

Underwriting Agreement

BBY Limited

Firestone Energy Limited

PERKINS SOLICITORS

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Underwriting Agreement

Dated

18 September 2009

Parties

1. **Firestone Energy Limited** ABN 71 058 436 794 of Level 1 63 Hay Street, Subiaco, WA 6008, ("Issuer").
2. **BBY Ltd** ABN 80 006 707 777 of Level 17, 60 Margaret Street, Sydney NSW 2000 (the "Underwriter")

Background

- A. The Issuer proposes to issue \$25 million of Convertible Notes on the terms and conditions contained in the Convertible Note Deed Poll made on or about the date hereof. ("Issue").
- B. The Underwriter, at the request of the Issuer, is willing to underwrite the Issue upon and subject to the provisions of this document.

Operative provisions

1. Defined meanings

Words used in this document and the rules of interpretation that apply are set out and explained in the definitions and interpretation clause at the back of this document.

2. Underwriting commitment

2.1 Underwriting

The Underwriter agrees to underwrite subscription for the Underwritten Securities:

- (a) upon and subject to the provisions of this document; and
- (b) relying upon the representations made by the Issuer,

provided however that the Underwriter shall not be required to underwrite the subscription for Underwritten Securities in excess of the following:

- (c) \$6 million on or before ten days from the date of this agreement. The parties acknowledge that on that date the Issuer will issue and the Underwriter shall subscribe for, or shall arrange for the subscription of, \$6 million of Underwritten Securities and shall cause cleared funds net of its fees as provided herein to be paid to the Issuer's nominated account on that day ("Initial Issue"); and
- (d) \$1.5 million per calendar month commencing 45 days following the Initial Issue and thereafter each calendar month provided, unless the Underwriter otherwise agrees, the

Underwritten Securities may only be issued on or after the 10th Business Day of the relevant month;

and further provided that each request for subscription of Underwritten Securities is made by the Company to the Underwriter on or before 30 November 2010.

2.2 Subunderwriting

- (a) Subject to subclause 2.2(c) the Underwriter may in its discretion engage any sub-underwriter to sub-underwrite any or all Underwritten Securities.
- (b) Subject to subclause 2.2(c) the Underwriter may in its discretion at any time nominate any sub-underwriter or other person as the Subscriber of any Underwritten Securities.
- (c) The Underwriter will not, without the consent of the Issuer, appoint a Corporate Investor as sub-underwriter or nominate a Corporate Investor as a sub-underwriter or a Subscriber if that Corporate Investor would, upon taking up its allocation or subscription, have Voting Power of more than 1% in the Issuer.

3. Issue Compliance

3.1 Compliance

The Issuer must procure that the Issue complies with any applicable provision of:

- (a) this document;
- (b) the Convertible Note Deed Poll; and
- (c) the Corporations Act and any other applicable legislation;

3.2 Due diligence inquiry

The Issuer must from the date of this document until Completion:

- (a) make reasonable inquiries on a continuing basis;
- (b) take reasonable precautions; and
- (c) exercise due diligence,

to ensure that:

- (d) it complies with its continuous disclosure obligations under Listing Rule 3.1 and section 674 of the Corporations Act; and
- (e) any information provided to the ASX or the Underwriter is accurate and not misleading or deceptive (including by omission) in any material respect.

4. Issue procedure

4.1 Issue Timetable

Subject to the provisions set out in clauses 2.1, 3.1 and 4.2 the Issuer may (but is not obliged to) offer Underwritten Securities to the Underwriter and request that the Underwriter subscribe for those Underwritten Securities at any time.

4.2 Offer process

The Underwritten Securities may only be offered for subscription to the Underwriter. The Underwriter must accept the offer for subscription of Underwritten Securities or arrange for a Subscriber to subscribe for the Underwritten Securities.

4.3 Issue proceeds

- (a) Except as otherwise provided by this Agreement, on the Issue Date the Underwriter must transfer the Issue proceeds in immediately available funds to an account nominated by the Issuer, net of any fees and costs payable to the Underwriter pursuant to this Agreement.
- (b) The Issuer acknowledges that the Underwriter is not obliged to transfer the Issue proceeds until after issue of the Underwritten Securities which are applied for under the Offer.

5. Underwriting procedure

5.1 Securities subscription

The Underwriter must (subject to clause 2.1), on the day an offer of Underwritten Securities is made under clause 4.1, lodge (or procure the lodgement by any Subscriber) with the Issuer:

- (a) valid applications for the Underwritten Securities offered on that day; and
- (b) subject to clause 4.3(b), payment in clear funds of an aggregate face value of those Underwritten Securities.

6. Underwriting conditions

6.1 Conditions precedent

The liability of the Underwriter under this document is subject to the condition precedent that:

- (a) the representations made by the Issuer in this document are accurate in all material respects on and as at each Issue Date as if made at that date in relation to the facts then subsisting, except where previously disclosed in writing to and waived in writing by the Underwriter; and
- (b) no Termination Event has occurred as at the Issue Date and no Termination Event will result from or occur at the time of subscription of any Underwritten Securities; and

7. Representations

7.1 Issuer representations

The Issuer represents to the Underwriter that as at the date of this document and each Issue Date:

