

POWER PURCHASE AGREEMENT

BETWEEN



ASTRO POWER LIMITED

AND



ELECTRICITY COMPANY OF GHANA LIMITED

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THIS AGREEMENT is made on the 13th day of October, 2014 in the Year of Our Lord Two Thousand and Fourteen between:

(1) **ASTRO POWER LIMITED**, a body corporate incorporated under the Companies Act of Ghana, 1963(Act 179), (Company Number CS273252013) whose registered office is at World Trade Centre, 8th Floor, Independence Avenue, Accra, Ghana (hereinafter called the "Seller", which expression shall, where the context so admits or requires, include its successors, agents and assigns), and represented by its Chairman of the one part; and

(2) **ELECTRICITY COMPANY OF GHANA LIMITED**, a government owned electricity distributor incorporated under the Company Laws of Ghana, Act 179 of 1963, with its registered address at P.O. Box GP521, Accra, Ghana, represented by its Managing Director, (hereinafter called the "Buyer", which expression shall, where the context so admits or requires, include its successors, agents and assigns) of the other part.

WHEREAS, the Buyer is a licensed electricity distribution utility and may purchase electrical energy under applicable laws and regulations of the Republic of Ghana;

WHEREAS, the Seller is a licensed wholesale supplier permitted by applicable laws and regulations of the Republic of Ghana to sell independently produced electrical energy;

WHEREAS, the Seller plans to build, commission, own and operate a nominal 220MW power station near Aboadze subject to further design and EPC issues which may arise, to operate as a Base-Load Plant;

WHEREAS, the Seller wishes to sell to the Buyer, and the Buyer wishes to purchase from the Seller, the electrical energy to be produced at the Facility, all pursuant to the terms and conditions as set forth in this Agreement;

WHEREAS, the Parties agree that the Facility will be constructed in phases and will operate as follows:

1. Potentially, on an open-cycle basis (but when in such mode, not necessarily as a Base-Load Plant), for a period of up to 6 months, prior to COD, during which period the Seller may provide Energy to the Buyer on the basis of clause 7.6 (relating to Commissioning of the Facility)
2. On a Combined Cycle basis, following modification of the plant to Combined Cycle mode, and the occurrence of COD
3. Primarily fuelled by natural gas, save that where the Seller has demonstrated that natural gas cannot be obtained for the Facility, the Facility may be operated on fuel oil.

NOW THEREFORE THIS AGREEMENT WITNESSETH AND IT IS HEREBY AGREED AS FOLLOWS:

1 DEFINITIONS

"Affected Party" has the meaning ascribed to it in Section 14.1 (*Definition of Force Majeure*);

"Agreed Form" in relation to any document means the form of the document agreed by the Seller and the Buyer and initialled by them for the purposes of identification;

"Agreement" means this power purchase agreement, as may be amended, modified, supplemented or replaced from time to time;

"Applicable Law" means any statute, law, treaty, rule, regulation or other legislation (including subordinated or delegated legislation), directive or policy (including any condition applying to a Consent) of any Governmental Authority having jurisdiction in respect of the Project or any party to this Agreement;

"Availability" means a measure of time the Facility (as appropriate) is capable of delivering Energy at the Delivery Point (i.e. plant readiness to operate and fuel availability) and the terms **"Available"** and **"Unavailable"** shall be construed accordingly;

"Annual Energy" means the energy produced by the Seller for the Buyer at the Delivery Point in a calendar year as more particularly described in clause 3.4;

"Bank Guarantee" means the bank guarantee to be procured by the Buyer and issued to the Seller pursuant to Section 11 (*Security of Payment*);

"Bank Guarantee Required Amount" means USD25 million;

"Base-Load Plant" means a facility that is primarily for steady-state base-load production of electricity, is not a peaking plant, is not a two-shifting plant, and is not ordinarily subject to load-shedding (provided it is price competitive at the relevant time)

"Capacity" means maximum contracted electric power at any point in time, measured in MW, at the Delivery Point.

"Capacity Charge" has the meaning ascribed to it in Section 7.2a (*Pricing*);

"Change in Law" means the occurrence of any of the following after the Signature Date:

- (a) the enactment of any new Applicable Laws;
- (b) the repeal, modification or re-enactment of any Applicable Laws;
- (c) the commencement of any Applicable Law which has not yet entered into effect as of the Commencement Date;
- (d) a change in the interpretation or application of any Applicable Law;

- (e) the imposition of a requirement for a Consent where such requirement did not exist as at the Signature Date;
- (f) the grant of any Consent on terms and conditions which:
 - (i) prejudice the Seller's ability to carry out the Project;
 - (ii) prejudice the financial interest of the Seller; or
- (g) after the date of grant of any Consent, a change in the terms and conditions attaching to such Consent or the attachment of any new terms and conditions to such Consent;
- (h) any change in the interpretation or application of Grid Code; or
- (i) save in the case of a Consent which is revoked on the ground of breach by the Seller, any Consent ceasing to remain in full force and effect, or if granted for a limited period, not being renewed on a timely basis on application therefore having been duly made, or being renewed on terms and subject to conditions which are less favourable to the Seller, its lenders, investors or contractors than those attached to the original Consent.

"Check Meter" has the meaning ascribed to that term in the Grid Code, the location of which is agreed between the Seller and GRIDCo pursuant to the Connection Agreement;

"Combined Cycle" means the combined cycle operation of the Facility;

"Commercial Operation Date" or "COD" means the date that the Seller notifies the Buyer the Facility is Commissioned and Available for Combined Cycle mode operation, which notice shall include the Commissioning Test Report and refer to clause 6.3.

"Commissioning Notice" means in relation to the Facility the notice to be given by the Seller to the Buyer attaching the Certificate of Approval to connect;

"Commissioning Period" means, in relation to the Facility, the period from and including the date that the Seller gives in the Commissioning Notice up to the time of the Commercial Operation Date;

"Commissioning Tests" means the commissioning tests for the Facility as determined pursuant to the procedure detailed in Article 8.59 of the Grid Code and as agreed between the Seller and the Buyer;

"Commissioned" in relation to the Facility means that it has passed the Commissioning Tests pursuant to the terms agreed by the Buyer and Seller, and such fact has been notified by the Seller to the Buyer by way of providing the Commissioning Notice to the Buyer and the term **"Commissioning"** shall be construed accordingly;

"Conditions Precedent" means the conditions precedent specified in Section 5 (*Conditions Precedent*);

"Confidential Information" has the meaning ascribed to it in Section 26 (*Non-Disclosure*);

"Connection Agreement" means the connection agreement to be entered into between the Seller and GRIDCo for the interconnection of the Facility to the NITS;

"Consents" mean any consent, licence, approval, permit, no objection certificate or any other authorisation of whatsoever nature which is required to be granted by any Governmental Authority for the purposes of the Project, including without limitation the ownership and development, thereof;

"Decreased Costs" means any cash quantifiable savings or increased revenues of the Project directly attributable to a Change in Law;

"Deemed Energy" means the amount of electrical energy output that would have been produced by the Facility (at 92% availability) were it not for:

- (i) Any failure, event, default or causes attributable to NITS; or
- (ii) Any failure, event, default or causes attributable to Buyer

"Default Rate" means 0.1 percentage point above LIBOR;

"Delivery Point" means the physical point at which the Facility is connected to the NITS by a bridge to be constructed by the Seller and owned by the NITS and at which the Seller delivers Energy to the Buyer as shown in the line diagram set out in Schedule 2 (*Delivery Point*);

"Dispatch Instructions" shall mean instructions from GRIDCo with respect to the delivery of Energy from the Facility, under the Grid Code.

"Due Date" in relation to any Invoice means not later than the forty-fifth (45th) day after the Invoice is received by the Buyer (or, if that day is not a Working Day, the immediately following Working Day);

"Effective Date" shall mean the date referred to in clause 5 on which all the Conditions Precedent are met;

"End Date" shall mean 11.59pm on the last day of the twentieth (20th) anniversary of the Commercial Operation Date or such later date as envisaged under clause 4;

"Emergency" means any abnormal system condition that requires automatic or immediate human action to prevent or limit loss of generation supply or transmission facilities that could:

- (a) adversely affect the reliability of the electric system; or
- (b) affect the ability of the Seller to maintain safe, adequate and continuous operation of the Facility; or
- (c) presents a physical threat to persons, plant or equipment;

"Energy" means active power measured in KWh or GWh, as applicable;

“Energy Charge” has the meaning ascribed to it in Section 7 (*Pricing*);

“Events of Default” has the meaning ascribed to it in Section 20 (*Events of Default*);

“Existing Dispute” has the meaning ascribed to it in Section 24 (*Settlement of Disputes*);

“Facility” means the Seller’s nominal capacity 220MW combined-cycle natural gas/light crude oil fired power plant and all associated equipment to be built near Aboadze. The facility shall use natural gas as primary fuel and light crude oil as the secondary or alternative fuel. If there is persistent interruption in natural gas supply, or prior to COD, the Seller shall fuel the Facility with light crude oil to supply energy to the Buyer;

“Force Majeure” has the meaning ascribed to it in Section 14 (*Force Majeure*);

“Fuel Oil Supply Agreement” means the fuel oil supply agreement entered into or to be entered into between the Seller and a fuel oil supplier for the provision of fuel oil supplies to the Facility, (which may include take or pay clauses), or such other agreement that is reasonably acceptable to the Buyer;

