

**ENGINEERING, PROCUREMENT AND
CONSTRUCTION (EPC)
AGREEMENT**

**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**

BETWEEN

**XENERGI LIMITED
(PROJECT COMPANY)**

AND

**ISTROENERGO INTERNATIONAL, A.S.
(EPC CONTRACTOR)**

_____, 2022

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This ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT ("Agreement"), entered into as of the _____ day of _____ July, 2021 ("Effective Date"), is between:

XENERGI LIMITED (XENERGI), a Power and Energy Company, duly existing and organized under the Laws of the Federal Republic of Nigeria, whose business office is at Plot 282b Trans-Amadi Industrial Estate, Port Harcourt, Rivers State, Nigeria (hereinafter called "**PROJECT COMPANY**", which expression shall where the context so admits include its successor-in-title and assigns) of the one part.

and

ISTROENERGO INTERNATIONAL, A.S. (IEI), a Company duly organised under the laws of Slovak Republic, whose registered office is at Rozmarínová 4, 934 01 Levice, Slovak Republic (hereinafter called "**Contractor**", which expression shall where the context so admits include its successors-in-title and assignees) of the other part.

(individually "Party" and collectively "Parties").

RECITALS

WHEREAS, the CONTRACTOR is a Slovak and Czech supplier of power generation projects and their technological parts. It is actively and primarily engaged in the business of construction, rehabilitation and modernization of custom supplies of conventional power plants, thermal plants, steam plants, heat distribution systems, industrial technologies, ecological projects, desulphurization of combustion products, water treatment, drinking water treatment, low-output energy systems for industry and the communal sphere, selected supplies for the chemical and petrochemical industry.

WHEREAS, CONTRACTOR agrees to perform the duties to act as general EPC contractor for the full design configuration, construction, performance of start-up, testing and commissioning of the power plant upon the terms and conditions hereinafter set forth.

WHEREAS, PROJECT COMPANY is an Nigerian Power and Energy Company, which is engaged in the business of developing, building, operating and owning Independent Power Projects (IPPs). XENERGI is established to be a well-rounded energy Company, which is committed to the application of standard Industry Best Practice and the application of environmentally friendly

Technology, providing competitive advantages in the Nigerian and African industrial development.

WHEREAS, the PROJECT COMPANY is ready, willing and able, under export investment credit and in accordance with the financial term sheet of the EXIMBANK SK, to provide an equity contribution of **15%** of the Total Project cost (TPC) or Investment Capital (IC) through its Bank, hereinafter to as **Guarantee Trust Bank Plc. (GTB)**, also called the Project income receiving bank and credit reimbursement guarantor of the project.

WHEREAS, the PROJECT COMPANY is ready, willing and able to provide and directly pay all local taxes related to the Project (including VAT and WHT taxes applicable on onshore part of the Project);

WHEREAS, CONTRACTOR shall provide **Performance Bond (PB)** of **2%** maximum pursuant to INCOTERMS 2000, Publication No. 458 of the International Chamber of Commerce (ICC);TBD

WHEREAS, the Plant can only be built following the issuance of Generation License from the Nigerian Electricity Regulatory Commission (NERC) pursuant to the Electric Power Sector Reform Act No. 6 of 2005 ("the Act") and following the issuance of other Authorizations;

WHEREAS, the PROJECT COMPANY shall be responsible for obtaining of Generation License from the Nigerian Electricity Regulatory Commission (NERC) pursuant to the Electric Power Sector Reform Act No. 6 of 2005 ("the Act") and other Authorizations;

NOW THEREFORE, in consideration of the foregoing, the mutual agreements set forth herein and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, PROJECT COMPANY and CONTRACTOR agree as follows:

ARTICLE 1

DEFINITIONS

1.1 Definitions

Unless the context indicates otherwise, capitalized and bolded words used in this Agreement, including the recitals and Schedules shall have the corresponding meaning set out below:

"Acceptance Tests/Acceptance Testing" shall mean the performance tests, to be performed on the Plant as more particularly set forth on *Schedule III*, including any adjustments thereto as provided in this Agreement or as otherwise agreed to by the Parties to address the conditions present at the time the Plant is available for testing.

"Acceptance Test Capacity Guarantee" shall have the meaning assigned to it in *Section 10.3*.

"Acceptance Testing Period" shall have the meaning set forth in *Section 10.2.3*.

"Addendum" or **"Addenda"** shall have the meaning assigned to it in *Section 7.1*.

"Affiliate" shall mean (i) any Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with a Party, and (ii) any Person that, directly or indirectly, is the beneficial PROJECT COMPANY of thirty percent (30%) or more of any class of equity securities of, or other ownership interests in, a Party or of which the Party is directly or indirectly the owner of thirty percent (30%) or more of any class of equity securities or other ownership interests.

"Agreement" means this Engineering, Procurement and Installation (EPC) Agreement and all related schedules as may be amended from time to time by written agreement of both Parties.

"Applicable Laws" mean all laws, treaties, ordinances, decrees, statutes, rules and regulations of any national, state, municipal, regional or other governmental body, instrumentality, agency or other authority having jurisdiction over the Parties, the performance of obligations herein reserved or the provision of ancillary services hereunder. Any reference to an Applicable Law shall include all statutory and administrative provisions consolidating, amending or replacing such Applicable Law and shall include all rules and regulations promulgated thereunder.

"All Requirements Service" means the exclusive supply by PROJECT COMPANY to the Point(s) of Delivery of the capacity, Energy and Delivery Services required by Bulk Power Purchaser (Benin Electricity Distribution Company Plc. – BEDC) to serve the entire bulk Power Purchase Load not to exceed the Peak Contract Capacity provided in the Power Purchase Agreement (PPA).

"Associated Party" shall mean, with respect to any Party, any Affiliate of such

Party, any officer, director, trustee, fiduciary, employee, agent or representative of such Party, in each case acting within the scope of their authority and, in the case of employees, in the course of their employment.

"Authorization" shall mean any license, permit, approval, filing, waiver, exemption, variance, clearance, entitlement, allowance, franchise, or other authorization, whether from any Governmental Authority, corporate or otherwise.

"Bank" means either EXIMBANK SK (providing the credit of 85% of the total investment capital under the Slovak and EU laws of export credit) or the PROJECT COMPANY's bank, herein called the Receiving Bank and Guarantor of the Credit for a period of 5-10 years maximum including a moratorium of 2 years maximum required for the EPC and commissioning of the project..

"Business Day" means any day except any Saturday, any Sunday, or any day which is a federal legal holiday or any day on which banking institutions are authorized or required by law or other governmental action to close.

"Change Order" shall mean a document issued pursuant to *Article 7*, which describes changes in or to the Work.

"Commercial Operation" shall mean that Electric Energy Commercial Operation and Chilled Water Commercial Operation have occurred.

"Commercial Operation Date" shall mean the date on which the Plant achieves Commercial Operation.

"Construction Commencement Date" shall have the meaning assigned to it in *Section 9.1*.

"Cost" means the total investment capital (TIC) or total cost (TC) of the project, consisting of the costs of development, engineering, procurement, construction (civil works), technologies and equipment required for the full implementation and commissioning of the project.

"Day" means the consecutive twenty-four (24) hour period beginning at one (1) minute prior to 12:01 a.m. CPT on any calendar Day and ending at midnight CPT on such calendar Day.

"Default" means any of the events defined in *Article 11* hereof.

"Defects", individually a **"Defect"**, shall have the meaning assigned to it in *Section 10.5*.

"Delay Default Date" shall mean the as defined in Article 11 hereof.

"Due Date" has the meaning set forth in *Section 8.1.1* hereof.

"Early Termination Date" has the meaning set forth in Article 9 hereof.

"Electric Energy Commercial Operation" shall have the meaning set forth in *Section 9.3.2*.

"Energy" means electric energy, measured in MWh/MWe.

"Equipment Instruction Manual" shall mean the manual or manuals provided by CONTRACTOR pursuant to *Section 3.1.6*, including operation requirements, guidelines and manuals established by the manufacturers of the major equipment for the Plant.

"EUMEC" EUROMADE ENGINEERING & CONSTRUCTION LIMITED, member of MDACI Consortium, which shall undertake local subcontracting works such as advisory jobs, supplies of building construction materials, office furniture and equipment, etc.

"Execution Date" means the date on which this contract is duly signed.

"Expert" means any competent person appointed for the determination of disputes reserved for expert determination in this Agreement.

"Facility (ies)" has the means THE 10.2 MWH IGCC POWER PLANT in ENUGU STATE, NIGERIA (Expandable up to 60 MWh IGCC) specified and limited in Appendix 1 of Commercial offer.

"Final Completion" shall have the meaning assigned to it in *Section 11.8*.

"Final Completion Date" shall mean the date Final Completion occurs.

"Final Payment" shall have the meaning assigned to it in *Section 8.3*.

"Financing Party" shall mean any Person, other than Parties, providing debt or equity financing (including equity contributions or commitments) refinancing of any guarantees, insurance or credit support for or in connection with such a financing or refinancing, in connection with the development, construction, ownership or leasing operation or maintenance of the Plant, or any part thereof including any trustee or agent acting on any such Person's behalf.

“Force Majeure” shall mean in respect of any Party an event beyond the reasonable control of such Party, which prevents or delays such Party from performing its obligations under this Agreement (except for the obligation to pay money) or which increases its costs of performing those obligations. Examples include, to the extent they otherwise meet the foregoing definition, the following: war, acts or threat of terrorism, hostilities, civil disturbances, any kind of local or national emergency, riot, fire, flood, hurricane, storm, earthquake, concealed or subterranean conditions at the Site that could not be discovered by a reasonable inspection of the Site, consistent with the limitations on access provided by PROJECT COMPANY, power failure or power surge (except those resulting from the Contractor’s negligence), epidemic, explosion, sabotage, act of God, acts or failures to act by Governmental Authorities (including failure to issue, delays in issuing beyond the period provided by law, or if no such period is provided, beyond the customary period, or revocation of Authorizations, except to the extent any such failure, delay or revocation is due to the negligence or willful misconduct of CONTRACTOR or its Affiliates), failure of the Subcontractors or Suppliers to perform or deliver on a timely basis, to the extent such failure is due to a force majeure condition affecting the Subcontractor or Supplier, strike, slowdown or other labor unrest (other than a localized strike against an individual employer), delay of carriers, failure of the usual modes of transportation, embargo, change in any applicable Law from that in effect on the date hereof, any condition at the Site that requires remediation under any applicable Law related to the environment, or expropriation or confiscation of facilities. Force Majeure shall not include breach of contract by Subcontractors or Suppliers.

“Good Utility Practice” shall mean, at any particular time, (a) any of the practices, methods and acts engaged in or approved by a significant portion of the Nigerian electric power generating industry (including without limitation cogeneration facilities) prior to such time and by constructors, owners, of facilities similar in size and operational characteristics to the Plant, or (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at the lowest reasonable costs consistent with applicable Law and the Authorizations, environmental considerations, good business practices, reliability, safety, expedition and the manufacturer’s maintenance requirements, provided that “Good Utility Practice” is not intended to be limited to the optimum practices, methods or acts to the exclusion of all others, but rather to be a spectrum of the acceptable practices methods or acts generally accepted in such industry having due regard for, among other things, the manufacturer’s maintenance requirements, the requirements of Governmental Authorities and any applicable agreements.

“Government (s)” means the state and/or Federal Government of Nigeria.

“Governmental Authority” shall mean the Federal Government of Nigeria (FGN) and any state, county or local government or regulatory department, body, political subdivision, commission, agency, instrumentality, ministry, court, judicial or administrative body, taxing authority, or other authority thereof (including any corporation or other entity owned or controlled by any of the foregoing) having jurisdiction over either Party, the Plant or the Site, whether acting under actual or assumed authority.

“Hazardous Substances” shall mean, collectively, any petroleum or petroleum product, asbestos in any form that is or could become friable, transformers or other equipment that contain dielectric fluid containing levels of polychlorinated biphenyls (PCBs), hazardous waste, hazardous material, hazardous substance, toxic substance, contaminant or pollutant, as defined or regulated under any federal, state or local law relating to the protection of the environment, including the Resource Conservation and Recovery Act, or any similar state statute.

“Independent Engineer” shall mean a qualified independent engineering firm, hereinafter referred to as EUROMADE ENGINEERING & CONSTRUCTION LIMITED (EUMEC), mutually agreeable to CONTRACTOR and PROJECT COMPANY, already selected by the PROJECT COMPANY as Developer of the Project. The Parties shall employ the Independent Engineer, whose compensation shall be a part of the Cost of the Work, to verify that Preliminary Completion has occurred and to resolve any disputes among the Parties as to the items that should appear on the Punch List.

“kV” means kilovolts, a unit of voltage.

“kW” means kilowatt, a unit of power.

“kWh” means kilowatt-hour, a unit of electrical energy.

