
Deed of Exclusivity

NATIONAL BIO ENERGY (XUNXIAN) CO., LTD

CLIMATE CHANGE CAPITAL CARBON FUND s.a.r.l

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Date

17 February, 2006

Parties

National Bio Energy (Xunxian) Co., Ltd. company organized and existing under the laws of the Peoples Republic of China, which has its business office at Room 1611, Office Tower 1, Henderson Center, No. 18 Jianguomennei Avenue, Beijing, (**Seller**)

Climate Change Capital Carbon Fund s.a.r.l., company organized and existing under the laws of Luxemburg, acting through Climate Change Capital Limited (in its capacity as fund manager), which has its business office at 49, Grosvenor Street, London, (**Buyer**)

Recitals

- A The Seller owns an emission reduction project which it intends to register as a Clean Development Mechanism project with the CDM Executive Board.
- B The Buyer and the Seller have each expressed an interest in pursuing the CER Transaction under an ERPA.
- C The Seller wishes to grant the Buyer during the Exclusivity Period the exclusive right to negotiate with the Seller in respect of the CER Transaction and to undertake the Buyer's Due Diligence of the Project.
- D The parties intend, subject to the process established in this Deed, to enter into formal legal arrangements to record and give effect to the CER Transaction in the form of an ERPA as soon as reasonably practicable.

Operative provisions

1 Exclusivity

- 1.1 During the Exclusivity Period, the Seller grants the Buyer the exclusive right to:
 - (a) negotiate with the Seller in relation to the CER Transaction; and
 - (b) carry out enquiries, including Due Diligence review in relation to the Project.
- 1.2 During the Exclusivity Period, the Seller must not:
 - (a) Promote (or arrange for any third party to Promote) any GHG Reductions, ERs or CERs to be generated by the Project;
 - (b) sell, agree to sell or grant any other rights whatsoever to any GHG Reductions, Emission Reductions or CERs generated or to be generated by the Project to any third party; and
 - (c) not create or allow any Encumbrance to be created over the CERs to be generated by the Project.

2 Process

- 2.1 The Parties agree on the following process during the Exclusivity Period:
- (a) the Seller will, within 21 days from the execution of this Deed, promptly provide the Buyer with all Material Information, including any specific information requested by the Buyer;
 - (b) the Buyer will conduct its Due Diligence; and
 - (c) if the results of the Due Diligence are satisfactory to the Buyer, the Buyer will inform the Seller that it is prepared to enter into negotiations with the view to being able to agree and enter into an ERPA.

3 Terms of ERPA

- 3.1 The parties agree to use the Term Sheet as an initial basis for negotiation of the commercial terms of the CER Transaction.
- 3.2 During the Exclusivity Period, the Buyer offers to the Seller, and the Seller shall select from and agree to one of, the following pricing and payment options for CER Transactions:
- (a) **Option A1 (Down-payment & Fixed Price):** The Buyer may pay a Downpayment of €1.05million, and a price for each CER Transferred between € 6.5 and €7.5 for 100% of the CERs from the Project; or
 - (b) **Option A2 (Down-payment & Floating Price):** The Buyer may pay a Downpayment of €0.84 million and pay pursuant to a profit sharing structure at the higher of €6 or 50% of the price of a European Union Allowance; or
 - (c) **Option B1 (No Down-payment & Fixed Price):** The Buyer may pay a price for each CER Transferred between € 8.0 - 9.0 for 100% of the CERs from the Project; or
 - (d) **Option B2 (No Down-payment & Floating Price):** The Buyer may pay pursuant to a profit sharing structure based on the higher of 60% or €6.5 for each CER Transferred.
- 3.3 In each case set out in Clause 3.2 above, the Buyer would be prepared to undertake the following:
- (a) Contract and pay for the preparation, development and submission of the Project Design Document;
 - (b) Pay the Registration Costs associated with the Project; and
 - (c) Contract and pay for Project Validation.
- 3.4 The parties will only become legally bound to the CER Transaction upon execution of a negotiated ERPA on the basis of the Buyer's Due Diligence.
- 3.5 To the extent that there is any inconsistency between this Deed; and the terms of any ERPA entered into between the Seller and the Buyer in relation to the purchase of CERs, the terms of the ERPA will prevail.