- (a) the Issuer is a corporation duly incorporated and validly existing under the laws of Australia;
- (b) the Issuer has full power to enter into and perform its obligation under this document, to make the Issue, and to issue the Underwritten Securities.
- (c) the Issuer has procured all necessary consents for the Issue;
- (d) the execution and performance of this document, and the Issue do not and will not contravene any provision of the Constitution, or any law, agreement or consent binding on, the Issuer or its assets;
- (e) this document constitutes a binding obligation on the Issuer in accordance with its terms;
- (f) the Issuer is not in default, and no default event has occurred, under any agreement, breach of which might have a Material Adverse Effect;
- (g) the issue of any Underwritten Security complies with:
 - (i) the Constitution;
 - (ii) any agreement created by the Issuer including any agreement conferring any pre-emption or other right over, or relating to the issue of securities;
 - (iii) the Corporations Act and any other applicable law; and
 - (iv) any consent from any Governmental Agency or third party relating to the Issuer or its assets, or any securities issued by the Issuer;
- (h) any Subscriber will hold the Legal Interest in any Underwritten Securities:
 - (i) upon being registered as holder in the register of holders of convertible notes;
 - (ii) free and clear of any Security Interest or other adverse interest created by the Issuer existing or arising in favour of any other person; and
 - (iii) without creating any right in favour of any other person to the issue or transfer of any Securities of the Issuer;
- (i) the facts or information specified or disclosed in this document or any report or other document prepared and provided by or on behalf of the Issuer to the Underwriter in connection with the Issue are:
 - (i) accurate in all material respects; and

- (ii) are not deficient by reason of any material omission.

7.2 Underwriter's reliance

The Issuer agrees that the Underwriter has entered and will perform this document in reliance on each representation by the Issuer contained in clause 7.1 as a material term of this document.

7.3 Underwriter's representation

The Underwriter represents to the Issuer that as at the date of this document and each Issue Date:

- (a) it is a corporation duly incorporated and validly existing under the laws of Australia;
- (b) it has full power to enter into and perform its liability under this document;
- (c) the execution or performance of this document by it does not contravene any provision of:
 - (i) its constitution;
 - (ii) any agreement entered by it;
 - (iii) any law by which its securities business is regulated;
- (d) it has procured all consents for the execution and performance by it of this document, which has been executed in compliance with its constitution and any applicable law.

7.4 Issuer reliance

The Underwriter agrees that the Issuer has created and will perform this document in reliance on each representation by it contained in this provision as a material term of this document.

8. Issue undertakings

8.1 Positive undertakings

The Issuer must until Completion and for 90 days following Completion:

- (a) perform any action necessary to maintain the corporate existence of any entity in the Issuer in good standing;
- (b) perform any Business Activity in a proper and efficient manner;
- (c) keep financial records as required by the Corporations Act;
- (d) notify the Underwriter of any requisition by any Governmental Agency or document received by the Issuer relating to the Issuer, the Issue, any Material Contract or the performance of any Business Activity connected with the Issue immediately upon receipt;

- (e) comply with any law, consent from any Governmental Agency and governmental requisition in any case where non-compliance would have a Material Adverse Effect, except where ASIC or ASX has granted any applicable waiver, exemption or modification;
- (f) in relation to the Issue:
 - (i) keep the Underwriter informed of information which could reasonably be expected to have a Material Adverse Effect;
 - (ii) promptly provide to the Underwriter a copy of any communication to or from ASIC or ASX; and
 - (iii) provide to the Underwriter any other information or document reasonably requested by the Underwriter;
- (g) promptly notify the Underwriter in writing upon receipt of actual notice of:
 - (i) any Termination Event;
 - (ii) any fact or circumstances which might reasonably be expected to give rise to a Termination Event;
 - (iii) any legal action in which the Issuer is engaged with any Governmental Agency or other person which, if adversely decided against that Issuer, would have a Material Adverse Effect;
 - (iv) any notice or action by ASIC under the Corporations Act or the Australian Securities and Investments Commission Act 2001 (Cth) relating to any report on the Issuer or Business Activity of the Issuer;
 - (v) any fact, or series facts, which may affect the ability of the Issuer to perform a Business Activity or materially affect or change the financial condition of the Issuer; and
- (h) for any purpose relating to this document or the Issue perform any action within the power and control of the Issuer to provide, and procure that any agent of the Issuer provides any business record and any necessary document, information and assistance to the Underwriter and a copy of any business record or document upon reasonable request by the Underwriter.

8.2 Negative undertakings

The Issuer must not at any time up to Completion and until each Underwritten Security has been converted or redeemed, without prior written consent of the Underwriter, such consent not to be unreasonably withheld:

- (a) amend, or perform any action to propose or initiate the amendment of, the constitution of the Issuer;
- (b) issue, or propose or announce the issue of, any Securities of the Issuer, except for:
 - (i) any Underwritten Securities;

- (ii) any Securities issued under any employee share or option plan implemented by the Issuer; or
- (iii) an issue of securities pursuant to the conversion of the Underwritten Securities or other convertible securities (including options) issued prior to the date of this document,

without the prior written consent of the Underwriter.

8.3 Further undertakings

- (a) The Issuer must at any time during the continuance of this document and for 12 months following Completion, offer the Underwriter the first right of refusal for the lead role in any further issue of Convertible Notes, subject to competitive terms. Any such additional engagements will be governed by separate agreements, having such terms and conditions as are customary for the Underwriter in similar transactions and as are mutually agreed by the parties. For the avoidance of doubt, this clause 8.3 is not a commitment either express or implied on the part of the Underwriter to accept any such offer.
- (b) The Issuer must as soon as practicable provide the Underwriter with current cash flow estimates for the issuer and during the term of this agreement and while any Underwritten Security remains unconverted provide the Underwriter with monthly updates of those estimates.
- (c) Proceeds of the Initial Issue will be used to pay all or part of the amount due by the Issuer to Sekoko Coal (Pty) Limited pursuant to the joint venture agreement recently announced through the ASX.

