excused by such Force Majeure Event: provided however that the Seller may not terminate this Agreement unless the Implementation Agreement is terminated along with this Agreement in accordance with the terms of the Implementation Agreement.

13.6 Payment of Coal delivered prior to Force Majeure Event not excused

Notwithstanding anything contained in this Section, the Buyer will not be excused on account any Force Majeure event from making payment to the Seller against Coal already delivered to the Buyer prior to the notification of the Force Majeure Event in accordance with *Section 13.2*.

14 ASSIGNMENT AND SECURITY

14.1 Assignment

No assignment or transfer by a Party of this Agreement or such Party's rights or obligations hereunder shall be effective without the prior written consent of the other Party, except by the Buyer or the seller as provided in *Section 14.2* or *Section 14.3*.

14.2 Creation of Security

- a) Notwithstanding the provisions of *Section 14.1* for the purpose of financing the construction of the Complex the Buyer may, pursuant to the Financing Documents assign to, or create a security interest in favour of, the Lenders in the Buyer's rights and interests under or pursuant to this Agreement so long as the Lenders assume in writing for the benefit of the Seller all of the obligations of the Buyer under this Agreement.

- b) Except as expressly provided in this Agreement, the Lenders shall have no rights or obligations to the Seller under this Agreement until such time as the Lenders or the Agent succeed to the Buyer's interest under this Agreement, whether by exercise of their rights or remedies under the Financing Documents, in which case the Lenders or the Agent shall assume liability for all of the Buyer's obligations under this Agreement and shall assume in writing for the benefit of the Seller all of the obligations of the Buyer under this Agreement, including payment of any amounts due and owing to the Seller for payment defaults by the Buyer under this Agreement (other than, so long as the liability insurance has been and is in effect, liabilities incurred by the Buyer, arising during the period prior to the Lenders' or such Agent's succession to the Buyer's interest in and under this Agreement). Notwithstanding the foregoing, the Seller shall not be prevented from terminating this Agreement in respect of any liability of the Buyer arising under this Agreement, including without limitation under *Section 15.1 (b)*. that is not assumed and satisfied by the Lenders or the Agent as and when required herein. Except as otherwise set forth in the immediately preceding sentence none of the Lenders or the Agent shall be liable for the performance or observance of any of the obligations or duties of the Buyer under this Agreement nor shall the assignment by the Buyer of this Agreement to the Lenders give rise to any duties or obligations whatsoever on the part of any of the Lenders owing to the Seller.
- c) Upon delivery by the Lenders or the Agent to the Seller of notice of the occurrence and continuance of an event of default under the Financing Documents and the succession of the Lenders to the Buyer's interests in and under this Agreement the Lenders shall have the right, among others, to (i) take possession of the Complex and, prior to the Commercial Operations Date, complete construction of the Complex and operate the same and, after the Commercial Operations Date, operate the same, and (ii) cure any continuing Buyer Event of Default under this Agreement as provided in *Section 15.1*. Without the requirement of obtaining any further consent from the Seller, upon the exercise by the Lenders or the Agent of any of the remedies set forth in the Financing Documents the Lenders may assign their rights and interests and the rights of the Buyer under this Agreement to a Transferee (as hereinafter defined) so long as such Transferee shall assume in writing for the benefit of the Seller all of the obligations of the Buyer under this Agreement. Upon such assignment and assumption the Lenders shall be relieved of any obligations assumed by them under this Agreement arising after such assignment and assumption.
- d) As used herein, a "Transferee" shall be a Person who (i) either is an experienced power plant operator or shall have agreed to engage the services of a person who is an experienced power plant operator, (ii) shall have paid all amounts, if any, then due and payable to the Seller under this Agreement, (iii) shall have expressly assumed in writing for the benefit of the Seller the obligations of the Buyer under this Agreement and (iv) constitutes a Company organized under the Laws of Nigeria.
- e) At the request of the Buyer, delivered to the Seller not less than Thirty (30) days in advance the Seller shall execute and deliver at the Financial Closing all such acknowledgments to the Lenders or their designees of any security created pursuant to this *Section 14* as are reasonably requested by the Buyer and the Lenders to give effect to the foregoing.

- f) Notwithstanding the foregoing, the Seller shall have the right to assign this Agreement to any entity or entities assuming all or part of the Seller's rights and obligations in connection with the transmission or distribution of Coal to the Delivery Point: provided however, that the Buyer without interruption guarantees the performance of such other succeeding entity or entities on the same terms and conditions as the Guarantee or such other commercial security is provided for the obligations of the succeeding entity or entities that in the reasonable business judgment of the Buyer provides an adequate alternative to the Guarantee and all of the Seller's obligations under this Agreement are assigned pursuant to law to or contractually assumed, through a novation by one or more entities each of which has the legal capacity and appropriate commercial function to perform such obligations.

15 TERMINATION FOR DEFAULT

15.1 Buyer Event of Default

Each of the following events shall be events of default by the Buyer (each a Buyer Event of Default"), which, if not cured within the time permitted (if any) by the Seller to cure shall give rise to the right on the part of the Seller to terminate this Agreement pursuant to Section 15.3, provided, however, that no such event shall be a Buyer Event of Default (i) if it results from a breach by the Buyer of this Agreement, or (ii) if it occurs as a result of a Force Majeure Event:

