

OPERATIONS MANAGEMENT AND TRAINING (OMT) AGREEMENT

**OPERATION, MANAGEMENT, MAINTENANCE AND REPAIR OF THE EUL'S 60MWH
EMBEDDED XENERGI'S 10.2 MWH IGCC POWER PLANT IN THE FREE TRADE
ZONE, 9th MILE CORNER, ENUGU STATE, NIGERIA**

Nº OMT/IEI/XENERGI/10.2 IGCC/0001-22

Between

**ISTROENERGO INTERNATIONAL, A.S.
(MDAC)**

AND

**XENERGI LIMITED
(XENERGI)**

DRAFT

CONTENTS

ARTICLE I:	DEFINITIONS OF TERMS.....	7
SECTION 1.1	Definitions	7
SECTION 1.2	Interpretation.....	10
ARTICLE II	MANAGEMENT SERVICES.....	10
SECTION 2.1	Operation, Management, Maintenance and Repair of the Plant.....	10
SECTION 2.2	Irrevocable Performance Letter of Credit/Annually Renewable Performance Bond/Labour and Materials Bond.....	10
SECTION 2.3	Operations Committee	11
ARTICLE III:	TERM.....	11
SECTION 3.1	Term	11
SECTION 3.2	Extension	11
ARTICLE IV:	CONDITIONS PRECEDENT	12
SECTION 4.1	General	12
SECTION 4.2	Conditions Precedent to PROJECT COMPANY's Obligations	12
SECTION 4.3	Conditions Precedent to Operators' Obligations.....	14
SECTION 4.4	Satisfaction of Conditions Precedent.....	15
ARTICLE V:	REPRESENTATIONS AND WARRANTIES.....	16
SECTION 5.1	PROJECT COMPANY Representations and Warranties	16
SECTION 5.2	Operators Representations and Warranties	17
	5.2.1 Lead Operator Representation and Warranties	17
	5.2.2 ISTROENERGO INTERNATIONAL, A.S. Representation and Warranties.....	17
ARTICLE VI:	OPERATION, MANAGEMENT, MAINTENANCE AND REPAIR OF THE POWER PLANT	18
SECTION 6.1	General	18
SECTION 6.2	Maintenance Management Program	19
SECTION 6.3	Analytical Services.....	19
SECTION 6.4	Administrative Consent Orders.....	19
SECTION 6.5	Equipment and Orders.....	19
SECTION 6.6	Vehicles Maintenance.....	20

SECTION 6.7	Buildings and Ground Services	20
SECTION 6.8	Utilities	20
SECTION 6.9	Planning.....	20
SECTION 6.10	Economic Development.....	20
SECTION 6.11	Permits.....	20
SECTION 6.12	Solid Waste Management.....	20
SECTION 6.13	Water System	21
SECTION 6.14	Distribution and Storage	21
SECTION 6.15	Wastewater Collection System	22
SECTION 6.16	Wastewater Collection System Monitoring and Notification Requirements	23
SECTION 6.17	Operation and Maintenance Costs	24
SECTION 6.18	Operations Review	24
	6.18.1 Monthly Progress Report	24
	6.18.2 Acces to Power Plant and Records.....	24
	6.18.3 Meetings.....	24
	6.18.4 Audit of Power Plant and Review at Expiration of Agreement	25
SECTION 6.19	Operations and Maintenance Plan	25
SECTION 6.20	Continuous Operation.....	25
SECTION 6.21	Continuity of Service.....	25
SECTION 6.22	Customer Service and Emergency Response.....	25
SECTION 6.23	Staffing.....	26
SECTION 6.24	Licenses.....	26
SECTION 6.25	Compliance with Laws and Regulations and Permits.....	26
SECTION 6.26	Safety and Security.....	26
SECTION 6.27	User Complaints	27
ARTICLE VII:	CAPITAL IMPROVEMENTS	28
SECTION 7.1	PROJECT COMPANY Responsibilities	28
SECTION 7.2	Operators Responsibilities	28
SECTION 7.3	Emergencies or Improvements Required by Laws	28
ARTICLE VIII:	FINANCIAL TERMS.....	29
SECTION 8.1	Annual Service Fee	29
SECTION 8.2	Establishment and Collection of Rates, Fees and Charges	29
SECTION 8.3	Expenses	30

SECTION 8.4	Billing and Collections.....	30
	8.4.1 Customer Services.....	30
	8.4.2 Collection Office	30
	8.4.3 Drinking Water Service Charges.....	31
SECTION 8.5	Deposit of Revenues	31
ARTICLE IX:	DEFAULT AND TERMINATION	31
SECTION 9.1	General Provisions	31
SECTION 9.2	Termination for Cause by the PROJECT COMPANY	31
SECTION 9.3	Termination for Cause by the Operators	32
SECTION 9.4	Termination for Unenforceability of Agreement	34
SECTION 9.5	Operational Termination by the PROJECT COMPANY	34
ARTICLE X:	MISCELLANEOUS	34
SECTION 10.1	Insurance	34
SECTION 10.2	Indemnification.....	38
SECTION 10.3	New Equipment	39
SECTION 10.4	Enforcement	39
SECTION 10.5	Assignment.....	39
SECTION 10.6	Affirmative Action.....	39
SECTION 10.9	Application of Law.....	40
SECTION 10.10	Relationship	40
SECTION 10.11	Public Relations	41
SECTION 10.12	Notice of Litigation	41
SECTION 10.13	Cost Substantiation.....	41
SECTION 10.14	Bulk Sale and/or Wheeling of Water.....	41
SECTION 10.15	Hazardous Wastes	42
SECTION 10.16	Unforeseen Events	42
SECTION 10.17	System Regulations.....	43
SECTION 10.18	Covenant to Continue Work.....	43
SECTION 10.19	Cooperation with Financing	43
SECTION 10.20	PROJECT COMPANY's Obligations	43
SECTION 10.21	PROJECT COMPANY's Approvals	43
SECTION 10.22	Survivorship	44
SECTION 10.23	Severability	44
SECTION 10.24	Language.....	44

SECTION 10.25	Notifications	44
SECTION 10.26	Designated Representatives.....	45
SECTION 10.27	Taxes and Duties	45
SECTION 10.28	Commencement	45
SECTION 10.29	Amendment	45
SECTION 10.30	Confidentiality	45
SECTION 10.31	Assistance	46
SECTION 10.32	Services	46
SECTION 10.33	Non-Circumvention	46
SECTION 10.34	Settlement of Disputes.....	46
10.34.1	Amicable Settlement of Disputes	46
10.34.2	Legal Settlement of Disputes	46
10.34.3	Legal Settlement of Disputes through change of Rules and Regulation.....	47

SCHEDULES

SCHEDULE 1: Program Information	48
SCHEDULE 2: Power Plant Operation & Maintenance Standards.....	49
SCHEDULE 3: Water & Wastewater Systems Operation & Maintenance Standards	50
SCHEDULE 4: Billing and Collection Service Requirements	51
SCHEDULE 5: Control Room and Computer Information Systems	52
SCHEDULE 6: Rates, Fees and Charges	53
SCHEDULE 7: CVs of the Key Technical Team.....	54

THIS AGREEMENT, made this _____th day of _____, 2022 by and between:

PROJECT COMPANY

XENERGI LIMITED (XENERGI), an energy and power 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, Federal Republic of 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

LEAD OPERATOR

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 (hereinafter referred to as the „**Lead Operator**“)

I. PREAMBLE

WHEREAS, the LEAD OPERATOR has requested the Management, which has agreed to undertake the lead operations of the Project and focus on the Management of internal processes in order to produce and distribute the electricity to Residential, Commercial and Industrial Consumers, assuring the operational maintenance of the aforementioned power plant in accordance with national and international rules and standards.

WHEREAS, the LEAD OPERATOR has demonstrated that they have the professional expertise, personnel, technical and financial resources required for the development of the aforementioned 10.2 MWh IGCC Power Plant in compliance with the terms and conditions stated in this Agreement.

WHEREAS, for the purpose of this Project, the LEAD OPERATOR has agreed to jointly ensure the operation, management, maintenance and repair of the power plant and have agreed that the services required by the PROJECT COMPANY, under this agreement will be in compliance with the laws of the Federal Republic of Nigeria.

WHEREAS, the LEAD OPERATOR shall, on behalf of the PROJECT COMPANY, make available all the necessary information and data required by the operators before commencement of works and services.

WHEREAS, PROJECT COMPANY has agreed that the LEAD OPERATOR shall be responsible for the operation, management, maintenance and repair of the complete Plant under European standards.

NOW therefore, in consideration of the mutual covenants set forth and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the *Parties* agree as follows:

ARTICLE I DEFINITIONS OF TERMS

The above preamble shall be deemed to constitute an integral part of this Agreement, which shall be construed accordingly.

SECTION 1.1: Definitions

In this Agreement, unless otherwise required by the context, the following terms, whenever used, shall have the respective meanings shown against each:

"Applicable law" Includes a reference to any statute, regulation, by-law, rule, resolution, order or directive includes all statutes, regulations, ordinances, by-laws or resolutions, rules, orders or directives varying, consolidating, re-enacting, extending or replacing it and a reference to a statute includes all regulations, rules and by-laws of a legislative nature issued under any applicable statute of the Federal Republic of Nigeria as may be applicable.

"Agreement" means the current Agreement or Contract between the LEAD OPERATOR of the consortium, hereinafter referred to as IEI, and XENERGI LIMITED (XENERGI), hereinafter referred to as the PROJECT COMPANY. The operators are ready, willing and able to undertake the Operation, Management, Maintenance and Repair of the Power Plant and its components and systems.

"Annual Service Fee" means the sum of the Fixed Operations Management Fee, Pass Through Charge, and any variable fee components that will be paid by the PROJECT COMPANY to the LEAD OPERATOR in accordance with the terms and conditions of this Agreement and Schedule 6.

"Commencement Date" means the date that the operators shall begin the commencement of the Services related to the operation, management, maintenance and repair of the Power Plant and its components and systems.

"Contract Date" means the date of execution of this Agreement.

"Contract Year" means each one-year period beginning on the Commencement Date and ending on the day immediately prior to the next succeeding anniversary of the Commencement Date (which shall be the first Contract Year) and for each succeeding period beginning on the anniversary of the Commencement Date and ending on the day immediately prior to the next succeeding anniversary of the Commencement Date.

"Day" means a calendar day of twenty-four hours measured from midnight to the next midnight.

“EPC” means Engineering, Procurement and Construction.

“ICC” means International Chamber of Commerce.

“IGCC” means Integrated Gasification Combined Cycle.

“O&M” means operation and maintenance (operations management).

“OPERATOR” means ISTROENERGO INTERNATIONAL, A.S. (IEI), or its permitted successors or assigns, the firms or entities selected by Project Developer (MDA CAPITAL INVEST, A.S.) to jointly provide the operations management services for the Power Plant in accordance the terms and conditions of this Agreement

“Party” means the Client, hereinafter referred to as XENERGI LIMITED (PROJECT COMPANY) or ISTROENERGO INTERNATIONAL, A.S. or IEI (LEAD OPERATOR) represented by CAPITAL INVEST, A.S., as circumstance dictate.

“Parties” means the LEAD OPERATOR, hereinafter referred to as ISTROENERGO INTERNATIONAL, A.S. or IEI and the PROJECT COMPANY, hereinafter referred to as XENERGI LIMITED or simply XENERGI.

“Systems” means collectively all of the individual components and elements of Embedded Power Plant Project, which comprise the Fuel systems, electricity generation and distribution systems, water system, wastewater collection system, and cooling system, etc. owned by the XENERGI LIMITED.

“Term” means the period of time in which this Agreement is in full force and effect.

“Trustee” means an agent that may be selected by the ONWER or the LEAD OPETATOR to perform the fiscal responsibilities as set forth in Article IV and Article VIII of this Agreement.