9. Underwriting termination

9.1 Termination events

Subject to clause 9.2, the Underwriter may, until the date upon which no further Underwritten Securities may be issued, terminate this document by notice to the Issuer without cost or liability to the Underwriter if the Underwriter becomes aware of the happening of any of the following events:

- (a) **(change - Issuer)** there is an adverse change in the assets, liabilities, financial position and performance, profits, losses or prospects of the Issuer and any entity within the Issuer Group;
- (b) **(hostilities)** hostilities not presently existing begin (whether war has been declared or not) involving any one or more of Australia, the United States of America, United Kingdom, Singapore, Indonesia, Japan, Republic of South Africa, Russia, Peoples Republic of China, Democratic People's Republic of Korea;
- (c) **(market fall)** the S&P/ASX 200 Index of the ASX closes on any Business Day at a level that is 12% or more below the level at market close on the date of this Agreement and remains at 12% or more below that level for at least 3 consecutive Business Days;

- (d) **(market shock)** the S&P/ASX 200 Index of the ASX closes on any Business Day at a level that is 17% or more below the level at market close on the date of this Agreement;
- (e) **(Materials Index)** the S&P/ASX 200 Materials Index of the ASX closes on any Business Day at a level that is 12% or more below the level at market close on the date of this Agreement and remains at 12% or more below that level for at least 3 consecutive Business Days;
- (f) **(change of law)** there is introduced or there is announced a proposal to introduce into the Parliament of Australia or any State or Territory of Australia or into any legislature or like body of any other jurisdiction a new law or the Reserve Bank of Australia or any Commonwealth or State or Territory authority or any other like authority of any other jurisdiction adopts or announces a proposal to adopt a new policy, any of which does or is likely to prohibit or regulate the Business Activity of the Issuer, the Issue, capital issues generally in Australia, or the Republic of South Africa, or stock markets generally in Australia, the Republic of South Africa, United Kingdom or the United States of America;
- (g) **(Issuer breach of law)** there occurs a contravention by the Issuer or by any entity in the Issuer of the *Corporations Act*, or their constitutions;
- (h) **(ASIC hearing or investigation)** ASIC issues or applies for an order or indicates an intention to hold a hearing arising out of or in connection with the Issue or ASIC commences an examination of any person or requires any person to produce documents arising out of or in connection with the Issue;
- (i) **(change to Material Contract)** any Material Contract is varied, repudiated, rescinded or terminated without the Underwriter's written consent (such consent not to be unreasonably withheld or delayed);
- (j) **(default under Material Contract)** there is a default under any Material Contract;
- (k) **(offence by director)** a director of the Issuer is charged with an indictable offence;
- (l) **(Issuer default under this document)** there is a default by the Issuer in the performance of any of its obligations under this document;
- (m) **(due diligence)** a Due Diligence Inquiry does not meet the reasonable requirements of the Underwrite or a report of such an inquiry includes information which is incorrect or is misleading or deceptive, is incorrect or is misleading or deceptive because of an omission;
- (n) **(Issuer breach of warranty)** a representation or warranty made or given or deemed to have been made or given by the Issuer under this document proving to have been untrue or incorrect in any material respect and the matters rendering the representation or warranty untrue in such respect are not remedied to the satisfaction of the Underwriter;
- (o) **(undisclosed charge over Issuer's assets)** other than as recorded in the register maintained by ASIC as at the date of this document, the Issuer charges, or agrees to charge, the whole or a substantial part, of its business or property;

- (p) **(Issuer insolvency)** an Insolvency Event occurs with respect to the Issuer or any entity in the Issuer Group that holds any material asset or right of the Issuer Group;
- (q) **(Force Majeure)** a Force Majeure Event occurs;
- (r) **(disruption in financial markets)** there is an adverse change or disruption to the existing financial markets of Australia, Japan, the United Kingdom and the United States of America;
- (s) **(Issuer's capital structure, management, or directors changed)** the Issuer alters its capital structure (other than by a change permitted by clause 8.2) or its Constitution in any respect or if there is a change in the directors or senior management of the Issuer without the prior written consent of the Underwriter, such consent not unreasonably to be withheld;
- (t) **(information misleading)** any information supplied by or on behalf of the Issuer to the Underwriter in relation to the Issue is misleading or deceptive or information which should have been supplied in relation to the Issue was not supplied;
- (u) **(judgment)** a judgment in an amount exceeding \$500,000 is obtained against any entity in the Issuer and is not set aside or satisfied within 7 days; or
- (v) **(process)** any distress, attachment, execution or other process of a Governmental Agency in an amount exceeding \$500,000 is issued against, levied or enforced upon any of the assets of any entity in the Issuer and is not set aside or satisfied within 7 days.

9.2 Materiality and responsibility

The Underwriter may not terminate this document solely due to the occurrence of one of the Termination Events unless it believes (not acting unreasonably) that the event has or is likely to have a Materially Adverse Effect.

9.3 Notice of Termination Event

The Underwriter must specify in a notice to the Issuer given under clause 9.1 the event or events in relation to which the notice is given.

9.4 Notification of Prospective Termination Event

- (a) Without prejudice to its rights under clause 9.1, the Underwriter may, at any time after becoming aware of the happening of a Termination Event by notice in writing to the Issuer:
 - (i) inform the Issuer that it has become aware of the happening of the Termination Event and that, in its view, it is entitled to terminate this document as a consequence of the event; and
 - (ii) set out the grounds which have led the Underwriter to form that view and that, as a consequence, the Underwriter reserves the right to terminate unless the Termination Event is remedied to the satisfaction of the Underwriter within any reasonable period specified by the Underwriter if

capable of remedy or the Underwriter determines and informs the Issuer that it is prepared to waive its rights in relation to that event.

- (b) Unless the Termination Event is so remedied or the Underwriter determines and informs the Issuer in writing that it is prepared to waive its rights in relation to that Termination Event, the Underwriter may at any time after the time specified in the notice given under clause 9.3, by further notice in writing to the Issuer terminate this document without cost or liability to the Underwriter in accordance with the terms of this clause 9.

