

POWER PURCHASE AGREEMENT

BETWEEN



BXC COMPANY (GHANA) LIMITED

AND



**ELECTRICITY COMPANY OF GHANA
LIMITED**

TABLE OF CONTENTS

		Page
1	Definitions	1
2	Rules of Interpretation	12
3	Scope of Agreement	12
4	Term of Agreement	13
5	Conditions Precedent to Effectiveness of Agreement	13
6	Commissioning and Commercial Operation Date	15
7	Capacity Calculation and testing	16
8	Pricing	17
9	Increased Costs	21
10	Decreased Costs	21
11	Billing and Payment	22
12	SECURITY FOR PAYMENTS	24
13	Standard of Performance	25
14	Continuity of Supply	25
15	Information	26
16	Force Majeure	27
17	Insurance	29
18	Capacity and Energy measurement, meter readings and adjustment of measurement devices	30
19	Liability	33
20	Events of Default	35
21	Termination	37
22	Waivers	40
23	Representations and warranties	40
24	Governing Law	41
25	Settlement of Disputes	41
26	NOT USED	44
27	Assignment	44
28	Non-Disclosure	44
29	Amendments	45
30	Severability	45
31	Relationship of the Parties	46
32	No third-party rights	46

33	Miscellaneous: Calculations, accrual of interest and change of index.....	46
34	Entire Agreement	47
35	Notices.....	47
	Schedule 1 Pro-forma Monthly Invoice	49
	Schedule 2 Facility Specification	53
	Schedule 3 Delivery Point.....	58
	Schedule 4 Commissioning Procedures.....	60
	Schedule 5 Dispatch Procedures.....	61
	Schedule 6 Operating and Maintenance Procedures.....	62
	Schedule 7 Capacity Testing Procedures	64
	Schedule 8 Form of Buyer's Legal Opinion	67
	Schedule 9 Form of Seller's Legal Opinion.....	69
	Schedule 10 NOT USED.....	71
	Schedule 11 Effect of Change In Law	72
	Schedule 12 Payments on transfer	73
	NOT USED	73
	Schedule 13 Transfer procedures.....	74
	Schedule 14 INDICATIVE PROJECT MILESTONES	75
	Schedule 15 PURC APPROVED TARIFF	76

THIS AGREEMENT is made on the 5th day of SEPTEMBER in the Year of Our Lord Two Thousand and Sixteen

BETWEEN:

- (1) **ELECTRICITY COMPANY OF GHANA LIMITED**, a limited liability company incorporated in the Republic of Ghana under the Companies Code, 1963 (Act 179), with its registered offices at Electro-Volta House, 28th February Road, Accra, Ghana, and mailing address of P.O. Box GP 521, 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) on the one part; and
- (2) **BXC COMPANY (GHANA) LIMITED**, a limited liability company incorporated in the Republic of Ghana under the Companies Code, 1963 (Act 179), having its registered office adjacent Kingdom Book Shop, Ako-Adjei junction, LA Road, , Accra, Ghana and mailing address of P.O. Box KN 5273, Kaneshie Ghana, represented by its Chief Executive Officer (hereinafter called the "**Seller**", which expression shall, where the context so admits or requires, include its successors, agents and assigns) on the other part.

WHEREAS, the Buyer is a Distribution Company (as such term is defined in the Energy Commission Act, 1997 (Act 541)) licensed to purchase electrical energy under applicable laws and regulations of the Republic of Ghana;

WHEREAS, the Seller is a Wholesale Supplier (as such term is defined in the Energy Commission Act, 1997 (Act 541)) licensed (License Number EC/PRO-GL/002-15-042) to operate facilities and installations for the wholesale supply of electricity under applicable laws and regulations of the Republic of Ghana;

WHEREAS, the Seller plans to build, own and operate, for the wholesale supply of electricity, a combined cycle dual base electric power generation facility (as described in this Agreement) at Aboadze; and

WHEREAS, the Seller wishes to sell to the Buyer on a take-and-pay basis, and the Buyer wishes to purchase from the Seller on a take-and-pay basis, the Contracted Capacity (hereinafter defined) and the Dispatched Energy (hereinafter defined) to be produced from the Facility, all pursuant to the terms and conditions as set forth in this Agreement.