“Late Payment Rate” shall mean, for any period, the lesser of (i) 10.5% per annum simple interest, non-compounded, and (ii) the maximum rate permitted by applicable Law.

“Law” shall mean (i) any law, legislation, statute, act, rule, ordinance, decree, treaty, regulation, order, judgment, or other similar legal requirement, or (ii) any legally binding announcement, directive or published practice or interpretation thereof, enacted, issued or promulgated by any Governmental Authority.

“Lay Down Areas” shall have the meaning assigned to it in Section 4.9.

“Major Equipment Suppliers” shall have the meaning assigned to it in *Section 4.2.4*.

“Preliminary Completion” means, with respect to each unit, system, or component of the Plant, the completion of the work relating thereto, to include setting of the major equipment on foundations; connecting such major equipment to other applicable equipment with piping, wiring, controls and safety systems; ensuring that such equipment and such related operating systems are individually cleaned, leak checked, lubricated, and point-to-point checked to verify that such major equipment and such related operating systems have been correctly installed so as to respond to simulated test signals equivalent to actual signals received during operation; and ensuring that such equipment related operating systems are ready to initial operation, adjustment and testing and may be so operated, adjusted and tested without damage thereto or to any other property and without injury to any person. Preliminary Completion with respect to each unit, system or component of the Plant will be considered as having been achieved notwithstanding that some minor punch list items or that some deficiency not affecting the operation thereof requires correction as agreed by Seller. Preliminary Completion shall include but not be limited to the following pre-commission activities with respect to the applicable unit, system or component; stroking of all control valves, phase rotation of electrical equipment, and continuity of other electrical circuits (including loop checks) and response of controls and control equipment.

“Preliminary Completion Date Guarantee” shall have the meaning set forth in *Section 10.4*.

“Minimum Required Capacity” shall have the meaning assigned to it in *Section 10.3.1*.

“Month” means a calendar Month and “monthly” shall be construed accordingly.

“Operation Management and Training (OMT) Agreement” shall mean that the EPC Contractor (IEI) shall undertake this OMT agreement to secure the sustainable O&M of the Project for period of at least Five (5) years (Project lifetime) and trained the XENERGI’s Staff (*i.e.* future operators) of the plant using the Best Available Techniques (BATs). This OMT Agreement shall be signed between IEI (or its affiliate) and XENERGI. During this period MDACI shall provide a follow and support services, making sure that all the Projects financial commitments and contracts are duly fulfilled.

“Operator” shall mean the group IEI and XENERGI, forming the technical consortium that is responsible for the Operations management of the Power Plan under the OMT Agreement for a period of at least Five (5) years.

“MW” means megawatt, a unit of power being one thousand (1,000) kW.

“MWh” means megawatt-hour, a unit of electrical energy being one thousand (1,000) kWh.

“Naira” or “N” means the currency of the Federal Republic of Nigeria.

“NERC” NIGERIAN ELECTRICITY REGULATORY COMMISSION

“Parties” shall mean the CONTRACTOR and the PROJECT COMPANY, when referred to collectively and **“Party”** shall mean any one of the Parties referred to singly.

“Payment Due Date” shall have the meaning assigned to it in *Section 8.1.1.1*.

“Payment Schedule” shall mean *Schedule VI*.

“Payment Period” shall have the meaning assigned to it in *Section 8.1.1.1*.

“Person” shall mean any individual, firm, company, association, general partnership, limited partnership, Limited Liability Company, trust, business trust, corporation, public body, or other legal entity.

“Plant” means the XENERGI’s embedded 10.2 MWh (3 x 3.5MWh) IGCC power plant for the Enpower Free Trade Zone located at 9th Mile Corner, Enugu State, Federal Republic of Nigeria. The Plant shall be built on 1.6 ha of Land with the provision of possible expansion to higher capacity. For the purpose of maintainability, the Power Plant shall be provided with 1 x Steam Turbine (ST) of total installed power of 3.5MWh and 2 x Dual Fuel Gensets/Gas Fired Turbines of a total installed power of 3.5MWh each to meet the requirements of the 10.2 MWh (3 x 3.5MWh) IGCC captive power plant.

“Plant Commercial Operations Tests” means those tests that take place following the technical commissioning that show the Plant is reliable enough for commercial operation; these will include a reliability run that shows that the Plant can run at or near its Contracted Capacity for a significant period of time as described in *Schedule III*.

“Plant Start Up” shall mean the activities following completion of construction of the Plant, but prior to Acceptance Testing, that are necessary to accomplish

the initial start up of the equipment within the Plant that generates electricity, and water, including, without limitation, the flushing of lines, pressure testing of pipes, filling equipment with oils and other fluids, and the provision of any equipment vendor services relating thereto.

"PM/CM" shall have the meaning assigned to it in *Section 4.2.3*.

"Progress Report" shall have the meaning assigned to it in *Section 8.1.1*.

"Project" shall mean the Construction of the power plant at the Site (in the Enugu Free Trade Zone, 9th Mile Corner) by CONTRACTOR, and shall include the Work(s).

"Project Documents" shall have the meaning assigned to it in *Section 15.2.5.2*.

"Project Schedule" shall mean the schedule of activities (including all amendments or supplements thereto following the Effective Date of this Agreement) during the Project that coordinates all aspects of the Project, including without limitation, permitting, engineering, procurement of equipment and materials, construction, Plant Start Up, Preliminary Completion, Acceptance Testing, Electric Energy Commercial Operation, Chilled Water Commercial Operation, completion of the Punch List and Project close out. The Project Schedule will include, without limitation, the Payment Milestone Schedule and sub-Project schedules for each of the major participants in the Project.

"Reasonable Efforts" means for any action required to be made, attempted or taken by a Party under this Agreement, all necessary efforts that a prudent Person would undertake to protect its own interests, including commercial interests, taking into account the conditions affecting such action, including the amount of notice to act, recognition of the need to act, the duration and type of the action, the competitive environment in which such action occurs, and the projected benefit, cost and risk to the Party required to take such action.

"Site" means the plot of land upon which the Plant and Seller's other facilities are located;

"Specifications" shall mean all the design and quality specifications of the power plants guaranteeing an efficient and economic operation of the plant. It includes all data and information defined in the Project Administration Manual (PAM) prepared by the Developer and its consortium to secure the sustainable implementation of the project from design, engineering, procurement, construction to operations management of the plant. Some of the data and information of the PAM are, of course, incorporated into this Agreement and

any supplements or amendments thereto that may be agreed to by the Parties after execution of this Agreement. The Specifications shall further include any Change Orders and other changes to the Work authorized in accordance with *Article 7* of this Agreement.

“Subcontractor” shall mean every Person (other than employees of the CONTRACTOR) employed or engaged by the CONTRACTOR or any Person (other than PROJECT COMPANY) directly or indirectly in privity with the CONTRACTOR (including every sub-subcontractor of whatever tier) to perform any portion of the Work, whether the furnishing of labor, materials, equipment, services or otherwise.

“Suppliers” shall mean a manufacturer, fabricator, supplier, distributor, materialman or vendor having a direct contract with the CONTRACTOR or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by the CONTRACTOR or any Subcontractor.

“Tax” means any charge, fee, levy or other assessment imposed by any Governmental Authority, whether federal, state, local or otherwise; including all income, withholding, gross receipts, business, environmental, value added, capital gain, duties, capital stock, registration, excise, ad valorem, real property, personal property, land, local development, license, sales, production, occupation, use, service, transfer, payroll, employment, social security, travel, franchise, severance, bonus, or other tax of any kind, as well as any charges and assessments (including any interest, penalties or additions to tax attributable to or imposed on or with respect to any such assessment, whether disputed or not and all stamp or documentary taxes and fees.

“Technical Commissioning” means the engineering verification process after construction whereby the Seller ensures that the Plant is fit for purpose and ready for the Plant Commercial Operations Tests.

“Term” shall mean the duration of this Agreement, from the Effective Date until Final Completion.

“Test Capacity” means the level of capacity resulting from a Capacity Test, which cannot be greater than Contracted Capacity.

“Traffic Control Plan” shall have the meaning set forth in *Section 4.1*.

“Uninsured Force Majeure” shall mean any event of Force Majeure, or portion thereof, not covered by the insurance required to be carried in connection with the Project.

“Transfer” means a change of ownership or control described in *Article 5.1*.

“Unit” means an individual system or component of the power plant, including compressor, steam turbine, alternator and transformer combination together with its auxiliary equipment.

“Warranty Period” means the guaranteeing **period of 24 months** (i.e. 2 years) with respect to the quality and standards any component, the applicable length of any warranties provided by the related Subcontractor.

“Work” shall mean all design, engineering, procurement, construction, erection, installation, training, start-up and testing activities and services necessary to achieve a complete Plant in accordance with the terms of this Agreement, to achieve Preliminary Completion, Commercial Operation, and Final Acceptance, and shall include all activities and services described in *Schedule VI* and in *Section 3.1*; provided, that Work shall not include those obligations of the PROJECT COMPANY set forth in this Agreement (including obligations as per *Article 5*).

“Year” means a period of Twelve (12) calendar Months.

1.2 Principles of Interpretation

Unless the context requires otherwise, any reference in this Agreement to any document shall mean such document and all schedules and attachments thereto as amended and in effect from time to time. Unless otherwise stated, any reference in this Agreement to any Person shall include its permitted successors and assigns and, in the case of any Governmental Authority, any Person succeeding to its functions and capacities. The words "hereof, "herein" and "hereunder" and words of similar import when used in this Agreement shall, unless otherwise expressly specified, refer to this Agreement as a whole and not to any particular provision of this Agreement. The singular shall include the plural and the masculine shall include the feminine and neuter. Whenever the term "including" is used herein in connection with a listing of items included within a prior reference, such listing shall be interpreted to be illustrative only, and shall not be interpreted as a limitation on or exclusive listing of the items included within the prior reference.

1.3 Technical Meanings

Words not otherwise defined herein that have well-known and generally accepted technical or trade meanings are used herein in accordance with such recognized meanings, as of the Effective Date.

ARTICLE 2 REPRESENTATIONS

For greater certainty, the Parties confirm that any activities not specifically governed by this Agreement are outside of the scope of this Agreement.

2.1 Representation by CONTRACTOR

CONTRACTOR represents that:

- 2.1.1 **Organization and qualification.** It is a private limited liability company duly organized and validly existing under the laws of the Slovak Republic. It has all necessary power and authority to carry on its business as presently conducted, to own or hold its properties, and to enter into and perform its obligations under this Agreement.
- 2.1.2 **Authorization, approvals, no defaults.** The execution, delivery and performance of this Agreement by the CONTRACTOR (1) has been duly authorized by all requisite company action; (2) to the best of Contractor's knowledge will not conflict with any provisions of applicable Law; and (3) will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by, any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected.
- 2.1.3 **Enforceability.** This Agreement constitutes the legal, valid and binding obligation of the CONTRACTOR in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, or similar laws affecting creditors' rights generally.
- 2.1.4 **Legal proceedings.** There is no action, suit or proceeding, at law or in equity, or official investigation by or before any governmental authority, arbitral tribunal or any other body pending or, to the knowledge of the CONTRACTOR threatened, against or affecting the CONTRACTOR or any of its properties, rights or assets, which could reasonably be expected to result in a material adverse effect on the Contractor's ability to perform its obligations under this Agreement or on the validity or enforceability of this Agreement.
- 2.1.5 **Site Inspection.** The CONTRACTOR and the Developer and their local experts under EUROMADE ENGINEERING & CONSTRUCTION LIMITED (www.euromadeconstruction.com) have already visited and inspected

the sites and are familiar with its surface physical condition, roads, access rights, utilities, and air quality conditions, except for unusual or unknown surface or subsurface conditions, or unusual or unknown soil conditions, and have performed all reasonable investigations necessary to determine that the Site is suitable for the construction and installation of the Plant, and are familiar with the local and other conditions which may be material to the Constructor's performance of its obligations under this Agreement (including, but not limited to transportation, seasons and climates, access, the handling and storage of materials and fuel).

2.1.6 **Necessary Rights.** The CONTRACTOR owns or will obtain the legal right to use all patents, rights to patents, trademarks, copyrights and licenses necessary for the performance by the CONTRACTOR of this Agreement and the transactions contemplated hereby, without any material conflict with the rights of others.

2.1.7 **Approvals.** The CONTRACTOR has obtained and is in compliance with all Governmental Authorizations (other than Governmental Authorizations listed in *Schedule VIII*) that the CONTRACTOR is required to obtain hereunder and for the valid execution, delivery and performance by the CONTRACTOR of this Agreement, and all such legal entitlements are in full force and effect.

2.1.8 **Qualification.** The CONTRACTOR (including where applicable, through its relationships with Subcontractors and its Affiliates) possesses the know-how and wherewithal to oversee the construction of the Plant.