- a) the failure by the Buyer to make any payment or to deposit the Coal Supply Deposit required hereunder within Three (3) Days of the due date therefor.
- b) except for the purpose of amalgamation or reconstruction that does not affect the ability of the amalgamated or reconstructed entity to perform its obligations under this Agreement and provided that the entity in question has unconditionally assumed such obligations the occurrence of any of the following events: (i) the passing of a resolution by the shareholders of the Buyer for the winding up of the Buyer, (ii) the appointment of a provisional liquidator in case of bankruptcy adjudged by a court of competent jurisdiction, which appointment has not been set aside or stayed within Ninety (90) Days of such appointment, or (iii) the making of an order winding up the Buyer by a court of competent jurisdiction.
- c) any statement, representation or warranty made by the Buyer herein proving to have been incorrect, in any respect, when made or when deemed to have been made and the circumstances that cause such failure or incorrect statement, representation or warranty to be incorrect having a material adverse effect on the Buyer's ability to perform its obligations under this Agreement.
- d) any material breach by the Buyer of this Agreement, which is not remedied within Thirty (30) days after notice from the Seller to the Buyer, which notice (i) states that a material breach of this Agreement has occurred and is continuing, which could result in the termination of this Agreement, (ii) identifies the breach in question in reasonable detail and (iii) demands remedy thereof.

15.2 Seller Event of Default

Each of the following events shall be events of default by the Seller (each a-Seller Event of Default"), which if not cured within the time period permitted (if any) by the Buyer to cure, shall give rise to the right on the part of the Buyer to terminate this Agreement pursuant to *Section 15.3*: provided, however, that no such event shall be Seller Event of Default (i) if it results from a breach by the Buyer of this Agreement or the Implementation Agreement, or (ii) if it occurs as a result of a Force Majeure Event:

- a) any assignment or transfer of this Agreement or of the Seller's rights or obligations hereunder in violation of *Section 14*.
- b) except for purposes of amalgamation, reorganization, reconstruction or privatization of the Seller or its assets that does not affect the ability of the resulting entity to perform its obligations under this Agreement and provided that the entity in question has unconditionally assumed such obligations the occurrence of any of the following events: (i) a decision by the shareholders of the Seller for the winding up of the Seller, (ii) the appointment of a provisional liquidator in case of bankruptcy adjudged by a court of competent jurisdiction, which appointment has not been set aside or stayed within Ninety (90) days of such appointment, or (iii) the making of an order winding up the Seller by a court of competent jurisdiction;
- c) any statement, representation or warranty made by the Seller herein proving to have been incorrect, in any respect when made or when deemed to have been made and the circumstances that cause such failure or incorrect statement, representation or warranty to be incorrect having a material adverse effect on the Seller's rights or obligations under this Agreement; or
- d) the Seller's continuous failure for Three (3) consecutive months to tender such quantities of Coal for delivery to the Buyer as is required to be delivered under this Agreement during each of the aforementioned Three (3) months.
- e) If liquidated damages actually payable by the Buyer to the Power Purchaser for any Year due to Seller's default **exceeds 10% of the Commodity Component value of the Annual Scheduled Quantity for that year.**
- f) any material breach by the Seller of this Agreement which is not remedied by the Seller within Thirty (30) Days after notice from the Buyer to the Seller, which notice (i) states that a material breach of this Agreement has occurred and is continuing, which could result in the termination of this Agreement, (ii) identifies the breach in question in reasonable detail and (iii) demands remedy thereof.

15.3 Termination Notices, Termination

- a) Upon occurrence of a Buyer Event of Default or a Seller Event of Default, as the case may be, that is not cured within the applicable period (if any) for cure, the non-defaulting Party may at its option initiate termination of this Agreement by delivering a written notice ("Notice of Intent to Terminate") of its intent to terminate this Agreement to the defaulting Party. The Notice of Intent to Terminate shall specify in reasonable detail the Buyer Event of Default or the Seller Event of Default, as the case may be giving rise to the Notice of Intent to Terminate.

- b) Following delivery of the Notice of Intent to Terminate, except in the case of a Buyer Event of Default under *Section 15.1(d)* or a Seller Event of Default under *Section 15.2(c)* the Party in default may continue to undertake efforts to cure the Buyer Event of Default or the Seller Event of Default, as the case may be, for a period of Forty Five (45) days commencing on the delivery date of such notice in the case of a failure by either Party to make payments, or for a period of Ninety (90) days commencing on the delivery of such notice in the case of any other Buyer Event of Default or Seller Event of Default (other than a Buyer Event of Default under *Section 15.1(d)* or a Seller Event of Default under *Section 15.2(c)*). as the case may be (or such longer period as the Parties mutually may agree) and if the default is cured at any time prior to the delivery of a Termination Notice in accordance with *Section 15.3(c)*, then the non-defaulting Party shall have no right to terminate this Agreement in respect of such cured Buyer Event of Default or Seller Event of Default. as the case may be.
- c) Subject to the provisions of *Section 15.3* as the case may be, upon expiration of any cure period described in *Section 15.3(b)* and unless the Parties shall have otherwise agreed or unless the Buyer Event of Default or the Seller Event of Default, as the case may be, giving rise to the Notice of Intent to Terminate shall have been remedied the Party having given the Notice of Intent to Terminate may terminate this Agreement by delivering a Termination Notice to the other Party whereupon this Agreement shall immediately terminate.

15.4 Remedies

- a) Remedies are cumulative, and, except as otherwise provided herein the exercise of or failure to exercise one or more remedy by a Party shall not impair limit or preclude the exercise of or constitute a waiver of other remedies by that Party that are available to it at law or in equity.
- b) if this Agreement is terminated by the Seller as a result of a Buyer Event of Default hereunder prior to the occurrence of the Commercial Operations Date, the Buyer shall upon such termination reimburse the Seller for all costs and expenses (including reasonable overhead) incurred by the Seller in connection with the design, engineering, construction and installation of the facilities at the Loading Point along with mark-up at the rate of 18% per annum. This obligation shall expressly survive any termination of this Agreement.
- c) If this Agreement is terminated by the Seller as a result of a Buyer Event of Default following the occurrence of the Commercial Operations Date the Buyer shall upon such termination make payment to the Seller of 120% of the Book Value of the Seller's Fixed Assets. This obligation shall expressly survive any termination of this Agreement.
- d) Notwithstanding the provisions of *Section 15.4(b)* and *15.4(c)* the Parties agree that the Seller or the Buyer as the case may be damaged in an amount that may be difficult or impossible to determine in the event that this Agreement is terminated due to a Buyer Event of Default or a Seller Event of Default, as the case may be, hereunder.