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

1 DEFINITIONS

"**Accrued Rights and Obligations**" means the sum or addition of total benefits or interest accumulated or that accrue over a period of time with the corresponding duties and responsibilities the party is bound to or obliged to carry out in this Agreement;

"**Affected Party**" has the meaning ascribed to that term in Clause 16.1 (*Definition of Force Majeure*);

"**Agreement**" means this power purchase agreement, the Schedules attached hereto and any documents included by reference, as each may be amended, supplemented or replaced from time to time in accordance with the terms of this Agreement;

"Applicable Law" means any statute, law, treaty, rule, regulation or other legislation (including subordinated or delegated legislation), or any judicial decision having the force of law or any decree, order, directive or policy (including any condition applying to a Consent) of any Governmental Authority and Relevant Authority having jurisdiction in respect of the Project;

"Arbitration Rules" has the meaning ascribed to that term in Clause 25.3 (*Arbitration*);

"Availability" means a measure of time the Facility is capable of delivering Energy at the Delivery Point and the terms **"Available"** and **"Unavailable"** shall be construed accordingly;

"Availability Period" means a period of one (1) hour starting on the hour;

"Available Capacity" means, in respect of any given period, the Capacity, expressed in MW, that the Seller declares to ETU for that period in accordance with the Grid Code, as may be revised thereafter to reflect actual Available Capacity during that period;

"Availability Declaration" means the Capability and Availability declaration made by Seller to ETU, and where necessary, GRIDCo, in respect of Available Capacity, as detailed in the Grid Code;

"Average Site Ambient Conditions" means the average ambient air dry bulb temperature of 30° C, barometric air pressure of 1,012 mbar and relative humidity of 60 per cent at the Site;

"Billing Period" means (a) the period from the Commercial Operation Date until the last Day of the Month in which the Commercial Operations Date occurs, (b) each successive period of one (1) Month thereafter, and (c) the period from the first (1st) Day of the last Month of the Term to the last Day of the Term, or, if this Agreement is terminated earlier in accordance with the terms hereof, from the first (1st) Day of the Month in which this Agreement is terminated until the Day of termination;

"Business 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;

"Buyer Consultation Period" has the meaning ascribed to that term in Clause 21.2(b);

"Buyer Preliminary Notice" has the meaning ascribed to that term in Clause 21.2(b);

"Capacity" means the capacity at any point in time, measured in MW, at the Delivery Point to generate and deliver Energy by the Facility and the term **"Capable"** and cognate expressions shall be construed accordingly;

"Capacity Charge" has the meaning ascribed to that term in Clause 8.2(a) (*Pricing*);

"Capacity Test" means a test of the Capacity of the Facility conducted at the request of Buyer, Seller or ETU, in accordance with Schedule 7 (*Capacity Testing Procedures*) and otherwise in accordance with the Grid Code;

"Certificate of Approval to Connect" means a certificate issued by an Independent Engineer upon the successful testing and commissioning the Facility to meet the requirements of the Grid Code;

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

- (a) the enactment of any new Applicable Law;
- (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 Signature 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) are contrary to the Applicable Laws;
 - (ii) prejudice the Seller's ability to carry out the Project;
 - (iii) prejudice the financial interest of the Seller, its Lenders, investors or contractors; or
 - (iv) prejudice the security documents forming part of the Financing Agreements;
- (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 the Grid Code;
- (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 investors, contractors or the Lenders than those attached to the original Consent; or
- [(j) the imposition of any new Tax or any change in the application of any existing Tax (including, without limitation, the time or rate at which such Tax is payable) that would increase the tax burden on Seller above that provided under Applicable Law as incorporated in the definitive tariff approved by the PURC.

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

"Commercial Operation Date" or **"COD"** means the date that the Seller notifies the Buyer that the Facility is Commissioned and Available for operation, which notification shall include the Commissioning Certificate;

"Commissioned" in relation to the Facility means that it has passed the Commissioning Tests pursuant to the terms of Schedule 7 (*Capacity Testing Procedures*) 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;

"Commissioning Certificate" means a certificate that the Facility has been Commissioned in accordance with the EPC Contract and the Connection Agreement and that the Commissioning Tests demonstrate a Capacity of the Facility of not less than 95% of the Contracted Capacity;