“Unforeseen Events” means (a) any acts, events or conditions or any combination thereof (other than a labour strike by the LEAD OPERATOR, its employees, affiliates, subcontractors, and/or suppliers) that are (i) reasonably unforeseeable as of the Contract Date, (ii) outside of the reasonable control of the party relying thereon not performing an obligation or complying with any condition required of such party under the Agreement; and (iii) has had or may be reasonably expected to have a direct, material adverse effect on the Power Plant or the operation thereof, including, without limitation the following:

- A. Force Majeure events that are outside the reasonable control of the party relying thereon, such as acts of God, acts of terrorism, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, floods that constitute a 100-year flood, and explosions, civil disturbances, acts of the public enemy, and war.

- B. Change in Law, defined as (1) the enactment of any law or regulations after the Contract Date (excluding (a) laws adopted at the time of execution of this Agreement but which have provisions that take effect after the Commencement Date and (b) pending changes in law reasonably anticipated to be enacted as of the Contract Date and (c) changes in tax law other than a tax law promulgated by the PROJECT COMPANY); or (2) a material modification of or imposition of any material condition on the issuance, modification or renewal of any Permit which, in the case of either (1) or (2) above, establishes requirements affecting the financing or operation or capital costs of the Power Plant that are materially more burdensome than the most stringent requirements in effect as of the Contract Date.
- C. Judicial Administrative Determinations, defined as the final order, judgment, action and/or determination of any federal, state or local court of competent jurisdiction, administrative agency or governmental body (other than the PROJECT COMPANY if issued pursuant to the provisions of this Agreement expressly authorizing the same).
- D. Permit terminations, defined as the suspension, termination, interruption, denial or failure of renewal or issuance of any Permit (to the extent not caused in any way by the negligence or willful misconduct of the LEAD OPERATOR) that is necessary to operate the Power Plant.
- E. The failure of any appropriate federal, state, municipal, county or other public agency or private utility having operating jurisdiction in the area in which the facility is located, to provide and maintain utilities, services, water and sewer lines and power transmission lines to the Power Plant, except if such failure is caused by the negligence or willful misconduct of the LEAD OPERATOR.
- F. The condemnation, taking, seizure, involuntary conversion or requisition of title to or use of the Power Plant, or any material portion or part thereof by the action of any federal, state or local government or governmental agency.
- G. Labour strikes, provided however, that those strikes directed at the LEAD OPERATOR, its parents or other related entities or any subcontractor(s), employee(s), affiliate(s) and/or supplier(s), shall not be an event beyond LEAD OPERATOR's control.
- H. With respect to the LEAD OPERATOR, PROJECT COMPANY Fault.
- I. Any Environmental Condition or Preexisting Environmental Condition or Hazardous Substances to the extent not caused by the negligence or willful misconduct of LEAD OPERATOR, parent and/or affiliated entities or by any of the LEAD OPERATOR's subcontractors, employees and/or agents.
- J. Receipt by the Water System or the Wastewater Collection System of any water or wastewater containing any Hazardous Substance.

- K. The "Yea! 2000" computer problem only to the extent that such specifically affects the operating components of the Power Plant.

SECTION 1.2: Interpretation.

Whenever the context may require, any pronoun that is used in this Agreement shall include the corresponding masculine, feminine and neuter forms, and the singular shall include the plural and vice versa. Unless otherwise noted, the Words "include", "includes" and "including" when used in this Agreement shall be deemed to be followed by the phrase "without limitation". The words "agree", "agreements", "approval" and "consent" when used in this Agreement shall be deemed to be followed by the phrase "which shall not be unreasonably withheld or unduly delayed", except or unless the context may otherwise specify.

**ARTICLE II
MANAGEMENT SERVICES**

SECTION 2.1: Operation, Management, Maintenance and Repair of the Power Plant

On and after the Commencement Date, the PROJECT COMPANY and the LEAD OPERATOR, in combination with each other in the manner herein described, shall operate, manage, maintain and repair the Power Plant on the terms and conditions set forth in this Agreement and Schedules attached hereto

SECTION 2.2: Irrevocable Performance Letter of Credit/Annually Renewable Performance Bond/Labour and Materials Bond

- (a) On or prior to the Commencement Date, and thirty (30) days prior to each anniversary of Commencement Date, the LEAD OPERATOR shall submit to the PROJECT COMPANY (i) an irrevocable performance letter of credit specifically encumbered to the PROJECT COMPANY; (ii) an annually renewable performance bond; or (iii) a combination thereof; each of which shall be in the amounts and substantially in form and substance as set forth in Schedules 1 The LEAD OPERATOR shall also provide a labour and materials payment bond, which shall be obtained from a surety that is authorized to do business in Nigeria if applicable, the irrevocable performance letter of credit and/or the annually renewable performance bond shall be issued by a bank that is rated in one of the two highest rating categories by Standard & Poor's Corporation and/or Moody's Investors Service or a surety provider, as applicable

- (b) The amount of the irrevocable performance letter of credit, as applicable, and the annually renewable performance bond, as applicable, shall be provided in an amount equal to 100% of the annual cost to provide the Services (which amount shall be calculated by the PROJECT COMPANY, initially, on or prior to the Contract Date and, annually, thereafter) The irrevocable letter of credit and/or the annually renewable performance bond shall be substantially in the form set forth in Schedules 1 attached here, etc.
- (c) The failure of the LEAD OPERATOR to provide the annually renewable performance bond, the irrevocable performance letter of credit, and/or the labour and materials payment bond (or such other substitute as authorized by the PROJECT COMPANY in writing) in the amounts and at the times provided herein shall entitle the PROJECT COMPANY to terminate this Agreement upon three (3) days prior written notice to the LEAD OPERATOR and to seek any damages and/or remedies available at law or in equity

SECTION 2.3: Operations Committee.

The PROJECT COMPANY and the LEAD OPERATORS shall establish a formal Operations Committee, which shall meet every three (3) months to discuss issues related to the operation, management, maintenance and Repair of the Power Plant; to receive and review reports; and to confer generally as a means of enhancing communication between the PROJECT COMPANY and the LEAD OPERATOR in addition to such quarterly meetings, representatives of the LEAD OPERATOR shall be available to meet with the Board of Director of the PROJECT COMPANY or their authorized representatives as reasonably requested by the PROJECT COMPANY. In addition, the Operations Committee shall utilize its best efforts to resolve any disputes that may arise between the parties during the term of this Agreement. If disputes are not resolved through negotiations of the parties, either party may pursue its remedies in a court of competent jurisdiction or other applicable venue.

ARTICLE III TERM

SECTION 3.1: Term

The Term of this Agreement shall commence on the Commencement Date and, unless earlier terminated in accordance with the terms hereof, shall expire on the fifth anniversary date of the Commencement Date, and subject to such extension as is contemplated in Section 3.2, Extension.

SECTION 3.2: Extension

This Agreement may be extended by the parties her eta upon terms mutually acceptable consistent with applicable law. The PROJECT COMPANY shall notify the LEAD OPERATOR, in writing, of its desire to extend the Agreement prior to the expiration of the original Term or of any extension period such notice shall identify the period of the

proposed extension and any proposed modifications to the terms and conditions of this Agreement that would be effective during such extension period. The LEAD OPERATOR, herein represented by the LEAD OPERATOR, shall respond in writing to the PROJECT COMPANY's request for an extension within thirty (30) days of the PROJECT COMPANY's notice requesting an extension, which response shall specify the LEAD OPERATOR's acceptance projection of the PROJECT COMPANY's proposed modifications, if any. Notwithstanding the foregoing, the PROJECT COMPANY shall not be obligated to extend or modify this Agreement beyond its original Term.

ARTICLE IV CONDITIONS PRECEDENT

SECTION 4.1: General.

The issuance of a notice to proceed and the establishment of the Commencement Date shall be subject to the satisfaction or waiver of the conditions precedent set forth in this Article IV hereof

SECTION 4.2: Conditions Precedent to the PROJECT COMPANY's Obligations.

The PROJECT COMPANY shall be under no obligation to perform any obligations under the terms of this Agreement (other than those obligations arising or relating to actions required to be taken by or on behalf of the PROJECT COMPANY pursuant to Article IV prior to issuance of the Notice to Proceed) unless the following conditions have been satisfied (or waived by the PROJECT COMPANY, (in writing):

- (a) The Board, the Division and the Department shall have approved this Agreement;
- (b) The LEAD OPERATOR, hereinafter referred to as MDA CAPITALINVEST, a.s., shall have paid a 2% Performance Bond of the Operations Management Fee (OMF) to the PROJECT COMPANY;
- (c) The LEAD OPERATOR, hereinafter referred to as the Manager and the Lead Operator, and the Project Guarantor shall have been validly organized and created and shall be validly existing under the laws of the jurisdiction in which each was incorporated and is authorized to transact business in Nigeria if applicable, as evidenced by delivery of:
 - (1) certified copies of the Certificate of Incorporation and the Certificate of Good Standing and certification of the Nigerian Authorities that it is authorized to do business in Nigeria;
 - (2) an opinion of counsel to the LEAD OPERATOR and the Project Guarantor to such effect; and

- (3) such other documentation as the PROJECT COMPANY may reasonably require to evidence satisfaction of the requirements set forth in this subparagraph
- (d) The LEAD OPERATOR shall have delivered the Project Guarantor Agreement(s) to the PROJECT COMPANY, and such Project Guarantor Agreement(s) shall be duly executed and delivered by the duly authorized and proper corporate officers of the Project Guarantor(s);
- (e) Each OPERATOR shall have delivered to the PROJECT COMPANY (1) a certificate of an authorized officer, dated the Commencement Date, to the effect that each of the representations of each OPERATOR, that are set forth in this Agreement are true and correct as if made on such date, and (2) an opinion of counsel to LEAD OPERATOR and the Project Guarantor(s), in a form which is satisfactory to the PROJECT COMPANY and the Financier, to the effect set forth in Section 5.2 hereof.
- (f) Each OPERATOR, its employees and/or its subcontractors, as applicable, shall have obtained all applicable Permits, licenses and authorizations that are necessary for the operation, management, maintenance and repair of the Power Plant.
- (g) The LEAD OPERATOR shall have submitted to the PROJECT COMPANY and the Financier all certificates of insurance and, at the PROJECT COMPANY's Opinion, copies of all applicable endorsements to insurance policies, as are required by the term of this Agreement for operation, management, maintenance and repair of the Power Plant.
- (h) The LEAD OPERATOR and the Project Guarantor shall have delivered an Opinion of Counsel to the effect that no (reasonably foreseeable) material action, suit, proceeding or official investigation shall have been threatened, publicly announced or commenced by any federal, state or local governmental authority or agency, or in any federal, state or local court, that seeks to enjoin, assess civil or criminal penalties against, assess civil damage against or obtain any judgment, order or consent decree with respect to the OPERATORS or the Project Guarantor or to any of the agreements that are referred to in this Section as a result of the OPERATORS' negotiation, execution, delivery or performance of any such agreement or its participation or intended participation in any transaction contemplated thereby.
- (i) No receiver, liquidator, custodian or trustee of the OPERATORS or the Project Guarantor or of a major part of either entity's property shall have been appointed subsequent to the Contract Date, and no petition to reorganize the OPERATOR or the Project Guarantor pursuant to the Nigeria Bankruptcy Code or any similar statute that is applicable to the OPERATORS or the Project Guarantor shall have been filed; and no adjudication of bankruptcy or a filing for voluntary bankruptcy under the provisions of the Nigeria Bankruptcy Code or any other similar statute

which is applicable to the OPERATORS or the Project Guarantor shall have been filed.