2.2 Representation by PROJECT COMPANY

PROJECT COMPANY represents that:

2.2.1 **Organization and qualification.** It is a limited liability company duly organized and validly existing under the laws of the Federal Republic of Nigeria (FRN). It has all necessary power and authority to carry on its business as presently conducted, to own or hold its properties, and to enter into and perform its obligations under this Agreement.

2.2.2 **Authorization, approvals, no defaults.** The execution, delivery and performance of this Agreement by the PROJECT COMPANY (1) has been duly authorized by all requisite company action; (2) to the best of the PROJECT COMPANY's knowledge will not conflict with any provisions of applicable Law; and (3) will not conflict with, result in the breach of, constitute a default under, or accelerate performance

required by, any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected.

- 2.2.3 **Enforceability.** This Agreement constitutes the legal, valid and binding obligation of the PROJECT COMPANY in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, or similar laws affecting creditors' rights generally.
- 2.2.4 **Legal proceedings.** There is no action, suit or proceeding, at law or in equity, or official investigation by or before any governmental authority, arbitral tribunal or any other body pending or, to the knowledge of the PROJECT COMPANY threatened, against or affecting the PROJECT COMPANY or any of its properties, rights or assets, which could reasonably be expected to result in a material adverse effect on the PROJECT COMPANY's ability to perform its obligations under this Agreement or on the validity or enforceability of this Agreement.
- 2.2.5 **Necessary Rights.** The PROJECT COMPANY owns or will obtain the legal right to use all patents, rights to patents, trademarks, copyrights and licenses necessary for the performance by the PROJECT COMPANY of this Agreement and the transactions contemplated hereby, without any material conflict with the rights of others.

ARTICLE 3

THE WORK

3.1 Scope of Work.

The CONTRACTOR shall provide or perform the Work or cause the Work to be provided or performed, in accordance with the terms of this Agreement. Without limiting the foregoing, the Work shall include conducting, performing, providing or procuring when and as necessary to proceed in accordance with the Project Schedule:

- 3.1.1 all detailed designs configuration and engineering activities and services necessary to conduct the Work and complete the Plant in accordance with this Agreement;
- 3.1.2 N/A;
- 3.1.3 all construction activities and services necessary to conduct the Work and complete the Plant in accordance with this Agreement (excluding the Site preparation, excavation and grading and proper disposal of all

- excavated materials by the PROJECT COMPANY if and as required in connection with performance of the Work);
- 3.1.4 all materials necessary to conduct the Work and complete the Facility in accordance with this Agreement (including all necessary transport thereof);
- 3.1.5 all work forces necessary to conduct the Work and complete the Facility in accordance with this Agreement (including all skilled and unskilled labor, supervisory, quality assurance and support service personnel);
- 3.1.6 all documents required to direct the PROJECT COMPANY's personnel in the proper start-up, operation and maintenance of the Plant, including, without limitation, the Equipment Instruction Manual and all as-built drawings and as-built wiring diagrams (in CD-ROM format capable of generating reproducible hard copies, stamped by an Architect/Engineer registered in the European Union and/or the Federal Republic of Nigerian);
- 3.1.7 all training of Operator adequate to allow Operator to assume responsibility for dispatch and control of the Plant;
- 3.1.8 all other activities, services and items, whether or not specifically described above, in *Schedule VI* or elsewhere in this Agreement, if such performance, provision or procurement is necessary for a complete and operable Plant; provided, that the CONTRACTOR shall not be responsible for performing, providing or procuring those activities, services and items for which PROJECT COMPANY bears express responsibility pursuant to **Article 5**;
- 3.1.9 all design, engineering, materials, work forces needed to perform the Acceptance Tests; and
- 3.1.10 all activity necessary to enable the PROJECT COMPANY to achieve the Commercial Operation Date under the Plant guaranteed operation data.

ARTICLE 4 CONTRACTOR'S RIGHTS AND RESPONSIBILITIES

4.1 Engineering, Procurement and Construction of the Plant; Performance of the Work

The CONTRACTOR, on behalf of the PROJECT COMPANY, shall act as the general contractor for the Project and shall be solely responsible for the engineering, procurement and construction of the Power Plant, including, without limitation, the overall oversight and coordination of construction of the Plant in accordance with: (a) the Specifications; (b) the NERC's Generation License and other Authorizations for the Plant; (c) the terms of this Agreement; (d) the Traffic Control Plan, the Safety Plan and the Security Plan; and (e) all applicable Laws. The CONTRACTOR shall coordinate the activities of Engineer, PM/CM, the Prime Subcontractors, the Safety Director, the QA/QC Director and other persons providing labor and materials to the Project to design, engineer and procure the equipment and materials for and complete the construction of the Plant and act as the interface between the PROJECT COMPANY and such persons all in accordance with applicable Law and Good Utility Practice.

4.2 Retention of Qualified Subcontractors and Suppliers

The CONTRACTOR may subcontract any portion of the Work to one or more Subcontractors and Suppliers. Approved Subcontractors and Suppliers as of the date hereof are set forth in *Schedule VII*. The final decision and responsibility as to whether to contract with any particular Subcontractor who are not identified on *Schedule VII*, or Supply shall reside with the CONTRACTOR.

4.2.1 N/A

4.2.2 N/A

4.2.3 N/A

4.2.4 N/A

4.2.5 N/A

4.2.6 Quality Control/Quality Assurance. The CONTRACTOR shall retain a qualified person or firm to be responsible for quality control and quality assurance of the completed Work (the "QA/QC Director"), subject to the approval of the PROJECT COMPANY, not to be unreasonably withheld. The QA/QC Director shall be responsible,

among other things, for developing procedures for testing materials, the oversight of materials testing, inspecting field assembled equipment (such as quality control of welding procedures and welding testing), verifying QA/QC of materials used in the manufacture of major equipment and verifying that all equipment and materials delivered to the Site meet the specifications of Engineer.

The QA/QC Director shall report to PM/CM, the CONTRACTOR and the PROJECT COMPANY on a bi-weekly basis, or more frequently as needed. The role and specific responsibilities of QA/QC Director with respect to the Project shall be more particularly set forth in the agreement between the CONTRACTOR and QA/QC Director (the "QA/QC Contract"). To the extent applicable, the QA/QC Contract shall be consistent with the requirements of **Article 14** of this Agreement.

- 4.2.7 Safety Director. The CONTRACTOR shall retain a qualified person or firm to serve as the safety director for the Project (the "Safety Director"), subject to the approval of the PROJECT COMPANY, not to be unreasonably withheld. If required by either the PROJECT COMPANY or the Contractor's insurance provider, such Safety Director shall have the qualifications and authority necessary to support the issuance of the required insurance for the Project. The Safety Director shall be responsible to observe and enforce safe practices at the Site and related support facilities and shall report to PM/CM, the CONTRACTOR and the PROJECT COMPANY on a bi-weekly basis. The role and responsibilities of the Safety Director shall be more particularly set forth in the agreement between the CONTRACTOR and the Safety Director (the "Safety Contract"). To the extent applicable, the Safety Contract shall be consistent with the requirements of **Article 14** of this Agreement.

4.3 Investigation of the Site.

- 4.3.1 The PROJECT COMPANY shall be responsible for the Site preparation, excavation and grading and proper disposal of all excavated materials by the Developer if and as required in connection with performance of the Work by the CONTRACTOR (as further specified in Schedule I).

- 4.3.2 The CONTRACTOR acknowledges that it has reviewed the Ground Lease and has made reasonable efforts to investigate the surface physical conditions affecting the Site consistent with the access that the State Government has granted to the PROJECT COMPANY. The CONTRACTOR shall be granted access to and shall make investigation or inspection of any of the off-Site staging areas, including the Lay

Down Areas, the Soil Disposal Area, or the Easement Areas, beyond drawings and other information previously provided by the Developer on which the CONTRACTOR has relied.

- 4.3.3 The CONTRACTOR shall ascertain the nature of the Site consistent with the access that the PROJECT COMPANY shall grant to the CONTRACTOR and its Subcontractors and the general and local conditions that may affect the Site and the cost of making the Site fit for the construction of the Plant, provided however, that the CONTRACTOR makes no representation or warranty as to (a) any environmental matters that may exist, including without limitation, any surface or subsurface contamination at the Site, except such surface or subsurface contamination found in soil boring testing and subsurface water testing previously conducted by or on behalf of the CONTRACTOR; (b) the use or contents of any of the buildings that the Developer has been asked to demolish or remove from the Site, except such use or contents revealed by soil boring testing and subsurface water testing previously conducted by or on behalf of the CONTRACTOR; (c) any subsurface conditions of the Site; (d) any matters not disclosed -provided drawings or other information provided to the CONTRACTOR by the University on which the CONTRACTOR has reasonably relied; or (e) any conditions at any off-Site areas or facilities previously provided by the Developer with respect to the Plant.
- 4.3.4 Except for environmental conditions and subsurface or other conditions that could not have reasonably been discovered by a reasonable surface inspection of the Site within the scope of access afforded the CONTRACTOR by the Developer, the CONTRACTOR is responsible for accommodating all Site conditions in the Specifications for and construction of the Facility, regardless of when the Site condition is discovered, but shall not be responsible for (a) subsurface or other conditions that could not be discovered by a reasonable inspection of the Site, consistent with the limitations on access provided by the University; (b) any Easement Areas or other staging areas for the Work provided by the CONTRACTOR, except to the extent that such conditions were disclosed by the drawings and other information provided by the Developer to the CONTRACTOR.

Notwithstanding a failure by the CONTRACTOR to perform its surface Site investigation due diligence consistent with the access the PROJECT COMPANY has granted under this **Section 4.3**, the CONTRACTOR shall be responsible for successfully constructing the Plant without adjustment of the Contract Price. The Parties agree that any information provided by the PROJECT COMPANY to

any of the CONTRACTOR affiliates in connection with the Site and other staging areas shall be deemed to have been provided to the CONTRACTOR.

4.4 Hazardous Substances; Erosion

4.4.1 The CONTRACTOR shall be responsible for seeing that all Hazardous Substances transported to or from, moved, or used or stored upon, the Site in connection with the Contractor's performance of its obligations under this Agreement are transported, moved, used or stored in accordance with applicable Law. The CONTRACTOR shall further see that all Hazardous Substances are disposed of in accordance with applicable Law. Any costs of clean up, transportation, treatment, storage or disposal of Hazardous Substances, that were on or under the Site prior to the commencement of the Work shall be the sole responsibility and expense of the PROJECT COMPANY.

4.4.2 The CONTRACTOR shall be responsible for seeing that all waste generated in the performance of its obligations under this Agreement and all waste transported to or from, moved or used or stored upon the Site by The CONTRACTOR or any other person for whom the CONTRACTOR is responsible, within the scope of the Contractor's performance of this Agreement, is handled in accordance with applicable Law. The CONTRACTOR shall cause the affected Subcontractors to manage and dispose of the waste in compliance with applicable Law and Good Utility Practice.

4.4.3 The CONTRACTOR shall be responsible to see that all sedimentation, erosion control, and siltation within or adjacent to the Site caused by Subcontractors is conducted in accordance with applicable Laws. In the event the CONTRACTOR fails to prevent such sedimentation, erosion or siltation from occurring in violation of applicable Law, the PROJECT COMPANY shall have the right, after notifying the CONTRACTOR and providing it an opportunity to cure of not less than three (3) Business Days, to correct such pollution or siltation. All expenses incurred by the PROJECT COMPANY in the course of such correction shall be credited against payments owed to the CONTRACTOR.

4.5 Compliance with Laws

In carrying out its duties hereunder, the CONTRACTOR shall comply with all applicable Laws, including without limitation, all Laws relating to health, safety or the protection of the environment. The PROJECT COMPANY shall have no responsibility for any costs of environmental compliance or remediation to the

extent caused by the negligent acts and omissions or intentional or willful misconduct of the CONTRACTOR or any of the Contractor's employees or agents, including, without limitation, all Subcontractors and Suppliers.

4.6 Traffic Control Plan

The CONTRACTOR shall work together with the Developer to develop a comprehensive traffic control plan for the Project ("Traffic Control Plan"), to assure that the delivery of Works, including technologies, equipment and services has prompt and safe access to the delivery Site, while minimizing disruption to the Management and its scheduled events. Without limitation, the Traffic Control Plan shall provide:

- 4.6.1 for off-site parking for construction personnel and busing of such personnel to the Site;
- 4.6.2 a general prohibition on deliveries of Major Equipment to the Site during the hours of 7-9 a.m.;
- 4.6.3 that the CONTRACTOR shall use its reasonable efforts to arrange for deliveries of Major Equipment on weekends and holidays; and
- 4.6.4 that it shall be consistent with any traffic control requirements set forth in the NERC's rules and regulations. The State and Federal Governments shall use good faith efforts to assist the CONTRACTOR and the Developer in the development of this plan and to ensure that the CONTRACTOR is not denied access to roads and other transportation facilities necessary for timely and cost-effective completion of the Project. The CONTRACTOR acknowledges that it has studied the Site, railroads, surrounding streets and highways and the CONTRACTOR can transport all equipment to the Site and all costs associated with the transportation and unloading of the equipment are included in the Guaranteed Maximum Price, provided that access to the Site is available to the CONTRACTOR and the Subcontractors at all reasonable times and in accordance with the Traffic Control Plan. The CONTRACTOR or the Developer shall provide to the State, the Federal Ministry of Power, and NERC a proposed Traffic Control Plan no later than thirty (30) days following the effective date of this Agreement. The Parties shall use their good faith efforts to finalize the Traffic Control Plan no later than sixty (60) days following the date of this Agreement.