4 Seller's Obligations

During the Exclusivity Period the Seller must:

- (a) promptly provide all Material Information to the Buyer and provide any additional Material Information to or as directed by the Buyer upon the reasonable request of the Buyer;
- (b) do all things reasonably necessary to assist the Buyer, its staff and consultants with Due Diligence enquiries and answer all reasonable questions;
- (c) cooperate with the Buyer to develop any necessary documents incidental to register and operate the Project as a CDM Project; and
- (d) inform the Buyer of any events or circumstances which may impact on the ability of the Project to create and transfer CERs and/or the ability of Seller to perform any of its obligations under this Deed.

5 Costs

- 5.1 The parties acknowledge that the Buyer may incur certain costs during the Exclusivity Period with respect to its Due Diligence in relation to the Project ('Due Diligence Costs').
- 5.2 If, during the Exclusivity Period, the Project Entity breaches any of the obligations set out in clauses 1, 4 or 9 of this Deed, terminates negotiations on the CER Transaction or does not proceed with the Project for any reason, the Project Entity must pay to Buyer all Due Diligence costs incurred by the Buyer, and any Project Development Costs already paid for by the Buyer up to a total capped amount of €200,000 Euros, upon receipt of documentation evidencing that the Buyer has incurred such costs.
- 5.3 Subject to clause 5.2, if the Exclusivity Period expires and a final ERPA has not been entered into, each party shall be liable for any costs which it has incurred prior to the date of expiry.
- 5.4 Subject to clauses 3.2 and 3.3 and the subsequent agreement between the parties on one of the pricing and payment options set out therein and the Term Sheet, the Seller acknowledges that it will be responsible for its own costs associated with (i) the Validation and Registration of the Project, and (ii) operating the Project as a CDM project activity, and the Seller agrees to pay these costs, from time to time when they become due.
- 5.5 Subject to clauses 3.2, and 5.1 to 5.4, each party will be responsible for any costs and disbursements which it incurs in the negotiation, preparation and execution of this Deed and the ERPA.

6 Warranties

- 6.1 Each party warrants and represents to the other party that:
 - (a) it is duly organised and validly existing under the laws of its governing jurisdiction and is qualified to conduct its business in that jurisdiction;
 - (b) it has the power and authority to execute and deliver this Deed and to perform its obligations under it and has taken all necessary actions to authorise the entry into and the observance and performance of its obligations under this Deed;

- (c) the entry into and observance and performance of its obligations under this Deed do not violate or conflict with or require any consent or waiver under any of the terms or conditions in its governing documents or any material contract to which it is a party or by which any of its assets are bound or affected, or any applicable law; and
 - (d) this Deed constitutes a legal, valid and binding obligation on it enforceable in accordance with its terms by an appropriate legal remedy.
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7 Indemnities

- 7.1 Subject to clauses 5 and 8.2, in the event that a party breaches any of its obligations undertakings or warranties in this Deed, it must indemnify, defend and hold harmless the other party for any ensuing liability and loss other than consequential loss, including a party's related expenses, which arise out of such breach by the party in default. To avoid doubt, in the case of the Buyer such loss may include but is not limited to the Project Development Costs, and the Due Diligence Costs, and loss associated with the disclosure of Confidential Information.
 - 7.2 It is not necessary for the party to incur any expense or to make any payment before enforcing a right of indemnity under this clause 7.
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8 Term and Termination

- 8.1 The Buyer may terminate this Deed by notice in writing to the Seller at any time upon the occurrence of one or more of the following:
 - (a) The Seller is unable to make proper progress on the negotiation of the ERPA, and/or the implementation and/or development of the Project, and following a written request from the Buyer to rectify the issues, in the Buyer's sole discretion, the Seller fails to do so within a reasonable period of time;
 - (b) Failure by the Seller to comply with any of the terms of this Deed; and/or
 - (c) End of the Exclusivity Period.
 - 8.2 In the event of a termination of this Deed pursuant to clause 8.1(b), or 8.1(a) in circumstances other than those outside the control of the Seller, the Seller must pay to Buyer all Due Diligence costs incurred by the Buyer, and any Project Development Costs already paid for by the Buyer up to a total capped amount of €200,000 Euros, upon receipt of documentation evidencing that the Buyer has incurred such costs.
 - 8.3 The respective rights and obligations of the parties contained within clauses 5, 7, 8, 9, and 10 will survive any termination of this Deed.
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9 Confidentiality

- 9.1 Subject to clause 9.2, a party in receipt of Confidential Information of the other party under this Deed must not:
 - (a) make public or disclose that Confidential Information to any third party; or

- (b) make or allow to be made copies of or extracts of all or any part of the Confidential Information except for the purposes of this Deed.