- e) Notwithstanding anything else contained in this Agreement, if this Agreement is terminated by the Buyer due to a Seller Event of Default then the Seller shall pay to the Buyer damages on the same basis as set forth in *Section 10.3(a)* (if termination occurs prior to the Commercial Operations Date) or *Section 10.3(h)* (if termination occurs after the Commercial Operations Date) that (i) have accrued as of the effective date of termination of this Agreement and (ii) will accrue thereafter for a maximum period of Ninety (90) days or the remaining term of the Power Purchase Agreement whichever is less, provided, however, that the Buyer shall use its best efforts to expeditiously make alternative arrangements for procuring Coal before the expiry of such Ninety (90) days and if the Buyer has made any such alternative arrangements for procuring Coal before the expiry of such Ninety (90) day period then the Seller shall be liable to pay damages only up to the Day on which supplies are commenced to the Buyer under such alternative arrangement.

15.5 Obligations Upon Termination

Upon expiration or termination of this Agreement the Parties shall have no further obligations or liabilities hereunder except for those obligations and liabilities that (i) arose prior to such expiration or termination and (ii) obligations and liabilities that arose upon termination and expressly survive such termination including the obligation to pay any compensation and expenses payable under Section 15.4.

16 DISPUTE RESOLUTION

16.1 Resolutions by Parties

In the event that a Dispute arises, the Parties shall attempt in good faith to settle such Dispute by mutual discussions within 30 Days after the date that the disputing Party gives written notice of the Dispute to the non-disputing Party. During such mutual discussions and any resolution procedure instituted pursuant to this Section 16, the Parties shall faithfully continue to perform their respective obligations under this Agreement.

16.2 Determination by Expert

- (a) In the event that the Parties are unable to resolve a Dispute in accordance with Section 16.1 within the time periods set forth therein, then either Party, in accordance with this *Section 16.2* may refer the Dispute to an expert (the "Expert") for consideration of the Dispute and to obtain a recommendation from the Expert as to the resolution of the Dispute; provided, however, that with respect to a payment Dispute, either Party may require the Dispute to be resolved by the Expert, but with respect to any other Dispute hereunder, except where expressly provided to the contrary, neither Party shall be required to pursue resolution of the Dispute pursuant to this Section 16.2, and either Party may by written notice to the other Party require arbitration of the Dispute in accordance with *Section 16.3*, in which case the provisions of Section 16.3 shall immediately apply.
- (b) The Party initiating submission of the Dispute to the Expert shall provide the other Party with a notice stating that it is submitting the Dispute to an Expert and nominating the person it proposes to be the Expert. The other Party shall, within Fifteen (15) days of receiving such notice, notify the initiating Party whether such person is acceptable. If the Party receiving such notice fails to respond or notifies the

initiating Party that the person is not acceptable, the Parties shall meet and discuss in good faith for a period of Ten (10) days to agree upon a person to be the Expert. If the Parties are unable to agree, each Party shall by the end of such 10 Day period nominate a person to agree on the Expert, whereupon the two nominated persons shall meet and agree upon a third person who shall be the Expert. Failing nomination by either Party of persons to agree on an Expert within the period provided or failing such agreement by the nominated persons within Ten (10) days of their meeting, either Party may request the Federal High Court for Expertise to appoint the Expert; provided, however, that the Expert shall not be a national of the jurisdiction of either Party or of the jurisdiction of any investor or group of investors holding directly or beneficially Five percent (5%) or more of the aggregate equity interest in the Buyer or the Buyer nor shall any such Expert be an employee or agent or former employee or agent or have a material interest in the business of any such person.

- (i) Consideration of the Dispute by an Expert shall be initiated by the Party who is seeking consideration of the Dispute by concurrently submitting to both the Expert and the other Party written materials setting forth:
 - (A) a description of the Dispute;
 - (B) a statement of the Party's position and whether a hearing is requested by such Party; and
 - (C) copies of records supporting the Party's position.
- (ii) Within Ten (10) days of the date that a Party has submitted the materials described in *Section 016.2 (c) (i)* the other Party may submit to the Expert (and, if submitted to the Expert, such materials shall be concurrently submitted to the other Party):
 - (A) a description of the Dispute;
 - (B) a statement of the Party's position, and (if not already requested) whether a hearing is requested by such Party; and
 - (C) copies of any records supporting the Party's position.

The Expert shall consider any such information submitted by the responding Party and may consider any additional information submitted by either Party at a later date but in such *event* the other Party shall be concurrently provided with such information and shall be allowed a reasonable time to respond thereto.

- d) Each Party shall designate one person knowledgeable about the issues in Dispute who shall be available to the Expert to answer questions and provide any additional information requested by the Expert. Except for such person, a Party shall not be required to, but may, provide oral statements or presentations to the Expert or make any particular individuals available to the Expert.
- e) The Expert shall provide a recommendation within Fifteen (15) days after the 10-day response period provided in *Section 16.2(c)(ii)* above has run *or* within such further time as is agreed in writing by the Parties. If the Expert's recommendation is given

within such fifteen (15)-day period as may be extended by the Parties, the Parties shall review and discuss the recommendation with each other in good faith for a period of Ten (10) days following delivery of the recommendation before proceeding with any other actions.