9.5 Right to damages

Any exercise of any rights that the Underwriter may have under clause 9.1 is without prejudice to any rights the Underwriter may have under this document or at law.

9.6 Repetition of Termination Event

If the Underwriter elects not to exercise its rights on the occurrence of a Termination Event, that election does not prevent the Underwriter from terminating this document if that Termination Event or any other Termination Event occurs at a later time.

10. Information Access

10.1 Record access

- (a) This provision applies at any time:
- (i) from the date of this document to Completion; and
 - (ii) after Completion, in the event of any governmental requisition, inquiry or report by ASIC or any other Governmental Agency to or in relation to the Underwriter or any Underwriter's Agent in connection with the Issue but only, for the duration of that requisition or enquiry, or the issue of that report.
- (b) Subject to clause 10.1(a), the Issuer must provide to the Underwriter any business record, document or other information that the Underwriter may reasonably request in connection with the Issue, including any business record, document or information relating to or necessary for:
- (i) the Business Activities, assets liabilities, financial position, profits, losses and prospects of the Issuer;
 - (ii) rights attaching to Underwritten Securities;
 - (iii) any verification that the Issuer has made reasonable inquiries, taken reasonable precautions and exercised due diligence to ensure that any material statement made in relation to the Issue is accurate and is not misleading or deceptive that there is no material omission of information which should have been disclosed concerning the Issue.

10.2 Record retention

The Issuer must, at any time from the date of this document until the date of expiry for engagement in any legal action by any person against the Underwriter in connection with the Issue, retain, keep secure and provide to the Underwriter upon request by the Underwriter any Business Records of the Issuer connected with the Issue.

11. Confidentiality

11.1 Confidentiality liability

The Underwriter must during and after termination or expiration of this document keep any Issuer Information confidential and must:

- (a) not publish or disclose that Issuer Information to any person, except with the prior consent of the Issuer or as permitted under this provision; and
- (b) not use that Issuer Information for any purpose, except where strictly necessary for the performance of its liability under this document in connection with the Issue.

11.2 Agency disclosure

- (a) The Underwriter may disclose the Issuer Information to any Underwriter's Agent to the extent reasonably necessary or desirable for the purposes of this document.
- (b) The Underwriter must procure that any Underwriter's Agent is informed of, and complies with, the confidentiality liability of the Underwriter under this document.

11.3 Reliance

The Underwriter does not assume any liability or responsibility for, and may rely upon without verification, the accuracy and completeness of Issuer Information.

11.4 Subunderwriters' disclosure

- (a) The Underwriter may disclose any Issuer Information to any subunderwriters or any other person interested in subscribing for any Shortfall Securities.
- (b) The Underwriter must direct any recipient party specified in this provision to keep Issuer Information confidential.
- (c) Provided the Underwriter complies with its obligations under clause 11.4(b), the Underwriter is not liable to the Issuer for any action by a recipient party, including unauthorised disclosure by that recipient party.

11.5 Permitted exemptions

This clause 11 does not apply to any Confidential Information which:

- (a) at the date of this document is in, or at any time subsequent comes into public domain, except through default under this document by any Underwriter's Agent;

- (b) can be shown by the Underwriter to have been known by the Underwriter before disclosure by the Issuer to the Underwriter;
- (c) subsequently comes lawfully into the possession of the Underwriter from a third party; or,
- (d) is required by compulsion of any law or under the Listing Rules to be disclosed to a third party after consultation with the Issuer about the form or content of that disclosure.

12. Indemnity

12.1 Indemnity

The Issuer must indemnify the Underwriter for itself and as agent and trustee for the benefit of any Underwriter's Agent, against any Loss incurred by the Underwriter or any Underwriter's Agent or any legal action in which an Underwriter or any Underwriter's Agent is engaged resulting from:

- (a) any false, misleading or deceptive statement made, or omission from information provided by the Issuer to the Underwriter concerning the Issue;
- (b) any false, misleading or deceptive statement in, or omission from, any announcement:
 - (i) made or distributed by the Issuer; or
 - (ii) made or distributed by the Underwriter with the prior written consent of the Issuer;
- (c) any default by the Issuer under the Corporations Act, the Listing Rules or any other legal liability of the Issuer in relation to the Issue;
- (d) any default by the Issuer under any provision of this document;
- (e) any claim that the Underwriter or Underwriter's Agent has any liability under the Corporations Act (including, but not limited to, sections 1041H and 1041I), the Australian Securities and Investments Commission Act 2001 or any other applicable law in relation to the Issue; or,
- (f) any GST payable as a consequence of any payment under this clause 12 being regarded as consideration for a taxable supply.

12.2 Liability exclusions

The Issuer is not liable under this clause 12 for any Loss incurred by the Underwriter, the Underwriter's Agent resulting from:

- (a) any liability of the Underwriter, or any Underwriter's Agent for any criminal penalty or fine for any default under any law resulting from any action of the Underwriter or the Underwriter's Agent; or
- (b) any fraud, negligence or wilful misconduct by the Underwriter or the Underwriter's Agent.

12.3 Reimbursement

Without limiting clause 12.1, the Issuer agrees to reimburse the Underwriter or any Underwriter's Agent for all costs and expenses (including legal costs on an indemnity basis and disbursements) as they are incurred by each such person, and pay each such person at their standard professional charge out rate for all time spent, in connection with investigating, preparing or defending any claim or potential claim whatsoever relating to or arising out of or in connection with the Issue or in connection with preparing for or being involved in or otherwise relating to any investigations, enquiries, hearings, prosecutions or legal proceedings by the ASIC, ASX or any Governmental Agency in respect of or arising out of any matter referred to in this Agreement.