9.2 Nothing in clause 9.1 restricts the disclosure of Confidential Information:

- (a) to the CDM Executive Board to the extent that such disclosure is required to conduct the Project as a CDM project activity and to issue CERs for the Project;
- (b) to the Designated Operational Entity for the Project, provided that the Designated Operational Entity, and any of its directors, employees or officers which will view the Confidential Information, acknowledge and comply with confidentiality obligations at least as stringent as those contained in this Deed;
- (c) to the Designated National Authority of the Host Country or the country which approves the participation of the Buyer in the Project, to the extent that such disclosure is required to receive approval of the Project as a CDM project activity;
- (d) that an employee, agent or adviser of the Party needs to know, but only where such employees, agents or advisers have been required to keep the information confidential on terms no less stringent than this Deed;
- (e) in proceedings before any court or tribunal arising out of, or in connection with, this Deed;
- (f) if required under the International Rules to register the Project as a CDM project activity and to issue CERs or any law, or administrative guidelines, directive, request or policy, whether or not having force of law;
- (g) where the disclosure has been approved in writing by the Parties.

9.3 The obligations under this clause 9 shall endure for a period of two (2) years from the expiry of the Exclusivity Period.

10 Dispute Resolution

- 10.1 The parties shall attempt in good faith to resolve any dispute arising out of or in connection with this Deed, including any question regarding its existence, validity or termination, promptly by negotiation between executives.
- 10.2 Either party may commence the negotiation by giving the other party written notice of any dispute not resolved in the normal course of business (the *Dispute Notice*).
- 10.3 If the dispute has not been resolved by negotiation within 30 calendar days of delivery of the Dispute Notice, the dispute shall be referred to arbitration by a request for arbitration from one party to another (the *Request for Arbitration*) and finally resolved by arbitration under the Rules of Arbitration of the International Chamber of Commerce, and the parties agree that, if any dispute is submitted to arbitration:
- (a) such dispute arising out of or in connection with this Agreement will be finally settled under the Rules of Arbitration of International Chamber of Commerce by one arbitrator appointed in accordance with the said Rules;
 - (b) the seat, or legal place, of arbitration will be Singapore;
 - (c) the language to be used in the arbitral proceedings will be English; and

- (d) all arbitration costs (including legal costs) will be borne by the unsuccessful party unless otherwise determined by the arbitrator(s);
 - (e) the parties agree to carry out any arbitral award without delay.
- 10.4 Nothing in this clause 10 shall prevent either party from having recourse to a court of competent jurisdiction for the sole purpose of seeking a preliminary injunction or such other provisional judicial relief as it considers necessary to avoid irreparable damage.

11 General

- 11.1 Without limiting any other provisions of this Deed, each party must, whenever reasonably requested by the other party, promptly do or arrange for others to do, everything reasonably necessary or desirable to give full effect to this Deed and the CER Transaction contemplated by this Deed.
- 11.2 This Deed is legally binding and is governed by the laws of England and each party submits to the exclusive jurisdiction of the arbitration body described in clause 10.
- 11.3 If a term of this Deed is found to be wholly or partly void, invalid, unreasonable or otherwise unenforceable, that term will be deemed to be severed or modified to the extent necessary to make the balance of this Deed and that term enforceable or reasonable.
- 11.4 The *Contracts (Rights of Third Parties) Act 1999* shall not apply to this Deed.

12 Definitions

- 12.1 The following words have these meanings unless the contrary intention appears:

CDM Executive Board means the executive board of the Clean Development Mechanism that is referred to in Article 12, paragraph 4 of the Kyoto Protocol.

CDM Related Costs means any cost, fees or expenses in relation to establishing the Project and obtaining Registration of the Project with the CDM Executive Board, including but not limiting to any commercial, legal or technical advice required to ensure the Project is in accordance with the International Rules.

CERs mean (i) Certified Emission Reductions issued by the CDM Executive Board for CDM projects, as described in the International Rules; or (ii) if the CDM Executive Board is not yet issuing the Certified Emission Reductions described in paragraph (i), the legal title to Verified Emission Reductions from the Project.

Clean Development Mechanism or **CDM** means the mechanism defined in Article 12 of the Kyoto Protocol.

CDM Executive Board means the executive board of the Clean Development Mechanism that is constituted under Article 12, paragraph 4 of the Kyoto Protocol.