"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 Tests" means the commissioning tests for the Facility as determined pursuant to the procedure detailed in the Grid Code, and as agreed between the Seller and the Buyer as detailed in Schedule 4 (*Commissioning Procedures*);

"Conditions Precedent" means the conditions precedent specified in Clause 5.5 (*Seller Conditions Precedent*) and Clause 5.6 (*Buyer Conditions Precedent*);

"Confidential Information" has the meaning ascribed to that term in Clause 28.1;

"Connection Agreement" means the connection agreement entered into or to be entered into between Seller and ETU for the interconnection of the Facility to the Delivery Point;

"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 Relevant Authority for the purposes of the Project, including without limitation the ownership and development, thereof;

"Contracted Capacity" means 378MW (at ISO Conditions);

"Day" means the twenty four (24) hour period beginning and ending at 00:00 midnight.

"Decreased Costs" means any cash quantifiable savings or increased revenues of the Project directly attributable to a Change in Law which exceeds the threshold amount set forth in Schedule 2 (*Effect of Change in Law*);

"Default Interest Rate" means the rate of interest per annum which is equal to the aggregate of (i) the applicable LIBOR and (ii) a margin of 0.05 percentage points per annum;

"Delivery Point" means the physical point at which the Facility meets the Power Evacuation System and at which point the Seller delivers Energy to the Buyer as indicated in the single-line diagram set out in Schedule 3 (*Delivery Point*);

"Dispatch Instructions" means instructions from ETU with respect to the delivery of Energy from the Facility. Dispatch Instructions includes the entire range of instructions from ETU in accordance with provisions of the Grid Code;

"Dispatch Procedures" means the procedures for scheduling and dispatch of the Available Capacity and other matters set forth in the Grid Code;

"Dispatched Energy" means the amount of Energy expressed in GWh measured at the Delivery Point which the Seller delivers to the Buyer following a Dispatch Instruction by the ETU and for which the ETU is expected to dispatch from the Facility pursuant to the Connection Agreement;

"Dispute" has the meaning ascribed to that term in Clause 25.1(a);

"Distillate Fuel Oil" or "DFO" means fuel oil that meets the GE Fuel Specification "MID" – TD-0000-2 –Engines" latest revision;

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

"Effective Date" has the meaning ascribed to that term in Clause 5.2;

"Emergency" means any abnormal power system condition that requires automatic or immediate manual 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) present a physical threat to persons, plant or equipment;

"Energy" means the active electrical energy, measured in kWh or GWh, as applicable, that is generated and delivered by the Capacity at the Delivery Point during any specified time interval;

"Energy Charge" has the meaning ascribed to that term in Clause 8.2(b);

"Energy Commission" means the Energy Commission of Ghana, a body corporate established in the Republic of Ghana pursuant to the Energy Commission Act, 1997 (Act 541);

"EPC" means the engineering procurement and construction of the Facility;

"EPC Contract" means the contract entered or to be entered into between the Seller and the EPC Contractor;

"EPC Contractor" means the contractor, as counterparty to the EPC Contract, contracted to undertake the engineering procurement and construction of the Facility;

"ETU" means the Ghana Grid Company Limited, in its capacity as the operator of the Power Evacuation System and a counterparty to the Connection Agreement;

"Events of Default" has the meaning ascribed to that term in Clause 20 (*Events of Default*);

"Exchange Rate Hedge Agreement" means the agreement entered into among the Seller and creditworthy reputable banks or other financial institutions licensed to operate in Ghana in respect of the Exchange Rate Hedging Arrangements;

"Exchange Rate Hedge Arrangements" has the meaning ascribed to that term in Clause 11.5(a);

"Existing Dispute" has the meaning ascribed to that term in Clause 25.3 (*Arbitration*);

"Expert" has the meaning ascribed to that term in Clause 25.2 (*Expert Determination*);

"Expert Dispute" has the meaning ascribed to that term in Clause 25.2 (*Expert Determination*);

"Facility" means the Seller's Natural Gas and Light Crude Oil-fuelled combined cycle gas turbine-based electric power generating station to be built near Aboadze, Greater Accra Region, Ghana, comprising a dual-fuel generator with specifications as described in Schedule 2 (*Facility Specification*) together with associated equipment to deliver Capacity and Energy to the Buyer, including all other related energy producing equipment and auxiliary equipment;