12.4 Legal action

- (a) The Underwriter must notify the Issuer, in reasonable detail, as soon as practicable following receipt of actual notice of any fact which the Underwriter decides may result in the Underwriter or any Underwriter's Agent being engaged in any legal action against which the Issuer has indemnified the Underwriter or the Underwriter's Agent (**adverse claim**).
- (b) The Issuer is entitled to defend, and engage in any other legal action in connection with, any adverse claim in the name of the Underwriter or the Underwriter's Agent, under the sole management and control and at the full cost of the Issuer.
- (c) The Issuer must in relation to and at any time during any adverse claim:
 - (i) agree that the Issuer is liable to indemnify the Underwriter and Underwriter's Agent under this clause 12;
 - (ii) provide adequate security for any cost in connection with the defence, and pay that cost on due date;
 - (iii) satisfy the Underwriter and Underwriter's Agent at any time of its financial ability to indemnify the Underwriter and Underwriter's Agent; and
 - (iv) procure legal advice from senior counsel experienced in the relevant area that there is a reasonable prospect of a successful defence of the adverse claim.
- (d) The Underwriter may, without prejudice to their right of indemnity, decide on separate representation in any legal action connected with the adverse claim, in the event of any conflict of interest between the Issuer and the Underwriter or the Underwriter's Agent.
- (e) The Issuer must not settle any adverse claim, without the prior written consent of the Underwriter and any Underwriter's Agent, or instruct the Underwriter's Agent to settle any adverse claim, except where:
 - (i) the Issuer has previously agreed in writing that the Issuer is liable to indemnify the Underwriter and any Underwriter's Agent under this provision in relation to that adverse claim; and

- (ii) has satisfied the Underwriter and any Underwriter’s Agent that the Issuer has sufficient available funds to pay the settlement amount.
- (f) The Underwriter must use all reasonable endeavours to procure that any Underwriter’s Agent must, subject to this provision:
 - (i) promptly perform any reasonable action requested by the Issuer to avoid, dispute, resist, appeal, compromise or defend the adverse claim, or any judicial order relative to the adverse claim;
 - (ii) not settle the adverse claim, without the prior consent of the other and the Issuer;
 - (iii) promptly provide any reasonable assistance to the Issuer in the conduct of the adverse claim; and
 - (iv) execute any document and perform any action necessary or desirable to ensure that the Issuer is subrogated to, and enjoys the benefit of, any right of the Underwriter or Underwriter’s Agent in relation to any adverse claim or other legal action, except for any legal action against another Underwriter’s Agent or the insurer of any Underwriter’s Agent.

13. Underwriting Commission and Management Fee

13.1 Establishment Fees

The Issuer must pay the Underwriter an establishment fee of 4.5% of the face value of the Underwritten Securities in accordance with clause 13.4.

13.2 Underwriting Fee

The Issuer must pay to the Underwriter an underwriting fee 1.0% of the face value of the Underwritten Securities in accordance with clause 13.4.

13.3 Placement Fee

On each occasion the Issuer receives Issue proceeds from the issue of Underwritten Securities the Issuer must pay to the Underwriter for providing the Services in respect of the Offer, a placement fee of 2.5% of the Issue proceeds.

13.4 Time of Initial Fee Payments

The Issuer must pay the Establishment Fees and Underwriting Fees and Placement Fees with respect to the first three issues of Underwritten Securities in accordance with the following table. The Underwriter is authorised to withhold its fees from amount otherwise payable to the Issuer.

| | Portion of Fees payable |
|---------------|-------------------------|
| Initial Issue | \$800,000 |

| | |
|-------------------------|-----------|
| First Subsequent Issue | \$412,500 |
| Second Subsequent Issue | \$387,500 |

13.5 Cancellation Fee

In the event the Issuer does request the subscription of Underwritten Securities having face value of \$25,000,000 before 30 November 2010 the Issuer must pay to the Underwriter a cancellation fee equal the placement fee that would otherwise be payable on the difference between \$25 million and the face value of Underwritten Securities which have been issued.

13.6 Set-off

The Underwriter may set-off any amount payable to it against Issue proceeds.

14. General provisions

14.1 Party Costs

Subject to clause 14.2 each party must pay its own costs in relation to:

- (a) the negotiation, preparation, execution, performance, amendment or registration of, or any consent given or made; and
- (b) the performance of any action by that party in compliance with any liability arising,

under this document, or any agreement or document executed or effected under this document, unless this document provides otherwise.

14.2 Underwriter's Costs

- (a) The Issuer must pay all reasonable costs (including legal fees) incurred by the Underwriter in connection with the preparation, negotiation and execution of this document and generally in relation to the Issue and all reasonable out of pocket expenses of the Underwriter incurred in connection with the Issue, subject however to a maximum of \$15,000.
- (b) all reasonable out-of-pocket expenses of the Underwriter incurred in connection with the Issue including without limitation for travel (at business class rates) and accommodation relevant to the conduct of the Offer and in connection with institutional roadshow and investor/equity analyst presentation and marketing the Issue, provided that any individual expense item in an amount greater than \$3,000 has been approved by the Issuer.
- (c) All such costs if not offset pursuant to this agreement must be paid by the Issuer within 14 days of the receipt of a tax invoice for such amount.
- (d) Costs and expenses of the Underwriter are payable under this clause 14.2 if this document is terminated for any reason other than due to default of the Underwriter.

14.3 GST

If any payment made by one party to any other party under or relating to this document constitutes consideration for a taxable supply for the purposes of GST or any similar tax, the amount to be paid for the supply will be increased so that the net amount retained by the supplier after payment of that GST is the same as if the supplier was not liable to pay GST in respect of that supply. This provision is subject to any other agreement regarding the payment of GST on specific supplies, and includes payments for supplies relating to the breach or termination of, and indemnities arising from, this document.