- (j) No indictment has been returned against any officer of the Operator or the Project Guarantor with respect to any business transaction, whether or not related to the transactions contemplated by the terms and conditions of this Agreement.
- (k) The Minimum Financial Criteria set forth in Schedule 1 have been, and continue to be, satisfied as of the Contract Date. The entity for which the Minimum Financial Criteria will be measured will be the Respondent, United Utilities Overseas Holdings, and financial information required to be provided by the Project Guarantors, if any, shall only be provided by United Utilities Overseas Holdings.
- (l) No change shall have occurred subsequent to the Contract Date and on or prior to the Commencement Date or in any applicable federal, State or local law, or any applicable federal, State or local state, regulation thereunder or written interpretation thereof by any applicable regulatory authority, that would make the execution or delivery by either party of this Agreement or the compliance by the PROJECT COMPANY with the terms and conditions hereof or the consummation by the PROJECT COMPANY of the transactions contemplated hereby, a violation of such law, statute or regulation.

SECTION 4.3: Conditions Precedent to OPERATORS' Obligations

The OPERATORS shall be under no obligation to perform any obligations under the terms of this Agreement (other than obligations arising or relating to actions required to be taken by or on behalf of the OPERATORS pursuant to Article IV prior to issuance of the Notice to Proceed) unless the following conditions have been satisfied (or waived by the OPERATORS (in writing):

- (a) The Board, the Division and the Department shall have reviewed and/or approved this Agreement, as applicable.
- (b) The PROJECT COMPANY shall have delivered to the Operator (1) a certificate of an authorized officer of the PROJECT COMPANY, dated the Commencement Date, to the effect that each of the representations of the PROJECT COMPANY that are set forth in Section 5.1 hereof are true and correct as if made on such date.
- (c) No material action, suit, proceeding or official investigation shall have been threatened, publicly announced or commenced by any federal, State or local governmental authority or agency, or in any federal, State or local court, that seeks to enjoin; assess civil or criminal penalties against; assess civil damage against or obtain any judgment, order or consent decree with respect to the PROJECT COMPANY or to any of the agreements that are referred to in this Section as a result of the PROJECT COMPANY's negotiation, execution, delivery or performance of any such agreement or its participation or intended participation in any transaction contemplated thereby.

- (d) No change shall have occurred subsequent to the Contract Date in any applicable federal, State or local law, or any applicable federal, State or local statute or regulation thereunder or written interpretation thereof by any applicable regulatory authority, that would make the execution or delivery by either party to this Agreement (or the execution or delivery by the Project Guarantor of the Project Guarantor Agreement) the compliance by the OPERATORS or the Project Guarantor with the terms and conditions hereof or the consummation by the OPERATORS or the Project Guarantor of the transactions contemplated hereby, a violation of such law, statute or regulation.
- (e) Except as previously disclosed, no change shall have occurred subsequent to the Contract Date and prior to Commencement Date, in the financial condition of the PROJECT COMPANY, which would materially and adversely affect for a substantial period of time the ability of the PROJECT COMPANY to meet its financial obligations under the Agreement.

SECTION 4.4: Satisfaction of Conditions Precedent.

- (a) The parties hereto shall exercise good faith and due diligence *in* satisfying the conditions precedent required by this Article IV and shall promptly proceed to perform or cause to be performed those conditions precedent, or portions thereof; that are within each party's control.
- (b) If the Commencement Date has not occurred on or prior to one hundred twenty days (120) after the Contract Date, the period in which the conditions precedent can be satisfied or waived may be extended by *joint* agreement of the PROJECT COMPANY and LEAD OPERATOR, for a period of time to be agreed upon by the PROJECT COMPANY and LEAD OPERATOR, on the same terms and conditions set forth in this Agreement, except to the extent expressly provided below.
- (c) In the event that the Commencement Date shall not have occurred on or before the one hundred twentieth (120th) day after the Contract Date or prior to the last day of any extension period elected pursuant to Section 4A(b), then either party, by notice in writing to the other party, may terminate this Agreement. If the reason for such termination is the fault of neither party to the Agreement, then all amounts paid by the LEAD OPERATOR to the PROJECT COMPANY prior to such termination shall be returned to the LEAD OPERATOR (without interest) and each party shall bear its respective expenses attributable to the Agreement. Because the amount of damages are unascertainable if termination is the result of the fault of the OPERATOR OPERATOR for failure to meet conditions precedent within its reasonable control, and through the exercise of reasonable due diligence, then the PROJECT COMPANY shall be entitled to a € _____ liquidated damages payment. Failure of the LEAD OPERATOR to secure third-party lender project financing (based on revenues of this Agreement) needed to fund payments required of the LEAD OPERATORS on or before the Commencement Date as a result of materially adverse and different market conditions than that, which existed as of _____ March, 2015 shall not give rise to a claim of liquidated damages if the LEAD

OPERATOR have proceeded in good faith to secure such financing but is unsuccessful in securing it.

- (d) The LEAD OPERATOR and the PROJECT COMPANY shall each provide an executed acknowledgment to the other of the date that the respective conditions precedent to its obligations under this Agreement have been met or waived and such acknowledgment shall be given within thirty (30) days of the date on which the last such condition is met or waived. Neither party will be permitted to terminate this Agreement for failure to satisfy any condition precedent that is entirely and reasonably within such party's control or which failure is determined to be PROJECT COMPANY fault or LEAD OPERATOR fault, as the case may be.

ARTICLE V REPRESENTATIONS AND WARRANTIES

SECTION 5.1: PROJECT COMPANY's Representations and Warranties.

The PROJECT COMPANY hereby represents and warrants to the LEAD OPERATOR as follows:

- (a) The PROJECT COMPANY is a Nigerian energy corporation duly created and existing pursuant to the laws of the Federal Republic of Nigeria. The PROJECT COMPANY has the requisite power and authority to enter into this Agreement.
- (b) The PROJECT COMPANY has the legal capacity and authority to develop, build, own and operated Independent Power Plant (IPP) and distribute electric energy as to residential, commercial and industrial consumers in compliance with the rules and regulations of the Nigerian Electricity Regulatory Commission (NERC). The PROJECT COMPANY has and will maintain for the Term of this Agreement the legal capacity and authority to impose liens for the non-payment of the established electric energy supply rates and fees, there are no liens, notes, bonds, mortgages, encumbrances, or other entitlement to the revenues of the Power Plant (other than connection fees, if any, which shall be retained by the PROJECT COMPANY), which have priority over the LEAD OPERATOR's entitlement to the revenues of the Power Plant pursuant to this Agreement.
- (c) Other than that disclosed to the LEAD OPERATOR in writing referring to this Section, the PROJECT COMPANY is not aware of any claims, suits, actions, or judgments which, if successful, would create an encumbrance upon the revenues of the Power Plant which would have a priority over the OPERATOR's entitlement to be paid from the revenues of the Power Plant pursuant to this Agreement or which otherwise would have a material adverse effect on the ability of either the LEAD OPERATOR or the PROJECT COMPANY to perform its obligations hereunder.
- (d) The PROJECT COMPANY has enacted, or will have enacted by the Commencement Date, all Nigerian laws, ordinances, or regulations necessary for the performance of this Agreement.

SECTION 5.2: OPERATORS Representations and Warranties**5.2.1 LEAD OPERATOR Representations and Warranties**

The LEAD OPERATOR represents and warrants to the PROJECT COMPANY as follows:

- (a) The LEAD OPERATOR is an entity duly organized and validly existing and in good standing in Czech Republic and is qualified and authorized to do business in the Federal Republic of Nigeria.
- (b) The LEAD OPERATOR has full power and authority to enter into this Agreement and to perform its duties and obligations hereunder. This Agreement has been duly authorized, executed and delivered by the LEAD OPERATOR and the authorization, execution, delivery and performance of this Agreement by the LEAD OPERATOR will not violate any law, judgment, order, ruling or regulation applicable to the LEAD OPERATOR and does not constitute a breach of or default under any agreement or instrument by which the LEAD OPERATOR is bound.
- (c) The LEAD OPERATOR has or holds, or will have or hold as of the Commencement Date, and will continue to have or hold throughout the term of this Agreement, all approvals, licenses, Permits, and certifications necessary to operate, manage, maintain and repair the Power Plant in accordance with the terms and provisions of this Agreement, and competent and experienced personnel on its staff who have direct experience in operating; managing, maintaining and repairing the Power Plant.
- (d) No litigation is pending or threatened (or reasonably foreseeable) against the LEAD OPERATOR, which would impair its ability to perform its duties and obligations under this Agreement.
- (e) At all times during the term of this Agreement, after the Commencement Date, the LEAD OPERATOR shall keep the Power Plant and all components thereof free from any and all liens and encumbrances arising out of or in connection with its operation, management, maintenance and repair or any acts, omissions or debts of the LEAD OPERATOR, its parent, any of its affiliates or subsidiaries, or any of its subcontractors.
- (f) At all times during the term of this Agreement, the LEAD OPERATOR and/or Project Guarantor shall meet and maintain the Minimum Financial Criteria, as set forth in Schedule 1, and will maintain on and after the Commencement Date, the irrevocable performance letter of credit and/or the annually renewable performance bond.

5.2.2 ISTROENERGO INTERNATIONAL, A.S. (IEI) Representations and Warranties

The ISTROENERGO INTERNATIONAL, A.S. (IEI) represents and warrants to the PROJECT COMPANY as follows:

- (a) The ISTROENERGO INTERNATIONAL, A.S. (IEI) is an entity duly organized and validly existing and in good standing in Slovak Republic and is qualified and authorized to do business in the Federal Republic of Nigeria.
- (b) ISTROENERGO INTERNATIONAL, A.S. has full power and authority to enter into this Agreement and to perform its duties and obligations hereunder. This Agreement has been duly authorized, executed and delivered by ISTROENERGO INTERNATIONAL, A.S. and the authorization, execution, delivery and performance of this Agreement by ISTROENERGO INTERNATIONAL, A.S. will not violate any law, judgment, order, ruling or regulation applicable to ISTROENERGO INTERNATIONAL, A.S. and does not constitute a breach of or default under any agreement or instrument by which ISTROENERGO INTERNATIONAL, A.S. is bound.
- (c) ISTROENERGO INTERNATIONAL, A.S. has or holds, or will have or hold as of the Commencement Date, and will continue to have or hold throughout the term of this Agreement, all approvals, licenses, Permits, and certifications necessary to operate, manage, maintain and repair the Power Plant in accordance with the terms and provisions of this Agreement, and competent and experienced personnel on its staff who have direct experience in operating; managing, maintaining and repairing the Power Plant.
- (d) No litigation is pending or threatened (or reasonably foreseeable) against the ISTROENERGO INTERNATIONAL, A.S., which would impair its ability to perform its duties and obligations under this Agreement.
- (e) At all times during the term of this Agreement, after the Commencement Date, ISTROENERGO INTERNATIONAL, A.S. shall keep the Power Plant and all components thereof free from any and all liens and encumbrances arising out of or in connection with its operation, management, maintenance and repair or any acts, omissions or debts of the ISTROENERGO INTERNATIONAL, A.S., its patent, any of its affiliates or subsidiaries, or any of its subcontractors.
- (f) At all times during the term of this Agreement, ISTROENERGO INTERNATIONAL, A.S. and/or Project Guarantor shall meet and maintain the Minimum Financial Criteria, as set forth in Schedule 1, and will maintain on and after the Commencement Date, the irrevocable performance letter of credit and/or the annually renewable performance bond.

ARTICLE VI

OPERATION, MANAGEMENT, MAINTENANCE AND REPAIR OF THE POWER PLANT

SECTION 6.1: General

- (a) On and after the Commencement Date and throughout the term of this Agreement, the OPERATORS shall operate, manage, maintain and repair the Power Plant at all

times on behalf of the PROJECT COMPANY and shall perform the Services in a professional, efficient and economical manner and in accordance with the terms and provisions set forth in this Agreement and in accordance with the Schedules attached hereto. In addition, the OPERATORS shall perform the Services in compliance with all federal, State and local laws, and the NERC's regulations, permits and requirements.