- f) The proceedings shall be without prejudice to any Party and any evidence given or statements made in the course of this process may not be used against a Party in any other proceedings. The process shall not be regarded as an arbitration and the laws relating to commercial arbitration shall not apply.
- g) Unless the Parties agree in writing at the time the Expert is selected stating that the decision of the Expert shall be binding, the determination of the Expert shall not be binding; provided however, if arbitration proceedings in accordance with *Section 16.3* have not been commenced within Sixty (60) days from the date the Expert's recommendation was received by the Parties in accordance with *Section 16.2(e)* the Expert's recommendation shall be final and binding on the Parties and any right of such Parties to resort to arbitral judicial or other proceedings in relation to the subject-matter of the recommendation shall be waived to the fullest extent permitted by law.
- h) Subject to *Section 16.2(g)*, if a Party does not accept the recommendation of the Expert with respect to the Dispute or if the Expert has not provided a recommendation within the time period specified in *Section 16.2(e)* any Party may initiate arbitration proceedings in accordance with *Section 16.3*.
- i) The costs of engaging an Expert shall be borne equally by the Parties and each Party shall bear its costs in preparing materials for and making presentations to, the Expert.

The failure of any Party to comply with the provisions and time periods set out in this *Section 16.2* shall not prevent (i) the Expert from proceeding; and/or (ii) any Party from requesting that the Expert proceedings be terminated, and the matter referred immediately to arbitration in accordance with *Section 16.3*.

16.3 Arbitration of Disputes

In the event that the Parties are unable to resolve any Dispute pursuant to *Section 16.1* or *Section 16.2* or either Party requires arbitration of the Dispute without referral of the Dispute to an Expert under *Section 16.2* then the Parties agree as follows:

- a) The Dispute shall be settled by arbitration conducted in accordance with the rules of the Laws of the Federal Republic of Nigeria (FRN) as in effect on the date of this Agreement (the "Rules"); provided, however, if for any reason the Dispute cannot be settled in accordance with the Rules, such Dispute shall be finally settled by arbitration under the Rules of Conciliation and Arbitration of the Enugu State in accordance with this *Section 16.3*. The arbitration proceedings shall be conducted, and the award shall be rendered in the English language.
- b) Unless the Parties otherwise agree, there shall be three arbitrators for the resolution of Disputes hereunder. Each Party shall select one arbitrator within 30 days of a request by a Party for arbitration pursuant to this *Section 16.3*. The two arbitrators thus appointed shall within Thirty (30) days of the selection of the second arbitrator

select the third arbitrator, which three arbitrators shall serve as the arbitration tribunal for resolution of the Dispute hereunder. If a Party does not select an arbitrator where it is entitled to do so within Thirty (30) days of a request for arbitration by a Party or if the two Party-appointed arbitrators fail to agree on the third arbitrator, either Party may request the Federal High Court for Expertise to appoint the third arbitrator. No arbitrator appointed pursuant to this *Section 16.3* shall be a national of the jurisdiction of either Party or of the jurisdiction of any investor or group of investors owning directly or beneficially five percent (5%) or more of the aggregate equity interest in the Company, nor shall any arbitrator be a shareholder or employee or agent or former employee or agent of or have or have had any material interest (directly or indirectly) in the business of or in any Party or any such person.

- c) The conduct of the arbitration (including any resort to a court for provisional remedy) and any other question of arbitration law shall be governed by the laws of England.
- d) Any arbitral award or procedural order under this *Section 16.3* shall be final and binding upon the Parties and shall be the sole and exclusive remedy between the Parties regarding all Disputes and each Party undertakes to comply with and to carry out any such arbitral award or procedural order, fully and without delay. The Parties expressly waive to the fullest extent permitted by law or under equity any rights of appeal to the courts of any jurisdiction with respect to any award of arbitration pursuant to this *Section 16.3*. The Parties expressly agree that any rights of appeal that may not be waived by a Party shall be exercisable by a Party only (i) after the award has been fully implemented under this *Section 16.3*, or (ii) if such Party must pay an amount under such award, after such Party has either paid such amount to the other Party or deposited the amount of the award with the tribunal or a court of competent jurisdiction.
- e) The Parties agree that, except as provided in *Section 16.3* any award may be enforced by a Party against the assets of the other Party wherever those assets are located, and such award may be entered and enforced into any court or tribunal of competent jurisdiction and the Parties expressly submit to the jurisdiction of any such courts or tribunals in London for such purpose.
- f) Until such time as any arbitral proceedings begun pursuant to this *Section 16.3* have been finally concluded (and, for this purpose, all rights of appeal, if any, shall have been exhausted), except for proceedings brought exclusively for the purpose of recognition and enforcement of any arbitral award or procedural order made by an arbitral tribunal duly constituted hereunder each Party irrevocably agrees not to initiate any proceedings or any action or suit in any court of competent jurisdiction or before any judicial or other authority arising under, out of or in connection with or relating to this Agreement the arbitration agreements set forth in this *Section 16.3*, any Dispute (whether or not any such Dispute shall have been referred to arbitration in pursuance of this *Section 16.3*, including without limitation (i) proceedings brought with a view to recourse or appeal against or revision or the annulment of any arbitral award or procedural order made by the arbitral tribunal or (ii) proceedings in which relief or remedy is sought by way of injunction or other judicial order (interlocutory or final) which would have the effect (directly or indirectly) of restraining or impeding the maintenance or prosecution by either Party of any arbitral proceeding initiated in pursuance of this *Section 16.3*.

16.4 Commercial Acts

The Seller unconditionally and irrevocably agrees that the execution delivery and performance by it of this Agreement constitutes a private and commercial act.