14.4 Duties

- (a) The Issuer must promptly within the initial applicable period prescribed by law pay any duty payable in relation to the execution, performance and registration of this document, or any agreement or document executed or effected under this document.
- (b) The Issuer must indemnify the Underwriter against any loss incurred by the Underwriter in relation to any duty specified in this provision, whether through default by the Issuer under this provision or otherwise.

14.5 Assignment

A party must not transfer any right or liability under this document without the prior consent of each other party, except where this document provides otherwise.

14.6 Notices

- (a) Any notice to or by a party under this document must be in writing and signed by the sender or, if a corporate party, an authorised officer of the sender.
- (b) Any notice may be served by delivery in person or by post or transmission by facsimile to the address or number of the recipient specified in this provision or most recently notified by the recipient to the sender.
- (c) Any notice is effective for the purposes of this document upon delivery to the recipient or production to the sender of a facsimile transmittal confirmation report before 5.00pm local time on a day in the place in or to which the written notice is delivered or sent or otherwise at 9.00am on the next day following delivery or receipt.

- (d) The addresses for service for notices of the parties are:

To the Underwriter: BBY Ltd
 Level 17, 60 Margaret Street, Sydney NSW 2000
 Facsimile: (02) 9226 0108
 Attention: Mr David Smith

To the Issuer: Firestone Energy Limited
 ACN 058 436 794
 Level 1 63 Hay Street,
 Subiaco, WA 6008

Attn: Managing Director

14.7 Governing law and jurisdiction

- (a) This document is governed by and construed under the law in the State of Western Australia.
- (b) Any legal action in relation to this document against any party or its property may be brought in any court of competent jurisdiction in the State of Western Australia.
- (c) Each party by execution of this document irrevocably, generally and unconditionally submits to the non-exclusive jurisdiction of any court specified in this provision in relation to both itself and its property.

14.8 Amendments

Any amendment to this document has no force or effect, unless effected by a document executed by the parties.

14.9 Third parties

This document confers rights only upon a person expressed to be a party, and not upon any other person.

14.10 Survival

The provisions of clauses 10, 11, 12, 13, 14 and 15 survive termination of this document.

14.11 Further assurance

Each party must execute any document and perform any action necessary to give full effect to this document, whether before or after performance of this document.

14.12 Continuing performance

- (a) The provisions of this document do not merge with any action performed or document executed by any party for the purposes of performance of this document.
- (b) Any representation in this document survives the execution of any document for the purposes of, and continues after, performance of this document.
- (c) Any indemnity agreed by any party under this document:
 - (i) constitutes a liability of that party separate and independent from any other liability of that party under this document or any other agreement; and
 - (ii) survives and continues after performance of this document.

14.13 Waivers

Any failure by any party to exercise any right under this document does not operate as a waiver and the single or partial exercise of any right by that party does not preclude any other or further exercise of that or any other right by that party.

14.14 Remedies

The rights of a party under this document are cumulative and not exclusive of any rights provided by law.

14.15 Severability

Any provision of this document which is invalid in any jurisdiction is invalid in that jurisdiction to that extent, without invalidating or affecting the remaining provisions of this document or the validity of that provision in any other jurisdiction.

14.16 Counterparts

This document may be executed in any number of counterparts, all of which taken together are deemed to constitute one and the same document.

15. Definitions and interpretation

15.1 Definitions

In this document unless the context otherwise requires:

Application means a properly completed and executed application for any Underwritten Security.

ASIC means Australian Securities and Investment Commission;

Associate Company in relation to any person, means any company in or in relation to which that person, or a Related Company of that person:

- (a) is a member, shareholder or director;
- (b) holds any Marketable Securities; or
- (c) in practice or effect controls the business activities of that person,

excluding any holding of Marketable Securities, not exceeding in total 5 per centum of that class of marketable securities in, or any directorship of, a company which is admitted to the official list of Australian Stock Exchange Limited:

ASTC means ASX Settlement and Transfer Corporation Pty Limited;

ASX means ASX Limited;

Business Activity means the business activities of the Issuer;

Business Day means a day that is not a Saturday, Sunday, public holiday or bank holiday in New South Wales;

Business Records in relation to any person or any business or assets of that person, include accounting records, financial statements, financial data, operating statements, trading and financial records, sales and purchasing records, business, property, contractual, employee or other records, statements, books, vouchers, valuations, registers, supplier lists, customer lists,

sales literature, market research reports, promotional and marketing brochures and materials, computer programmes, data bases, software and negatives, research and know-how records, results and materials, and other papers or documents relating to that business or those assets, whether in machine readable or printed form, including any original and any copy;

CHES Rules means the Settlement Rules and the provisions of the Corporations Act and Listing Rules concerning the electronic security registration and transfer system as and to the extent that they apply to the Issuer;

Closing Date means the date upon the aggregate face value of Underwritten Securities issued by the Issuer totals \$25 million;

Completion means completion of the Issue of each Underwritten Security;

Confidential Information means information which at any time is in the knowledge, possession or control of any person, or any Subsidiary or agent or that person, relating to the business, operations or affairs of that person, or any Subsidiary of that person, including information relating to:

- (a) corporate or business development structure and expansion strategy;
- (b) financial, taxation and accounting matters;
- (c) Business Records, reports, lists, data, training materials and material generally;
- (d) any relationship or arrangement with any agent;
- (e) inventions, discoveries, trade secrets, know-how, novel designs, technology, techniques, processes, methods, information, data, formulae, ideas or concepts, whether or not reduced to material form, drawings, designs, plans, models, artwork, films, printing plates and scientific, technical and product information, whether or not registrable as patents, designs or otherwise;
- (f) source and object codes as well as computer or electronic software, tapes and media;
- (g) business and marketing plans and projections;
- (h) customer information, customer lists and customer information proprietary to customers; and
- (i) agreements and arrangements with third parties, whether legally enforceable or otherwise;

Constitution means the constitution of the Issuer;

Convertible Note means a convertible note issued under the terms of the Convertible Note Deed Poll;

Convertible Note Deed Poll means the convertible note deed poll executed by the Issuer on or about the date hereof;

Corporate Investor means a body corporate engaged in manufacturing or mining industries but does not include a bona fide institutional investment company.