4.7 Safety Plan

The CONTRACTOR, in conjunction with PM/CM, Safety Director and the Prime Subcontractors for the Project shall develop a comprehensive safety plan to establish and maintain appropriate safety rules and procedures in connection with the performance of this Agreement (the "Safety Plan"). Such Safety Plan shall require, among other things that the CONTRACTOR and the State satisfy any safety requirements of the insurers for the Project. The CONTRACTOR or the Developer shall provide to the State, the Federal Ministry of Power, and NERC a proposed Safety Plan no later than forty-five (45) days prior to the start of construction. The Parties shall use their good faith efforts to finalize the Safety Plan no later than fifteen (15) days prior to the start of construction.

4.8 Security Plan

The CONTRACTOR shall establish appropriate security measures to maintain the security of the Site and protect the Work in progress (the "Security Plan"). The Security Plan shall comply with all requirements of the insurers for the Project, shall address the reasonable concerns of the University and shall, at a minimum require that the CONTRACTOR or the Developer shall cause to be erected temporary chain link fencing, and temporary security lighting to secure the Site and Lay Down Areas. The CONTRACTOR shall provide to the State, the Federal Ministry of Power, and NERC a proposed Security Plan no later than forty-five (45) days prior to the start of construction. The Parties shall use their good faith efforts to finalize the Security Plan no later than sixty (60) days following the date of this Agreement.

4.9 Construction and Storage Confined to Permitted Areas

The CONTRACTOR and the Subcontractors and suppliers shall confine construction activities and storage to the Site, to the Lay Down Areas provided by Local Communities and Enugu State Government as more particularly depicted on the diagram attached hereto as *Schedule V* (the "Lay Down Areas"), to the area designated by the State for soil disposal in the Ground Lease (the "Soil Disposal Area"), to temporary and permanent easements (at reasonable locations acceptable to the State) that are reasonably necessary for the construction, operation, maintenance and repair of the Project and support facilities for the Project, that have been provided or are in the future provided by the State (the "Easement Areas") and to other areas that may hereafter be provided by the State or other persons for such purposes.

4.10 Construction Office; Records

The CONTRACTOR shall maintain a temporary construction office at the Site during the course of construction of the Facility. The CONTRACTOR shall maintain at such office a copy of the Specifications, together with construction-related drawings that are developed during the course of the Project. The CONTRACTOR agrees to remove the temporary construction office from the Site within six (6) months after the Commercial Operation Date. The CONTRACTOR shall further maintain an office off the Site, which during the Term of this Agreement and the twenty-four (24) months following the Commercial Operation Date shall serve as a repository for all documents relating to the Project. The CONTRACTOR shall provide the Parties full access to such records during regular business hours.

4.11 No Liens

Upon receipt of full portion of the Contract Price, the CONTRACTOR shall be responsible to see that all equipment and materials incorporated into the Work that are purchased by the CONTRACTOR or by any Subcontractor to the Project shall not be subject to any chattel mortgage, conditional sales contract, or security agreement under which an interest or lien is retained; provided, however, that such equipment and materials may be subject to the security interest of the vendor, to secure the payment of the purchase price of the affected equipment and materials, so long as such security interest is terminable upon payment in full and the CONTRACTOR causes good title to such equipment and materials, free and clear of such security interest to be conveyed to the PROJECT COMPANY on or before the date of Final Payment.

4.12 Compliance with NERC Requirements

The developer will assist the CONTRACTOR to comply with any applicable requirements of the Nigeria Electricity Regulatory Commission (NERC) for the Plant, including without limitation, requirements pertaining to environmental protection, noise abatement, erosion, traffic control, and parking.

4.13 Patents

The CONTRACTOR shall, at its sole expense, pay or use reasonable efforts to ensure that its Subcontractors and Suppliers pay all royalties, license fees or other costs incident to their use in the performance of the Work of any invention, design, process, product, or device that is the subject of patent rights or copyrights held by others.

4.14 Inspections; Defective Work

The CONTRACTOR shall communicate regularly with PM/CM regarding PM/CM's inspection of completed portions of the Work for conformity with the Specifications and for freedom from defects. The CONTRACTOR shall accompany PM/CM on such inspections as necessary under the circumstances.

4.15 The CONTRACTOR Responsibility to the State

N/A

4.16 Facility Start Up and Acceptance Testing

The CONTRACTOR shall be responsible for coordinating all tasks and responsibilities associated with Acceptance Testing and Plant Start Up.

4.16.1 Testing Methodology. The testing methodology for Acceptance Testing is set forth in **Article 10** and in *Schedule III*.

4.16.2 Acceptance Standards; Consequences of Under-Performance. The Acceptance Tests for the Work and the consequences for the Work falling short of the Acceptance Test Capacity Guarantee standards are set forth in **Article 10** and *Schedule III*.

4.17 Other Authorizations

Except for the NERC Authorizations, the Federal Ministry of Power and the State Authorizations, the PROJECT COMPANY shall be required to obtain all other Authorizations (e.g., street opening permits, plumbing permits, etc.) required for the performance of the Work by the CONTRACTOR.

4.18 Public Records

The CONTRACTOR shall make available to the State for inspection and copying, any record produced or collected under this Agreement, subject to the right of any Party to this Agreement to assert any limitations upon access and disclosure available.

4.19 Insurance

The CONTRACTOR and the PROJECT COMPANY shall obtain and maintain insurances as set forth *in Schedule II*.

Note: no CPI/EAR/CAR, Marine Cargo or Inland transportation insurances are included in scope and price as per submitted Commercial Bid

ARTICLE 5 PROJECT COMPANY'S RIGHTS AND RESPONSIBILITIES DURING THE PROJECT

5.1 PROJECT COMPANY'S Responsibilities During the Project

The PROJECT COMPANY shall:

- 5.1.1 shall pay the Contract Price in accordance with **Article 8**;
- 5.1.2 require employees and agents to abide by all rules applicable to the Site and the Plant, including but not limited to rules pertaining to safety, security procedures or requirements, and designated entrances;
- 5.1.3 reasonably cooperate with the CONTRACTOR and provide any other assistance reasonably necessary to enable the CONTRACTOR to perform the Work as required hereunder;
- 5.1.4 provide adequate temporary construction easements and permanent easements for the Plant and any necessary support facilities for the Plant;
- 5.1.5 provide any necessary approvals for provision of the water supply of the Plant;
- 5.1.6 at all times promptly respond, including making appropriate representatives available with decision-making authority, to any reasonable requests by any of the Parties to this Agreement for meetings, for review and comments regarding relevant documents provided to them for review and comment;
- 5.1.7 at all times, use commercially reasonable efforts to proceed in a manner that supports the Project Schedule;
- 5.1.8 promptly take all actions reasonably requested by the CONTRACTOR to assist the CONTRACTOR and the Developer in obtaining any Authorizations for the Plant;

- 5.1.9 obtain a suitable water supply for the Project. Including any necessary Authorizations from Governmental Agencies including, but not limited to, timely submittal and support for the permitting activities necessary to obtain river water from the River Niger water through the Project new water intake structure;
- 5.1.10 not unreasonably withhold their support from other actions reasonably requested by the CONTRACTOR to promote the timely completion of the Plant or to promote the completion of the Plant within the Project budget;
- 5.1.11 shall comply with its obligation stipulated in this Agreement;
- 5.1.12 provide operational personnel for the Plant during Start-up, Acceptance Tests and Commercial Operation (for avoidance of doubts such personnel shall follow instruction of the CONTRACTOR until the Preliminary Completion or Commercial Operation, whichever occurs first);
- 5.1.13 provide all fuels, water and medias needed for Start-up, Acceptance Tests, Preliminary Completion and Commercial Operation of the Plant;
- 5.1.14 to provide security arrangements for the CONTRACTOR's and its Subcontractor's and Suppliers' personnel during inland transport, accommodation and performance of the Work.

5.2 Denial of Authorizations

Subject to the specific rights and obligations of the Parties set forth in **Section 5.2.4**, if the CONTRACTOR or the Developer is denied a required Authorization, or any such Authorization is obtained but contains restrictions, qualifications or conditions that would have a material adverse impact on the benefits or obligations of the Parties under this Agreement, the Parties agree to use commercially reasonable efforts, within thirty (30) days of the denial of the required Authorization or issuance of the unduly restrictive Authorization, to reform this Agreement, or to take other mutually agreeable actions (including, for example and without limitation, one Party indemnifying or making whole the other Party), that provide each Party with economic or other benefits that are substantially equivalent to those set forth in this Agreement.

If the Parties are unable to so reform this Agreement or agree upon other mutually acceptable arrangements, **Section 11.5** (Force Majeure; Failure of Authorizations) shall apply.

ARTICLE 6

CONTRACT PRICE

The PROJECT COMPANY shall pay the CONTRACTOR the Contract Price for performance of the Work. The Contract price may be increase or decrease in accordance with this Agreement.

The Contract Price is [US\$_____] (IN WORDS).

PROJECT COMPANY is responsible for payment of all applicable national, federal, state and local taxes, duties, fees or assessments ("Taxes"), including without limitation all import, excise, customs and value added taxes, except for sales and use taxes included in the **Contract Price under the succeeding paragraph**.

Contractor will separately identify production equipment, materials, labour and service and the balance of the Contract Price on its quote and invoices.

The CONTRACTOR shall be entitled to claim additional Cost for performance of the Work due to following events:

- a) the Force Majeure; or
- b) the PROJECT COMPANY'S Default; or
- c) the unforeseeable conditions as per Section 4.3.4 of this Agreement; or
- d) the change of Law;
- e) the Addenda and Change Order as per Article 7;
- f) any additional Cost caused by the PROJECT COMPANY.

ARTICLE 7

ADDENDA, CHANGE ORDERS

7.1 General

"Addenda" are changes to the Work before construction begins. "Change Orders" are changes to the Work after construction begins. Addenda and Change Orders shall be handled as follows:

7.1.1 Any Party may request an Addendum or Change Order in writing.

7.1.2 Approval or rejection of Addenda and Change Orders must be mutually agreed between the PROJECT COMPANY and the CONTRACTOR prior to execution of such Addenda or Change Order.

7.1.3 Addenda and Change Orders that increase or decrease the Contract Price of the Work shall be approved or rejected in accordance with the procedures set forth in **Sections 7.2** and **7.3**.

7.2 Addenda or Change Orders Request

All requests for Addenda or Change Orders by the PROJECT COMPANY shall be submitted to the CONTRACTOR, with copies to PM/CM and Engineer (as appropriate). All requests for Addenda or Change Orders by the CONTRACTOR shall be submitted to the PROJECT COMPANY, with copies to PM/CM and Engineer (the "Addenda or Change Orders Request").

7.3 Evaluation of Addendum and Change Order

Within Fourteen (14) days from receipt of the PROJECT COMPANY's Addenda or Change Orders Request as per Section 7.2, the CONTRACTOR shall prepare and submit Addenda or Change Orders Proposal to the PROJECT COMPANY for evaluation. Within Seven (7) days from receipt of the Addenda or Change Orders Proposal, the PROJECT COMPANY:

- a) notify the CONTRACTOR that the Addenda or Change Orders Proposal have been accepted; or
- b) refuse the Addenda of Change Order Proposal.

Within Fourteen (14) days from the CONTRACTOR's Addenda or Change Orders Proposal as per **Section 7.2**, the PROJECT COMPANY:

- a) notify the CONTRACTOR that Addenda or Change Orders Proposal have been accepted; or
- b) refuse the Addenda of Change Order Proposal.

In case progress of the Work is effected by the PROJECT COMPANY's Addenda or Change Orders Request, the PROJECT COMPANY may either notify the CONTRACTOR to suspend the effected part of the Work, or to instruct the CONTRACTOR to carry in effected part of the Work until the Addenda or Change Orders are mutually agreed by the Parties. In case the effected part of the Work is suspended, the CONTRACTOR shall be entitled to claim extension of the Guaranteed Preliminary Completion Date as per **Section 10.4** of this Agreement. In case the PROJECT COMPANY instructs the CONTRACTOR to carry on performance of the effected part of the Work, the CONTRACTOR shall be entitled for additional Cost as per Article 6.