“Fuel Reconciliation” means any payments due to the fuel supplier or from the fuel supplier as a result of a fuel or gas take or pay payment, or reconciliation under the Fuel Oil Supply Agreement or Gas Supply Agreement (as the case may be);

“Gas Supply Agreement” means the gas supply agreement entered into or to be entered into between the Seller and a gas supplier for the provision of gas supplies to the Facility through a Quarterly fixed price arrangement (which may include take or pay clauses), or such other agreement that is reasonably acceptable to the Buyer;

“Ghana Cedis” means the lawful currency of the Republic of Ghana and the term **“CEDIS”** shall be construed accordingly;

“Government” means the Government of the Republic of Ghana;

“Government Consent and Support Agreement” means the agreement entered into or to be entered into between the Seller and the Government;

“Governmental Authority” means the Parliament of the Republic of Ghana or the Government, any ministry, statutory body or office, authority (including any regional, state, local or municipal authority) or division thereof or any quasi-governmental or independent regulatory body or any agency, inspectorate or corporation (other than the Buyer) owned, managed, or controlled by the Government of the Republic of Ghana, or any sub-division thereof (including any regional or local authority), or acting pursuant to authority granted to it by the Laws of Ghana;

“Grid Code” means the prevailing National Electricity Grid Code specified by the Energy Commission of Ghana for the operation of the NITS and based on sections 24, 27 and 28 of the Energy Commission Act, 1997 (Act 541);

"GRIDCo" means Ghana Grid Company Limited, the Ghanaian national electricity transmission grid operator, and any successor entity operating the portion of the Ghanaian national electricity transmission grid at the Delivery Point;

"Increased Cost Event" has the meaning ascribed to it in Section 8.1 (*Increased Costs*);

"Increased Costs" means any quantifiable increase in costs or decrease in revenues incurred by the Project directly attributable to or resulting from an Increased Cost Event and, in respect of a Change in Law;

"Invoice" has the meaning ascribed to it in Section 10 (*Billing and Payment*);

"Invoice Dispute Notice" has the meaning ascribed to it in Section 10 (*Billing and Payment*);

"kW" means a kilowatt or one thousand watts (1,000 watts);

"kWh" means a kilowatt-hour;

"Laws" means any national, provincial or local law, orders, rules, regulations, bye-laws, statutory orders, statutory reversionary orders, executive orders, policies, judicial decisions, notifications, administrative decisions or other similar directives made pursuant thereto, or legally binding instructions, policies, guidelines, codes (industry or otherwise) or standards issued by any Governmental Authority, as any of them may be amended from time to time;

"Laws of Ghana" means all Laws that apply in the Republic of Ghana;

"LIBOR" means the rate at which an individual contributor panel bank could borrow funds, were it to do so by asking for and then accepting inter-bank offers in reasonable market size, just prior to 11:00am London time;

Liquidated Damages has the meaning ascribed in Section 6.4.

"Main Meter" has the meaning ascribed to that term in the Grid Code, the location of which is agreed between the Seller and GRIDCo pursuant to the Connection Agreement;

"Month" means one calendar month;

"MW" means one thousand kW;

"MWh" means one megawatt-hour or one thousand kilowatt-hours;

"NITS" means the national interconnected transmission system of Ghana, under the Grid Code;

"Party" or **"Parties"** means the entities executing this Agreement;

"Performance Bond" means an on demand performance bond or insurance-backed similar product in the amount US\$ eighteen million drawn on an internationally recognised insurer or bank acceptable to the Buyer and/or in a form agreed by both parties.

"Political Event" means each of the following events or circumstances occurring for whatever reason where such event is the predominant cause of the inability of a Party to perform or causes a Party to have Increased Costs or Decreased Costs:

- (a) acts of war (whether declared or not) invasion, armed conflict, terrorism activity, act of foreign enemy in each case occurring within or involving the Republic of Ghana or its territorial waters;
- (b) any Change in Law;
- (c) any expropriation (including any series of events collectively constituting creeping expropriation), confiscation, or compulsory acquisition, of all or a portion of the properties or assets of the Seller or of all or any part of its share capital;

"Power" means electric power measured in kW or MW, as applicable;

"Project" means the ownership, development, design, financing, insurance, construction, commissioning, operation and maintenance of the Facility;

"Prudent Utility Practices" means the generally accepted design, practices, methods and operation of a power facility, to achieve industry-accepted standards of safety, dependability, efficiency and economy, and consistent with applicable utility and industry codes, standards and regulations;

"PURC" means the Public Utilities Regulatory Commission of Ghana, and any successor, successor in title, or Governmental Authority which subsequently takes over its responsibilities;

"Quarter" means a period of three consecutive calendar Months starting on 1st of January, 1st of April, 1st of July or 1st of October, and "Quarterly" shall be construed accordingly;

"Reduced Output for Temperature" means the reduction in output of the Facility, as measured against the output of the Facility at ISO conditions and at OEM stipulated conditions (being 220 MW for the Facility) that occurs due to higher ambient temperatures during any relevant measurement period;

"Heat Rate" shall mean the measure of generating station thermal efficiency, generally expressed in Btu per kilowatt-hour. It is computed by dividing the total Btu content (Lower Heating Value) of fuel burned for electric generation by the resulting kilowatt-hour generation (i.e. 8400MMbtu/kWh), which shall be calculated on a gross generation basis;

"Scheduled Commercial Operation Date" shall mean fifteen and half (15.5) months after the Effective Date.

"Scheduled Outage" means, from and after the Commercial Operation Date, a planned interruption or reduction of the Capacity of the Facility that has been scheduled.

"Seller Force Majeure" means a Force Majeure that affects the Seller;

"Signature Date" shall be the date on which this Agreement is signed by the representatives of both Parties.

"System Marginal Price" means the weighted average system marginal price (or equivalent spot market replacement if applicable) during the relevant period, but in any event subject to a cap of 32 cents USD(\$) per KWh

"Tax" all forms of taxation, duties, imposts, levies and rates whenever imposed and applicable pursuant to the Laws of Ghana and the term **"Taxes"** shall be construed accordingly.

"Tax Authority" means any government, or other fiscal, revenue, customs or excise authority, body or official involved in the imposition, collection or assessment of Tax in Ghana;

"Term" shall mean the period of time starting at the Effective Date of the Agreement and ending at the twentieth (20th) anniversary of the Commercial Operation Date unless extended in accordance with the terms of this Agreement;

"Total Electricity Charge" has the meaning given in section 7 (*Pricing*);

"Unscheduled Outage" means, from and after the Commercial Operation Date, an interruption or reduction of the Capacity of the Facility that is not planned or a Scheduled Outage;

"US Dollar" or **"US\$"** or **"USD"** means the lawful currency of the United States of America;

"Working Day" means any day of the week other than a Saturday, Sunday and or a Public Holiday on which banking institutions are required by law to remain closed in Ghana; and

"Year" means a calendar year starting on 1st January and finishing on 31st December.

2 RULES OF INTERPRETATION

In this Agreement:

- (a) Capitalised terms used in this Agreement shall have the meanings specified in Section 1 (*Definitions*);
- (b) the words "herein", "hereby", "hereof" and "hereunder" shall refer to this Agreement as a whole and not to any particular Section of this Agreement;
- (c) references to Sections, Schedules and Appendices are references to sections, schedules and appendices to this Agreement;

- (d) references to this Agreement shall include a reference to all Schedules and Appendices hereto, as the same may be amended, modified, supplemented or replaced from time to time;
- (e) references to any agreement, document or instrument shall mean such agreement, document or instrument as the same may be amended, modified, supplemented or replaced from time to time;
- (f) the words "including", "includes" and "include" shall be deemed to be followed by the words, "without limitation";
- (g) words importing the singular shall include the plural and vice versa;
- (h) a person includes a reference to a government, state, state agency, corporation, body corporate, association or partnership;
- (i) a person includes a reference to that person's legal personal representatives, successors and permitted assigns; and
- (j) the headings in this Agreement do not affect its interpretation.

3 SCOPE OF AGREEMENT

3.1 Sale and Purchase of Energy

From and after the Commercial Operation Date and until the expiry or earlier termination of this Agreement, the Seller shall supply and deliver the Annual Energy to the Buyer and the Buyer shall receive and purchase the same from the Seller under the terms established by this Agreement. The Annual Energy amount is 1,757,606MWh.

3.2 Commissioning

Prior to the Commercial Operation Date, the Seller shall carry out the Commissioning Tests and procedures agreed between the Seller and the Buyer. The Buyer shall purchase the Energy produced during the commissioning period and pay the Seller under the terms established by this Agreement.

3.3 Delivery Point

The Energy supplied under this Agreement shall be delivered at the Delivery Point. The ownership of and the risk of loss to the Energy delivered in accordance with this Agreement shall pass from the Seller to the Buyer at the Delivery Point.