"Financial Close" means the first Business Day on which the Seller is satisfied that:

- (a) the Financing Agreements have been executed by each of the parties thereto; and

- (b) the initial drawdown of funds for the Project has occurred following the satisfaction, or the waiver, of the conditions precedent to the initial availability of funds under the Financing Agreements;

"Financing Agreements" mean, collectively, the loan and security agreements entered into or to be entered into amongst the Seller and the Lenders for the provision of financing for the implementation of the Project;

"Force Majeure" has the meaning ascribed to that term in Clause 16.1 (*Definition of Force Majeure*);

"Fuel" means, collectively, Natural Gas, Light Crude Oil and Light Crude Oil;

"Fuel Supply Agreements" means, collectively, the agreements entered into or to be entered into from time to time amongst the Seller and fuel suppliers for the supply of Natural Gas, Light Crude Oil and Light Crude Oil to the Facility;

"Ghana Cedis" or **"GHS"** means the lawful currency of the Republic of Ghana;

"Government" means the Government of the Republic of Ghana;

"Governmental Authority" means the Government or the Parliament of the Republic of Ghana, any Government ministry, statutory body or office, authority (including any regional, 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 or controlled by the Government, or any sub-division thereof (including any regional or local authority), or acting pursuant to authority granted to it under the Laws of Ghana;

"Grid Code" means the National Electricity Grid Code dated October 2009 specified by the Energy Commission of Ghana for the operation of the NITS and based on the provisions of Clauses 24, 27 and 28 of the Energy Commission Act, 1997 (Act 541), and for the purposes of this Agreement any references in the Ghana Grid Company or the Operator of the NITS shall be deemed to mean the ETU as defined in this Clause 1 (*Definitions*);

"Grid 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) any constraints on or disruption in the ability of the Power Evacuation System to receive and take delivery of Capacity, but only if and to the extent that:
- (i) such disruption despite the exercise of Prudent Utility Practices by the Seller, cannot be prevented, avoided or removed by the Seller; and
 - (ii) such constraint or disruption would materially adversely affect the ability of the Seller to deliver Capacity if the Facility were to be dispatched by ETU in accordance with the Operating Procedures and the Grid Code;
- (b) any variations in the Power Evacuation System voltage or other characteristics outside the Technical Limits;
- (c) an Emergency in respect of the Power Evacuation System;
- (d) any act or omission by the Seller that would otherwise be a default under a Project Agreement or Financing Agreement that results from:

- (i) an instruction from ETU under the Connection Agreement or Grid Code (including any instruction pursuant to Clause 10.95 of the Grid Code); or
- (ii) compliance with the Grid Code;
- (e) a breach by ETU of its obligations under the Connection Agreement; or
- (f) termination of the Connection Agreement save for a Seller default under the Connection Agreement.

"GWh" means one gigawatt-hour or one million kilowatt-hours (1,000,000 kWh);

"Heat Rate" means the net heat rate of the Facility, being the measure of thermal efficiency, expressed in Btu/kWh, and determined in accordance with Part B of Schedule 2 (*Facility Specification*) taking into account the gas turbine manufacturer's cycle of (A) degradation in the heat rate during operation from new and clean conditions and (B) recovery in the heat rate after periodic overhauls of the respective Units;

"Hedged Exchange Rate" has the meaning ascribed to that term in Clause 11.5(a);

"Increased Cost Event" has the meaning ascribed to that term in Clause 9.1;

"Increased Cost Follow-Up Notice" has the meaning ascribed to that term in Clause 9.2;

"Increased Cost Initial Notice" has the meaning ascribed to that term in Clause 9.2;

"Increased Costs" means any quantifiable increase in costs or decrease in revenues incurred by the Project directly attributable to an Increased Cost Event and, in respect of a Change in Law, which exceeds the threshold amount set forth in Schedule 2 (*Effect of Change in Law*);

"Indemnified Party" has the meaning ascribed to that term in Clause 19.4(a) (*Third-Party Loss Indemnity*);

"Indemnifying Party" has the meaning ascribed to that term in Clause 19.4(a) (*Third-Party Loss Indemnity*);

"Independent Engineer" means an independent consulting engineer agreed upon by the Parties to act jointly on behalf of the Seller and the Buyer to test, certify and document the state of the Facility at Commercial Operation Date;