7.4 Addenda or Change Orders Requested by the PROJECT COMPANY

If the PROJECT COMPANY requests an Addendum or a Change Order to address solely the PROJECT COMPANY's needs, including without limitation changes to address the PROJECT COMPANY's aesthetic or design requirements, and such Addendum or Change Order is approvable under **Section 7.3** above and approved by the CONTRACTOR, but increases the Contract Price of the Work, then the PROJECT COMPANY shall bear the entire increase of the Contract Price of the Work (including costs of delays and rework) resulting from such Addendum or Change Order

7.5 Addenda and Change Orders Requested by the CONTRACTOR

If the CONTRACTOR requests an Addendum or a Change Order that is approved by the PROJECT COMPANY, then the PROJECT COMPANY shall bear the entire increase of the Contract Price of the Work (including costs of delays and rework).

7.6 Addenda and Change Orders Resulting from Errors or Omissions of the CONTRACTOR

The PROJECT COMPANY shall not be responsible for any increased of the Contract Price of the Work resulting from Addenda and Change Orders that are necessary because of errors of the CONTRACTOR and/or its Subcontractors in coordinating the design, scheduling or construction of the Facility.

7.7 Markup on Addenda and Change Orders.

On any Addenda and Change Orders under **Sections 7.4, 7.6, 7.7** and **7.8** the CONTRACTOR and its Subcontractors shall be entitled to a markup not to exceed ten percent (10%) in the aggregate of the Cost of the Work covered by the Addendum or Change Order.

7.8 Tracking of Cost Impact of Addenda and Change Orders

The CONTRACTOR shall institute and maintain a ledger type system to track the impact of all increases and decreases to the Contract Price of the Work resulting from any Addenda or Change Orders approved by the CONTRACTOR and the PROJECT COMPANY. The CONTRACTOR shall monthly, and more frequently upon request, report to the PROJECT COMPANY the cumulative impact of such Addenda and Change Orders. If applicable, the Parties shall modify the Project Schedule and Payment Milestones to reflect the impact of Addenda and Change Orders.

ARTICLE 8

PAYMENT FOR WORK

8.1 Payment Milestones

All payment of the Contract Price shall be made through LC (advance payment may be done using wire transfer).

Offshore payment terms:

- (i) 15% advance payment;
- (ii) 75% progress payments against delivery events of the Equipment, with latest event CFR port of Lagos;
- (iii) 10% final payment upon completion of the Work.

Onshore payment terms:

- (i) 15% advance payment;
- (ii) 75% progress payments against performance of site works and inland transportation;
- (iii) 10% final payment upon completion of the Work.

All payments, other than advance payments and final payments, to be done against third party documents (shall not be subject to certificate signed/issued by the PROJECT COMPANY). Third party documents such as FAC report, Bill of Lading, Packing/Unloading List, FCR to be used.

ARTICLE 9

COMMENCEMENT AND PERFORMANCE OF WORK

9.1 Commencement and Schedule

The CONTRACTOR shall commence performance of the Work (the "Construction Commencement Date") within thirty (30) days after occurrence of all following events: (a) issuance of the Generation License by NERC and any other Authorizations required for the Plant; (b) completion of the final foundation drawings for the Project; (c) availability of suitable weather conditions for the commencement of construction; and (d) PROJECT COMPANY having in place all insurance policies required of them under this Agreement; (e) issuance of the LC by the PROJECT COMPANY's bank; (f) receipt of the Advance Payment by the CONTRACTOR.

9.2 Preliminary Completion

“Preliminary Completion” shall occur when, except for minor items of the Work that would not affect the performance or operation of the Plant such as painting, landscaping and so forth (a) all materials and equipment for the Plant have been installed substantially in accordance with the Specifications and checked for alignment, lubrication, rotation, and hydrostatic and pneumatic pressure integrity; (b) all systems required to be installed by the CONTRACTOR have been installed and tested (excluding Acceptance Testing); (c) the Facility has been flushed and cleaned out as necessary; (d) all the equipment and systems can be operated in a safe and prudent manner and have been installed in a manner that does not void any Subcontractor equipment or system warranties; (e) the Plant is ready to commence start-up, Acceptance Testing, and operations; (f) the Plant is physically capable of accepting condensate return and chilled water return; and (g) a Punch List of the uncompleted items is established by the CONTRACTOR and mutually agreed upon by the Parties, *provided* that if the CONTRACTOR and either of the PROJECT COMPANY disagree as to whether a particular item shall appear on the Punch List, the Independent Engineer (the Developer) shall promptly decide the dispute; (g) all Work, other than Punch List items and Acceptance Testing and any other Work sequenced after Preliminary Completion, has been completed.

9.3 Commercial Operation.

9.3.1 “Electric Energy Commercial Operation” shall be deemed to have occurred when the first of following event occurs (i) Preliminary Completion of the Plant has occurred, as determined by the Developer or an Independent Engineer; (ii) completion of Acceptance Testing for Electric Energy pursuant to **Section 10.2.3**, or alternatively satisfaction of the Contractor’s Acceptance Test related obligations in **Section 10.3** (including, if applicable, payment of liquidated damages pursuant to **Section 10.3**); and (iii) when the Plant is used and useful for the purpose of delivering Electric Energy to Consumers (other than Electricity delivered during Plant Start Up and Acceptance Testing). If either of the PROJECT COMPANY disputes that Electric Energy Commercial Operation has occurred, it shall provide written notice to that effect to the CONTRACTOR, specifying the basis for disputing Electric Energy Commercial Operation and the Parties in dispute shall thereafter utilize the dispute resolution procedures in **Article 15.2** to resolve the dispute. Failure of the PROJECT COMPANY to provide such written notice within ten (10) Business Days after receipt of notice of Electric Energy Commercial Operation shall constitute waiver of the PROJECT COMPANY’s right to dispute that Electric Energy Commercial Operation has occurred.

9.3.2 "Chilled Water Commercial Operation" shall be deemed to have occurred when the first of following event occurs (i) Preliminary Completion of the Plant has occurred, as determined by the Developer or an Independent Engineer; (ii) completion of Acceptance Testing for chilled or Hot water pursuant to **Section 10.2.3**, or alternatively satisfaction of the Contractor's Acceptance Test related obligations in **Section 10.3** (including, if applicable, payment of liquidated damages pursuant to **Section 10.3**); and (iii) when the Plant is used and useful for the purpose of delivering chilled water to consumers (other than chilled water delivered during Plant Start Up and Acceptance Testing). If either of the PROJECT COMPANY disputes that Chilled Water Commercial Operation has occurred, it shall provide written notice to that effect to the CONTRACTOR, specifying the basis for disputing Chilled Water Commercial Operation and the Parties in dispute shall thereafter utilize the dispute resolution procedures in **Article 15.2** to resolve the dispute. Failure of the PROJECT COMPANY to provide such written notice within ten (10) Business Days after receipt of notice of Chilled Water Commercial Operation shall constitute waiver of the PROJECT COMPANY's right to dispute that Chilled Water Commercial Operation has occurred.

9.4 Punch List

A list of the uncompleted items for the Project shall be established by the CONTRACTOR prior to Preliminary Completion (the "Punch List"). The Punch List may be amended from time to time, upon written Agreement of the Parties, prior to Final Completion. The Punch List shall include all deliverables through Final Completion.

9.5 Final Completion

"Final Completion" occurs after **Commercial Operation has occurred and any remaining Punch List items have been finished**. the CONTRACTOR will notify the PROJECT COMPANY when it considers that Final Completion has occurred. If either of the PROJECT COMPANY disputes that Final Completion has occurred, it shall provide written notice to that effect to the CONTRACTOR specifying the basis for disputing Final Completion and the Parties in dispute shall thereafter use the dispute resolution procedures in **Article 15.2** to resolve the dispute. Failure of the PROJECT COMPANY to provide such written notice within ten (10) Business Days after the initial notice from the CONTRACTOR shall constitute waiver of the PROJECT COMPANY's rights to dispute that Final Completion has occurred.

ARTICLE 10
ACCEPTANCE TESTING; CAPACITY GUARANTEE; COMPLETION
GUARANTEE; WARRANTIES; LIMITATION OF LIABILITY; QUALITY
GUARANTEE;

10.1 Acceptance Tests

The CONTRACTOR will be responsible for coordinating the Acceptance Tests of the Facility as more particularly set forth in **Section 9.2** and *Schedule III* of this Agreement (the "Acceptance Tests"). Such Acceptance Tests shall be conducted by one or more qualified independent testing companies approved by the Parties (the "Testing Engineer").

10.2 Acceptance Testing

10.2.1 General

Within sixty (60) days following Preliminary Completion, the CONTRACTOR shall cause the Testing Engineer to conduct the initial Acceptance Test, subject to **Section 10.2.3** below. The Acceptance Tests shall be conducted in accordance with *Schedule III*.

10.2.2 Procedure

10.2.2.1 The procedures for conduct of the Acceptance Test are set forth in *Schedule III*. Either Party may propose changes to a test procedure at any time up to 60 days prior to commencement of the initial Acceptance Test, and each Party agrees to cooperate in good faith in evaluating such change. No change shall be effective, however, without written acceptance of the PROJECT COMPANY and the CONTRACTOR.

10.2.2.2 The CONTRACTOR shall give PROJECT COMPANY and Engineer 30 days' advance written notice of the time it expects the qualified independent testing company to conduct the initial Acceptance Test. The PROJECT COMPANY, Engineer and their representatives may observe any Acceptance Test conducted by the Testing Engineer in order to confirm the Testing Engineer's compliance with the procedures set forth in *Schedule III*.

10.2.3 Acceptance Testing Period; Repeat Tests.

The CONTRACTOR, subject to the provisions of this **Section 10.2.3** and *Schedule III*, may repeat an Acceptance Test as the CONTRACTOR deems appropriate; provided, that all Acceptance Tests must be completed by sixty (60) days after the Plant achieves Preliminary Completion (the "Acceptance Testing Period"), unless: (a) the Parties agree otherwise in writing; (b) the Acceptance Testing Period is extended by Force Majeure, but not beyond the Delay Default Date; or (c) the chilled water load is not sufficient to permit the qualified independent testing company to conduct all required Acceptance Tests within the Acceptance Testing Period. If the chilled water load is not sufficient for Acceptance Testing, the Parties agree that the CONTRACTOR shall cause the qualified independent testing company to complete within the Acceptance Testing Period all Acceptance Tests for which a sufficient chilled water load exists and that the Acceptance Testing Period shall be extended until the date sixty (60) days after the PROJECT COMPANY reasonably determines that a sufficient chilled water load exists to conduct the remaining Acceptance Tests.

The CONTRACTOR shall bear those costs of performing the Acceptance Tests. The CONTRACTOR shall give PROJECT COMPANY and Engineer not less than the following advance notice of each Acceptance Test following the initial Acceptance Test: (i) if the Acceptance Test is a prompt retest which merely continues a previously commenced Acceptance Test or promptly follows a failed Acceptance Test, not less than twenty-four (24) hours advance notice; and (ii) if the Acceptance Test is a new Acceptance Test that follows an interim period of more than ten (10) business days during which no Acceptance Testing has occurred, then not less than three (3) business days advance notice, unless a shorter period is agreed to by the Parties.

10.2.4 Acceptance Test Results

10.2.4.1 After the Testing Engineer completes an Acceptance Test, the CONTRACTOR shall give written notice thereof to PROJECT COMPANY and Engineer and shall provide PROJECT COMPANY and Engineer with all gross and reduced data for such test in accordance with *Schedule III*.

10.2.4.2 If the Testing Engineer determines that the Acceptance Test was successfully completed, the CONTRACTOR shall ensure that the Testing Engineer notifies the PROJECT COMPANY and Engineer thereof promptly following determination to that effect, including providing them a copy of the written test report.

10.2.5 The CONTRACTOR to Promptly Commence and Complete Acceptance Testing. The CONTRACTOR shall promptly commence and complete Acceptance Testing following Preliminary Completion.