16.5 Sovereign Immunity: Jurisdiction

- a) The Seller unconditionally and irrevocably:
 - (i) should any proceedings be brought against the Seller or its assets other than other than Coal Reserves pipelines, Seller's Equipment, machinery and other assets necessary for the Seller to fulfil its obligations under the Laws of Nigeria and assets protected under the Immunity Act of the Federal Republic of Nigeria or any analogous legislation (collectively, the "Protected Assets") in any jurisdiction in connection with this Agreement or any of the transactions contemplated by this Agreement, no claim of immunity from such proceedings will be claimed by or on behalf of the Seller on behalf of itself or any of its assets (other than the Protected Assets): provided, however, that in no event shall the Seller's Protected Assets include the Seller Equipment and the Measuring Station;
 - (ii) it waives any right of immunity, which it or any of its assets (other than the Protected Assets) now has or may in the future have in any jurisdiction in connection with any such proceedings; and
 - (iii) consents generally in respect of the enforcement of any judgment against it in any such proceedings in any jurisdiction to the giving of any relief or the issue of any process in connection with such proceedings (including without limitation, the making enforcement or execution against or in respect of any of its assets other than the Protected Assets).
- b) The Buyer hereby unconditionally and irrevocably consents generally to the jurisdiction, with respect to itself and any and all of its assets and property that it now has or may thereafter acquire, of any court of competent jurisdiction for any action tiled by the Seller to enforce any award or decision of any arbitrator who was duly appointed under this Agreement to resolve any Dispute between the parties. The Buyer waives any objection that it may now or hereafter have to the venue of any action or proceeding brought as consented to in this Section 16 and specifically waives any objection that any such action or proceeding has been brought in an inconvenient forum and agrees not to plead or claim the same. The Buyer agrees that service of process in any such action or proceeding may be effected in any manner permitted by the law applicable to the aforementioned court. The Buyer irrevocably waives any and all rights it may have to enforce any judgment or claim against the Protected Assets in the courts of any jurisdiction. For the avoidance of doubt, any dispute or difference between the Parties as to whether either Party has complied with the affirmation set out in this Section 16.5 shall be referred for determination in accordance with Sections 16.1 to 16.3 and shall fall within the definition of Dispute.

17 NOTICES

17.1 Method of Giving Notices

Any notice to be given by or to a Party in accordance with this Agreement shall be made in writing and in the English language and shall be delivered by any form of courier (including by hand) or sent by facsimile or electronic mail, provided that such electronic mail shall be followed by a paper copy sent by courier, to the following address or to such other address as a Party may from time to time designate by notice to the other Party:

To the Buyer:

Managing Director / CEO

XENERGI LIMITED

Plot 282b Trans-Amadi Industrial Estate,

Port Harcourt, Rivers State, Nigeria

Tel: +234 (0)803 402 1964

Email: emekaene@me.com

To the Seller:

Chairman

GOALMARKSUPERJET INTERNATIONAL LIMITED

Plot C18 Ugwunchi Layout, Along Air Port Road,

Emene Enugu, Enugu State, Nigeria

Tel: +234 (0)817 464 0065, +234 (0)803 338 6750

Email: superjetenugu@yahoo.com

17.2 Confirmation of Notices

Except where expressly provided to the contrary in this Agreement, any notice given by facsimile or by electronic mail shall, unless already acknowledged, be subsequently confirmed by the sending Party by letter to the receiving Party but without prejudice to the validity of the original notice by facsimile or electronic mail if received.

17.3 Receipt of Notices

Any notice given to a Party in accordance with this Agreement shall be deemed to have been received by that Party as follows:

- a) if delivered by any form of courier (including by hand) or sent by recorded or registered postal delivery; if delivered during business hours on a Working Day, when delivered; if not delivered during business hours on a Working Day, 09:00 hours on the next Working Day;
- b) if sent by facsimile: when confirmation of transmission to and receipt by the facsimile machine of the receiving Party is received by the facsimile machine of the sending Party; and
- c) if sent by electronic mail, the Party sending the Notice shall also send a facsimile copy and the Party receiving the Notice shall be deemed to have received the Notice in accordance with the provisions of 30.3.2.

17.4 Notice of Construction Schedule

As soon as possible but in no event later than Financial Closing, the Buyer shall provide the Seller with notice of the anticipated construction schedule for the Complex, which schedule shall include the significant construction milestones leading to the achievement of the Commercial Operations Date.

17.5 Notice and Construction

Following the occurrence of Financial Closing, the Buyer shall deliver written notice of the then-anticipated Commissioning Period Start Date to the Seller not less than 365 Days prior to the then-anticipated Commissioning Period Start Date. Upon receipt of notice of the anticipated Commissioning Period Start Date, the Seller shall use all reasonable efforts to complete any design, construction and installation of the Seller Equipment on or before the anticipated Commissioning Period Start Date. The Buyer shall complete any design, construction and installation of the Buyer Transportation Facilities and Buyer Equipment not later than 120 Days prior to the Scheduled Commissioning Period Start Date. The Parties shall ensure that all such facilities constructed or modified are compatible to the extent reasonably necessary for the purposes of this Agreement and shall cooperate with each other as necessary to ensure the compatibility of such facilities.

18 MISCELLANEOUS**18.1 Amendment**

This Agreement can be amended only by agreement between the Parties in writing. No amendment of this Agreement will be effective without the prior written consent of the other Party.

18.2 Third Parties

This Agreement is intended solely for the benefit of the Parties, and nothing in this Agreement shall be construed to create any rights in, duty to, standard of care to or any liability to any person except as otherwise provided in the Agreement.