- (b) The total cost of all Services outlined in this Agreement and in the Schedules shall be included in the Fixed Management Fee, to be paid to the OPERATORS in accordance with Schedule 6. Although the Schedules address the major activities required to be performed by the OPERATORS, they are not, however, intended to include all specific activities that are necessary for meeting the performance requirements set forth in this Agreement, the Schedules, and the Operation and Maintenance (O&M) Plan and in no way do they limit the generality of the Services under this Agreement.

SECTION 6.2: Maintenance Management Program

- (a) The operators shall develop, implement and maintain a comprehensive computer-based maintenance management program for all components and systems of the Power Plant, in accordance with Schedule 3 of this Agreement.
- (b) Maintenance shall be performed by the operators in accordance with the terms and provisions of this Agreement, the O&M Plan, routine maintenance schedule, manufacturers' recommendations, federal, State and local requirements, and industry standards. The operators shall maintain documentation of all maintenance activities.

SECTION 6.3: Analytical Services

The operators shall perform testing, sampling and any other analytical procedures to demonstrate compliance with this Agreement, applicable regulatory requirements, and Permit provisions, in accordance with Schedule 3 of this Agreement.

SECTION 6.4: Administrative Consent Orders

The operators shall be responsible for operation, management, maintenance and repair of the Power Plant in compliance with all Permits and Administrative Consent Orders (ACOs), in accordance with Schedule 3 of this Agreement.

SECTION 6.5: Equipment and Chemicals

- (a) The operators shall keep all equipment in good operating condition and maintain and operate all equipment and chemicals and perform all tests and testing, in accordance with Schedule 3 of this Agreement.

- (b) All equipment, and chemicals provided by the PROJECT COMPANY or by the Lead Operator on behalf of the PROJECT COMPANY on and after the Commencement Date, including any equipment and chemicals on order, shall be deemed to be owned by the PROJECT COMPANY and shall remain a part of the Power Plant upon termination or expiration of this Agreement.

SECTION 6.6: Vehicle Maintenance

The operators shall operate, maintain and store the vehicles provided in Schedule 1 of this Agreement, and/or any additional equipment provided by the Operator, in accordance with Schedule 3 of this Agreement

SECTION 6.7: Buildings and Grounds Services

The operators shall maintain the current condition of the Power Plant and maintain the facilities and facilities' structures in accordance with Schedule 3 of this Agreement.

SECTION 6.8: Utilities

As of the Commencement Date, the operators shall be responsible for supplying and paying for all utilities in accordance with Schedule 3 of this Agreement.

SECTION 6.9: Planning

The operators shall be responsible for supporting the PROJECT COMPANY's short and long-term planning for the Power Plant, and for development and implementation of all planning documents as required by federal, State and local regulations and requirements, in accordance with Schedule 3 of this Agreement.

SECTION 6.10: Economic Development

The operators shall provide all reasonable services requested by the PROJECT COMPANY or potential developers or others regarding potential development or rehabilitation within the Power Plant.

SECTION 6.11: Permits

The operators shall maintain continuous compliance with all federal, State and local Permits held by the PROJECT COMPANY related to the Power Plant, and obtain any Permits (federal, State or local) required to operate, maintain, or enhance the Power Plant over the term of this Agreement.

SECTION 6.12: Wastes Management

The operators shall perform collection and delivery of all wastes from within the Power Plant to State-approved disposal facilities, in accordance with Schedule 3 of this Agreement.

SECTION 6.13: Water System

- (a) The operators shall operate, maintain and manage the Water System in accordance with Schedule 3 of this Agreement, and in compliance with all federal, State and local laws, regulations and requirements and in conformance with applicable Permits.
- (b) The operators shall perform raw water monitoring in conformance with all federal, State and local laws, regulations and requirements, and in accordance with Schedule 3 of this Agreement.
- (c) The operators shall maintain and monitor the wells located within the Power Plant in accordance with all federal, State and local laws, regulations and requirements, and in accordance with Schedule 3 of this Agreement.
- (d) The operators shall provide treated water in quantities meeting the production and quality requirements specified in Schedule 3 of this Agreement.
- (e) The operators shall routinely monitor, calibrate, repair and/or replace all existing flow meters; periodically remove accumulated iron and manganese deposits from exposed equipment surfaces and unit processes; operate the solids handling and residuals disposal system in accordance with all federal, State and local laws, regulations and requirements, and in accordance with Schedule 3 of this Agreement; and shall furnish all labour, materials, equipment and incidentals required to repair or replace, and then to continuously maintain, the integrated Water Treatment Plant, all in accordance with Schedule 3 of this Agreement.
- (f) The operators shall perform process and finished water monitoring in conformance with all federal, State and local laws, regulations and requirements, and in accordance with Schedule 3 of this Agreement.

SECTION 6.14: Water Distribution and Storage

- (a) The operators shall repair or replace all water mains, which become frozen or broken, in accordance with Schedule 3 of this Agreement.
- (b) The operators shall propose and implement a valve-exercising program to address those valves deemed to be critical to the Water System's operation.
- (c) The operators shall flush all hydrants and water mains, record the condition and maintenance of the hydrants, and replace the hydrants, in accordance with Schedule 3 of this Agreement.
- (d) The operators shall operate the treatment plant and pumping facilities needed to maintain distribution system water pressure at all locations and under all conditions in accordance with Schedule 3 of this Agreement.

- (e) The operators shall cooperate and assist Fire and Police Department personnel or their representatives in times of fire or other emergencies in accordance with Schedule 3 of this Agreement.
- (f) The operators shall maintain, monitor and control water capacity in all storage tanks, in accordance with Schedule 3 of this Agreement.
- (g) The operators shall read, test, calibrate and repair meters in accordance with Schedule 3 of this Agreement.
- (h) The operators shall replace all commercial, industrial and residential meters in accordance with Schedule 3 of this Agreement.
- (i) The operators shall install meters in accordance with Schedule 3 of this Agreement.
- (j) The operators shall maintain the existing radio based communications system accordance with Schedule 3 of this Agreement.
- (k) The operators shall perform distribution system monitoring and notification in conformance with all federal, State and local laws, regulations and requirements and in conformance with applicable Permits, as currently performed by the PROJECT COMPANY, and in accordance with Schedule 3 of this Agreement.
- (l) The operators shall meet the distribution system operating requirements in accordance with Schedule 3 of this Agreement.

SECTION 6.15: Wastewater Collection System

- (a) The majority of all wastewater and a portion of the storm water generated within the Power Plant and the Free Trade Zone (FTZ) is conveyed via interceptor sewer facilities to the FTZ No 1 Wastewater Treatment Plant owned and operated by XENERGI, where same is treated in accordance with an existing contract. Dedicated storm water sewers discharge directly to the Orji River. The operators shall comply with all provisions, amendments and revisions of said contract (including any fees and/or payments up to an annual aggregate amount of € _____). The operators shall also operate the Wastewater Collection System in conformance with all requirements of said contract, including prohibited discharges and assistance with industrial pretreatment programs, in accordance with Schedule 3 of this Agreement.
- (b) The operators shall operate, maintain and manage the Wastewater Collection System in accordance with this Agreement and Schedule 3 of this Agreement
- (c) The operators shall maintain an accurate inventory of the Wastewater Collection System, in accordance with Schedule 3 of this Agreement

- (d) The operators shall provide, at its sole cost and expense, all labour, materials, machinery, vehicles and equipment necessary to make repairs, in accordance with Schedule 3 of this Agreement.
- (e) The operators shall clean all manholes, catch basins and collection and interceptor sewers and perform CCTV inspections, in accordance with Schedule 3 of this Agreement.
- (f) Based on the CCTV inspection, the operators shall develop and implement a program to facilitate repair of sewer piping and connections on the street side of the curb line, and prepare a list of abandoned service connections in accordance with Schedule 3 of this Agreement.
- (g) The operators shall inspect and maintain all the Power Plant's components and systems in accordance with industry standards, manufacturer's material recommendations (provided that operators shall undertake all maintenance to ensure effectiveness of all warranties, licenses and permits) and field conditions unique to the individual facility, and Schedule 3 of this Agreement.
- (h) The operators shall develop a Pumping Station Rehabilitation Program in accordance with Schedule 3 of this Agreement.
- (i) The operators shall clean and maintain all regulators, weirs, floodgates and outfalls (CSO Equipment), in accordance with Schedule 3 of this Agreement.
- (j) The LEAD OPERATOR shall furnish all labour, materials, equipment and incidentals required to remove and properly dispose of the residuals/debris collected at the pump stations, overflow structures or through cleaning of the Wastewater Collection System in accordance with the requirements of all applicable federal, State and local regulations, and in accordance with Schedule 3 of this Agreement.
- (k) The LEAD OPERATOR shall coordinate with a designated person responsible for the FTZ's Industrial Pretreatment Program (IPP) and notify PROJECT COMPANY regarding known and/or suspected illegal discharges, in accordance with Schedule 3 of this Agreement.
- (l) The LEAD OPERATOR shall develop and implement a preventive maintenance program for the Wastewater Collection System in accordance with Schedule 3 of this Agreement.

SECTION 6.16: Wastewater Collection System Monitoring and Notification Requirements

The operators shall perform system monitoring in conformance with all federal, State and local regulations and in conformance with applicable Permits, and comply at all times with the State's Conditions for Notification, in accordance with Schedule 3 of this Agreement.

SECTION 6.17: Operation and Maintenance Costs

The OPERATORS shall provide, at its sole cost and expense, all labour, materials, machinery, vehicles, storage areas, equipment, office equipment (i.e., copiers, computers, etc.), fuel, chemicals, supplies, materials, spare parts, expendables, consumables, testing and laboratory analysis, and any other items required for the OPERATORS to perform the Services, in accordance with the terms and provisions of this Agreement and the Schedules attached hereto.

SECTION 6.18: Operations Review

The PROJECT COMPANY shall have the right to and intends to exercise its right to actively participate in the review of Services performed by the operators and any subcontractor throughout the term of this Agreement.

SECTION 6.18.1: Monthly Progress Report

The LEAD OPERATOR shall prepare and submit Monthly Progress Reports regarding the Services for submission to the PROJECT COMPANY in accordance with Schedule 3 of this Agreement.

SECTION 6.18.2: Access to Power Plant 2nd Records.

- (a) The PROJECT COMPANY and/or its authorized agents and representatives from the governing regulatory agency (e.g. NERC) reserve the right to visit or inspect the Power Plant at any time, in accordance with Schedule 3 of this Agreement.
- (b) The PROJECT COMPANY and/or its authorized agents and representatives shall perform an annual inspection of the Power Plant, in accordance with Schedule 3 of this Agreement.
- (c) The LEAD OPERATOR shall maintain all records of operating data and information relevant to the Power Plant, including accounting and financial records, and provide the PROJECT COMPANY access to all such records upon request, in accordance with Schedule 3 of this Agreement.
- (d) The LEAD OPERATOR shall maintain a computerized recordkeeping system for all operation and maintenance functions performed, in accordance with Schedule 3 of this Agreement. The LEAD OPERATOR shall provide the PROJECT COMPANY, upon request, with copies of all operating data, accounting, financial and other information kept by the LEAD OPERATOR in accordance with Schedule 3 of this Agreement.

SECTION 6.18.3: Meeting

The PROJECT COMPANY and the OPERATORS shall meet on a monthly basis to discuss performance of services, maintenance issues, equipment conditions,

environmental and Permit compliance, invoicing issues, public relations and other relevant issues, in accordance with Schedule 3 of this Agreement.