10.3 Acceptance Test Capacity Guarantee

At the end of Acceptance Testing Period under **Section 10.2.3**, each Plant shall have demonstrated the capability to produce the following: (a) 10.2 MWh of gross electric energy capacity (the "promised electric energy capacity") based upon the Acceptance Testing Results. The CONTRACTOR hereby guarantees that the Plant shall provide not less than ninety-seven percent (97%) of the promised electric energy capacity by the end of the Acceptance Testing Period (the "Acceptance Test Capacity Guarantee"). The CONTRACTOR and the Testing Engineer shall be entitled to conduct and verify satisfaction of the Acceptance Tests in stages and in such order as may be appropriate given the available testing conditions, including, without limitation, separating the Acceptance Tests to demonstrate steam capacity from the Acceptance Tests to demonstrate chilled water capacity. In the event that the Facility fails to meet the Acceptance Test Capacity Guarantee, the following shall apply:

- 10.3.1 If either the actual tested steam capacity or the actual tested electric energy capacity of a Plant is less than 97% but greater than 90% of the promised electric energy capacity (the "Minimum Required Capacity"), the CONTRACTOR may, at its sole option, elect to either (i) make (or cause to be made) the modifications, improvements, redesign, repairs or reconstruction ("Remedial Measures") necessary to cause the Plant to meet the Acceptance Test Capacity Guarantee as evidenced by repeat Acceptance Tests; or (ii) pay liquidated damages to the PROJECT COMPANY as follows: For each 0.1% below 97% of the promised electric energy capacity, the liquidated damages shall be **US\$45,000**. The Contractor's obligations under this Section to undertake Remedial Measures and/or pay liquidated damages shall be counted toward and subject to the Damages Cap set forth in **Section 10.10**.
- 10.3.2 If the actual tested electric energy capacity of a Plant is less than the Minimum Required Capacity, the CONTRACTOR shall conduct Remedial Measures until the earlier in time to occur of the following: (a) the actual tested electric energy capacity, as the case may be, of a Plant is at least equal to the Minimum Required Capacity; or (b) the CONTRACTOR reaches the Damages Cap set forth in **Section 10.10**.
- 10.3.3 Foregoing liquidated damages are sole and exclusive remedy of the PROJECT COMPANY for the failure of the CONTRACTOR to meet the Acceptance Test Capacity Guarantee.

10.4 Guaranteed Preliminary Completion Date

The CONTRACTOR hereby guarantees (the "Preliminary Completion Date Guarantee") that a Plant shall have achieved Preliminary Completion on or before the Guaranteed Preliminary Completion Date. In the event that a Plant has not achieved Preliminary Completion on or before the Guaranteed Preliminary Completion Date, then the CONTRACTOR shall pay to the PROJECT COMPANY liquidated damages as follows: (a) **US\$5,000/day** for each day or a portion thereof for the first 30 days beyond the Guaranteed Preliminary Completion Date that the Project has not achieved Preliminary Completion; (b) **US\$10,000/day** for each day in excess of 30 days beyond the Guaranteed Preliminary Completion Date that the Project has not achieved Preliminary Completion. If a Plant fails to achieve Preliminary Completion by the Delay Default Date, then this shall be a CONTRACTOR Event of Default as provided in **Section 11.1.5**.

Foregoing liquidated damages are sole and exclusive remedy of the PROJECT COMPANY for delay of the CONTRACTOR with achieving the Guaranteed Preliminary Completion Date.

The CONTRACTOR shall be entitled to claim extension of the Guaranteed Preliminary Completion Date due to following events:

- a) the Force Majeure; or
- b) the PROJECT COMPANY's Default as per Section 11.3; or
- c) the unforeseeable conditions as per Section 4.3.4; or
- d) the change of Law;
- e) the Addenda and Change Order as per Article 7;
- f) any delay caused by the PROJECT COMPANY.

10.5 Compliance with Standards

In the event the Plant contains any design or construction defects ("Defects") that cause it to fail to meet any design, construction or Preliminary Completion standard in the Specifications or the Agreement, then the CONTRACTOR shall, at no expense to PROJECT COMPANY (except in the case of omitted equipment and materials, as provided in this **Article 10**), make (or cause to be made) the Remedial Measures necessary to remedy the Defects. In the event the Remedial Measures include supplying equipment and materials that were necessary to the Plant, but omitted from its construction, the PROJECT COMPANY shall pay for the costs of such omitted equipment and materials as part of the Cost of the Work if such Remedial Measure is implemented to address Defects discovered before the Plant achieves Preliminary Completion. If the Remedial Measure is implemented to address Defects discovered after the

Plant achieves Preliminary Completion, the PROJECT COMPANY shall not be obligated to pay any portion of the cost of the omitted equipment and materials.

10.6 The Contractor's Warranties.

The CONTRACTOR warrants to the PROJECT COMPANY as follows:

- 10.6.1 The CONTRACTOR shall perform the Work, including its design and engineering services hereunder, and will procure all materials hereunder using its best skill and attention, in accordance with Good Utility Practice associated with engineering and procurement of facilities such as the Facility.
- 10.6.2 The CONTRACTOR shall perform its construction services hereunder in a good and workmanlike manner and otherwise in accordance with Good Utility Practice associated with constructing facilities such as the Plant. The Plant will, at all times through the Commercial Operation Date, comply with all Laws. The CONTRACTOR shall have no obligation for breach of warranty under this **Section 10.6** to the extent any deficiencies are the result of Force Majeure, normal wear and tear, misuse or negligence by the PROJECT COMPANY or someone other than the CONTRACTOR.
- 10.6.3 All materials procured or furnished by the CONTRACTOR hereunder shall be new (unless otherwise agreed by PROJECT COMPANY in writing), of good quality and in accordance with the specifications set forth in this Agreement and the Schedules.

10.7 Repair and Replacement of Defective Work

If any breach arises under the Contractor's warranties in **Section 10.6**, the CONTRACTOR shall, at its sole cost and expense and subject to the Damages Cap, promptly correct, replace or repair, at the PROJECT COMPANY's selection, any defect in design, engineering, materials, workmanship or operability in the Facility discovered during the Warranty Period. Any such correction, replacement or repair prior to Preliminary Completion shall not be considered a Remedial Measure. The Contractor's correction, replacement, or repair shall be made with due regard to PROJECT COMPANY's operational requirements.

10.8 Subcontractor Warranties; Subcontractor Protections for PROJECT COMPANY

The CONTRACTOR shall use its good faith efforts, in its negotiations with all Subcontractors for the Plant, to see that such Subcontractors provide commercially reasonable remedies, including warranties, performance guarantees, and, where appropriate, liquidated damages. The CONTRACTOR shall enforce all contractual remedies and enforce any other remedies against the Subcontractors, including, without limitation, those arising from Subcontractors' negligent acts or omissions (collectively, the "Subcontractor Protections"). The CONTRACTOR shall enforce, at its sole expense, all warranties contained within the Subcontractor Protections for the Subcontractor warranty periods provided for the specific equipment to which such warranties pertain. The applicable warranty periods that are known as of the date of this Agreement are set forth in *Schedule VII*. Upon request from any Party, VPE Construct shall, following the negotiation of all Subcontractor contracts, update *Schedule VII* to reflect the final negotiated warranty periods.

10.9 The CONTRACTOR Enforcement of Subcontractor Protections

N/A

10.10 Limitation of Liability

10.10.1 The maximum amount of all liquidated damages to which the PROJECT COMPANY is entitled to charge the CONTRACTOR in terms of this Agreement shall not in any case exceed 15 % of the Contract Price.

10.10.2 THE GUARANTEES AND OTHER REMEDIES PROVIDED IN THIS AGREEMENT ARE THE SOLE AND EXCLUSIVE REMEDIES FOR ALL CLAIMS BASED ON FAILURE OF OR DEFECT IN THE WORK PROVIDED UNDER THIS CONTRACT, WHETHER THE FAILURE OR DEFECT ARISES BEFORE OR DURING THE WARRANTY PERIOD AND WHETHER A CLAIM, HOWEVER INSTITUTED, IS BASED ON CONTRACT, INDEMNITY, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE. THE FOREGOING WARRANTIES ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES AND GUARANTEES WHETHER WRITTEN, ORAL, IMPLIED OR STATUTORY. NO IMPLIED STATUTORY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE SHALL APPLY..

10.10.3 THE CONTRACTOR SHALL NOT BE LIABLE FOR LOSS OF PROFIT OR REVENUES, LOSS OF PRODUCT, LOSS OF USE OF THE WORK OR ANY ASSOCIATED EQUIPMENT, INTERRUPTION OF BUSINESS, COST OF

CAPITAL, COST OF REPLACEMENT EQUIPMENT OR POWER, DOWNTIME COSTS, INCREASED OPERATING COSTS, CLAIMS OF THE BUYER'S CUSTOMERS FOR SUCH DAMAGES, OR FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE OR EXEMPLARY DAMAGES.

10.10.4 THE TOTAL LIABILITY OF THE CONTRACTOR FOR ALL CLAIMS ARISING OUT OF OR RELATING TO THE PERFORMANCE OR BREACH OF THIS AGREEMENT OR USE OF WORK SHALL NOT EXCEED 100% OF THE CONTRACT PRICE.

10.11 Quality Guarantee

10.11.1 The CONTRACTOR provides the PROJECT COMPANY with a quality guarantee of the Work, which guarantees that the Project shall be useful for the agreed, otherwise regular, purpose and that it shall retain the agreed, otherwise usual, characteristics.

10.11.2 Unless the Contract specifies otherwise, the warranty period is Twenty Four (24) months and starts to be effective on the day after Preliminary Completion or the Commercial Operation of the Work, whichever occurs first.

10.11.3 The length of warranty period shall be prolonged for the time the PROJECT COMPANY is unable to use the subject of the Work because of its defects for which the CONTRACTOR is responsible. For avoidance of Doubts the prolongation of the warranty period shall apply only on defective part of the Works. Such prolongation of the warranty period shall in no case excess Thirty Six (36) months after Preliminary Completion or the Commercial Operation of the Work, whichever occurs first.

10.11.4 In the event the PROJECT COMPANY finds during the warranty period that the subject of the work contains defects, he shall inform the CONTRACTOR about these defects in writing within 10 days from its occurrence (hereinafter referred to only as the "**complaint**").

10.11.5 In the complaint the PROJECT COMPANY must specify the nature of the defect, the nature of his claim against the CONTRACTOR and or in which time he requires that the defect is eliminated. The PROJECT COMPANY shall specify the term for the elimination of defects reasonably, taking into account the nature and extent of these defects. Then the CONTRACTOR has an obligation to commence the

activities to eliminate the defect within Five (5) business days after he was informed by the PROJECT COMPANY about such defect.

10.11.6 In the event the complaint is rejected, the CONTRACTOR must provide clear, verifiable and unambiguous reasons.

10.11.7 In the event the CONTRACTOR does not commence the activities to eliminate the defect in the subject of his work within the prescribed time, the PROJECT COMPANY has the right to eliminate the defect on his own, or through a third professionally competent person and it shall do that at the Contractor's expense.

10.11.8 When the defect is eliminated, it shall be recorded in the protocol which shall be signed by both contractual parties. This protocol must contain at least the following details:

- (i) if the protocol is not identified by its serial number, it must contain the number of Contract or purchase order or other identification of Contract or purchase order;
- (ii) the date when the complaint was filed;
- (iii) description and extent of defects and a method of their elimination;
- (iv) starting and completion date of the work on the elimination of the defect;
- (v) total time the defect lasted (from the moment of its discovery until the time of its elimination);
- (vi) the date of protocol preparation;
- (vii) signatures of the persons authorized by the contractual parties.

10.11.9 N/A

10.12 Exclusive remedies

10.12.1 THE PROJECT COMPANY'S AND THE BUYER'S RIGHTS, OBLIGATIONS AND REMEDIES ARISING OUT OF OR RELATING TO THE WORK ARE LIMITED TO THOSE RIGHTS, OBLIGATIONS AND REMEDIES DESCRIBED IN THIS AGREEMENT. THIS ARTICLE SHALL PREVAIL OVER ANY CONFLICTING OR INCONSISTENT TERMS IN THIS

CONTRACT, UNLESS THOSE TERMS FURTHER RESTRICT THE SELLER'S LIABILITY.

10.12.2 THE LIMITATIONS AND EXCLUSIONS IN THIS ARTICLE SHALL APPLY WHETHER A CLAIM IS BASED IN THIS AGREEMENT (INCLUDING WARRANTY OR INDEMNITY), TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), STATUTE, EQUITY OR ANY OTHER EXTRA-CONTRACTUAL THEORY.

ARTICLE 11

DEFAULTS; REMEDIES; TERM; TERMINATION

11.1 The CONTRACTOR's Default

The occurrence of any of the events set forth below shall constitute a "the CONTRACTOR Event of Default" under this Agreement:

- 11.1.1 Bankruptcy. The CONTRACTOR becomes insolvent, or become the subject of any bankruptcy, insolvency or similar proceeding, which, in the case of any such proceeding shall be exclusively govern by the law of country where the Contractor is incorporated; or
- 11.1.2 Failure to Maintain Insurance. The CONTRACTOR fails to maintain the insurance coverages required under *Section 4.19* as set forth in *Schedule II* hereto; or
- 11.1.3 Failure to Perform. The CONTRACTOR shall have defaulted in its performance under any other material provision of this Agreement and shall have failed to cure such default within thirty (30) days following delivery to the CONTRACTOR of a Notice from PROJECT COMPANY to cure such default, or if a cure cannot be effected within such thirty (30) day period, such period shall extend for a reasonable period of time, but not to exceed a total of sixty (60) days, so long as the CONTRACTOR is proceeding diligently to cure such default throughout such period; or
- 11.1.4 Representation False. Any material representation made by the CONTRACTOR herein shall have been false or misleading in any material respect when made; or
- 11.1.5 Failure to Achieve Preliminary Completion. If Preliminary Completion is not achieved within One Hundred and Twenty (120) days from the Preliminary Completion Date Guarantee (the "Delay Default Date").