18.3 No Waiver

No waiver by either Party of any default or defaults by the other Party in the performance of any of the provisions of this Agreement:

- a) shall operate or be construed as a waiver of any other or further default whether of a like or different character;
- b) shall be effective unless in writing duly executed by a duly authorized representative of such Party; or
- c) Neither the failure by either Party to insist on any occasion upon the performance of the terms conditions and provisions of this Agreement nor time or other indulgence granted by one Party to the other shall act as a waiver of such breach or acceptance of any variation or the relinquishment of any such right or any other right hereunder, which shall remain in full force and effect.

18.4 Relationship of the Parties

This Agreement shall not be interpreted or construed to create an association joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

18.5 Survival

The cancellation, expiration or earlier termination of this Agreement shall not relieve the Parties of obligations that by their nature should survive such cancellation, expiration or termination, including, without limitation, warranties, remedies, promises of indemnity and confidentiality.

18.6 Language

The language for the purpose of administering this Agreement shall be English.

18.7 Governing Law

This Agreement and the rights and obligations of the Parties hereunder shall be governed by, and interpreted and construed in accordance with the laws of the Federal Republic of Nigeria.

18.8 Entirety

This Agreement and the schedules attached hereto are intended by the Parties as the final expression of their agreement on the matters contained herein. All prior written or oral representations, understandings, offers or other communications of every kind are hereby abrogated and withdrawn.

18.9 Confidentiality

- a) Each of the Parties and their contractors, consultants and agents shall hold in confidence all documents and other information whether technical or commercial supplied to it by or on behalf of the other Party relating to the design and construction of the Project Line and the design, Construction, insurance, operation, maintenance, management and financing of the Complex and all information and documents obtained by it in the course of any inspection performed in accordance with the terms of this Agreement and shall not save as required by law or appropriate regulatory authorities, prospective lenders to or investors in the Company and their professional advisers publish or otherwise disclose or use the same for its own purposes otherwise than as may be required to perform its obligations under this Agreement. Notwithstanding the above, nothing herein contained shall preclude the use of provisions similar to those contained in this Agreement and the other Agreements referred to herein and in agreements prepared and issued in connection with other projects.

The provisions of this Section 18.9a) above shall not apply to:

- (i) any information in the public domain otherwise than by breach of this Agreement;
- (ii) information in the possession of the receiving Party thereof before divulgence as aforesaid, and which was not obtained under any obligation of confidentiality.

18.10 Successors and Assigns

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

18.11 Liability for Review

No review and approval by the Seller of any agreement, document, instrument, drawing, specifications or design proposed by the Buyer shall relieve the Buyer from any liability that it would otherwise have had for its negligence in the preparation of such agreement. Document, instrument, drawing, specification or design or failure to comply with the applicable State and Federal Laws with respect thereto or to satisfy the Buyer's obligations under this Agreement nor shall the Seller be liable to the Buyer or any other person by reason of its review and approval of an agreement, document, instrument, drawing, specification, or design.

18.12 Affirmation

The Buyer declares and affirms that it has not paid nor has it undertaken to pay and that it shall in the future not pay any bribes 'pay-offs', 'kick-backs' or unlawful commission and that it has not in any other way or manner paid any sums whether in US Dollar or in Euro and whether in Nigeria or abroad or in any other manner given or offered to give any gifts and presents in Nigeria or abroad to any person or Buyer to procure this Agreement and the Buyer undertakes not to engage in any of such acts or similar acts during the Term in relation to this Agreement.

18.13 Counterparts

This Agreement may be executed in two or more original copies and each such copy may be executed by each of the Parties in separate counterparts each of which copies when executed and delivered by the Parties shall constitute an original but all of which shall together constitute one and the same instrument.

SIGNED for and on behalf of the Seller:

XENERGI LIMITED

Signature and Seal:

By: Emeka C. Ene

Position: Managing Director / CEO

Date:

WITNESS:

Signature:

Name:

Position:

Date:

SIGNED for and on behalf of the Buyer:

GOALMARKSUPERJET INTERNATIONAL LIMITED

Signature and Seal:

By: Prince Jude Obi

Position: Chairman

Date:

WITNESS:

Signature:

Name:

Position:

Date:

SCHEDULE A**FORM OF STAND-BY LETTER OF CREDIT**

[Issued on Issuing Bank Letterhead Showing Full Name and Address]

Date and Place of IssueApplicant:

Name: [Name and address of Buyer]
Address: [Name and address of Buyer]

Advising and Negotiating Bank:

Name: [Name and address of Buyer]
Address: [Name and address of Buyer]

Beneficiary:

Name: [Name and address of Seller]
Address: [Name and address of Buyer]

Attention: [Appropriate Seller's Representative]

We hereby issue our documentary credit as follows:

Type of Credit:

Irrevocable, Divisible, Transferable and Revolving

Letter of Credit Number:Date and Place of Expiry:

Date:
Place: [Name and address of Advising and Negotiating Bank]

Amount:

[Figures]
[Words]

Credit Available with: [Advising and Negotiating Bank], by negotiation against presentation of the documents detailed herein and of your draft(s) at sight drawn on Issuing Bank accompanied by a certificate signed on your behalf by a person describing himself therein as your duly authorized officer stating that:

- A. "This drawing in the amount of [currency and amount] is being made pursuant to the Coal Supply Agreement ("Agreement") between [Name of Buyer] (the "Buyer") and [Name of Seller] as a result of Buyer's failure to perform in accordance with Section 1 of the Agreement."

OR

- B. Name of Seller] (the "Seller") is making a drawing in the full available amount of [Issuing Bank] Letter of Credit No. _____ because the term of the Letter of Credit will expire within ten (10) business days of the date of this certificate and [Name of the Buyer (the "Buyer") has failed to deliver a replacement or renewal Letter of Credit acceptable to [the Seller] or the Coal Supply Deposit (as defined in the Coal Supply Agreement identified below) and security is still required under the terms of Section of the Coal Supply Agreement between the Seller and the Buyer dated _____, 2015.