3.4 Annual Energy

The Parties agree the Annual Energy under this Agreement is 1,757GWh. (one thousand, seven hundred and fifty seven GWh)

- (a) The Seller shall have made all reasonable efforts to supply the Annual Energy to the Buyer. And the Buyer shall have made all reasonable efforts to receive it (and on the basis that the Facility shall be a Base-Load Plant) The Party that fails to supply or receive the Annual Energy shall compensate the other Party in accordance with the terms contained in Section 7 (Compensation for failures to receive or deliver Annual Energy);

- (b) This notwithstanding, the Parties acknowledge that in the first twelve months of operation starting from the Commercial Operation Date the actual Energy supply by the Seller may be less than the Annual Energy and agree that the compensation terms described in Section 7.8(a) are not applicable.
- (c) The Parties also acknowledge that from the first twelve months of operation starting from the Commercial Operation Date until the expiry or earlier termination of this Agreement, for every single year (on a 12 month basis from the COD), the actual annual Energy supplied from the Seller's Facility to the Buyer may be more than the maximum Annual Energy, and which the Buyer shall pay for, provided that the Buyer shall be entitled to a discount from the Seller for amounts in excess (only) of 1,813,110 MWh, as more particularly described in Section 7.9.

4 TERM OF AGREEMENT

This Agreement shall be binding on the Parties hereto a from the Signature Date, and it shall continue in force for a period of twenty (20) years from the Commercial Operation Date until the End Date, unless earlier terminated or extended in accordance with its terms. To the extent that the Seller demonstrates to the Buyer that the Facility remains commercially competitive during the 12 month period prior to the End Date, the Buyer shall at the Seller's request extend this Agreement for an additional period of 5 years beyond the End Date, on the same commercial terms.

5 CONDITIONS PRECEDENT TO EFFECTIVENESS OF AGREEMENT

The obligations in Sections 5.1 (*The Seller Conditions Precedent*) and Sections 5.2 (*The Buyer Conditions Precedent*) shall be binding on the Parties from the Signature Date. Each Party shall use all reasonable endeavours to satisfy the Conditions Precedent for which it is responsible prior to the Effective Date. A Party for whose benefit a Condition Precedent is given may waive the requirement for the satisfaction of that Condition Precedent prior to the Effective Date. Any such waiver shall be made in writing and signed by the Party giving the waiver. The Parties shall jointly certify the achievement of the Effective Date within five (5) Business Days after the occurrence of same.

5.1 The Seller Conditions Precedent

- (a) The Seller shall have been granted by and received in writing from the relevant regulatory or governmental bodies, all required Consents and approvals necessary for operation of and sale of electricity from the Facility;
- (b) The Seller shall executed and shall have received the duly executed Government Consent and Support Agreement;
- (c) The Seller shall have received the duly executed Connection Agreement;
- (d) The Seller shall have received certified true copies of the constitutional documents of the Buyer;

- (e) The Seller shall have received certified true copies of resolutions adopted by the Buyer's Board of Directors authorising the execution, delivery and performance by the Buyer of this Agreement;
- (f) The Seller shall have received an indicative tariff from the Public Utilities Regulatory Commission, providing for rates and terms of service in accordance with this Agreement;
- (g) The Seller shall have entered valid Agreements between the Seller and reputable Fuel Supplier(s) for both fuel oil and natural gas
- (h) The Seller shall have received from the Energy Commission a permit for construction and a license to operate the power plant
- (i) The Seller shall have delivered to the Buyer a written notice confirming that the Effective Date has occurred.
- (j) The Seller shall have executed its financing documentation, an EPC contract, and all relevant land-related agreements, in each case relating to the Project

5.2 The Buyer Conditions Precedent

- (a) The Buyer shall have received certified true copies of the constitutional documents of the Seller;
- (b) The Buyer shall have received certified true copies of resolutions adopted by the Seller's Board of Directors authorising the execution, delivery and performance by the Seller of this Agreement;
- (c) The Buyer shall have received a notice from the Public Utilities Regulatory Commission, of the indicative tariff (including with respect to adjustments from time to time) in this Agreement pursuant to the terms of the Sellers generation licence;
- (d) The Buyer shall have received the written notice from the Seller confirming that the Effective Date has occurred.

5.3 Either Party may terminate this Agreement by giving written notice to the other Party if any of the Conditions Precedent has not been satisfied or waived 12 (twelve) months after the Signature Date, provided that if the Seller is satisfying agreed project milestones and proceeding diligently with its obligations under this Agreement then the Buyer shall not be entitled to terminate this Agreement pursuant to the foregoing provisions of this Clause unless the Buyer has paid all verifiable costs incurred by the Seller in meeting its obligations prior to the date of termination.

5.4 Subject to clause 5.3, if this Agreement is terminated due to the failure of the Effective Date to occur, neither Party shall have any liability to the other Party whatsoever.

6 COMMISSIONING AND COMMERCIAL OPERATION DATE

6.1 Buyer Cooperation

The Buyer shall cooperate with the Seller so as to enable the Seller to Commission the Facility in accordance with this Section 6 (*Commissioning and Commercial Operation*)

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Date) and, in particular will, subject to any constraints on NITS, assist in managing the interface with GRIDCo in respect of the connection to NITS and otherwise facilitate in terms of dispatch or providing the requisite load to the extent reasonably required by the Seller for such purposes.

6.2 Commissioning Tests

- (a) Prior to the Commercial Operations Date, procedures for the Commissioning Test shall be agreed between the Seller and the Buyer.
- (b) The Seller shall give the Buyer no less than 10 Days' notice of the date of each Commissioning Test and the Buyer shall have the right to attend and witness the Commissioning Tests.
- (c) The Seller shall provide to the Buyer in respect of the Facility a Commissioning Notice that includes the Certificate of Approval to Connect received from GRIDCo pursuant to the Connection Agreement.

6.3 Commercial Operation Date

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The Facility shall be commissioned and the Commercial Operations Date shall occur on the Day following the issuance of the Commissioning Test Report confirming the Capacity and Heat Rate of the Facility which shall be derived from the Commissioning Test Report.

6.4 Liquidated Damages

- (a) The Buyer will cooperate with the Seller so as to enable the Seller to commission the Facility subject to any constraints on NITS, assist in managing the interface with GRIDCO in respect of the connection to NITS and otherwise facilitate in terms of dispatch or providing the requisite load to the extent reasonably required by the Seller for such purposes.
- (b) In the event that the commercial operation date does not occur prior to the Scheduled Commercial Operation Date, liquidated damages shall be payable by the seller to the buyer at a rate of ten thousand USD (USD10,000) per day for each day that the Commercial Operation Date is delayed beyond such date (and the Buyer shall have the right to draw from the Performance Bond the amount of the liquidated damages) provided that:
 - (i) To the extent that such delay is attributable to NITS or the Buyer, the damages shall be reduced accordingly;
 - (ii) To the extent that the delay(s) are due to Force Majeure, the damages shall be reduced accordingly;
 - (iii) The maximum aggregate amount payable by the Seller to the Buyer under this clause 6.4 shall in any event be capped at 1 million USD (one million USD);
 - (iv) To the extent that the Facility is partially generating energy, the penalty above shall be reduced pro-rata to cover only the Capacity shortfall;

- (v) If the Buyer is satisfied that the Seller is using its reasonable endeavours to commission the Facility in a swift and professional manner, and the Facility is producing some generation, the Buyer may at its discretion, choose to waive all or any portion of any applicable damages

6.5 Performance Bond

- (a) On or prior to the Effective Date and with effect there from the Seller shall provide to the Buyer the Performance Bond
- (b) Unless payment in full of the Performance Bond is earlier demanded by the Buyer under Section 6.4 and paid, the Performance Bond shall continue in force until three months after the date on which Commissioning Certificate has been delivered and the liability for liquidated damages calculated by the Seller and stated in a letter to the Buyer and immediately thereafter the Performance Bond shall be deemed to have elapsed and shall be returned to the Seller.
- (c) In the event that the Buyer exercises its rights pursuant to section 6.4, the Buyer may take all steps necessary to obtain the requisite payments under the Performance Bond (which as provided therein, shall be the Buyer's sole and exclusive remedy against the Seller for any direct or indirect loss, cost or expense the Buyer incurs as a result of the event described in Section 6.4 (Liquidated Damages))

7 PRICING

- 7.1 The Total Electricity Charge shall be the sum total of the Capacity Charge, plus the Energy Charge and Excess Starts Charges and shall be payable monthly on the Due Date.

In respect of the Capacity Charge, the Seller shall be paid a sum of money for each period during which KWh are actually produced, or are deemed to be available to be produced. Accordingly, the Capacity Charge is calculated using the sum of (a) actual electrical output; and (b) the amount of Deemed Energy

In addition, to the extent that the Seller has a take or pay or similar payment obligation under its fuel supply arrangements (for Natural Gas or LNG fuels only), then the amount of any such take or pay payment(s) shall also be payable to the Seller by way of payment for the Fuel Reconciliation

- 7.2 The Total Energy Charge at the Delivery Point is calculated in accordance with the following formula:

$$TEC = TE \times EB$$

Where,

TEC = Total Energy Charge at the Delivery Point

TE = Tariff for the Unit Energy in US Dollars per kWh

EB = Electricity generated from the Facility plus Deemed Energy (if any) at the Delivery Point in kWh

TE shall be the total of the Unit Capacity Charge plus the Unit Energy Charge, that is:

$$TE = UCC + UEC$$

Where,

- (a) UCC = the Unit Capacity Charge of the Energy in US Dollars per kWh which shall be determined by the formula:

$$UCC = UFCC + UVCC$$

Where,

- i) UFCC = the Unit Fixed Capacity Charge (intended to cover investment costs recovery) of the Energy, which is **0.0375** USDollars per kWh;
- ii) UVCC = the Unit Variable Capacity Charge (this is intended to cover the fixed O&M recovery) of the Energy, which is **0.0079** US Dollars per kWh

- (b) UEC = the Unit Energy Charge of the Energy in US Dollars per kWh, which shall be determined by the formula when the Energy is generated from the Facility fuelled by Natural Gas:

$$UEC = \text{Heat Rate} \times GP$$

Where,

- i) Heat Rate = the contracted Heat Rate of the Facility in MMBTU per kWh
- ii) GP = Actual Natural Gas Price in US Dollars per MMBTU, which shall be fixed quarterly through Gas Supply Agreement between the Seller and the credible gas supplier.
- iii) The Actual Natural Gas Price which shall be agreed upon prior to the beginning of the current quarter, shall be subject to quarterly price adjustments by the Gas Supplier, and subsequently passed through the tariff by the PURC. The Actual Gas Price shall be used to calculate the Unit Energy Charge for the same period.