SECTION 6.18.4: Audit of the Power Plant and Review at Expiration of Agreement

A complete Power Plant audit to determine the condition of the Power Plant shall be conducted within Sixty (60) days of the Commencement Date and periodically thereafter, but in no case less than every five years, throughout the term of this Agreement, in accordance with Schedule 3 of this Agreement

SECTION 6.19: Operations and Maintenance Plan

- (a) The LEAD OPERATOR shall prepare and submit to the PROJECT COMPANY for approval three separate comprehensive O&M Plans for the Power Plant and the Billing and Collection Service, in accordance with Schedule 3 of this Agreement.
- (b) The O&M Plan shall dedicate a separate section to detail the LEAD OPERATOR's major maintenance, repair and replacement program, in accordance with Schedule 3 of this Agreement. The operators shall make and complete all major maintenance, Repairs and replacements to the Power Plant's components and systems, which are necessary to achieve such standard of repair and replacement by performing all such listed activities within the timeframe indicated in the O&M Plan.

SECTION 6.20: Continuous Operation

During the Term of this Agreement, the operators shall continue to operate and maintain the Power Plant and its components and systems, including the Water System, Wastewater Collection System facilities and the Electricity Distribution Network on a continuous basis, twenty-four hours a day, seven days a week, in accordance with the terms and provisions of this Agreement, and in compliance with all applicable Permits and other federal, State, and local requirements.

SECTION 6.21: Continuity of Service

The LEAD OPERATOR shall cooperate in good faith with the PROJECT COMPANY, its agents, contractors, and subcontractors and shall provide for the orderly transition of services from the PROJECT COMPANY and/or its contractors to the LEAD OPERATOR without interruption or disruption of Services and without adverse impacts to customers of the Power Plant or the PROJECT COMPANY, in accordance with Schedule 3 of this Agreement,

SECTION 6.22: Customer Services and Emergency Response

The LEAD OPERATOR shall respond promptly (within 2 hours) -- to the extent practicable and in a reasonable manner to all customer problems and emergencies pertaining to the Power Plant in accordance with Schedule 3 of this Agreement.

SECTION 6.23: Staffing

- (a) The operators shall provide a staff of qualified and experienced employees who have direct experience in operating, maintaining and managing and Power Plant and its components and systems, for operations, maintenance and management procedures, and shall provide such additional third-party support as may be needed to perform its duties and obligations hereunder, in accordance with Schedule 6 and Schedule 3 of this Agreement.
- (b) The operators at all times shall maintain the necessary number of employees, staff and third-party contractors to operate, maintain and manage the Power Plant in accordance with the terms and provisions of this Agreement, to adequately maintain the Power Plant and its components and systems in good repair and to adequately operate the Power Plant to provide good service to the customers, and protect the health, welfare and safety of the citizens of the Enugu State.

SECTION 6.24: Licenses

The operators shall acquire and hold, or cause its personnel to acquire and hold, all required State, federal and local approvals, licenses, Permits, and certifications necessary to operate, maintain and manage the Power Plant and its components and systems in accordance with the terms and provisions of this Agreement.

SECTION 6.25: Compliance with Laws and Regulations and Permits

- (a) The operators shall comply Nigerian Power Reform Act 2005, the Comprehensive Environmental Response, Compensation and Liability Act as amended ("CERCLA"), Occupational Safety and Health Act ("OSHA") and any other applicable local, State and federal laws, codes, ordinances and regulations as they pertain to the Power Plant's components and systems and their operation. The operators shall pay all regulatory fines and penalties, without limitation, assessed against the PROJECT COMPANY and/or the operators for non compliance resulting from the actions, or lack of action, required pursuant to the terms and conditions of this Agreement, of the operators, throughout the duration or the Term of this Agreement.
- (b) The operators shall comply with and shall satisfy, and shall pay all costs or fees associated with, all regulatory requirements pertaining to the above including, but not limited to, public notification in the event of non-compliance with power generation and distribution standards.
- (c) The operators shall comply with all applicable state, federal and local laws, regulations and ordinances including, without limitation, all environmental laws and regulations as they apply to the Power Plant and will comply with all Permits issued for or with respect to the Power Plant. The operators will maintain existing Permits (currently held by the PROJECT COMPANY) and will pay all costs associated therewith, including annual fees. In the event that during the Term of this

Agreement, any existing Permit must be renewed, or additional Permits are required, the operators shall be responsible for obtaining, including filling out required application forms, supplying required data, and payment of required fees for such Permits or Permit renewals. All additional and renewed Permits shall be in the name of the PROJECT COMPANY, as the permittee. The costs associated with obtaining additional permits not currently required to operate the Power Plant shall be treated as a Pass-through Charge to the PROJECT COMPANY.

- (d) On and after the Commencement Date, the operators shall operate the Power Plant in compliance with all laws and Permits as is required by the terms and provisions of this Agreement. The operators shall indemnify and hold the PROJECT COMPANY harmless from any fines or penalties assessed by the regulatory agencies during the Term of this Agreement for any and all violations of applicable laws, regulations or Permits committed by the negligent or wilful acts or failure to act of the operators, its agents, servants or employees that are not a result of a pre-existing condition.
- (e) All Repairs to the Embedded Power Plant and its Integrated Electricity Distribution Network shall be made by the operators, using the generated incomes from the Power Plant, subject to Schedule 2, in accordance with existing PROJECT COMPANY ordinances for work in the Power Plant including, but not limited to, securing all necessary road opening permits.

SECTION 6.26. Safety and Security

- (a) The operators shall provide for and maintain security and safety for all the Plant's assets contemplated under this Agreement. Fences shall be maintained in neat order and structural integrity. Gates, access points and doors shall be kept locked, structures shall be protected from unauthorized entry and security alarms shall be maintained in good working order.
- (b) The operators shall conduct all operations, maintenance and management of the Power Plant in compliance with applicable health and safety regulations including, but not limited to, OSHA, general industry regulations including requirements for confined space entry, respiratory protection and hazard communication; FMENV regulations on emergency planning and notification under; and FMENV regulations on hazardous chemical reporting and community light-to-know.

SECTION 6.27: User Complaints

- (a) The operators shall contain and control noise and odours emitted from the Power Plant and shall take an active role in the community to improve the local residents' understanding of the operation of the Power Plant.
- (b) If the LEAD OPERATOR or the PROJECT COMPANY receives any complaints in relation to the level of odours or noise generated by the Power Plant, or any other matters related to the Power Plant, the party receiving the complaint shall notify the other party immediately. The LEAD OPERATOR shall immediately investigate the

complaint and, within three (3) days of the time of the notification of the complaint, prepare and provide to the PROJECT COMPANY for approval, its proposed action plan to remedy the complaint. Upon the PROJECT COMPANY's approval of the LEAD OPERATOR's action plans may be modified by the PROJECT COMPANY, the OPERATORS shall implement the action plan within a time period to be determined by the PROJECT COMPANY.

ARTICLE VII CAPITAL IMPROVEMENT

SECTION 7.1: PROJECT COMPANY Responsibilities

Unless otherwise agreed to by the PROJECT COMPANY and the OPERATORS, the PROJECT COMPANY shall be responsible for the design, construction, implementation and financing of Capital Improvements to the Power Plant. Notwithstanding anything in the Agreement to the contrary, the PROJECT COMPANY will design, construct and implement, at a minimum, two million dollars per year (€ _____ in the aggregate over the term of the Agreement) worth of capital upgrades to the Power Plant. Further, the PROJECT COMPANY, in conjunction with OPERATORS shall develop a long-term Capital Improvements Program within the first Twelve (12) months of Commencement Date in accordance with Schedule 1.

SECTION 7.2: OPERATORS Responsibilities

- (a) The OPERATORS shall be required to assist the PROJECT COMPANY in the implementation of all Capital Improvements to the Power Plant. The OPERATORS shall also be responsible for all Repairs to the Power Plant as specifically identified in Schedule 2. The OPERATORS, in consultation with the PROJECT COMPANY, shall within the first Twelve (12) months of commencement, develop a long-term Capital Improvement Program. In addition, the OPERATORS will be required to implement the Capital Improvements as described in Schedule 1 within Thirty Six (36) months of Commencement Date.
- (b) In the event the OPERATORS deem an element of work to be a Capital Improvement, the OPERATORS shall (i) immediately notify the PROJECT COMPANY or its consulting engineer of the need to perform such work; and (ii) provide the PROJECT COMPANY with an explanation of the reasons why such work is necessary. The PROJECT COMPANY shall determine if and how the Capital Improvement will be implemented, subject to Section 7.3.

SECTION 7.3: Emergencies or Improvements Required by Law

In the event that a Capital Improvement is required (i) in order to continue to provide electricity and water and wastewater service to the residential, commercial and industrial Facilities, which are located within and out of the EEL's Free Trade Zone, (ii) to be made to the Power Plant in order to comply with applicable federal, State or local law, or (iii) if the failure to make a Capital Improvement will jeopardize the health and safety of the

people residing within and out of EEL's Free Trade Zone or the public welfare, or materially and adversely affect the ability of the LEAD OPERATOR to perform its obligations under this Agreement, the PROJECT COMPANY shall be obligated to implement such Capital Improvement as soon as practicable under the circumstances.

ARTICLE VIII FINANCIAL TERMS

SECTION 8.1: Annual Service Fee

On the first day of the month next succeeding the Commencement Date, and on the first day of each month thereafter during the Term of this Agreement, the Trustee, on behalf of the PROJECT COMPANY, in accordance with Schedule 3, shall pay the LEAD OPERATOR one twelfth of the Annual Service Fee calculated in accordance with Schedule 6 of this Agreement

SECTION 8.2: Establishment and Collection of Rates Fees and Charges

- (a) The PROJECT COMPANY retains responsibility for setting electric energy collection rates and charges, in accordance with Schedule 6 of this Agreement. The OPERATORS shall implement revised rates and charges on a date specified by the PROJECT COMPANY within thirty (30) days after notification to the PROJECT COMPANY.
- (b) Effective on the Commencement Date, and as of each anniversary thereafter throughout the Term of this Agreement, the PROJECT COMPANY agrees, to the extent permitted by law, and in accordance with Schedule 6, to increase its rates for the supply electricity, water and wastewater services to customers of the PROJECT COMPANY to at least the rates required to cover the Annual Service Fee to be paid to the LEAD OPERATOR for Services provided
- (c) The LEAD OPERATOR shall be responsible for the collection of all connection fees in accordance with Schedule 6 of this Agreement.
- (d) The PROJECT COMPANY shall be the sole authority in determining and establishing the connection fees to be charged to new customers of the PROJECT COMPANY connecting with the Power Plant. All such connection fees shall be established in accordance with the established connections fees by the PROJECT COMPANY and pursuant to NERC's Rules and Regulations, and all other charges shall be established pursuant to PROJECT COMPANY ordinance. All such connection fees shall be paid to, and shall remain the property of the PROJECT COMPANY, including those connection fees paid after the Commencement Date of this Agreement.

SECTION 8.3: Expenses

The LEAD OPERATOR shall pay all expenses required for the normal operation, management, maintenance and repair of the Embedded Power Plant and its Integrated Electricity Distribution Network, including those Repairs and replacements set forth in Schedule 2 hereof.

SECTION 8.4: Billing and Collections

- (a) On and after the Commencement Date, the LEAD OPERATOR, as agent for the PROJECT COMPANY, shall be responsible for the preparation, maintenance, and delivery of all bills and invoices to the user's of the Power Plant and collection of Revenues and all costs and expenses associated therewith, in accordance with Schedule 4 of this Agreement. The LEAD OPERATOR shall operate the Billing and Collection Service in accordance with the specific performance standards of Schedule 4 of this Agreement.
- (b) The LEAD OPERATOR shall deposit all funds collected from the users or consumers into the PROJECT COMPANY Controlled Account from which the Trustee (or PROJECT COMPANY if no Trustee is appointed) will disburse funds to the LEAD OPERATOR and the PROJECT COMPANY pursuant to the terms of this Agreement.
- (c) The PROJECT COMPANY agrees to cooperate with the LEAD OPERATOR in collection matters and to use its statutory powers pertaining to any and all remedies granted to municipalities for purposes of collection.