11.2 The PROJECT COMPANY's Default Remedies Against the Contractor

If a CONTRACTOR Event of Default shall have occurred and be continuing, either PROJECT COMPANY shall have the right to terminate this Agreement by notice to the CONTRACTOR. In the event of such termination:

11.2.1 If requested by the PROJECT COMPANY, the CONTRACTOR shall withdraw from the Site, shall assign to the PROJECT COMPANY (without future recourse to the CONTRACTOR) such of the Contractor's subcontracts as the PROJECT COMPANY may request, and shall remove such materials, equipment, tools and instruments used and any debris or waste materials generated by the CONTRACTOR in the performance of the Work as the PROJECT COMPANY may direct, and the CONTRACTOR shall promptly deliver to the PROJECT COMPANY all designs, drawings, and other documents related to the Work. In the event of such termination, the CONTRACTOR shall deliver to the PROJECT COMPANY all materials and data for which title has passed to the PROJECT COMPANY.

11.2.2 To the extent any specific item of the Work is complete at the time of termination, the PROJECT COMPANY shall pay the CONTRACTOR for such item of the Work, less any damages payable hereunder.

To the extent any specific item of the Work is partially complete at the time of termination, if instructed so by the PROJECT COMPANY, the CONTRACTOR shall complete such partially completed Work. In such event, the PROJECT COMPANY shall pay the CONTRACTOR the amount that the PROJECT COMPANY would have otherwise paid to the CONTRACTOR for such item of Work, less any damages payable hereunder.

11.2.3 The PROJECT COMPANY, without incurring any liability to the CONTRACTOR, shall have the right to have the Plant brought to Final Completion. In such event, the CONTRACTOR shall be liable to the PROJECT COMPANY for the reasonably incurred additional costs Preliminary Completion. With respect to the costs of performing any of the Work that follows after the termination as per this article 11.2, the Foregoing Contractor's liability shall be limited to the amounts set forth in *Section 10.10*. Such costs and fees for which the CONTRACTOR is liable as set forth above (and for failure to perform as may be requested pursuant to *Section 11.2.1* above) may be deducted by the PROJECT COMPANY out of monies due, or that may at any time

- thereafter become due, to the CONTRACTOR. If such additional costs exceed the sum that would have otherwise been payable to the CONTRACTOR under this Agreement, then the CONTRACTOR shall be liable for, and shall promptly, but in any event not more than ten (10) days after Notice from the PROJECT COMPANY, pay to the PROJECT COMPANY the amount of such excess excluding Changes in the Work approved by the PROJECT COMPANY following such the CONTRACTOR Event of Default.
- 11.2.4 Maximum liability of the CONTRACTOR with respect to the costs of performing any of the Work that follows after the termination as per this article 11.2 shall in no case exceed Ten Percent (10%) of the Contract Price.
- 11.2.5 Notwithstanding the availability and/or exercise of the foregoing remedies, the PROJECT COMPANY shall have all such other remedies available under this Agreement.
- 11.2.6 In exercising any of the foregoing remedies, the PROJECT COMPANY shall use reasonable efforts to mitigate their damages.

11.3 The PROJECT COMPANY's Event of Default

Each of the following shall constitute a "PROJECT COMPANY's Event of Default" with respect to the PROJECT COMPANY:

- 11.3.1 Failure to Make a Payment to the CONTRACTOR When Due. The failure of the PROJECT COMPANY to make the full amount of the payment to the CONTRACTOR required under this Agreement within three (3) Business Days following notice of failure to pay; or
- 11.3.2 Bankruptcy. The PROJECT COMPANY becomes insolvent, or become the subject of any bankruptcy, insolvency or similar proceeding, which, in the case of any such proceeding that a third party brings against either of them, has not been terminated, stayed, or dismissed within sixty (60) Business Days after it was commenced, unless the affected Party provides evidence to the CONTRACTOR of that Party's ability to perform all of its obligations under this Agreement; or
- 11.3.3 Representation False. Any material representation made by the PROJECT COMPANY herein shall have been false or misleading in any material respect when made; or

- 11.3.4 Failure to Perform. The PROJECT COMPANY failure to perform any of its respective nonpayment obligations under this Agreement, and such failure is not cured within thirty (30) days after receipt of written notice thereof, or if a cure cannot be effected within such thirty (30) day period, such period shall extend for a reasonable period of time, but not to exceed a total of sixty (60) days, so long as the PROJECT COMPANY is proceeding diligently to cure such default throughout such period; or
- 11.3.5 Failure to Maintain Insurance. If the PROJECT COMPANY fails to obtain and maintain in effect through the Commercial Operation Date such insurance as it is required by this Agreement to obtain and maintain; or
- 11.3.6 Failure to Cooperate or Allow Access. If the PROJECT COMPANY fails to cooperate with the CONTRACTOR in any situation where such cooperation is necessary to enable the CONTRACTOR to carry out obligations under this Agreement. Such failure to cooperate shall include, without limitation, the failure to assist in obtaining required Authorizations, the failure to afford the CONTRACTOR the access to the Site, to the Lay Down Areas, to the Soil Disposal Area or to the Easement Areas necessary for the CONTRACTOR and all persons retained by the CONTRACTOR in connection with the Project to perform their Project-related duties. A PROJECT COMPANY Event of Default shall not include any other default by the PROJECT COMPANY of any of its obligations under this Agreement.

11.4 The CONTRACTOR Remedies for the PROJECT COMPANY Event of Default

Subject to the rights granted in *Section 11.5* below, upon the occurrence of a PROJECT COMPANY Event of Default, the CONTRACTOR shall have the right to terminate this Agreement, to order all Subcontractors to stop Work and remove all their tools and equipment from the Site, and/or pursue all such remedies as may be allowed under this Agreement, at law or in equity. In addition, and without limiting the foregoing remedies, PROJECT COMPANY shall pay to the CONTRACTOR the amounts payable upon termination under **Section 11.7** of this Agreement.

11.5 Force Majeure

- 11.5.1 Effect. Any delays in or failure of performance by a Party, other than the obligations to pay monies hereunder, shall not constitute a default

hereunder if and to the extent such delays or failures of performance are caused by Force Majeure events.

11.5.2 Notice of Occurrence and Impact.

11.5.2.1 Notice of Occurrence. Any Party claiming that a Force Majeure condition has arisen shall immediately notify the other Party of the same, shall act diligently to overcome, remove and/or mitigate the effects of the event of Force Majeure, shall notify the other Party on a continuing basis of its efforts to overcome, remove and/or mitigate the event of Force Majeure and shall notify the other Party immediately when said condition has ceased.

11.5.2.2 Notice of Impact. In addition to its obligations under *Section 11.5.2.1*, if the CONTRACTOR claims there is a Force Majeure condition, the CONTRACTOR shall (i) promptly notify the PROJECT COMPANY, in writing of the nature, cause and cost of such Force Majeure condition, (ii) state whether and to what extent the condition will delay the Guaranteed Preliminary Completion Date, the Delay Default Date, the Commercial Operation Date or Final Completion Date, (iii) state the date and time the Force Majeure condition commenced; and (iii) state whether the CONTRACTOR recommends that the PROJECT COMPANY initiate a Change Order pursuant to *Article 8*.

11.5.3 Effect of Force Majeure. No failure or delay in performance under this Agreement shall be deemed to be a breach hereof to the extent such failure or delay is occasioned by or due to Force Majeure. With respect to delay in performance, a Force Majeure condition shall excuse such delay in performance on a day for day basis for a period of time equal to the duration of the Force Majeure condition or the period needed to remedy its effects, to the extent that such Force Majeure condition causes a delay in the Work.

11.5.4 Termination. In the event that (a) the CONTRACTOR or the PROJECT COMPANY are denied any required Authorizations, or such Authorizations are obtained, but are withdrawn, or contain restrictions, qualifications, or conditions that would have a material adverse impact on the benefits or obligations of the Parties, and the Parties are unable to reform this Agreement or agree upon other mutually acceptable arrangements, or (b) if a Force Majeure event continues for more than 180 days after notice of the event of Force Majeure is given under *Section 11.5.2*, then such Party may terminate this Agreement, in its sole discretion, within sixty (60) days after the

conditions in (a), (b) or (c), by giving at least ten (10) Business Days prior written notice to the other Party.

11.6 Right to Termination

No Party shall have the right to terminate this Agreement for cause or otherwise except as described in *Section 11.2*, *Section 11.4*, and *Section 11.5*.

11.7 Effect of Termination Under Sections 11.4, 11.5 and 15.19.

In the event that this Agreement is terminated by either party pursuant to *Sections 11.4*, or *11.5*, the PROJECT COMPANY shall pay to the CONTRACTOR an amount equal to the sum of (1) the Contract Price of the Work performed by the CONTRACTOR in connection with the Work and the Project as of the date of termination, plus (2) to the extent not already reflected in (1), any termination charges incurred by the CONTRACTOR that are imposed by Subcontractors as a result of the Termination and any other costs reasonably incurred by the CONTRACTOR solely as a result of the termination to the extent that this sum is not reimbursed pursuant to insurance policies maintained by the CONTRACTOR pursuant to *Schedule II* (it being specifically understood that the PROJECT COMPANY shall be responsible for the payment of all deductible amounts under any said insurance policies to the extent provided in *Schedule II*). Upon such payment by the PROJECT COMPANY, the PROJECT COMPANY shall have exclusive ownership of the Facility and the Work and the CONTRACTOR shall have no further obligations with respect thereto.

11.8 Completion; Survival

Unless earlier terminated pursuant to the terms of this *Article 11*, this Agreement shall be deemed to be completed when both of the following have taken place: (a) the Final Completion Date has occurred, and (b) the PROJECT COMPANY has paid the Contract Price of the Work in full pursuant to *Article 8*. Notwithstanding anything in this Agreement to the contrary, the provisions of *Section 10.11* and *Article 15.2* shall survive the completion or termination of this Agreement and nothing in this Agreement shall be deemed to limit the applicable statute of limitations period within which any Party may bring a claim for breach of this Agreement.

ARTICLE 12 REPRESENTATIONS, WARRANTIES AND COVENANTS

Each Party represents and warrants to the other Party that:

12.1 Organization and Existence

With respect to the PROJECT COMPANY and the CONTRACTOR, each is a company duly organized, validly existing and in good standing under the Laws of the jurisdiction of its organization.

12.2 Power and Authority

It has the full power and authority to execute and deliver this Agreement and to perform all its obligations hereunder.

12.3 Due Authorization

The execution, delivery and performance of this Agreement and the performance of its obligations hereunder and the consummation of the transactions described herein have been duly authorized by all requisite action on its part.

12.4 Permits and Approvals

With respect to the PROJECT COMPANY and the CONTRACTOR, each has obtained all permits and approvals for the performance of its obligations hereunder.

12.5 No Conflict

Neither the execution and delivery of this Agreement, its compliance with the terms hereof, nor its fulfillment of any of the terms hereof conflicts with, results in a breach of or constitutes a Default under (i) any of the terms, conditions or provisions of its articles of association, charter, articles of incorporation, by-laws or other constituent documents, (ii) any federal, state or local Law, any order, rule or regulation of any governmental authority having jurisdiction over it or its properties or by which it is bound, or (iii) any agreement or instrument to which it is a party or by which any of its properties is bound or affected.

12.6 Execution, Delivery and Performance

It has duly executed and delivered this Agreement and this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms.

ARTICLE 13

NOTICES

All notices and other communications required or permitted by this Agreement or by Law to be served upon or given to a Party by the other Party shall be deemed duly served and given when received after being delivered by hand or courier service or sent by confirmed facsimile or certified mail, return receipt requested, postage prepaid, to the following address.

PROJECT COMPANY:

XENERGI LIMITED

Attn: Chairman/CEO
Address: Plot 282b Trans-Amadi Industrial Estate, Port Harcourt, Rivers State, Nigeria
Tel: +234-.....
Fax: +234-.....
E-mail:

CONTRACTOR:

ISTROENERGO GROUP, a.s.

Attn: Chairman of Board of Director/CEO
Address: Rozmarínová 4, 934 01 Levice, Slovak Republic
Tel/Fax: +421 36 6376 111, 112
Fax: +421 36 6227 249
E-mail: jozef.barat@ieg.sk

Notices sent by confirmed facsimile to the addresses indicated above shall be deemed given on the date of confirmation of receipt of such facsimile, provided said notice is confirmed by any other means provided herein above and such confirmation is sent within one Business Day thereafter (or, in the case of hand or courier service delivery, received within three Business Days thereafter). Each Party may change its address for the purposes of this *Article 13* by giving notice of change to the other Party in the manner provided in this *Article 13*.