Confidential Information means the following information:

- (a) the terms and conditions of this Agreement; and

- (b) all information provided by one party to another party in accordance with the provisions of this Agreement to the extent that the information is marked as confidential or is by its nature inherently confidential,

but does not include information:

- (a) that, at the time of the first disclosure to or observation by the party to whom the information was disclosed, was already in the lawful possession of that party;
- (b) that is or becomes part of the public domain (other than by an act of a party to this Agreement);
- (c) that is disclosed to a person who is not a party to this Agreement provided that information was not obtained directly or indirectly from any party to this Agreement;

Convention means the United Nations Framework Convention on Climate Change adopted in New York on 9 May 1992.

Deed means this deed and any annexures and schedules to it.

Designated National Authority means the government authority of a party to the Kyoto Protocol responsible for approving projects for the purpose of the CDM under the International Rules.

Downpayment means any amount to be paid by the Buyer pursuant to clause 3.2;

Due Diligence means the due diligence review of the Project, the Seller and any parent companies by the Buyer and its advisors, including, but not limited to; (i) the legal status of the Project and the Seller, (ii) an investigation into the creditworthiness of the Seller and any parent companies, (iii) an evaluation of the Project's technologies and the Seller's ability to implement the Project; (iv) the commercial viability of the Project and (v) the Project's environmental and social performance.

Due Diligence Costs means the Buyers costs associated with undertaking Due Diligence on the Project.

Emission Reduction or ER means a GHG Reduction which has been or will be verified by a Designated Operational Entity in compliance with the standards established in the International Rules.

Encumbrance means any mortgage, charge, pledge, lien, assignment, security interest, title retention, preferential right, trust arrangement, contractual right of set-off or any other security agreement or arrangement in favour of any person by way of security for the payment of a debt or any other monetary obligation.

ERPA means a CER purchase agreement between the Seller and the Buyer for the sale and purchase of CERs.

Exclusivity Period means the period from the execution date of this Deed until 5.00 pm Central European Time on the earlier of:

- (a) the day on which an executed ERPA enters into full force and effect;
- (b) the date on which the Buyer gives written notice that this Deed is terminated; or
- (c) the expiry of 90 day period from the execution date of this Deed,

unless extended by mutual agreement.

GHG Reductions means the removal, limitation, reduction, avoidance, sequestration or mitigation of Greenhouse Gas emissions achieved by the Project, measured in metric tonnes of carbon dioxide equivalent.

Greenhouse Gas or **GHG** means one or more of the six greenhouse gases listed in Annex A of the Kyoto Protocol, which are carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons and sulphur hexafluoride.

Host Country means the country listed as such in the Term Sheet.

International Rules means the UNFCCC, the Kyoto Protocol, the Marrakesh Accords, decisions of the CDM Executive Board, and any successor or supplementary international agreements or decisions, as amended from time to time.

Kyoto Protocol means the protocol to the Convention, adopted at the third conference of parties to the Convention in Kyoto, Japan on 11 December 1997.

Marrakesh Accords means Decisions 2/CP.7 through to Decision 24/CP.7 inclusive of the Conference of Parties to the Convention, in its seventh session, held at Marrakesh from 29 October 2001 to 10 November 2001.

Material Information means all information reasonably required by the Buyer to carry out its Due Diligence enquiries and in its capacity as a prospective purchaser of CERs from the Project, and all information reasonably necessary to facilitate and promote the parties reaching agreement in relation to whether or not to proceed with the CER Transaction, including but without limitation documentary evidence that the Seller is the sole legal owner of the Project and is entitled to any CERs arising from the Project.

Project means the Project listed as such in the Term Sheet.

Project Design Document means the description of the project prepared in accordance with the International Rules for the purpose of Validation and Registration.

Project Design Document Costs or PDD Costs means the reasonable third party costs associated with the development of a Project Design Document.

Project Development Costs means the PDD Costs, Validation Costs and Registration Costs.

Promote means to advertise, market, display or communicate or to agree to do any of the foregoing in such a way that may suggest, either expressly or impliedly, that the CERs created by the Project are, or at some future time may be, available for purchase and includes written and oral representations to that effect.

Registration means the formal acceptance of the Validated Project by the CDM Executive Board as a CDM project activity.

Registration Costs means the costs imposed by the CDM Executive Board and which are associated with the Registration of the Project as a CDM Project.

Term Sheet means the indicative conditions to form the basis of an ERPA, as set out in Schedule 1 and referred to in clause 4.

Third Party Offer means any offer by any third party to purchase any CERs or ERs from the Project submitted to the Purchase on expiry of the Exclusivity Period.