7.3 When the Energy is generated from the Facility fuelled by Light Crude Oil or by Light Crude Oil and Natural Gas mix, the Unit Energy Charge of the Unit Energy shall be negotiate and agreed by the Seller and the Buyer. The calculation of the Unit Energy Charge shall use the following formula:

$$UEC = \%_G(HR_{NG} * GP) + \%_{LCO}(HR_{LCO} * LCOP)$$

Where,

UEC = the Unit Energy Charge in USD/kWh

GP = the Gas Price in USD/MMBTU

HR_{LCO} = Plant Heat Rate when fuelled by Light Crude Oil

LCOP = Price of Light Crude Oil

$\%_G$ = Percentage of power generation from Natural Gas

$\%_{\text{LCO}}$ = Percentage of power generation from Light Crude Oil

$$\text{i.e. } \%_{\text{G}} + \%_{\text{LCO}} = 1$$

- 7.4 From the Commercial Operation Date until the expiry or earlier termination of the Agreement, for every Quarter, the Seller shall enter an Exchange Rate Hedge Agreement for GH Cedi converting to US Dollar between Seller and a reputable Commercial Bank in Ghana which gives a demonstrably competitive rate. And the Seller shall provide the Buyer true copies of the Exchange Rate Hedge Agreement which spells out the applicable GH Cedi to US Dollar Exchange Rate. This rate shall be communicated from time to time to PURC and if acceptable to PURC, shall be used in converting the tariff for the Seller.
- 7.5 The Total Energy Charge will be invoiced monthly in US dollars and will be payable in Ghana Cedis using the agreed Hedged Exchange Rate at the time of the payment, with the cost of the Exchange Rate Hedge also being paid to the Seller.
- 7.6 The Buyer shall pay the Energy Charge for all the Energy supplied by the Seller to the Buyer during Commissioning of the Facility and prior to the Commercial Operation Date, provided that the tariff payable prior to COD and for OCGT generation shall be as set out in Schedule 3
- 7.7 The Facility shall be contracted as a Base-Load Plant, subject to merit order despatch rules of GRIDCo. Any start requested by the Buyer or GRIDCo in excess of the amount of Permitted Starts (being fifty (50) Starts each Year) shall be an "Excess Start". The Seller shall be entitled to collect an Excess Start Charge of not less than Five Thousand US Dollars (\$5,000.00). The exact amount to be charged will be determined during the Commissioning Test Period. for each start to recover the costs. For the Excess Start Charges, the Buyer shall pay the Seller within 30 days.
- 7.8 Compensation for failures to receive or deliver Annual Energy

From the second anniversary following the Commercial Operation Date until the expiry or earlier termination of this Agreement, for every single year, the Parties shall perform a calculation of the actual annual Energy supplied from the Seller's Facility to the Buyer, not later than 10th January of the ensuing year. If the actual annual Energy hereby is less than the contracted minimum Annual Energy of 1,702,103 MWh (a) for reasons attributable to the Seller, the Seller shall pay the Buyer the cost difference in Energy that as a result of the Seller's failure to deliver the contracted Annual Energy, the Buyer has purchased at the System Marginal Price (such that such shortfall volume shall therefore be paid for at an amount equal to the difference between System Marginal Price and the price that the Buyer would have paid for such shortfall under this Agreement had it been produced by the Facility); (b) for reasons attributable to the Buyer, the Buyer shall pay to the Seller annual compensation for the shortfall volume at the price that the Buyer would have paid to the Seller for such Energy had it been produced by the Facility.

The compensation shall be paid immediately into the entitled Party's designated bank account before the end of January of the following year in US Dollars or its equivalent Cedis converted in accordance with agreed Hedged Exchange Rate specified in Clause 7.4.

7.9 Discount on the excess energy beyond contract Annual Energy

From the first year of operation starting from the Commercial Operation Date until the expiry or earlier termination of this Agreement, for every single year, the Parties shall perform a calculation of the actual annual Energy supplied from the Seller's Facility to the Buyer not later than 10th January of the ensuing year.

If the actual annual Energy produced exceeds 1,813,110 MWh the Buyer shall be entitled to a Discount relating (only) to the Unit Fixed Capacity Charge (intended to cover investment costs recovery) on the excess amount (only) above 1,813,110 MWh, according to the following formula:

$$DC = (CB - 1,813,110 \text{ MWh}) \times UFC \times 50\% \times 10^6$$

Where,

DC = the Discount the Buyer shall be entitled to get from the Seller on the excess energy supplied beyond 1,813,110 MWh, which is in US Dollars;

CB = the actual annual energy taken by the Buyer in GWh under the aforesaid calculation (In case CB is below 1,813,110 MWh DC shall be zero)

UFC = Unit Fixed Capacity Charge (intended to cover investment costs recovery) which is **0.0375** US Dollars per kWh

The Discount shall be deducted from the outstanding balance of the Total Energy Charge which the Buyer owing to the Seller. If the balance of The Total Energy Charge is not enough to deduct the Discount, the Discount shall be paid immediately into the Buyer's designated bank account before the end of January of the following year in US Dollars or its equivalent Cedis converted in accordance with agreed Hedged Exchange Rate specified in Clause 7.4.

8 INCREASED COSTS

8.1 The Seller and the Buyer shall agree to seek approval from the PURC to charge Increased Costs to be paid by the Buyer (by way of an adjustment to the Total Electricity Charge (or as otherwise agreed)) on the occurrence of the following events or circumstances (each an "Increased Cost Event") which results in Increased Costs:

- (a) any Political Event that result in an increased cost;

(b) after the Signature Date, any change in the interpretation or application of any Prudent Utility Practices.

8.2 The Seller shall, on the occurrence of any Increased Cost Event, first discuss such Increased Cost Event, its impact and its potential resolution with the Buyer. Upon agreement by the Buyer and the Seller in respect of the applicable Increased Costs a joint application by the Parties shall be made to the PURC. In the event of any dispute as to the required Increased Costs the Seller shall be permitted to make an application directly to the PURC.

8.3 On the occurrence of an Increased Cost Event the Seller shall have the option, to raise additional funds to cover any Increased Costs. The cost of such further capital (including all applicable fees, margins and expenses) shall also be an Increased Cost which shall be reflected in the adjustment to the Total Electricity Charge upon the agreement of the parties.

9 DECREASED COSTS

9.1 The Buyer shall be entitled to request from the PURC (with prior notification to the Seller of such request from the Buyer to PURC) a reduction in the tariff attributable to any benefit accruing to the Seller resulting from any Decreased Costs.

9.2 The Buyer shall include with any request made pursuant to Section 9 (*Decreased Costs*) above an indication of the nature of the Decreased Cost and documentation in reasonable detail evidencing the same and a proposal as to how the reduction in tariff shall take effect, such proposal to be agreed with the Seller.

10 BILLING AND PAYMENT

10.1 Billing Procedure

(a) Each Month commencing with the Month following the Month in which the Commercial Operation Date occurs, the Seller shall submit an invoice (an "**Invoice**") to the Buyer or its designated agent by the 10th day of that Month in relation to the amounts due in respect of the preceding Month.

(b) The Invoice shall contain reasonably details set forth in Schedule 1 (*Pro-Forma Invoice*), together with such further supporting documentation and information as the Parties may agree.

(c) The Invoice shall apply any required VAT charge applicable at the time of invoicing in respect of such Invoice.

10.2 Billing Dispute

- (a) In the event that any or all amounts in an Invoice are disputed by the Buyer, the Buyer shall submit a justification for such dispute, including details of the basis for the dispute and the portion of the Invoice that is subject to such dispute, in writing (an "**Invoice Dispute Notice**") to the Seller prior to the Due Date for such Invoice. The Buyer shall nevertheless pay the undisputed portion of any payment on the due date.
- (b) If the Buyer does not issue a valid Invoice Dispute Notice prior to the Due Date of an Invoice, Buyer shall be required to pay that Invoice, but may subsequently issue an Invoice Dispute Notice within a period of one year from the Due Date, and if Buyer has not issued an Invoice Dispute Notice within such time such invoice shall be considered correct and complete and conclusive between the Parties in the absence of fraud or manifest error.
- (c) The Parties shall use their respective reasonable endeavours to resolve any dispute identified in an Invoice Dispute Notice as soon as reasonably practicable. In the event that within fourteen (14) days of the delivery of a valid Invoice Dispute Notice the dispute regarding the Invoice is not resolved between the Parties, the Seller or the Buyer may refer the dispute to be resolved by arbitration pursuant to Section 24 (Settlement of Disputes).
- (d) If the Expert resolves that the amount disputed in the Invoice Dispute Notice is due and payable, the Expert shall confirm this in writing and the Buyer shall immediately pay the amount detailed in the notice.