8.4.1 Customer Services

The LEAD OPERATOR shall handle customer service and complaints relating to billing and collection matters in accordance with Schedule 4 of this Agreement. The LEAD OPERATOR shall promptly respond (within 24 hours or the next business day following a holiday or weekend) to all customer billing and collection questions, problems, and inquiries and shall maintain a toll free telephone number for customers of the Power Plant to handle such questions, problems and inquiries, as well as any emergencies, as may arise.

8.4.2 Collection Office

The LEAD OPERATOR shall provide, within the geographical limits of Enugu City, a centrally located collection office (such as a bank), where customers of the Power Plant may pay their bills during normal business hours Monday through Friday. The LEAD OPERATOR shall also provide a "drop box" for customer use to be located in the EEL's Free Trade Zone; however, the LEAD OPERATOR shall not be obligated to accept cash payments at the "drop box" located in the EEL's Free Trade.

8.4.3 Drinking Water Service Charges

The LEAD OPERATOR shall, at no cost or expense to the PROJECT COMPANY (other than payment of the Annual Service Fee), provide during the term of this Agreement water and wastewater service as provided in this Agreement to the consumers (residential, commercial and industrial) located within and out of the EEL's Free Trade Zone, including, but not limited to, the federal, state and local government facilities, police and fire departments.

SECTION 8.5: Deposit of Revenues

The LEAD OPERATOR shall deposit on a daily basis all revenues collected from the ratepayers of the Electric Energy, Water and Wastewater Systems into the PROJECT COMPANY Controlled Account maintained for the benefit of the PROJECT COMPANY at a local designated Bank, herein called the receiving bank. The Trustee of the PROJECT COMPANY Controlled Account (or PROJECT COMPANY if no Trustee is appointed) shall disburse monies in accordance with Schedule 4.

ARTICLE IX DEFAULT AND TERMINATION

SECTION 9.1 General Provisions

This Agreement may be terminated prior to its stated expiration date by the PROJECT COMPANY or the LEAD OPERATOR on the terms and conditions set forth in this Article IX. The rights of the PROJECT COMPANY and the LEAD OPERATOR to terminate this Agreement shall be strictly construed in accordance with the provisions of this Article IX.

SECTION 9.2: Termination for Cause by the PROJECT COMPANY

- (a) Upon the happening of any of the following event of default by the LEAD OPERATOR, the PROJECT COMPANY shall have the right to terminate this Agreement and/or to pursue a cause of action for actual damages, all as more fully described herein:
 - (1) the persistent and repeated failure by the LEAD OPERATOR to provide the Services in accordance with the terms and provisions of this Agreement, and/or applicable laws, rules and regulations;
 - (2) the failure of the LEAD OPERATOR to perform any of its material covenants, agreements, obligations and/or duties created by this Agreement;
 - (3) if any representation and/or warranty, which is not capable of cure is made by the LEAD OPERATOR that shall prove to be false and/or misleading in any material respect and the legality of this Agreement or the ability of the LEAD OPERATOR to carry out its duties and obligations under this Agreement is thereby materially and adversely affected;

- (4) the commencement of any bankruptcy, insolvency, liquidation and/or similar proceeding against the LEAD OPERATOR, its parent corporation or Guarantor(s) and which materially and adversely affects the LEAD OPERATOR's ability to perform its duties or obligations under this Agreement; the consent by the LEAD OPERATOR, or its parent to the appointment of and/or taking possession by a receiver, liquidator, assignee, trustee and/or custodian of the LEAD OPERATOR, its parent corporation(s) or Guarantor(s) and/or any substantial part of their respective assets which materially and adversely affects the LEAD OPERATOR ability to perform its duties or obligations under this Agreement; the making by the LEAD OPERATOR, and/or its parent corporation or Guarantor(s) of any assignment for the benefit of creditors which materially and adversely affects the LEAD OPERATOR ability to perform its duties or obligations under this Agreement; and/or the failure by the LEAD OPERATOR, its parent corporation or Guarantor(s) to generally pay its debts as they come due; or
- (5) the failure by the LEAD OPERATOR to make any payment required to be made by the LEAD OPERATOR pursuant to the terms of this Agreement.
- (b) Upon the happening of any event described in clause (1), (2) or (5) of paragraph (a) of Section 9.2, the PROJECT COMPANY shall provide written notice to the LEAD OPERATOR setting forth in detail the alleged failure and/or deficiency of the LEAD OPERATOR. The LEAD OPERATOR shall have thirty (30) days after receipt of such written notice from the PROJECT COMPANY to cure and/or correct such failure and/or deficiency or to deliver to the PROJECT COMPANY a written notice alleging that no such event described in clause (1) or (2) or (5) of subsection (a) of this Section 9.2 has occurred and setting forth in detail its reasoning as to why no such event has occurred. In the event that the OPERATORS do not cure and/or correct such failure and/or deficiency within said thirty (30) day period or deliver to the PROJECT COMPANY the written notice described in the preceding sentence within said thirty (30) day period, the PROJECT COMPANY shall provide the OPERATORS with a second written notice affording the LEAD OPERATOR an additional thirty (30) days to cure and/or correct such failure and/or deficiency. If the LEAD OPERATOR fail to cure and/or correct the failure and/or deficiency within such second thirty (30) day period, the PROJECT COMPANY shall be entitled to seek specific performance before a court of competent jurisdiction.
- (c) Upon the happening of any event described in clause (3) or (4) of paragraph (a) of this Section 9.2, the PROJECT COMPANY shall have the right to terminate this Agreement upon 30 days prior written notice to the LEAD OPERATOR.

SECTION 9.3: Termination for Cause by the LEAD OPERATOR

- (a) Upon the happening of any of the following events of default by the PROJECT COMPANY, the LEAD OPERATOR shall have the right to terminate this Agreement or pursue a cause of action, for actual damages, all as described herein:

- (1) the failure of the PROJECT COMPANY to perform any of its material covenants, agreements, obligations and/or duties created by this Agreement;
 - (2) if any representation and/or warranty which is not capable of cure is made by the PROJECT COMPANY that shall prove to be false and/or misleading in any material respect and the legality of this Agreement or the ability of the PROJECT COMPANY to carry out its duties and obligations under this Agreement is thereby materially and adversely affected;
 - (3) the commencement of any bankruptcy, insolvency, liquidation and/or similar proceeding against the PROJECT COMPANY, which materially and adversely affects the PROJECT COMPANY's ability to perform its duties or under this Agreement; the consent by the PROJECT COMPANY to the appointment of and/or taking possession by a receiver, liquidator, assignee, trustee and/or custodian of the PROJECT COMPANY, and/or any substantial part of its assets, which materially and adversely affects the PROJECT COMPANY's ability to perform its duties or obligations under this Agreement; the making by the PROJECT COMPANY of any assignment for the benefit of creditors which materially and adversely affects the PROJECT COMPANY's ability to perform its duties or obligations under this Agreement; and/or the failure by the PROJECT COMPANY to generally pay its debts as they come due.
- (b) Upon the happening of any event described in clause (1) or (2) of paragraph (a) of Section 9.3, the LEAD OPERATOR shall provide written notice to the PROJECT COMPANY setting forth in detail the alleged failure and/or deficiency of the PROJECT COMPANY. The PROJECT COMPANY shall have thirty (30) days after receipt of such written notice from the LEAD OPERATOR to cure and/or correct such failure and/or deficiency or to deliver to the LEAD OPERATOR a written notice alleging that no such event described in clause (1) or (2) of subsection (a) of this Section 9.3 has occurred and setting forth in detail its reasoning as to why no such event has occurred. In the event that the PROJECT COMPANY does not cure and/or correct such failure and/or deficiency within said thirty (.30) day period or deliver to the LEAD OPERATOR the written notice described in the preceding sentence within said thirty (30) day period, the LEAD OPERATOR shall provide the PROJECT COMPANY with a second written notice affording the PROJECT COMPANY an additional thirty (30) days to cure and/or correct such failure and/or deficiency. If the PROJECT COMPANY fails to cure and/or correct the failure and/or deficiency within such second thirty (30) day period, the LEAD OPERATOR shall be entitled to seek specific performance before a court of competent jurisdiction.
- (c) Upon the happening of any event described in clause (2) or (.3) of paragraph (a) of this Section 9.3, the LEAD OPERATOR shall have the right to terminate this Agreement upon 30 days prior written notice to the PROJECT COMPANY.

SECTION 9.4: Termination for Unenforceability Agreement

If any court, agency and/or other entity with competent jurisdiction shall finally determine that this Agreement is unenforceable and/or prohibited by law, or, if for any reason the PROJECT COMPANY Council is legally prohibited (such prohibition shall be supported by a written legal opinion) from enacting any ordinance establishing the rates for the supply of water service and wastewater collection service to the customers of the Power Plant, which are required to be established by the PROJECT COMPANY in accordance with the Agreement hereof or any such ordinance so enacted shall fail to become legally effective or shall no longer be legally effective, then the PROJECT COMPANY and the LEAD OPERATOR shall each have the right to terminate this Agreement, upon ninety (90) days' prior written notice to the other party provided that the PROJECT COMPANY shall be obligated to make a payment to the LEAD OPERATOR, as determined pursuant to Section 9 3(d)

SECTION 9.5: Optional Termination by the PROJECT COMPANY

The PROJECT COMPANY may, at its sole option and discretion, terminate this Agreement if the increase in the Consumer Price Index (CPI) (as defined in Schedule 6) for the prior Contract Year period exceeds 9%. In the event the PROJECT COMPANY elects to terminate this Agreement, the PROJECT COMPANY shall be obligated to make a payment to the LEAD OPERATOR, as determined pursuant to Section 9 3(d)

**ARTICLE X
MISCELLANEOUS.****SECTION 10.1: Insurance**

- (a) The LEAD OPERATOR shall not commence performance of the Services under this Agreement until it has provided evidence of insurance of the types and in such amounts as is satisfactory to the PROJECT COMPANY and as set forth herein, and such insurance has been approved by the PROJECT COMPANY, nor shall the LEAD OPERATOR allow any subcontractor to work on its subcontract until all similar insurance required of the subcontractor has been so obtained and approved. The LEAD OPERATOR shall maintain such insurance in full force and effect for the duration of this Agreement.
- (b) The insurance Policies provided by the LEAD OPERATOR at its sole expense and more particularly described hereafter shall specifically designate the PROJECT COMPANY as an additional insured (except for Workers' Compensation) with respect to the operation and management of the Power Plant.

- (c) The LEAD OPERATOR shall be solely responsible for all injuries to persons or for damages to property of third parties occurring on account of and during performance of the Services hereunder, regardless of who is performing the Services, attributable to the negligence of the LEAD OPERATOR, its employees, subcontractors, or others acting on behalf of the LEAD OPERATOR, and shall defend, indemnify and save harmless the PROJECT COMPANY, it; elected and appointed officials, officers, members, employees, consultants, attorneys and agents from liability as provided in this Agreement.
- (d) The LEAD OPERATOR shall note the insurance requirements set forth below and shall ascertain the cost to it of all the required insurance policies.
- (e) Certificates, in triplicate, from the insurance carrier, stating the limits of liability and the expiration date for each policy and type of coverage shall be filed with the PROJECT COMPANY before the Commencement Date, and, annually, thereafter The certificates shall contain the following express endorsement:

"This is to certify that the policies of insurance described herein have been issued to the insured for whom this certificate is executed and are in force at this time, In the event of cancellation or material change in a policy affecting the certificate holder, sixty (60) days prior written notice will be given the certificate holder."
- (f) Such certificates shall specifically refer to this Agreement and this Section 10.1, and the following paragraphs in accordance with which the insurance is being furnished, and state that such insurance is as required by such paragraphs of this Agreement.
- (g) Certificates of the required insurance as listed above shall be submitted to the PROJECT COMPANY as evidence covering Comprehensive General Liability, Comprehensive Automobile Liability and where applicable, necessary Workmen's Compensation and Employer's Liability Insurance, such coverage shall be with insurance companies acceptable to the PROJECT COMPANY, which possess an A M, Best Company rating of at least A+,
- (h) All insurance policies herein required of the LEAD OPERATOR shall be written by a company duly authorized and licensed to do business in the State and be executed by some agent therein duly licensed as an agent in the State.
- (i) Insurance shall include the type of insurance specified below in not less than the amounts stated and whatever other insurance may be necessary to provide complete protection to the PROJECT COMPANY and the LEAD OPERATOR against liability, damage and accident of every kind Neither approval by the PROJECT COMPANY nor a failure to disapprove insurance furnished by an LEAD OPERATOR shall release the LEAD OPERATOR from full responsibility for liability, damages, and accidents as set forth herein.