Corporations Act means the Corporations Act 2001 (Cth);

Cost means:

- (a) any cost, charge, expense, disbursement, fee, commission, payment, outgoing, insurance premium payment, levy, Tax, Stamp Duty, impost, fine or penalty, whether legally due or otherwise, incurred at any time, directly or indirectly; and
- (b) in relation to legal cost, cost on a full solicitor and own client indemnity basis;

Debt Arrangement means any compromise, composition, moratorium, scheme or arrangement or reconstruction, suspension of any payment or right, restriction on any right or enforcement of any right, property transfer for the benefit of creditors, management, administration, voluntary administration, company arrangement or deed of company arrangement agreed or effected by or in connection with any person, or any creditor, asset, debt or other liability of any person;

Disputed Action means any legal action that is frivolous or vexatious or wholly disputed in good faith on reasonable and substantial grounds;

Dollar or \$ means the lawful currency of the Commonwealth of Australia at any time;

Due Diligence Inquiry means any action by the Issuer specified in clause 3.2;

Force Majeure Event means an act or occurrence beyond the reasonable control of the Issuer with respect to either of the Issuer or to any entity in the Issuer or with respect to any material asset of any of them;

GST means any tax, levy, charge or impost implemented under the *A New Tax System (Goods and Services Tax) Act (GST Act)* or an Act of the Parliament of the Commonwealth of Australia substantially in the form of, or which has a similar effect to, the GST Act;

Governmental Agency means the Crown, any government, any governmental ministry or department, or any Crown, governmental, semi-governmental, statutory, parliamentary, administrative, fiscal, public, federal, state, national, municipal, local, judicial or regulatory entity, agency, instrumentality, utility, authority, court, commission, body or tribunal;

Insolvency Event means:

- (a) the fact of any attachment against any asset;
- (b) the enforceability of any Security Interest over any asset securing payment for any amount after the occurrence of any default event under that Security Interest;
- (c) the appointment of any Receiver over, or possession taken by any secured party of, any asset;
- (d) cessation of payment generally or the inability of the Issuer, or the Underwriter reasonably deciding that the Issuer is unable, to pay all its debts as and when they become due and payable;
- (e) the appointment of any administrator;

- (f) any legal action, not being in the opinion of the Underwriter a Disputed Action, being commenced, judicial order made or resolution passed for the Liquidation of any entity in the Issuer;
- (g) the creation of any Debt Arrangement with creditors generally or any class of creditors;
- (h) the cessation of proposal for cessation of business generally; or
- (i) any fact similar or analogous to any previous item in any country or jurisdiction;

Issue means the Offer;

Issue Date means each date on which the Issuer issues Underwritten Securities;

Issue Period means the period commencing on date of the date of this agreement and ending on the Closing Date;

Issue Price means the face value any Underwritten Security;

Issuer Agent means:

- (a) each entity in the Issuer Group;
- (b) any agent of an entity in the Issuer Group;

Issuer Group means the Issuer, any entity which is a wholly owned Subsidiary of the Issuer;

Issuer Information means any Confidential Information which at any time is in the knowledge or possession of the Issuer relating to any Business Activity of the Issuer disclosed by or on behalf of the Issuer to the Underwriter for the purposes of this document;

Legal Interest means any legal and, except where any person owns or holds any property as trustee or fiduciary for any other person, equitable and beneficial right, interest or title;

Liquidation includes receivership, Debt Arrangement, merger, amalgamation, reconstruction, winding up, dissolution, bankruptcy, death or administration under any law relating to individual health or welfare;

Listing Rules means the official Listing Rules of ASX, as modified at any time by any applicable modification, exemption or waiver;

Loss means claims, demands damages, losses, costs, expenses and liabilities;

Material Adverse Effect means a material adverse effect on any of the following;

- (a) the Tax position or any Tax liability of the Issuer, including distributable profits of the Issuer; and
- (b) the willingness of Subscribers to make Applications for Underwritten Securities; or
- (c) the likelihood of the Underwriter or any Underwriter's Agent incurring any liability to any person under any law in connection with the Issue;

Material Contract means any agreement created by the Issuer Group with any person and which is material to the Business Activity;

Nominee includes any nominee, appointee, agent or trustee of or for any person who has a Legal Interest in any marketable security;

Offer means the offer of Underwritten Securities at the Issue Price to raise up to twenty five million dollars (AUD \$25,000,000);

Receiver means receiver or manager or both;

Related Company includes a body corporate and a trust and in relation to:

- (a) a body corporate, means a related body corporate within the meaning of Division 6 of Part 1.2 of the Corporations Act; and
- (b) a trust, means a trust that would be a related body corporate within that meaning assuming that the trust were a body corporate and that a Subsidiary meant a Subsidiary for the purposes of that meaning;

Securities means any share, or option or right convertible into shares, in the Issuer;

Security Interest means any agreement or document created to achieve security for the payment or performance of any liability including:

- (a) any mortgage, charge, pledge, lien, trust or power created or conferred over any asset;
- (b) any title retention arrangement or other proprietary title or Legal Interest retained or reserved in any asset;
- (c) any other right conferred on, or agreement with any creditor to be paid in priority or preference to other creditors;

Services means the services, as relevant to the Issue, including advice, promotion, management and placement of Underwritten Securities;