Validation means the independent evaluation of the Project by a Designated Operational Entity against the requirements of the CDM on the basis of the Project Design Document.

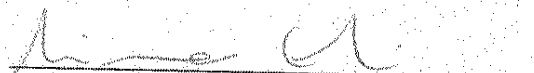
Validation Costs means the reasonable third party costs involved in undertaking Validation of the Project.

Execution

Signed sealed and delivered for and on behalf of:

Climate Change Capital Carbon Fund
s.a.r.l

by duly authorised signatories:



Authorised Signatories

Date:

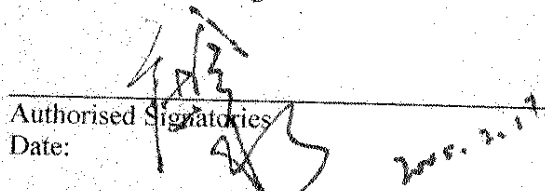


Names and titles of Authorised Signatories
(please print)

Signed sealed and delivered for and on behalf of:

National Bio Energy (Xunxian Co., Ltd)

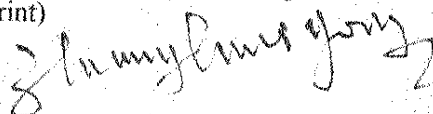
by duly authorised signatories:



Authorised Signatories

Date:

Names and titles of Authorised Signatories
(please print)



Schedule 1: **Term Sheet for Emission Reduction Purchase Agreement**

Seller	<i>National Bio Energy (Xunxian) Co., Ltd</i>
Buyer	<i>Climate Change Capital Carbon Fund ("C4F")</i>
Commodity	<i>CERs and all underlying rights to the related emission reductions.</i>
Total Contracted Volume	<i>The total amount of CERs generated by the Project from the first day of the Crediting Period until 31 December 2012, to be Transferred in accordance with the Transfer Schedule.</i>
Price	<p><i>The Buyer shall offer to the Seller, and the Seller shall select and agree to one of, the price and payment options for CER Transactions provided in clause 3.2 of the operative provisions of this Exclusivity Deed.</i></p> <p><i>The Buyer shall pay for the Project Development Costs as set out in the Exclusivity Deed.</i></p> <p><i>Down-payment, if any, shall be paid within 21 days of the latter to occur of Project Commissioning, Project Registration or signature of the ERPA, provided that:</i></p> <ul style="list-style-type: none"> <i>- the Seller has provided the Buyer with an unconditional and irrevocable bank guarantee for the full amount of any Downpayment;</i> <i>- The Buyer is listed as a Project Participant in the PDD and has been notified to the CDM EB as the Focal Point; and</i> <i>- The Seller has satisfied any other preconditions set out in the ERPA.</i>
Focal Point	<i>Buyer</i>
Option	<i>Seller grants Buyer the Option to purchase CERs generated by a Project equivalent to this Project, on substantially the same terms and conditions as for this Project, where such option will be offered to the Buyer within 6 months of the signature of the ERPA for this Project.</i>
Condition Precedents	<ul style="list-style-type: none"> <i>• Registration of Project and Buyer listed as Project Participant on Registration;</i> <i>• Commissioning of Project;</i> <i>• Buyer satisfactorily completed its due diligence;</i> <i>• Evidence of project debt financing agreement.</i>
Project Participant	<i>The Buyer shall be a Project Participant.</i>
Consequences of Transfer Failure	<p><i>Buyer has the right to choose from the following remedies at its sole discretion:</i></p> <ul style="list-style-type: none"> <i>• require Transfer of Contract CERs or replacement CERs (as approved by Buyer) equivalent to any shortfall;</i> <i>• pay the Buyer's replacement costs and loss from Transfer Failure; and/or</i> <i>• Right to Terminate and have the Down-payment re-paid in full plus interest at EURIBOR + 3 for balance of CERs paid for but not delivered at time of default.</i>
Taxes	<i>Seller shall be responsible for all taxes and charges incurred as a</i>

consequence of CERs being issued to it or the Buyer, including for the avoidance of doubt all registry related charges other than as set out in the Exclusivity Agreement. CERs shall be transferred free of all taxes, charges or other deductions. The Buyer shall be responsible for all taxes it is liable, under national law, for in respect of taking delivery of and purchasing CERs.

Assignment & Novation

Seller shall not be able to assign or novate its obligations without the Buyer's consent. The Buyer shall be free to assign and/or novate its rights and obligations to any party with an equivalent or better credit position.

Law

English Law.