- (j) Except as otherwise agreed to in writing by the PROJECT COMPANY, the LEAD OPERATOR shall take out and maintain during the life of this Agreement the following types of insurance in an amount, for each policy, not less than the amounts stated:

- (i) Workers' Compensation and Employer's Liability Insurance in accordance with the requirements of the General Laws of the State and all other applicable laws and regulations.

The LEAD OPERATOR shall take out and maintain during the life of this Agreement the applicable statutory Workers Compensation Insurance with an insurance company authorized to write such insurance in the applicable state covering all of its employees, and in the case of any work sublet, the LEAD OPERATOR shall require the Subcontractor similarly to provide statutory Workers' Compensation Insurance for the latter's employees. The OPERATORS shall take out and maintain during the life of this Agreement, Employer's Liability Insurance with a limit of € _____ with an insurance company authorized to write such insurance in all states where the LEAD OPERATOR will have employees located in the performance of this Agreement and the LEAD OPERATOR shall require each of its Subcontractors similarly to maintain Employer's Liability Insurance on its employees. The Employer's Liability Insurance limit should be split as: bodily injury by accident – € _____ each accident; bodily injury by disease – € _____ each Employee; and bodily in my by disease € _____ policy limit

- (ii) Public Liability Insurance. The LEAD OPERATOR shall maintain during the life of this Agreement such Public Liability Insurance as shall protect it against claims for damages resulting from (a) bodily injury, including wrongful death, and (b) property damage, with respect to property damage to third parties and with respect to claims brought by the PROJECT COMPANY with respect to property damage to PROJECT COMPANY property caused by the LEAD OPERATOR negligence or neglect, which may arise from operations under this Agreement whether such operations be by itself or by any Subcontractor or anyone directly or indirectly employed by either of them. The minimum acceptable limits of liability to be provided by such Public Liability Insurance shall be as follows: Bodily Injury Limits and Property Damage – € _____ each occurrence/annual aggregate. The Public Liability Insurance required by the preceding subparagraph shall include the following extensions of coverage:

- (a) The coverage shall be provided under a Comprehensive General Liability form of policy or similar thereto;
- (b) The property damage coverage shall include a Broad Form Property Damage Endorsement.

- (c) Contractual Liability coverage shall be included.
- (d) Protective Liability coverage shall be included to protect the LEAD OPERATOR against claims arising out of operations performed by its Subcontractors.
- (e) Products Liability and/or Completed Operations coverage shall be included,
- (iii) Automobile Liability and Property Damage Insurance. The LEAD OPERATOR shall take out and maintain during the life of this Agreement such Automobile Liability Insurance as shall protect it against claims for damages resulting from 1) bodily injury, including wrongful death, and 2) property damage, which may arise from the operations of any owned, hired or non-owned automobiles used by or for it in any capacity in connection with the carrying out of this Agreement (including theft and collision). If the LEAD OPERATOR is unable to obtain such coverage with respect to vehicles owned by the PROJECT COMPANY, the PROJECT COMPANY shall take out such coverage and the LEAD OPERATOR shall reimburse the PROJECT COMPANY with respect to the cost of such coverage. The minimum acceptable limits of liability to be provided by such Automobile Liability Insurance shall be as follows:

Bodily Injury Limits and Property Damage – € _____ each occurrence/annual aggregate. This limit can also be provided by an umbrella policy provided that policy has coverages no more restrictive than the primary general liability and automobile policies.

- (iv) PROJECT COMPANY Coverage. The LEAD OPERATOR shall assist the PROJECT COMPANY with the provision of underwriting information for purposes of obtaining their property insurance. The PROJECT COMPANY will rely on its first party insurance coverage to pay for any loss or damage and the LEAD OPERATOR shall reimburse the PROJECT COMPANY for the deductible amount (€10,000 per occurrence) in the event such loss or damage is the result of LEAD OPERATOR's negligence

The PROJECT COMPANY shall obtain an insurers' waiver of subrogation in favour of the LEAD OPERATOR.

- (v) Excess Umbrella Liability in an Amount Not Less Than € _____.
- (vi) Subcontractor. The LEAD OPERATOR shall require each of its Subcontractors to take out and maintain during the life of its subcontract the same insurance coverage required of the LEAD OPERATOR under Paragraphs 1, 2, and 3 above, including the extensions of coverage required under Paragraph 2, subparagraph (b) above reflecting the PROJECT COMPANY as a third party insured. Each Subcontractor shall furnish to the OPERATORS four (4) copies of each certificate of insurance and such

certificates shall contain the same information required hereinabove. The LEAD OPERATOR shall furnish three (3) copies of the certificates to the PROJECT COMPANY.

- (k) If at any time the OPERATORS fails to maintain any of the foregoing policies, or if a company issuing any such policy shall become unsatisfactory to the PROJECT COMPANY, the LEAD OPERATOR shall, upon notice to that effect from the PROJECT COMPANY, promptly obtain a new policy, submit the same to the PROJECT COMPANY for its approval and submit a certificate thereof as hereinabove provided. Upon failure of the OPERATORS to furnish, deliver and maintain such insurance as above provided, this Agreement, provided that such insurance is commercially available, (if unavailable, OPERATORS must provide the PROJECT COMPANY with a reasonable substitute subject to PROJECT COMPANY approval) at the election of the PROJECT COMPANY, may be forthwith declared suspended, discontinued or terminated. Failure of the LEAD OPERATOR to take out and/or maintain or the taking out and/or maintenance of any required insurance, shall not relieve the LEAD OPERATOR of any liability under this Agreement.

SECTION 10.2: Indemnification

- (a) The LEAD OPERATOR shall indemnify and hold harmless the PROJECT COMPANY, its elected and appointed officers, and its duly authorized agents, servants, consultants and employees from any liability including, but not limited to, pollution damages, and also including liability to third parties, for personal injury, including death, property damage or any other losses, which are caused by or arise from the actions, or lack of actions, required pursuant to the terms and conditions of this Agreement, of the LEAD OPERATOR or any subcontractor and/or agent selected by the OPERATOR.
- (b) The LEAD OPERATOR shall indemnify and hold harmless the PROJECT COMPANY, its elected and appointed officers, and its duly authorized agents, servants, consultants and employees from any liability including, but not limited to, pollution damages, and also including liability to third parties, for personal injury, including death, property damage or any other losses, which are caused by or arise from the use and operation of vehicles and/or equipment used by the LEAD OPERATOR, owned or leased by the LEAD OPERATOR or owned or leased by the PROJECT COMPANY and used by the LEAD OPERATOR.
- (c) The PROJECT COMPANY shall indemnify and hold harmless the LEAD OPERATOR, and its employees, officers, agents and consultants from any liability (including, but not limited to liability to third parties), which is caused by or arise from PROJECT COMPANY Fault, including for acts or events to the extent not caused by LEAD OPERATOR prior to Commencement Date.
- (d) The last sentence in Section 9.2(e) and 9.3(e) shall apply to this Section.

SECTION 10.3: New Equipment

Any new equipment, other than replacement of vehicles or other vehicles put chased by the LEAD OPERATOR, installed as part of the Power Plant by the LEAD OPERATOR during the term of this Agreement shall be owned by the PROJECT COMPANY and shall remain a part of the Power Plant upon termination or expiration of this Agreement. Prior to making any significant change to the Power Plant or expenditures of its own for new equipment (other than vehicles), the LEAD OPERATOR will consult with the PROJECT COMPANY.

SECTION 10.4: Enforcement

The failure on the part of any party to enforce any provision of this Agreement shall not be construed as a waiver of its right to enforce such provision in the future.

SECTION 10.5: Assignment

This Agreement shall not be assigned by any party without the prior written consent of the other party.

SECTION 10.6: Affirmative Action

During the performance of this Agreement, the LEAD OPERATOR agrees as follows:

- (a) The LEAD OPERATOR or its subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, colour, national origin, ancestry, marital status, sex, affectional or sexual orientation. The LEAD OPERATOR will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, colour, national origin, ancestry, marital status, sex, affectional or sexual orientation. Such action 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. The LEAD OPERATOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the public agency compliance officer setting forth provisions of this non-discrimination clause.
- (b) The LEAD OPERATOR or subcontractor, where applicable, will, in all solicitations or advertisements for employees placed by or on behalf of the LEAD OPERATOR, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, colour, national origin, ancestry, marital status, sex, affectional or sexual orientation.

- (c) The LEAD OPERATOR or subcontractor, where applicable, will send to each labour union or representative or workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer advising the labour union or workers' representative of the LEAD OPERATOR's commitments and shall post copies of this notice in conspicuous places available to employees and applicants for employment.
- (d) The LEAD OPERATOR or its subcontractor agrees to attempt in good faith to employ minority and female workers consistent with the applicable employment goals.
- (e) The LEAD OPERATOR or its subcontractor agrees to inform in writing appropriate recruitment agencies in the area, including employment agencies, placement bureaus, colleges, universities and labour unions, that it does not discriminate on the basis of age, creed, colour, national origin, ancestry, marital status, sex, affectional or sexual orientation, and that it will discontinue the use of any recruitment agency, which engages in direct or indirect discriminatory practices.
- (f) The LEAD OPERATOR or its subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State, and applicable federal court decisions.
- (g) The LEAD OPERATOR and its subcontractors shall furnish such reports or other documents to the Affirmative Action Office as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Affirmative Action Office for conducting a compliance investigation.

SECTION 10.9: Application of Law

This Agreement shall be construed in accordance with, and is subject to, all applicable laws, rules and regulations of the Federal Republic of Nigeria, the State, any appropriate political subdivision(s), and any relevant regulatory or administrative agency.

SECTION 10.10: Relationship

The relationship of the LEAD OPERATOR to the PROJECT COMPANY is that of independent contractor and not one of employment. None of the employees or agents of the LEAD OPERATOR shall be considered employees of the PROJECT COMPANY. For the purposes of all State, local and federal laws and regulations, the LEAD OPERATOR shall exercise primary management and operational decision-making authority.

SECTION 10.11: Public Relations

The LEAD OPERATOR shall develop, with the advice and consent of the PROJECT COMPANY, a communications, publicity and community relations program in order to keep the PROJECT COMPANY and the Power Plant's customers informed about the operation and maintenance of the Power Plant. The LEAD OPERATOR will deal in a professional manner with community groups concerned with any aspect of the operation of the Power Plant, including scheduling of tours of the Power Plant, if and as requested, the LEAD OPERATOR shall prepare written summaries of all formal meetings with the PROJECT COMPANY and/or community groups and provide the PROJECT COMPANY with a copy

SECTION 10.12: Notice of Litigation

In the event the LEAD OPERATOR or the PROJECT COMPANY receives notice of or undertakes the defence or the prosecution of any actions, claims, suits, administrative or arbitration proceedings or investigations in connection with the Power Plant, the party receiving such notice or undertaking such prosecution shall give the other party timely notice of such proceedings and will inform the other party in advance of all hearings regarding such proceedings

SECTION 10.13: Cost Substantiation

With respect to any costs and expenses incurred or to be incurred by the parties hereto in the performance of their obligations hereunder, all such costs and expenses shall be reasonably documented and accompanied by a certificate, signed by an authorized representative of the PROJECT COMPANY or the LEAD OPERATOR, as the case may be, stating the reason for incurring the cost, the amount of the cost, including labour, materials and a fixed overhead, the event or Section of this Agreement giving rise to the requesting party's right to incur such cost, and that such cost represents a competitive price for the service or materials supplied and any other information that is reasonably requested by the other party in order to assist in the evaluation and approval of the cost; provided, however, that such amounts shall not include any contingency amounts,

SECTION 10.14: Bulk Sale and/or Wheeling of Electricity and Water

Currently, the LEAD PROJECT COMPANY does not intend on entering into any Bulk Sale and/or Wheeling of Electricity and Water arrangement with the LEAD OPERATOR. However, the parties reserve the right to amend the Agreement at any time (subject to applicable law) and to negotiate mutually agreeable terms and conditions.