10.3 Billing Error

- (a) In the event that there is an error in the amounts billed in any Invoice submitted by the Seller, such error shall be rectified by the Seller within twenty one (21) days of the determination thereof.
- (b) Any erroneous amount paid to the Seller by the Buyer as a result of a billing error shall be refunded to the Buyer within twenty one (21) days. Any amount not paid by the Buyer to the Seller as a result of a billing error shall be invoiced by the Seller and paid by the Buyer within twenty one (21) days of receipt of such invoice.

10.4 Payment

- (a) After the Commercial Operation Date, for every Quarter, the Seller shall enter an Exchange Rate Hedge Agreement for GH Cedi converting to US Dollar between Seller and a reputable Commercial Bank in Ghana. And the Seller shall provide the Buyer true copies of the Exchange Rate Hedge Agreement which spells out the applicable GH Cedi to US Dollar Exchange Rate.
- (b) The Total Energy Charge will be invoiced monthly in US dollars and will be payable in GH Cedis using the agreed Hedged Exchange Rate at the time of the payment.

- (c) All amounts payable under this Agreement shall be paid on or before the Due Date to such account of the Seller as shall have been previously notified to the Buyer. If part of an Invoice is disputed by the Buyer pursuant to Section 10.2 (*Billing Dispute*), the Buyer shall pay the undisputed amount of the Invoice on the Due Date.
- (d) All amounts payable under this Agreement shall be made free and clear from, and without any set-off, deduction or withholding on account of, any amount or Taxes.
- (e) The Seller shall be entitled to charge the Buyer interest at the Default Rate for any payment due to Seller from the Buyer under this Agreement that is overdue (i.e. beyond the Due Date) for at least thirty (30) days.

11 SECURITY OF PAYMENT

- 11.1 From the Commercial Operation Date, the Buyer shall procure the issuance of the Bank Guarantee in the Bank Guarantee Required Amount, issued by a creditworthy reputable financial institution in Ghana reasonably acceptable to the Seller and on terms satisfactory to the Seller, as security for the timely payment of all sums due to Seller hereunder from the Buyer. Seller shall be entitled to draw upon the Bank Guarantee without further notice to the Buyer (a) for any payment due to Seller from the Buyer that is overdue for at least thirty (30) days or (b) upon termination pursuant to Section 21 (*Termination*).
- 11.2 The Buyer further covenants and agrees that, immediately following any drawing of funds by Seller under the Bank Guarantee the Buyer shall replenish the value of Bank Guarantee to the Required Amount. In the event that the Buyer fails to replenish the value of Bank Guarantee to the Required Amount within fifteen (15) days after the obligation to replenish the value of the Bank Guarantee, such failure shall be deemed to be a material breach of the Buyer's obligations and the provisions of Clause 20.2 (*Defaults by the Buyer*) shall apply and, provided such failure continues for thirty (30) days or more, the Seller may suspend deliveries of electricity hereunder until the Buyer has covered the breach of its obligations under this Clause 11.2. Each Bank Guarantee shall be valid for at least a twelve (12) month period. The Buyer shall be required to renew no later than ten (10) business days prior to the expiry of the current Bank Guarantee.

12 STANDARD OF PERFORMANCE

- 12.1 In performing its obligations under this Agreement the Seller undertakes:
 - (a) to operate and maintain the Facility in all material respects in accordance with the Prudent Utility Practices;
 - (b) to operate and maintain the Facility in all material respects in accordance with the Grid Code;

- (c) to maintain all consents and approvals necessary for the Seller to fulfil its obligations under this Agreement;
- (d) to provide such assistance and information as the Buyer may reasonably require in connection with the Buyer's discussions regarding its base rate with the PURC.

12.2 In performing its obligations under this Agreement the Buyer undertakes:

- (a) to act in accordance with the Prudent Utility Practices and the Grid Code;
- (b) to co-operate with, and not encumber, impair or diminish the ability of, the Seller at all times, by all means possible, to fulfil the objectives of this Agreement;
- (c) to maintain all Consents and approvals necessary for the Buyer to fulfil its obligations under this Agreement; and
- (d) to provide such assistance and support as the Seller may reasonably require in connection with the Seller's applications for Consents and customs and immigration control procedures.

13 CONTINUITY OF SUPPLY

- 13.1 Subject to Section 13.3 (*Continuity of Supply*) below, which may prevent the Seller from doing so, the Seller shall stand ready to supply Contracted Energy in a continuous manner during the twenty four (24) hours of every day at the Delivery Point, and shall do so in accordance with Dispatch Instructions, except as otherwise provided in this Agreement.
- 13.2 The Seller, and Buyer, with the support of GRIDCo shall use all reasonable efforts to remove or to assist in removing the cause of any interruption in the supply of contracted Energy with the minimum of delays, and, as soon as practicable, after the removal of any such cause, to resume or normalize the supply of the Energy under the terms of this Agreement.
- 13.3 The Seller shall have the right at all times to discontinue the supply of Energy to the Buyer at the Delivery Point (a) without notice for the purpose of safe-guarding life or property, or (b) if instructed to do so by GRIDCo pursuant to the Grid Code or the Connection Agreement, or (c) due to Seller Force Majeure; or (d) upon giving 72 hours' notice for the purpose of emergency maintenance, replacement or repair of the apparatus, equipment or works of the Seller. The Seller shall, where relevant, use its reasonable endeavours to ensure that all such interruptions shall be rectified as soon as reasonably practicable and, when possible, in coordination with the Buyer.
- 13.4 In the event that any Invoice has not been paid within 30 days after the Due Date and the Bank Guarantee and Government Consent has failed to pay for the overdue amount, the Seller shall have the right to discontinue the supply of

contracted Energy to the Buyer at the Delivery Point until such payment has been made pursuant to Section 10 (*Billing and Payment*).

14 FORCE MAJEURE

14.1 Definition of Force Majeure

For the purposes of this Agreement, "**Force Majeure**" means any circumstance, event or condition (or combination thereof) beyond the reasonable control, directly or indirectly, of the affected party ("**Affected Party**") but only to the extent that:

- (a) such circumstance, event or condition, despite the exercise of diligence, cannot be prevented, avoided or overcome by the Affected Party;
- (b) such circumstance, event or condition prevents the performance by the Affected Party of its obligations under or pursuant to this Agreement (save for payment obligations);
- (c) the Affected Party has taken all reasonable precautions, due care and measures to prevent, avoid or overcome the effect of such circumstance, event or condition on its ability to perform its obligations under this Agreement and to mitigate its consequences;
- (d) such circumstance, event or condition is not the direct or indirect result of a breach or failure by the Affected Party to perform any of its obligations under this Agreement or any other Project Agreement;
- (e) such circumstance, event or condition is without fault or negligence of the Affected Party;

and shall include the following events or circumstances to the extent that they satisfy the preceding definition:

- (i) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, military or other usurpation of power, blockade, embargo, political revolution, insurrection, civil commotion, sabotage or act of terrorism, after the Signature Date;
- (ii) an act of God including but not limited to lightning, earthquakes, volcanic activity, floods, storms;
- (iii) epidemics, plagues or quarantines.

14.2 Duty to Report Force Majeure

- (a) The Affected Party, when claiming relief for Force Majeure under this Section 14 (*Force Majeure*), shall notify the other Party in writing of the occurrence of a Force Majeure as soon as reasonably practicable, and in any event within seven

(7) days after the Affected Party becomes aware of its occurrence and that Force Majeure would be likely to have an impact on its performance of its obligations under this Agreement.

- (b) Any notice pursuant to Section 14.2(a) (*Duty to Report Force Majeure*) shall set out full particulars of:
 - (i) the nature of the events or circumstances constituting Force Majeure which is the subject of any claim for relief under this Agreement;
 - (ii) the effect which such Force Majeure is having on the Affected Party's performance of its obligations under this Agreement; and
 - (iii) the measures which the Affected Party is taking, or proposes to take, to mitigate the impact of Force Majeure.
- (c) For so long as the Affected Party continues to claim to be affected by Force Majeure, it shall provide the other Party with progress reports describing:
 - (i) the measures which the Affected Party is taking, or proposes to take, to mitigate the impact of Force Majeure; and
 - (ii) such other information as the other Party may reasonably request about the Affected Party's claim.

14.3 Duty to Mitigate

- (a) For so long as an event of Force Majeure which is the subject of any claim under this Agreement is continuing, the Affected Party shall take such steps as are reasonably practicable in accordance with the Prudent Utility Practices to minimise the duration and severity of the impact of such Force Majeure and to restore the Affected Party's ability to perform its obligations under this Agreement as soon as reasonably practicable following the cessation of such Force Majeure.
- (b) With respect to the Seller only, if a Force Majeure occurs that impacts the Seller, such event may be invoked only with respect to any Unit or Units affected by such event and not with respect to any other Unit or other part of the Facility not so affected if it is capable of independent or partial operation in accordance with Prudent Utility Practice.

14.4 Consequences of Force Majeure

Subject to Section 14.5 (*Payments During Force Majeure*), if the Affected Party claims relief in respect of Force Majeure in accordance with this Section 14 (*Force Majeure*), then the Affected Party shall be deemed not to be in breach of its obligations under this Agreement to the extent that the events or circumstances constituting such Force Majeure prevent, delay or impede the Affected Party from performing such obligations.