Presentation of either of the above certificates and all communications in writing with respect to this Letter of Credit shall be addressed to us at [Issuing Bank name and address] referencing Letter of Credit No.: _____ Attention: _____ or at [Advising and Negotiating Bank name and address] referencing Letter of Credit No.: _____ Attention: _____

This Letter of Credit sets forth in full the terms of our undertaking and this undertaking shall not in any way be modified, amended, limited, or amplified by reference to any document instrument, or agreement referred to herein, except only the certificates and draft referred to herein; and any such reference shall not be deemed to incorporate herein by reference any document, instrument, or agreement except for such certificates.

This Letter of Credit is transferable. Transfer may be effected only by Issuing Bank upon our receipt of an acceptable application for transfer accompanied by the original Letter of Credit and payment of our transfer commission in effect at the time of transfer.

Partial drawings are allowed.

Tested telex reimbursement is allowed.

Drafts drawn under this Letter of Credit must bear the clause: "Drawn under [Issuing Bank] Letter of Credit No.: _____ dated _____, 2015.

It is a condition of this Letter of Credit that it shall be automatically extended for an additional period of one year from the present and each future expiration date, unless Thirty (30) Days prior to the then-current expiration date, we notify you by registered mail that this Letter of Credit will not be renewed for an additional period.

We hereby engage with you that drafts drawn in compliance with the terms of this credit and amendments shall meet with due honour upon presentation.

Authorized Signature:

Authorized Signature:

SCHEDULE B

COAL QUANTITY, QUALITY AND PRICE
(Cost, Freight on Board to Buyer's Storage Hall at Power Plant Site in the EFTZ)

1. QUANTITY AND ORIGIN

The total quantity of coal of the contract is **87,591.24 MT/Year**, which shall be delivered by trucks under Cost, Insurance and Freight (CIF) basis to the power plant site, located at the Enpower Free Trade Zone (EFTZ), at Nine Mile Corner, Enugu, Enugu State. The monthly quantity of coal required by the plant is **7,299.27 MT**, which shall be delivered by **20-ton** trucks to the sites. The Trucks shall be technically compatible to the delivery conditions of goods and services of the power plant. Each truck content shall always be properly controlled and weighted at the main the power plant main gate by the security guards before being allowed to discharge the coal. Each supply shall be approved with a certificate of acceptance, approving the quantity and quality of the delivered coal to the plant.

The origin of the Coal is Enugu, Enugu State, also known as the Coal State of the Federal Republic of Nigeria.

2. COAL DELIVERY MILESTONES

Table 1: Coal Delivery Milestone

Month	Monthly Quantity [MT]	Number of Months [-]	Total Yearly Quantity [MT]
1	7,299.27 ± 5%	12	87,591.24 ± 5%
2	7,299.27 ± 5%	12	87,591.24 ± 5%
3	7,299.27 ± 5%	12	87,591.24 ± 5%
4	7,299.27 ± 5%	12	87,591.24 ± 5%
5	7,299.27 ± 5%	12	87,591.24 ± 5%
6	7,299.27 ± 5%	12	87,591.24 ± 5%
7	7,299.27 ± 5%	12	87,591.24 ± 5%
8	7,299.27 ± 5%	12	87,591.24 ± 5%
9	7,299.27 ± 5%	12	87,591.24 ± 5%
10	7,299.27 ± 5%	12	87,591.24 ± 5%
11	7,299.27 ± 5%	12	87,591.24 ± 5%
12	7,299.27 ± 5%	12	87,591.24 ± 5%
TOTAL	87,591.24 ± 5%	144	1,051,094.88 ± 5%

The Total Annual Contractual Quantity of coal required for the power plant is **87,591.24 MT**, which shall be delivered by the Seller to the Buyer as provided in this SCHEDULE B.

NOTE: This Total Quantity of Coal may increase or decrease.

3. PRICE AND DELIVERY METHOD

The agreed fixed unit price of the is **US\$ 46 per metric Ton (MT)** under **CIF basis** as provided in section 1 above of this *SCHEDULE B*. This price is fixed and will not change for the whole lifetime of the Project unless otherwise agreed in written by both parties.

- 2.1 Under CIF basis, this fixed unit price of the is **US\$ 46 per metric Ton (MT) include the costs of:**
- Insurance (*i.e.* all losses and damages caused during the delivery of the coal to the power plant shall be the Seller and its insurer or guarantor).
 - Delivery cost of the coal to the power plant site; and
 - Unloading cost.
- 2.2 For the purpose of more clarification, this fixed cost comprises of the coal handling and transportation cost, taxes and duties, processing and blending costs, inventory carrying costs, administrative costs and other overheads. The only billing price is **US\$ 46 per metric Ton (MT)** and no additional cost is required.
- 2.3 For avoidance of doubt, any costs in Nigeria related to the supply of Coal and to the Coal Seller's business and other activities (and to the business or activities of its contractors) and all local administrative costs in Nigeria, customs clearance charges and any other local costs in Nigeria related to this Agreement and to the processing of Coal for supply to the Buyer shall be Borne by the Seller.
- 2.4 The Insurance Component shall consist of the cost of Insurance included in the Total given Price of Coal Per Metric Ton, which is included in this fixed price.

4. QUALITY SPECIFICATIONS AND STANDARDS

3.1 Quality Specifications and Standard

The quality of this coal was provided by the Chairman of XENERGI LTD. It was based on the laboratory report No. 2020/0002 issued by NIGERIAN GEOLOGICAL SURVEY AGENCY (National Geosciences research Laboratory (NGRL) in Kaduna). But, as provided in Table 1 below, there are some missing important data such High Heating Values (HHV), methane, and Carbon Monoxide (CO).