SECTION 10.15: Hazardous Wastes

If during the course of excavation work (or other construction) necessary to make Repairs and/or improvements to the Power Plant, hazardous waste materials or other Hazardous Substances are uncovered by the LEAD OPERATOR, it shall not be the obligation of the LEAD OPERATOR to remove and dispose of such hazardous substances. The LEAD OPERATOR shall, however, take all of the necessary steps to protect the Power Plant from contamination and to notify the appropriate agencies and determine the necessary steps to properly dispose of such hazardous waste. The parties legally responsible shall pay all costs for such removal.

SECTION 10.16: Unforeseen Events

- (a) If an Unforeseen Event occurs, each party shall be relieved of its responsibility to perform to the extent necessitated by the Unforeseen Event and during the pendency thereof, except that neither party shall be relieved of its responsibility to satisfy any payment obligations. The affected party will notify the other promptly of the occurrence of such Unforeseen Event, including the anticipated duration and effects of the Unforeseen Event, and will make all reasonable efforts to alleviate or eliminate the effects of the Unforeseen Event.
- (b) The PROJECT COMPANY shall be responsible for making Capital Improvements that are necessitated by Unforeseen Events or a change in law, regardless of cost.
- (c) If an Unforeseen Event occurs that causes an adverse change in the operations of the Power Plant or increases in the operational costs, the LEAD OPERATOR shall prepare a proposal to be submitted to the PROJECT COMPANY and the PROJECT COMPANY's consulting engineer that describes the cause of the changes, the extent of the changes, the anticipated duration of the changes, the cost impact (increase or decrease) of the changes, and the duration of time that such anticipated cost increases or decreases will be in effect. If the PROJECT COMPANY approves the changes, such cost increases or decreases will be Pass-through Charges or Pass-through Credits, as the case may be, and shall be recovered through an increase or decrease in Annual Service Fee in the following year (or amortized as agreed to by the parties). If the PROJECT COMPANY does not approve the changes, the parties will use reasonable and good faith efforts to resolve the issue pursuant to Section 2.3 hereof. In the event any such dispute is not resolved pursuant to Section 2.3, the parties may take other actions to resolve such dispute, including filing claims in a court of competent jurisdiction.
- (d) The PROJECT COMPANY also may submit proposals to decrease the Annual Service Fee if an Unforeseen Event occurs that causes a decrease in costs.

SECTION 10.17: System Regulations

The PROJECT COMPANY shall maintain in effect, or cause to be maintained in effect, and amend, or cause to be amended, as necessary from time to time, the requirements, rules, regulations and ordinances which currently exist in regard to the Power Plant.

SECTION 10.18: Covenant to Continue Work

During resolution of any dispute under this Management Services Agreement, the LEAD OPERATOR and the PROJECT COMPANY shall each continue to perform all of their respective obligations under this Management Services Agreement without interruption or delay. In the event any dispute arises under the Agreement relative to any payment obligations, the disputing party shall deposit said monies in an escrow account until resolution of the issue.

SECTION 10.19: Cooperation with Financing

The PROJECT COMPANY agrees to reasonably cooperate in good faith with the LEAD OPERATOR in connection with any financing or refinancing of the Initial Concession Fee or other financing responsibilities of the LEAD OPERATOR with respect to the Power Plant.

SECTION 10.20: PROJECT COMPANY's Obligations

- (a) It is understood that the PROJECT COMPANY shall pay to the LEAD OPERATOR the Annual Service Fee through the revenues of the Power Plant and other available revenues of the PROJECT COMPANY that the PROJECT COMPANY shall take all reasonable and necessary steps to provide for and to authorize the payment of all amounts due to the LEAD OPERATOR from the PROJECT COMPANY under this Management Services Agreement as the same become due and payable.
- (b) In consideration of the LEAD OPERATOR entering into this Management Services Agreement and to provide funds for such purpose through financing or otherwise, the PROJECT COMPANY agrees that the pledge set forth in this Section and all related covenants and agreements in this Management Services Agreement are for the equal benefit, protection and security of the LEAD OPERATOR, any assignee of the lights of the LEAD OPERATOR hereunder, and any Person lending money or providing credit in connection with any financing relating to the Power Plant.

SECTION 10.21: PROJECT COMPANY Approvals

When it is provided in this Management Services Agreement that any matter is subject to the approval or review of the PROJECT COMPANY, except as to matters, which are expressly stated to be in the PROJECT COMPANY's sole discretion, the PROJECT COMPANY shall not unreasonably withhold or delay any such approval or review. Any task, which the PROJECT COMPANY may request or require the LEAD OPERATOR to

perform or any information or other material the PROJECT COMPANY may request or require the LEAD OPERATOR to provide shall be reasonably requested or required.

SECTION 10.22: Survivorship

Notwithstanding anything in this Agreement to the contrary and not intending to limit the rights of the parties, the parties agree that (i) all claims for breach of this Agreement will survive termination of this Agreement and the obligations of the Project Guarantor(s) with respect to those claims will survive termination of this Agreement; (ii) the PROJECT COMPANY's ability to draw upon the letters of credit and/or performance bonds as contained in Article II, Section 2.2 shall survive termination of this Agreement for so long as same remain in effect; (iii) the indemnification provisions contained in Article X, Section 10.2 shall survive termination of this Agreement.

SECTION 10.23: Severability

In the event that any material provision of this Agreement, for any reason, shall be determined to be invalid, illegal, or unenforceable in any respect, the parties hereto shall negotiate in good faith and agree to such amendments to this Agreement or to take such other actions as, to the maximum extent practicable in light of such determination, shall implement and give effect to the intentions of the parties as reflected herein, and the other provisions of this Agreement, as so amended, shall remain in full force and effect

SECTION 10.24: Language

The contractual documents shall be written in English and English language shall be used for all correspondence, instructions, orders for services and other questions related to the meaning and the interpretation of this contract.

SECTION 10.25: Notifications

Any notification, request or approval or granted approval in compliance with this contract shall be made in writing. Such notification, request or approval will be considered as performed when delivered by hand to a duly authorized representative of the party to which this communication is intended, or when sent by registered letter, telex, e-mail, or fax to the party at the address indicated below:

THE PROJECT COMPANY:

XENERGI LIMITED (XENERGI)
To the attention of: Managing Director
Country: Federal Republic of Nigeria
City: Port Harcourt
Mobile: +234
Tel: +234
Fax: +234
E-mail: ...

THE LEAD OPERATOR**LEAD OPERATOR – Lead Operator**

MDA CAPITAL INVEST, a.s.
To the attention of: Managing Director/CEO
Country: Czech Republic
City: PRAGUE
Mobile: +421 773 988 087
Tel/Fax: +421
E-mail:

SECTION 10.26: Designated Representatives

All actions that must be realized and any document that must be provided under this Agreement by the PROJECT COMPANY or by the LEAD OPERATOR will be done by the designated representatives.

SECTION 10.27: Taxes and Duties

All payments made under this agreement by the PROJECT COMPANY to the LEAD OPERATOR shall be value added tax, withholding or any other tax inclusive. The PROJECT COMPANY shall nevertheless have the right, but no liability or obligation, to withhold any amount on account of tax, or to make any payment, of any withheld amount to the Tax Revenue Service Agency or otherwise and then to account to the LEAD OPERATOR. In the event of such withholding, the PROJECT COMPANY will advise the LEAD OPERATOR of the amount of such withholding.

SECTION 10.28: Commencement

Unless otherwise agreed between the Parties, the LEAD OPERATOR shall commence provision of the services set out in this agreement by no later than Thirty (30) days after the execution of this Agreement between the PROJECT COMPANY and the LEAD OPERATOR.

SECTION 10.29: Amendment

The terms and conditions of this Agreement including the scope of Services may be modified by agreement of the parties provided that such agreement shall be in writing.

SECTION 10.30: Confidentiality

All information, data, documents and designs provided to the PROJECT COMPANY by the LEAD OPERATOR in the course of performing the Services shall be treated by them as confidential and shall not be published or disclosed to any third party without the prior written approval of the LEAD OPERATOR **Obligations with regard to reports**

SECTION 10.31: Assistance

The PROJECT COMPANY will provide to the LEAD OPERATOR the necessary assistance required in this Agreement

SECTION 10.32: Services

The PROJECT COMPANY shall furnish without charge and within a reasonable time all pertinent data and information available to him, relating to the study and shall give such assistance as shall reasonably be required by the LEAD OPERATOR for carrying out his duties under this Agreement.

SECTION 10.33: Non-Circumvention

The parties, including their employees, associates, third party consultants and funding sources, intending to be legally bound, hereby irrevocably and mutually agree not to circumvent, avoid, bypass, or obviate each other, directly or indirectly, to avoid payment or fees, commissions, or any form of compensation in any transaction with any other corporation, partnership or collateral, or finding, or any other transaction involving products, commodity, or services, or addition, renewals, extensions, rollover, amendment, new contract, re-negotiations, parallel contract/agreement or third party assignment hereof.

SECTION 10.34: Settlement of Disputes**10.34.1 Amicable Settlement of Disputes**

In case of disagreement between the PROJECT COMPANY and the LEAD OPERATOR and 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.

10.34.2 Legal settlements of Disputes

Any disputes which arise between the parties in connection to the interpretation and application of the provisions of this agreement incapable of being amicably resolved within Thirty (30) days following written notification by one of the parties that the dispute cannot be so resolved may, at the instance of either party, be referred for settlement. If the period accorded under does not permit 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 interpretation and execution of this agreement is the law of the Federal Republic of Nigeria.

10.34.3 Legal Settlements of Disputes through change of Rules and Regulations

In the event of changes of laws or regulations, which affect the economic and contractual basis of this agreement, resulting in a significant loss for the LEAD OPERATOR, which is unforeseen by the time the bids are deposited, only changes that occur in the country of the PROJECT COMPANY may be considered to modify the financial conditions of the agreement. In case of mandatory changes in the current regulation in the country of the PROJECT COMPANY, which result in an increase or decrease of the cost of execution of the study not envisaged in the earlier provisions of this agreement 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, as applicable, the amount of the contract within a period of three (3) months.

The final takeover marks the end of this Agreement and will free the contracting parties from their obligations.

A) THE PROJECT COMPANY**XENERGI LIMITED**

Signed, Sealed and Delivered by:

.....

Name:

Position:

Address:

B) LEAD OPERATOR**MDA CAPITAL INVEST, A.S.**

Signed, Sealed and Delivered by:

.....

Name:

Position:

Address:

SCHEDULE 1
PROGRAM INFORMATION

SCHEDULE 2

POWER PLANT OPERATION AND MAINTENANCE STANDARDS

SCHEDULE 3

WATER AND WASTEWATER SYSTEMS OPERATION AND MAINTENANCE STANDARDS

SCHEDULE 4

BILLING AND COLLECTION SERVICE REQUIREMENTS

SCHEDULE 5

CONTROL ROOM AND COMPUTER INFORMATION SYSTEMS

SCHEDULE 6
RATES, FEES AND CHARGES

SCHEDULE 7
CVs OF THE KEY TECHNICAL TEAM