14.5 Payments During Force Majeure

- (a) Upon the occurrence of any Force Majeure event after the Commercial Operation Date affecting the Seller, then during such Force Majeure event, the Buyer shall be required to make payment to the Seller for Energy delivered to the Buyer at the Delivery Point.
- (b) Immediately upon the occurrence of any Force Majeure event after the Commercial Operation Date affecting the Seller, then during such Force Majeure event, the Seller shall be required to notify the Buyer of such event and declare to the Buyer the quantum of Energy it anticipates it will be capable of producing over a specified period of time (being the period the Seller believes it will be affected by the Force Majeure event) as a result of the occurrence of the Force Majeure event.
- (c) The Buyer shall not be entitled to claim Force Majeure in respect of its payment obligations pursuant to the terms of this Agreement.

15 INSURANCE

The Seller shall:

- (a) at its sole cost and expense, obtain and maintain, in full force and effect, as a minimum, the insurance policies with levels of cover set out in Schedule 4, subject to such insurances being available on commercially reasonable terms to the Seller, such insurance policies being placed with reputable insurance companies;
- (b) provide to the Buyer upon request copies of all policies obtained by Buyer and evidence that the premiums payable thereunder have been paid, including the normal waivers of subrogation, and a representation from a reputable, independent insurance broker that such coverages conform to Prudent Operating Practice (i) prior to the Effective Date; (ii) prior to COD, (iii) annually prior to each anniversary of COD, and (iv) each time insurance coverages are changed in any respect;
- (c) provide access (on reasonable notice) to the Buyer or its representatives to its offices during office hours to inspect the original policies;
- (d) if the Seller fails to procure or maintain any insurance which is required in accordance with (a) above, the Buyer shall have the right to procure such insurance at the Seller's expense, provided that the Buyer shall have given 20 Days prior notice to the Seller of its intention to exercise such right, unless such notice arises from the Seller's non-payment of premiums for existing insurance, in which case the Buyer shall provide at least five (5) Days prior notice of such intention. If the Seller fails to reimburse the Buyer for any such premiums within seven (7) Days of being notified to do so, the Buyer shall be entitled to payment

of such amount by deducting such amount or amounts from the Total Electricity Charge due in the immediately following period until the amount of such premiums has been fully repaid.

16 ENERGY MEASUREMENT

The parties agree that the measurement of electricity from the Facility shall be done in accordance with the provisions of the prevailing grid code. All provisions in this section shall apply only if the prevailing grid code has not made provision for them.

- 16.1 At the same metering point, one set of power meters of GRIDCo (Principal Meter) and one set of power meters of the Seller (Check Meter) shall be installed. The Principal meter and the Check Meter shall be clearly marked. During the operation of this Agreement, neither party can change the Principal or Check Meters without the other's prior approval. In normal instance, the parties shall take the meter reading data of the Principal Meter as the basis of electricity calculation. The metering data of the Check Meter will be used for cross-checking the readings of the Principal Meter, or in substitution for the Principal Meter when it becomes defective. The Principal Meter and the Check Meter shall be installed at the same metering point and the same metering circuit, and have the same accuracy levels and same inspection term.
- 16.2 The accuracy of the measuring equipment shall be verified by a recognized independent authority at six (6) month intervals. The Seller shall give the Buyer written notice of the time and date of the verifications to be performed not less than five (5) days prior thereto. The Buyer shall have the right to participate in the verifications of the measurement devices.
- 16.3 If, as a consequence of the verification it is determined that the measuring equipment is measuring or recording Energy outside the accuracy level of 0.2S, then the inaccurate equipment shall be so recalibrated or replaced as to measure and record the Energy with the required accuracy.
- 16.4 The point of measuring for billing purposes shall be at the Power Delivery Point, but shall otherwise be determined jointly by the Seller and the Buyer. If the equipment for measuring at Power Delivery Point is connected at a location other than the Power Delivery Point, the readings shall be corrected to give results such as would be obtained by instruments connected at the Power Delivery Point and the corrections procedures shall be agreed upon by the Seller and the Buyer.
- 16.5 The measurement device used for billing shall have at any time two seals, one installed by the GRIDCo on behalf of the Buyer and the other installed by the Seller.
- 16.6 The Seller shall provide, in its metering station, space for the Buyer-owned check metering equipment and permit the use of the Seller's current and potential

transformers free of charge, for such metering purposes as may be requested by the Buyer.

- 16.7 Access to any measuring equipment belonging to the Buyer and on the premises of the Seller shall be granted free of charge to the Buyer at any and all times, and the Buyer may test, calibrate, adjust, remove or change its measuring equipment at any reasonable time with the consent of the Seller. After consultation between the parties and proper metering measures being taken, when possible the Seller shall be advised at least three (3) days in advance of the intention of the Buyer to test, calibrate, adjust, remove or change its measuring equipment.
- 16.8 Either Party shall have the right to request to test any measuring equipment in the presence of a representative of the other Party by giving to the other Party seven (7) days prior notice in writing of the Party's desire to test the measuring equipment.
- 16.9 The Party whose equipment is found to be defective shall within a reasonable time repair or replace and retest any meter or measuring equipment found after such verification to be defective.
- 16.10 The power metering devices include: power meter, voltage transformer (P.T.), current transformer (C.T.) and secondary connecting wire conductor. The metering circuit must use independent, specific voltage transformer windings and current transformer windings; the metering circuit must be absolute, no other unrelated components can be connected. The accuracy of the voltage transformer (P.T.) windings for metering must be Level of 0.2, while the accuracy of the current transformer (C.T.) must be Level of 0.2S.
- 16.11 The power metering devices should have functions that conform to the provisions of the prevailing grid code. The functions include the following:
 - (a) Complete electronic metering devices;
 - (b) Bi-directional metering function: from power plant to network, and, from network to power plant;
 - (c) Keep the memory for recording at least two months metering data;
 - (d) The accuracy must be Level of 0.2S for active power, and Level of 1.0 for inactive power;
 - (e) Connection mode must be 3 phase 4 wires;
 - (f) Display running time;
 - (g) Communication port with RS485, RS232, DMP3, Fibre Optic;
 - (h) And other functions that meet the requirements of IEC standard.
- 16.12 The power metering devices should have remote metering capability and be connected into the remote metering systems of the Seller or the Buyer. The communications shall meet the requirements of IEC standard.
- 16.13 The technical alteration of the metering system can only be made after being approved in writing by both parties.

- 16.14 The connecting wires of the transformer secondary circuit shall be made of insulated single core copper wire. The cross-sectional area of the secondary current circuit connecting wires shall be determined by the calculation of the rated secondary load of current transformer, but it shall not be less than 4mm². To the voltage secondary circuit, the cross-sectional area of the connecting wire shall be determined by the calculation of allowed voltage loss, but it shall not be less than 2.5mm².
- 16.15 The actual secondary burden of the transformer shall be within 25 to 100 per cent of the rated secondary load; the power factor of the rated secondary load of current transformer shall be 0.8 – 1.0; the rated secondary power factor of the voltage transformer shall be close to the actual secondary load power factor.
- 16.16 The rated primary current of the current transformer shall be guaranteed such that during normal operation the actual load current to reach 60 per cent of the rated value and not fall below 30 per cent of the rated value. In such an event, High-Moving-Heat stable current transformer shall be utilized to reduce the bias.

17 METER READINGS

- 17.1 The Buyer is entitled to reading the meters with the Seller and GRIDCo at the end of each month at 12:00 GMT or at a time agreed upon by the Parties for calculation of the electrical energy delivered.
- 17.2 The records from the meters dated and duly signed in three original copies shall be taken and kept by the Seller, the Buyer and GRIDCo.
- 17.3 The records shall be kept and maintained by the Seller, the Buyer and GRIDCo for at least five (5) years following the delivery of a bill.
- 17.4 The date of the meter reading will be extended in case of holidays to the immediately following business day.
- 17.5 If any one party of Seller or Buyer does not arrive for the meter reading within two hours after agreed time in Clause 17.1.1, the other party can proceed and read the meters with GRIDCo, and such reading would be considered as consented by the Seller and the Buyer, which shall be used for billing for that month.

18 ADJUSTMENT OF MEASUREMENT DEVICES

- 18.1 In the event it is determined that the reading from any measuring devices has been inaccurate, the Party who owns such inaccurate devices shall correct the inaccuracy and adjust the readings of the affected devices and the appropriate billing correction shall be reflected in the next regular Monthly invoice delivered hereunder.