ARTICLE 14

NONDISCRIMINATION/AFFIRMATIVE ACTION

14.1 General

In connection with the performance of the Work under this Agreement, the CONTRACTOR agrees not to discriminate against any employee or applicant for

employment because of age, race, religion, color handicap, sex, physical condition, developmental disability, sexual orientation, national origin, or any other basis prohibited by law. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, the CONTRACTOR further agrees to take affirmative action to ensure equal employment opportunities.

14.2 Affirmative Action Plan

N/A

14.3 Collective Bargaining Agreements

Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the CONTRACTOR has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's required initiatives under this *Article 14*.

14.4 Posting of Notices

The CONTRACTOR agrees to post in conspicuous places, available for employees and applicants for employment, a notice to be provided by the State that sets forth the provisions of the Nigerian nondiscrimination policy.

14.5 Ineligible Contractors

Failure to comply with the conditions of this Article may result in the CONTRACTOR becoming declared an "ineligible" contractor, termination of this Agreement, or withholding of payment.

14.6 Establishment of Initiatives

The CONTRACTOR will establish and take appropriate initiatives to reach the goal of five percent (5%) minority-owned business enterprise (MBE) utilization for the Work under this Agreement.

ARTICLE 15 MISCELLANEOUS

15.1 Governing Law

This Agreement shall be construed in accordance with the law of England and Wales excluding its conflict laws.

15.2 Dispute Resolution

15.2.1 Amicable Settlement. In case of disagreement between the PROJECT COMPANY and the CONTRACTOR, in absence of any satisfactory response within fifteen (15) days from the date of the disagreement, a period of Fifteen (15) days is set aside for a consensus between the parties.

15.2.2 Legal settlements of differences. Any differences which could arise between the parties in connection to the contract provisions and which could not be amicably settled within the thirty (30) days following writing receipt by one of the parties of the request of the other party for amicable settlement. If the period accorded under *Section 15.2.1* did not allow the parties to find an amicable settlement, each party is free to seek other competent means of settlement. In this case, the legal provision applicable for the dispute resolution are the rules of arbitration of the International Court of Arbitration of the International Chamber of Commercial (ICC). The venue of the court shall be London, UK. The language of arbitration shall be English.

15.2.3 Legal settlements of difference through change of Rules and Regulations. In an event of changes of laws or regulations, which affect the economic contractual agreement and resulting to a significant loss for the CONTRACTOR, which is unforeseen by the time this Agreement is signed and sealed, only changes that occurred in the country of the CONTRACTOR may be considered to modify the financial conditions of the contract. In case of mandatory changes in the current regulation in the country of the CONTRACTOR, which result an increase or decrease of the cost of execution of the study not envisaged in the earlier provisions of this contract by at least equal percentage to a given portion of the amount of the contract, an amendment will be concluded between the parties to increase or decrease, depending on the case, the amount of the contract within a period of three months.

15.3 Interpretation

- 15.3.1 Schedules are Part of Agreement. This Agreement includes the attached *Schedules I through IX*.
- 15.3.2 Entire Agreement. This Agreement, together with the Schedules attached hereto and the Collateral Agreements, constitutes the entire agreement and complete understanding between the CONTRACTOR and the PROJECT COMPANY with respect to the subject matter described herein and therein and supersedes all other understandings and agreements between the Parties with respect to such subject matter.
- 15.3.3 Order of Interpretation. In the event of any inconsistencies between the terms and conditions of the body of this Agreement and the Schedules, the provision of the body of this Agreement shall prevail over the terms of any Schedule.
- 15.3.4 Captions. Captions or headings to Articles, Sections or paragraphs of this Agreement are inserted for convenience of reference only, and shall not affect the interpretation or construction hereof.
- 15.3.5 Additional Principles of Construction. The Agreement shall be interpreted in a manner as to be consistent with the following principles:
- 15.3.5.1 Use of Good Utility Practice. It is the intent of the Agreement to require the application of Good Utility Practice to the Work where details of such Work are not included, are incomplete, are not specified, or are not clearly defined in the Specifications.
- 15.3.5.2 Integration of Project Documents. It is the intent of the Parties that the Specifications for the Plant, this Agreement, and the Schedules hereto (the "Project Documents") are to be interpreted as an integrated whole. Where work or obligations are referenced in one of the Project Documents but not in another, the CONTRACTOR shall coordinate the design and installation of the Work as if it were shown on both to the extent required to comply with the Acceptance Tests and Good Utility Practice.

15.4 Drafting Ambiguities

Each Party to the Agreement and its counsel have reviewed and revised the Agreement. The rule of construction that any ambiguities are to be resolved

against the drafting parties shall not be employed in the interpretation of the Agreement, or any amendment thereto.

15.5 Third Party Beneficiaries

Except with respect to the provisions of the Agreement pertaining to assignment, the Agreement is not intended to and shall not create rights of any character whatsoever in favor of any person other than the Parties to the Agreement and the Developer, and the obligation assumed therein are solely for the use and benefit of the Parties and the University. The Parties agree that the Developer is a third-party beneficiary under this Agreement.

15.6 Good Faith and Fair Dealing

Whenever the Agreement grants to any Party the right to take action, exercise discretion, or determine whether to approve a proposal of any other Party, the Party possessing the right shall act in good faith and shall deal fairly with each other. In the event of a Dispute, the Parties shall be obligated to make a reasonable and diligent effort to resolve the Dispute at the appropriate level before invoking the dispute resolution procedures in *Article 15.2*. Each of the Parties further expressly agrees that at all times it will exercise its good faith in the administration of this Agreement, and all actions of the Parties shall be designed to facilitate the successful completion of the Work by the CONTRACTOR and to promote the effective and efficient administration of this Agreement, and to achieve the objective of providing efficient, reliable and economical long term energy and utility services to the PROJECT COMPANY, Enugu State and its neighboring states.

The Parties further commit to act in a timely fashion, consistent with maintaining the Project Schedule to: (a) review all documents, (b) respond to all requests for information, (c) support all applications for Authorizations; (d) respond to requests for access to offsite support facilities and other assistance; and (e) resolve all differences and Disputes in a timely fashion.

15.7 Severability

Every part, term or provision of the Agreement is severable from others. Notwithstanding any possible future finding by duly constituted authority that a particular part, term or provision is invalid, void or unenforceable, the Agreement has been made with the clear intention that the validity and enforceability of the remaining parts, terms and provisions shall not be affected thereby.

15.8 Survival

All representations and warranties, and all agreements by the parties in this Agreement to indemnify each other shall survive the termination of this Agreement. The termination of this Agreement shall not limit or otherwise affect the respective rights and obligations of the Parties which accrued prior to the date of termination, and which continue to exist following the termination of this Agreement.

15.9 Technical or Trade Usage

When words that have a well-known technical or trade meaning are used to describe materials, equipment or services, such words will be interpreted in accordance with such meaning. Reference to such standard specifications, manuals, or codes of any technical society, organization or association, or to the code of any governmental authority, whether such references be specific or by implication, shall mean the latest standard specification, manual or code (whether or not specifically incorporated by reference in the contract documents) shall change the duties and responsibilities of the CONTRACTOR or the PROJECT COMPANY, or any of their agents, consultants, or employees from those set forth in the Agreement.

15.10 Amendments and Waivers

This Agreement may be amended only by a written instrument signed by a duly authorized representative of each Party. The failure of any Party to insist on one or more occasions upon strict performance of the obligations owed it by the other parties shall not waive or release such party's right to insist on strict performance of such obligation or any other obligation in the future.

15.11 Change of Address.

Any Party may, by written notice to the other Parties given in accordance with the foregoing, change its address for notices.

15.12 Successors; Assignment

This Agreement shall be binding upon the parties and their respective successors and permitted assigns. No party shall make any sale, assignment, mortgage, pledge or other transfer of all or any portion of its rights or obligations under this Agreement, whether voluntarily or involuntarily, by operation of law or otherwise, without the prior written consent of the other Parties; provided, however, that: (a) any Party may make a collateral assignment of its interest in this Agreement to a Financing Party; and (b) this

Section 15.11 shall not require the prior written consent of the Federal Government or NERC for any voluntary transfer in connection with a change in ownership, or the merger, restructuring or consolidation of the CONTRACTOR or the PROJECT COMPANY, so long as this Agreement remains within the CONTRACTOR and PROJECT COMPANY and continues to guarantee performance of the Agreement, as so voluntarily transferred. Any successor to the CONTRACTOR or the PROJECT COMPANY's respective interests (including the interest of the Developer) under this Agreement shall assume in writing all responsibilities of the CONTRACTOR or the PROJECT COMPANY, as the case may be under this Agreement.

15.13 Counterparts

This Agreement may be signed in counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute the same instrument.

15.14 Further Assurances

Each Party agrees to execute and deliver any such instruments and to perform any such acts as may be necessary or reasonably requested by any other Party in order to give full effect to the terms of this Agreement.

15.15 Interest

Past due payments hereunder not contested in good faith shall bear interest from the due date until paid at the Late Payment Rate.

15.16 Relationship to Other Agreements

15.16.1 The Parties recognize that this Agreement, the Development Agreement, the Operation & Maintenance Agreement, the Ground Lease (under the Certificate of Occupancy), Backup & Station Service Agreement, and any other documents relating to the power plant entered into between the PROJECT COMPANY and MDA CAPITAL INVEST, a.s. and/or any of its affiliates (the "Collateral Agreements") constitute an integrated and comprehensive set of agreements that are intended to facilitate the construction and operation of the Plant to provide efficient, reliable and economic long-term energy and utility services for the PROJECT COMPANY, the Delta State and its Neighboring States. All of the Collateral Agreements shall be read together to achieve these objectives and the Parties agree to support all such documents, regardless of whether they are a party to a particular Collateral Agreement. For avoidance of doubts, the

Collateral Agreements shall in no case extend obligation of the CONTRACTOR in respect to the Project unless specifically agreed in this Agreement.

15.16.2 Notwithstanding *Section 15.15.1*, the Agreement and the Collateral Agreements are separate and independent undertakings by the Parties. Termination of one of these agreements shall not affect or impair the rights or obligation of the Parties under the Collateral Agreements, except as otherwise specifically provided herein and in the Collateral Agreements.

15.17 No Partnership; Third Party Beneficiaries

The Parties hereby expressly disclaim any intention to create a joint venture or partnership relation between any of the Parties. Except as expressly stated in this Agreement, there are no third party beneficiaries to this Agreement.

15.18 Further Documents and Actions

Each Party shall promptly execute and deliver such further documents and assurances for and take such further actions reasonable requested by the other Parties as may be reasonably necessary to carry out the intent and purpose of this Agreement.

15.19 Time of the Essence; Cooperation to Control Costs

The Parties recognize that time is of the essence in designing and completing construction of the Plant. The Parties agree to use their good faith efforts to cooperate with each other and, where applicable, with Subcontractors to keep the Project on schedule, to control Project costs and to refrain from actions that drive up the Project costs or injects delay into the Project Schedule.

15.20 Contingent On Issuance of Generation License and Other Authorizations

The Parties obligations to continue to proceed in accordance with this Agreement are contingent upon the issuance of the Generation License and any other required Authorizations for the Plant. If the NERC has not issued the Generation License for the Project by December 31, 2015, then the CONTRACTOR shall have the right to terminate this Agreement by written notice to the other Parties.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and delivered by their duly authorized officers as of the date first set forth above.

PROJECT COMPANY:

XENERGI LIMITED

Signature: _____

Name: _____

Position: _____

Address: _____

Witnessed by:

Signature: _____

Name: _____

Position: _____

Address: _____

CONTRACTOR:

ISTROENERGO INTERNATIONAL, A.S.

Signature: _____

Name: _____

Position: _____

Address: _____

Witnessed by:

Signature: _____

Name: _____

Position: _____

Address: _____

SCHEDULE I
PLANT EQUIPMENT DESCRIPTION AND SPECIFICATIONS

SCHEDULE II

INSURANCE

SCHEDULE III
ACCEPTANCE TEST

SCHEDULE IV
PAYMENT SCHEDULE

SCHEDULE V
POWER PLANT LAYOUT

SCHEDULE VI

THE SCOPE OF WORKS – POWER PLANT TURNKEY SUPPLY

SCHEDULE VII

**CONTRACTOR, CONTRACTOR'S APPROVED SUBCONTRACTORS, SUPPLIERS AND
WARRANTIES**

SCHEDULE VIII
PERMITS AND APPROVALS

SCHEDULE IX

POWER PLANT CONSTRUCTION PRELIMINARY MILESTONE to be added