Settlement Rules means the Settlement Rules made by ASTC;

Stamp Duty means any Tax limited to any stamp, transaction or registration Stamp Duty or similar Tax, together with any associated interest, fine, penalty, charge, fee or other amount;

Statement in relation to any issued Underwritten Security means a certificate or holding statement relating to that Underwritten Security issued by the Issuer to the holder in compliance with the Corporations Act;

Subscriber means:

- (a) any person whom the Underwriter reasonably believes to be a person to whom an offer of Underwritten Securities may lawfully be made in Australia without a disclosure document (as defined in the Corporations Act) on the basis that such a person is exempt from the disclosure requirements of Part 6D.2 in accordance with sections 708(8) or 708(11) and who is not a U.S. Person or acting on account of or for the benefit of a U.S. Person; or

- (b) a person whom the Underwriter reasonably believes to be a person to whom an offer of Underwritten Securities may lawfully be made outside Australia without registration, lodgement of a formal disclosure document or other formal filing in accordance with the laws of that particular foreign jurisdiction (except to the extent which the Issuer is willing to comply with such requirements) but who is not a U.S. Person or acting on account of or for the benefit of a U.S. Person.

Subsidiary in relation to:

- (c) a body corporate, means a Subsidiary within the meaning of Division 6 of Part 1.2 of the Corporation Law;
- (d) a trust, means a trust that would be a Subsidiary within that meaning if it were a company equating for this purpose:
- (i) shares with the beneficial interest or units held in the trust; and
 - (ii) the board of directors with the trustee; and
- (e) a body corporate or subtrust owned or held as an asset of a trust, means a Subsidiary within any previous meaning which would be applicable if the trust were a body corporate;

Tax includes any Tax, levy, impost, assessment, deduction, charge, rate, Stamp Duty or compulsory loan or withholding levied, imposed, assessed or collected by or under any legislation or Governmental Agency, including any income, company, undistributed profits, payroll, sales, goods, services, value added, capital gain, withholding, prescribed payments, land, rating, stamp, transaction, social service and workers compensation Tax, Stamp Duty, charge, contribution, levy and obligation, together with any associated interest, penalty, fine, charge and fee or other amount;

Tax Change means any new Tax or change in the basis or rate of any existing Tax, including any new or change in any interpretation application or administration, whether effected by or in relation to any law, ruling or administrative practice of any Governmental Agency;

Termination Event means the occurrence, without the prior written consent of the Underwriter, of any Event specified in clause 9.1;

Underwritten Securities means that number of Convertible Notes having an aggregate face value of \$25 million (being 50 Convertible Notes, each having a face value of \$500,000);

Underwriter's Agent means each of:

- (a) each Related Company or Associate Company of the Underwriter; and
- (b) any agent or professional adviser of the Underwriter, or any Related Company or Associate Company of the Underwriter;

U.S. Person has the meaning given to that term in Rule 902(k) under the U.S. Securities Act;

U.S. Securities Act means the U.S. Securities Act of 1933, as amended; and

Voting Power has the meaning given by section 9 of the Corporations Act.

15.2 Interpretation

In this document unless the context otherwise requires:

- (a) clause and subclause headings are for reference purposes only;
- (b) the singular includes the plural and vice versa;
- (c) words denoting any gender include all genders;
- (d) reference to a person includes any other entity recognised by law and vice versa;
- (e) where a word or phrase is defined its other grammatical forms have a corresponding meaning;
- (f) any reference to a party to this document includes its successors and permitted assigns;
- (g) a reference to the Issuer includes, where the context permits, Issuer Agent;
- (h) any reference to any agreement or document includes that agreement or document as amended at any time;
- (i) the use of the word **includes** or **including** is not to be taken as limiting the meaning of the words preceding it;
- (j) the expression **at any time** includes reference to past, present and future time and the performance of any action from time to time;
- (k) reference to an item is a reference to an item in the schedule to this document;
- (l) reference to an exhibit, annexure, attachment or schedule is a reference to the corresponding exhibit, annexure, attachment or schedule in this document;
- (m) reference to a provision described, prefaced or qualified by the name, heading or caption of a clause, subclause, paragraph, schedule, item, annexure, exhibit or attachment in this document means a cross reference to that clause, subclause, paragraph, schedule, item, annexure, exhibit or attachment;
- (n) when a thing is required to be done or money required to be paid under this document on a day which is not a Business Day, the thing must be done and the money paid on the immediately preceding Business Day; and
- (o) reference to a statute includes all regulations and amendments to that statute and any statute passed in substitution for that statute or incorporating any of its provisions to the extent that they are incorporated.

Execution Page

Executed as an agreement.

Issuer:

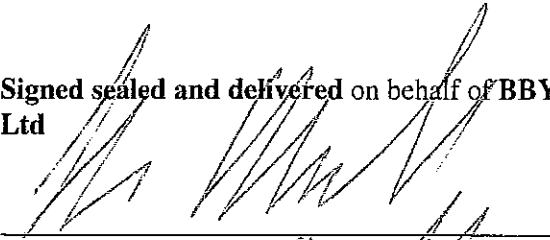
Signed sealed and delivered on behalf of
Firestone Energy Limited

Director

Print name

Underwriter:

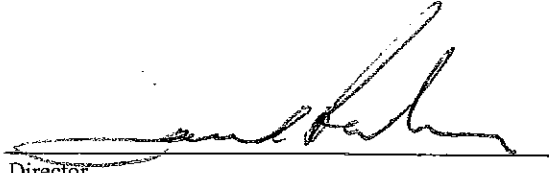
Signed sealed and delivered on behalf of **BBY Ltd**



Secretary/Director

Helen Rose

Print name



Director

DAVID PERKINS

Print name