- 18.2 If for any reason, any of the meters is unserviceable, the Energy consumed shall be estimated on the basis of following priority order:
- (a) The meter's data of the line recorded in the meters to be installed by GRIDCo at the end of the line in its substation;
 - (b) The sum of all meter readings on all main transformers at 161kV side in the Facility;
 - (c) That it is the same as for other days, preferably of the same month, on which similar load existed;

19 LIABILITY

- 19.1 A Party establishing or alleging a claim based on breach of contract, warranty, tort or otherwise arising out or in connection with this Agreement shall be under a duty to take all necessary measures to mitigate the loss which has occurred, provided that it can do so without unreasonable inconvenience or unreasonable cost.
- 19.2 Subject to the provisions of this Agreement specified hereunder, to the maximum extent permitted by law, each Party shall defend, indemnify and hold harmless the other Party and affiliated companies, and those with whom it may be associated in a joint venture, and the directors, employees and agents of any of the foregoing, from and against any loss, damage, claim, suit, fine, liability, other cost of litigation and judgment thereon, arising out of personal injury, death or disease (including such that arise from pollution), including but not limited to, employees of those entities mentioned above and their respective subsidiaries or subcontractors, incidental or in connection with the operation or performance of this Agreement, except to the extent that the injury, disease, death or damage is caused by the negligence and/or omission of the entity otherwise indemnified.
- 19.3 Without prejudice to clauses [3.4, 6.4, 7, 8,9, and 19.2], the liability of each Party to the other for any matter under or arising from this Agreement shall be limited to the sum of USD \$2million (two million USD)
- 19.4 The other Party shall have the right, but not the duty, to participate in the defence of any such claim or suit.
- 19.5 Any Party shall, as soon as practicable after receiving notice of any suit brought against it, deliver to the other Party, full particulars within its knowledge thereof and shall render all reasonable assistance requested by any Party in the defence of such suit.

20 EVENTS OF DEFAULT

20.1 Defaults by the Seller

Where, during any 12 month period, the Seller has paid compensation under clause 7.8(a) for a period of not less than 6 months, the Buyer will issue a warning notice to the Seller

that it may be inclined to terminate this Agreement absent an improvement in performance (but without prejudice to the Buyer's right to continue to receive compensation under clause 7.8(a) until termination) on the date that falls 3 months after the date of such notice (being the "**Expected Remedy Date**"), and if the Seller then fails to remedy the shortfalls (such that it ceases to pay compensation under clause 7.8(a)) prior to the Expected Remedy Date, the Buyer may thereafter commence the process for termination of this Agreement. Termination may thereafter occur if (from the Expected Remedy Date) the Seller fails to supply over a period of continuous 183 days immediately after the Expected Remedy Date, aggregate energy to the Buyer of at least 814GWh (eight hundred and fourteen GWh), in which case the Seller shall be deemed to have defaulted on its obligations under the Agreement, provided that in determining whether such 814GWh has been achieved, the Seller shall be credited with (by adding in what could have been produced) volumes that the Facility would have produced but for:

- (a) any failure, event, default or causes attributable to NITS or GridCo;
- (b) any failure, event, default or causes attributable to Buyer;
- (c) Force Majeure;
- (d) major maintenance and major inspections;
- (e) any Emergency;
- (f) Reduced Output for Temperature

20.2 Defaults by the Buyer

If the Buyer fails to pay for the energy purchased under the Agreement within the time stipulated in Clause 10.4e, and its failure is not rectified within 30 days, the Buyer shall be deemed to have defaulted on its obligations under the Agreement.

20.3 Once a breach has occurred, the non-defaulting party has the right to request in writing that the other party to remedy the default. After receipt of the notice of default, the defaulting party shall take immediate measures to remedy the default.

20.4 If either party defaults, the other party has the right to compensation for all losses incurred during the period of default as expressly provided for (only) under clauses [3.4, 6.4, 7, 8,9, and 19.2] of this Agreement

21 TERMINATION

21.1 This Agreement shall terminate on the expiry date of the Agreement.

21.2 Termination upon default of the Seller under clause 20.1

- (a) Upon the Seller's failure to remedy the default within the determined period, the Buyer may terminate this Agreement.

- (b) Default on the part of the Seller shall not relieve the Buyer from the obligation of payments for Energy effectively supplied, less an amount equivalent to the Supplier's liabilities to the Buyer as a result of Supplier's default.

21.3 Termination upon default of the Buyer

Upon Buyer's failure to remedy the default within the determined period, the Seller may terminate this Agreement. The Seller on providing due notice, and establishing a reasonable period for negotiation, without terminating the Agreement may, without liability therefore, discontinue delivery of Energy to the Buyer, but no such discontinuance shall relieve the Buyer from any obligation under this Agreement or lessen or change any of the Buyer's obligations.

21.4 The termination upon other Grounds

Either party shall have the right to terminate this Agreement upon the occurrence of the following:

- (a) The other party applies to be declared bankrupt or is in liquidation;
- (b) The merger of other party with another entity, the merging or transfer of most of its assets to another entity, where the succeeding entity cannot or will not be fully committed to all the obligations of this Party under the Agreement.

22 WAIVERS

- 22.1 Any waiver by the Seller or the Buyer shall be limited to the particular instance and shall not be deemed to waive any other right or remedy, or extend to any other matter under this Agreement or in any other way affect the validity of this Agreement.
- 22.2 No delay or forbearance by either Party in exercising any right, power, privilege or remedy provided by law or under this Agreement shall operate to impair or be construed as a waiver of such right, power, privilege or remedy.
- 22.3 Any waiver must be in writing, or if that is not practicable under exigent circumstances, reduced to writing as soon as practicable and delivered to the other party in the same manner as a Notice.

23 GOVERNING LAW

The governing law of this Agreement shall be the Laws of Ghana.

24 SETTLEMENT OF DISPUTES

24.1 Amicable Settlement

- (a) If any dispute shall arise between the Parties hereto in connection with any matter arising out of this Agreement, the Parties shall use their best efforts to resolve the dispute.
- (b) If the dispute is not settled within the first 60 days after one Party declares in writing to the other the existence of the dispute, any of the Parties may declare in writing its intention to solve the dispute by means of arbitration.

24.2 Arbitration

- (a) All disputes, controversy or claims arising out of or relating to this Agreement thereof shall be finally settled in accordance with the Rules of Arbitration of the International Chamber of Commerce:
- (b) The arbitral tribunal shall be composed of three arbitrators. Each party shall appoint one arbitrator and the two arbitrators shall mutually appoint a third arbitrator as chairman of tribunal from the list of arbitrators of the International Chamber of Commerce (the "Court"). If Parties cannot reach consensus, the Court shall designate the Chairman of the arbitral tribunal. The seat and place of arbitration shall be in London, England.
- (c) The language of the arbitration shall be English.
- (d) The arbitral award and consequential orders shall be final, conclusive and binding on the Parties.

25 ASSIGNMENT

This Agreement shall not be assigned or sub-contracted in any way without the written approval of both Parties, save to the extent the Seller is required to assign or pledge payments under this Agreement to its financiers.

26 NON-DISCLOSURE

26.1 The terms and conditions of this Agreement and all information relating to this Agreement or to financial, commercial, technical, operational, personnel, management aspects of the Project or a Party, which is disclosed to, discovered or acquired by the other Party or received from the first-mentioned Party, or its auditors, professional advisers or consultants or contractors, and any disclosure made in the course of any reference of a dispute to the Expert or to arbitration in accordance with Section 24 (*Settlement of Disputes*) ("**Confidential Information**") shall be treated as confidential and shall not be disclosed by either Party to any third party without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed), provided that:

- (a) this Section 26 (*Non-Disclosure*) shall not apply to Confidential Information which is in the public domain other than by reason of breach of this Section 26

(*Non-Disclosure*), or which was already in the rightful possession of the recipient Party, or which was obtained by the recipient Party in good faith from a third party entitled to disclose it;

- (b) a Party may disclose Confidential Information:
 - (i) to the extent required by law, or any securities exchange or regulatory or governmental body to which it is subject;
 - (ii) subject to obtaining undertakings to keep the same confidential (except where professional duties already impose an obligation of confidentiality) to:
 - (A) its shareholders, agents, advisers, directors, employees and contractors whose duties reasonably require such disclosure;
 - (B) any prospective assignee of the Party and to such assignee's advisers;
 - (C) any bank or financial institution from whom the Party is seeking or has obtained finance; and
 - (D) to any prospective investor of the Seller; and
 - (iii) to or an arbitral tribunal appointed in accordance with Section 23 (*Settlement of Disputes*)

Provided that, in all cases, the disclosing Party shall keep the disclosure of Confidential Information to the minimum necessary for the purposes for which it is disclosed.

- 26.2 The restrictions on the disclosure of Confidential Information in this Section 26 (*Non-Disclosure*) shall continue to be in force for three years after the expiration or termination of this Agreement for any reason.

27 AMENDMENTS

- 27.1 This Agreement and any of its provisions may not be amended except by mutual agreement of the Parties in writing.
- 27.2 If any provisions of this Agreement or part thereof is rendered void, illegal or unenforceable in any respect under any law:
 - (a) the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby;

(b) In the event that any part of this agreement is declared invalid or illegal or unenforceable, the Parties shall agree to amend this agreement so as to maintain as near as possible its original intent and effect.

27.3 If the Seller or the Buyer believes it is necessary to amend this Agreement to reflect a Change in Law each Party, at its own cost, shall promptly negotiate in good faith new provisions to accommodate such Change in Law whilst maintaining as near as possible the original intent and effect of this Agreement. This Section shall be without prejudice to the Seller's rights under Section 8 (*Increased Costs*) and Schedule 2 (*Change in Law*).

28 SEVERABILITY

If any provision of this Agreement is declared or found to be illegal, unenforceable or void, the Parties shall negotiate in good faith to agree upon a substitute provision that is legal and enforceable and is as nearly as possible consistent with the intentions underlying the original provision. If the remainder of this Agreement is not materially affected by such declaration or finding and is capable of substantial performance, then the remainder shall be enforced to the extent permitted by law.