The quality of coal shall meet all the gasification requirements provided basically by the stoichiometric equation (*see* table 2 below) for the production of quantity of syngas required for the operation of the power.

Table 1: Coal Quality Specifications

Parameter	Value
Total moisture, W _r (%)	6.15
Ash, A _r (%)	11.05
Total sulphur, S _r (%)	0.58
Calorific value, LHV _r (kJ/kg)	20,675.42
Moisture, W _a (%)	N/A
Ash, A _a (%)	N/A
Volatiles, V _a (%)	N/A
Heat of combustion, HHV _a (kJ/kg)	N/A
Calorific value, LHV _a (kJ/kg)	N/A
Sulphur, S _a (%)	0.58
Carbon, C _a (%)	65.87
Hydrogen, H _a (%)	4.97
Nitrogen, N _a (%)	1.26
Oxygen, O _a (%)	10.13

The evaluation of the coal quantity was based on the most accurate method, using the fuel consumption data from the manufacturers and a fuel of known properties procedures provided by XENERGI LTD. The verification of data was based on the **Stoichiometric Modelling** provided in table 2 below.

Although over one hundred chemical compounds take part in the gasification process, in the presented model only eight substances, which are considered C, CO, CO, HO, H, CH, O and N.

Nitrogen is treated as inert, so seven compounds, formed from three elements, participate in conversions. Therefore, the model was determined by four independent reactions. **Usually, the following reactions are used in equilibrium simulations.**

Table 2: Stoichiometric Modelling

Eq.	Name	Chemical Reaction	Energy
1	the Boudouard reaction	$C + CO_2 \rightarrow 2CO$	+172 MJ/kmol
2	the water gas reaction:	$C + H_2O \rightarrow CO + H_2$	+131MJ/kmol
3	the methanation reaction:	$C + 2H \rightarrow CH_4$	-75 MJ/kmol
4	the water gas shift reaction:	$CO + H_2O \rightarrow CO_2 + H_2$	-41MJ/kmol

NOTE 1:

When considering the quality specifications of your coal, you can see that we have only four (4) components. Besides, we do not have any data on the high heating value (HHV_{coal}), which is a very important data for the combustion of the coal and Syngas. The preliminary analysis of the coal specifications we received from you shows that your coal has a good Heating Value for coal-fired power generation and very poor chemical composition for the production of syngas.

Main requirement for the combustion of gas from the gasification of the coal

The combustion gas refers to gas mixtures, which are suitable for turbine/genset operation and differ in their composition. The most important main components are:

- **Methane (CH_4)**
 - as an essential heating value carrier of the usual combustion gases,
- **chained hydrocarbons (C_nH_m with n greater than 1)**
 - which have a strong tendency towards knocking combustion,
- **inert gases (N_2 and CO_2)**
 - which do not actively participate in the combustion. Inert gases increase the methane number in a combustion gas. This increases the methane number in CO_2 with the triple effect of N_2 ,
- **Hydrogen (H_2)**
 - which considerably reduces the methane number of the combustion gas.

5. CONCLUSION

No additional material that may change or sacrifice the quality of the coal shall be avoided by the supplier, hereinafter referred to as GOALMARKSUPERJET INTERNATIONAL LIMITED.

LOCATION OF THE END DELIVERY POINT AND SITE

[illegible]

Figure 1: Land Use Plan of the 403.562 Hectare Shagari Power and Energy Free Trade Zone

The map displays the land use plan for the 403.562 Hectare Shagari Power and Energy Free Trade Zone. The plan is divided into several zones, each color-coded according to the legend. The zones include Heavy Industry (blue), Light Industry (purple), Freight & Logistics (pink), Power Generation/Power Related Plants (green), Residential (orange), Public Use (light blue), Commercial/Central Business District (red), Educational (yellow), Recreation (light green), Green Areas (dark green), Boundary Line (dashed), Road (solid), Roundabout (circle), and Stream (blue wavy line). A scale bar indicates 0 to 1000 meters. A north arrow is present. A table of points with East and North coordinates is provided. A red circle with the number 1 is placed on the map.

POINT	EAST	NORTH
ENC 17494	210734.0000	171000.0000
ENC 17495	210737.0000	171175.0000
ENC 17496	209710.0000	171175.0000
ENC 17501	209500.0000	171175.0000
ENC 17502	209500.0000	170800.0000
ENC 17503	209500.0000	170800.0000

LEGEND

- HEAVY INDUSTRY
- LIGHT INDUSTRY
- FREIGHT & LOGISTICS
- POWER GENERATION/POWER RELATED PLANTS
- RESIDENTIAL
- PUBLIC USE
- COMMERCIAL/ CENTRAL BUSINESS DISTRICT
- EDUCATIONAL
- RECREATION
- GREEN AREAS
- BOUNDARY LINE
- ROAD
- ROUNDABOUT
- STREAM

SCALE

TOTAL AREA = 403.562 Ha

LAND USE PLAN

MASTER PLAN FOR SHAGARI POWER AND ENERGY FREE TRADE ZONE (SHPOWER) NINETEEN MILE CORRIDOR, ENUGO STATE, NIGERIA

ENPOWER ENERGY LTD.

LAND USE PLAN

JULY 2011

SCHEDULE D

A. COAL MINING AND TREATMENT EQUIPMENT

(To be provided by Seller)

B. COAL TRANSPORTATION FACILITIES AND EQUIPMENT TO END DELIVERY POINT – POWER PLANT SITE (9TH MILE CORNER, ENUGU)

(To be provided by Seller)

C. COAL SAMPLING AND MEASUREMENT EQUIPMENT

(To be provided by Seller)

SCHEDULE E

COAL POWER PLANT CONSTRUCTION MILESTONE