29 RELATIONSHIP OF THE PARTIES

It is expressly understood that the Buyer, on the one hand, and the Seller, on the other hand, intend by this Agreement to establish the relationship of independent contractors, and do not intend to undertake the relationship of principal and agent or to create a joint venture or partnership between them or their respective successors in title.

Neither the Buyer, on the one hand, nor the Seller, on the other hand, shall have any authority to create or assume, in the name or on behalf of the other Party, any obligation, expressed or implied, nor to act or purport to act as the agent or the legally empowered representative of the other Party hereto for any purpose whatsoever.

30 ENTIRE AGREEMENT

This Agreement contains and expressly refers to the entire agreement between the Parties with respect to its subject matter and expressly excludes any warranty, condition or other undertaking implied at law or by custom and supersedes all previous agreements and understandings between the Parties with respect to its subject matter and each of the Parties acknowledges and confirms that it does not enter into this Agreement in reliance on any representation, warranty or other undertaking by the other Party.

31 NOTICES

31.1 All notices hereunder, including service of processes in relation to any legal proceedings commenced under this Agreement, shall be in writing and may be delivered or sent by registered mail or facsimile to the recipient at the address, and

marked for the attention of the person, specified in Section 31 (*Notices*) and any such notice shall be deemed to have been duly given as follows:

- (a) when delivered by hand, upon delivery at the address of the relevant Party;
- (b) when sent by registered mail, fourteen (14) days after the date of posting;
- (c) when sent by facsimile, upon confirmation of uninterrupted transmission by a transmission report provided that any notice given by facsimile shall be confirmed by a letter sent by hand or registered post, but without prejudice to the original facsimile notice if received in accordance with this Section.

31.2 The notice details of each Party for the purposes of this Agreement are:

The Seller: The Chief Executive Officer

Astro Power Limited Limited
8th Floor, World Trade Center
29 Independence Avenue, Accra, Ghana
PMB KD5 Kanda, Accra

Tel: (0302) 632561
Fax No: (0302) 632569

The Buyer: The Managing Director

Electricity Company of Ghana
Electro Volta House
P.O. Box GP521
Accra, GHANA

Tel: (0302) 676762
Tel: (0302) 676747
Fax No: (0302) 666262

31.3 A Party may notify the other Party of a change in its notice details specified in Section 31 (*Notices*) and such notification shall be effective on the date specified in the notice or the date which is ten (10) days after the notice is given, whichever is the later.

IN WITNESS WHEREOF the parties hereto have hereunto caused this Agreement to be signed on their behalf by their authorized representatives on the day and year first above within.

SIGNED, SEALED AND DELIVERED on behalf of

Astro Power Limited

Name: KILIAN de BORMES

Title: BOARD CHAIRMAN

ASTRO POWER LIMITED
PMB KD 5
KANDA-ACCRA

In the presence of witness:

SIGNED, SEALED AND DELIVERED on behalf of

Electricity Company of Ghana Limited by

Name: WILLIAM HUTTON-MENSAH

Title: MANAGING DIRECTOR



In the presence of witness:

Schedule 1 Pro-Forma Monthly Invoice

From:

.....

TO:

Electricity Company of Ghana Ltd.
 Electro Volta House P.O. Box 521
 Accra, Ghana

Invoice for [Insert Month and Year]

Invoice No.:

Invoice Date:

Invoice Due Date:

Line	PARAMETERS	UNIT	AMOUNT
a	Monthly Energy Delivery	KWh	
b	Gas price	USD/MMBTU	
d	Contracted Heat rate (as agreed in PPA)	MMBTU/kWh	
e	Unit Capacity Price (as agreed in PPA)	USD/KWh	
f	Unit Energy Price (as agreed in PPA)	USD/KWh	

TOTAL ELECTRICITY CHARGE			
g	Capacity Charge (a X e)	USD	
h	Energy Charge (a X d)	USD	
f	VAT	USD	-
g	NHIL	USD	-
TOTAL ELECTRICITY CHARGE of THIS MONTH (OCT)		USD	
Add: OUTSTANDING BALANCE (September)		USD	
Deduct: ELECTRICITY CHARGE PAID THIS MONTH (OCT)		USD	
TOTAL ELECTRICITY CHARGE PAYABLE		USD	

INTEREST ON OVERDUE PAYMENT			
h	Amount of Overdue Payment	USD	
i	Default Rate	USD	
j	Interest Accrued This Month	USD	
ADD: INTEREST PAYABLE PRIOR BALANCE		USD	
Deduct: INTEREST PAID THIS MONTH		USD	
TOTAL INTEREST PAYABLE		USD	

ADDITIONAL AND DEDUCTABLE			
Additional: [Details Here]		USD	
Deductable: [Details Here]		USD	
TOTAL AMOUNT PAYABLE		USD	

Information: Payment of this month from ECG in GHS, the covert rate and etc.

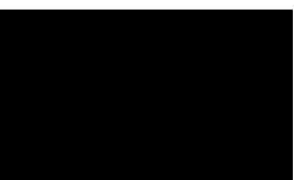
ATTACHMENT:

1. Gas Bill for [Insert Month and Year]
2. Meter Reading for [Insert Month and Year]
3. Exchange Rate Hedging Agreement
4. Others

Signature and Stamp

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Schedule 3 Annual Energy Computation

		PROJECTED DEPENDABLE CAPACITY & ANNUAL ENERGY						
					98%	92%	95%	
			Year	Nominal Capacity (MW)	Dependable Capacity (MW)	Max. Energy (MWh)	Min. Energy (MWh)	Average Energy (MWh)
Dependable Capacity	4% per year	0	July. 2015	150	144.0	209,987	197,130	203,558
Hours	8760 hrs	1	Jan 2016	220	211	1,813,110	1,702,103	1,757,606
Availability (Average)	95%	2	2017	220	211	1,813,110	1,702,103	1,757,606
Availability (minimum)	92%	3	2018	220	211	1,813,110	1,702,103	1,757,606
Availalability (maximum)	98%	4	2019	220	211	1,813,110	1,702,103	1,757,606
		5	2020	220	211	1,813,110	1,702,103	1,757,606
Monthly output	141,841,920.0 kWh	6	2021	220	211	1,813,110	1,702,103	1,757,606
Capacity Charge	4.65 US Cents/kWh	7	2022	220	211	1,813,110	1,702,103	1,757,606
Energy Charge NG	9.30 US Cents/kWh	8	2023	220	211	1,813,110	1,702,103	1,757,606
Total for NG	13.95 US Cents/kWh	9	2024	220	211	1,813,110	1,702,103	1,757,606
Energy Charge LCO	17.10 US Cents/kWh	10	2025	220	211	1,813,110	1,702,103	1,757,606
Total for LCO	21.75 US Cents/kWh	11	2026	220	211	1,813,110	1,702,103	1,757,606
Monthly Payments NG	19,786,947.8 USD	12	2027	220	211	1,813,110	1,702,103	1,757,606
Monthly Payments LCO	30,850,617.6 USD	13	2028	220	211	1,813,110	1,702,103	1,757,606
		14	2029	220	211	1,813,110	1,702,103	1,757,606
Bank Guarantee	USD	15	2030	220	211	1,813,110	1,702,103	1,757,606
NG	39,573,895.7 2 mnths	16	2031	220	211	1,813,110	1,702,103	1,757,606
NG	59,360,843.5 3 mnths	17	2032	220	211	1,813,110	1,702,103	1,757,606
LCO	61,701,235.2 2 mnths	18	2033	220	211	1,813,110	1,702,103	1,757,606
LCO	92,551,852.8 3 mnths	19	2034	220	211	1,813,110	1,702,103	1,757,606
	USD	20	2035	220	211	1,813,110	1,702,103	1,757,606
Blend NG & LCO	46,212,097.5 2 mnths	Annualised			211	1,813,110	1,702,103	1,757,606
Blend NG & LCO	69,318,146.3 3 mnths							
Agreed guarantee amt 40 million USD								

Schedule 4 Insurances and Amounts

Schedule 4 Insurances

- 1.0 Insurance cover to be maintained by Seller throughout the [Construction Period and the] Operating Period the Seller shall maintain in force the following insurance policies with reputable insurance companies:
- (a) employer's liability insurance in relation to the Operating Staff as required by applicable law;
 - (b) third party liability insurance for an amount of not less than [] unless otherwise agreed with the Buyer;
 - (c) motor vehicle insurance for vehicles used directly by the Operator in the provision of the Operating Services to the extent such insurance is required to be maintained under applicable Ghana road traffic legislation in relation to such use.
 - (d) a material damage policy for loss of or damage to the Facility (for their full reinstatement value) with an indemnity at least equal to [] unless otherwise agreed with the Buyer;
 - (e) a public and product liability insurance with a minimum sum insured at least equal to [] unless otherwise agreed for claims arising from a single event or series of related events in a single calendar year;
 - (f) employer's liability insurance as required by applicable law;
 - (g) machinery breakdown insurance with a minimum sum insured at least equal to [] unless otherwise agreed [for claims arising from a single event or series of related events] in any Operating Year;
 - (h) [equipment insurance for any equipment owned by the Operator at such level and on such terms considered reasonable having regard to Good Industry Practice;]
 - (i) Construction Risks policy as agreed with the Buyer
 - (j) any other insurance required by statute.

Schedule 5 Commercial Figures
TO BE PROVIDED

Schedule 6 Implementation Programme