"Invoice" has the meaning ascribed to that term in Clause 11.1(a) (*Billing Procedure*);

"Invoice Dispute Notice" has the meaning ascribed to that term in Clause 11.2(a) (*Billing Dispute*);

"ISO Conditions" means the standard reference conditions of fifteen (15) degrees Celsius dry bulb temperature, pressure at sea level and sixty percent (60%) relative humidity of the International Organization for Standardization Standard ISO 3977-2:1997 "Gas turbines -- Procurement -- Part 2: Standard reference conditions, and ratings" existing as of the Signature Date;

"kV" means kilo-volts;

"kW" means a kilo-watt or one-thousand watts (1,000 watts);

"kWh" means a kilo-watt hour;

"Laws of Ghana" means any national, provincial or local law, orders, rules, regulations, bye-laws, statutory orders, statutory reversionary orders, executive orders, decrees, 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 and Relevant Authority as they apply in the Republic of Ghana, as any of them may be amended from time to time;

"Lenders" mean the financial institutions under the Financing Agreements and shall be deemed to include any agent, trustee or other representatives acting on their behalf in relation to the Financing Agreements;

"LIBOR" means the London interbank offered rate administered by ICE Benchmark Administration Limited (or any person which takes over the administration of the rate) for Dollars and for a period of 6 months as displayed at 11.00am London time on the relevant page of the Reuters screen or on the appropriate page of such other information service which publishes that rate from time to time in place of Reuters;

"Light Crude Oil" means light crude oil that conforms with the fuel specifications required for the operation of the General Electric 9E.04 heavy duty gas turbine;

"Long Stop Effective Date" means the date falling eighteen (18) months after the Signature Date;

"Long Stop Commercial Operation Date" means the date falling six (6) months after the Scheduled Commercial Operation Date;

"Loss" means any claims, actions, demands, losses, liabilities, damages, costs and/or expenses, proceedings (including legal fees on a full indemnity basis and sums by way of settlement or compromise) of whatever nature;

"Main Meter" means the meter installed by the Buyer for measuring the flow of electricity and provides source data for the accounting and billing of power production to the distribution networks at the Delivery Point;

"Month" means one calendar month;

"MW" means one thousand (1,000) kW;

"MWh" means one megawatt-hour or one thousand kilowatt-hours (1,000 kWh);

"Natural Gas" means any hydrocarbons or a mixture of hydrocarbons and other gases which at a temperature of fifteen (15) degrees Celsius and atmospheric pressure are predominantly in a gaseous state and contains a few or no liquefiable liquid hydrocarbons, and that meets the specifications required for the operation of the GE Frame 9E.04 heavy gas turbine;

"NITS" means the National Interconnection Transmission System as further defined in Clause 1.03 of the Grid Code;

"O&M Agreement" means the agreement entered or to be entered into by the Seller and the O&M Contractor in respect of the Facility;

"O&M Contractor" means the contractor or contractors from time to time undertaking the operation and maintenance of the Facility pursuant to the O&M Agreement;

"Operating Procedures" means the operating procedures in respect of the Facility as described in Schedule 6 (*Operating and Maintenance Procedures*);

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

"Permitted Starts" has the meaning ascribed to that term in Clause 8.2(c);

"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) any event or circumstance arising from an action or inaction of the Government which affects the Seller, Buyer, ETU or any other party under a Project Agreement, any contractor, sub-contractor or supplier to the Seller;
- (b) acts of war (whether declared or not) invasion, armed conflict, act of foreign enemy in each case occurring within, involving or affecting the Republic of Ghana;
- (c) any acts of rebellion, blockade, embargo, riot, insurrection, civil commotion, sabotage or act of terrorism where such event has occurred or occurring in, or affecting the Republic of Ghana;
- (d) any Change in Law;
- (e) 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;
- (f) politically motivated boycott, sanction, or strikes or labour disputes;
- (g) the imposition of any onerous or restrictive conditions in any Consent;
- (h) any failure by a Relevant Authority to issue or renew any Consent required in connection with this Agreement, the Project or any Project Agreement on a timely basis, (including, without limitation, where any Consent has been revoked, suspended or terminated as a result of any change in the direct or indirect ownership of shares in or control of the Seller and/or the Project or where new Consents are required by any transferee of the Seller to whom this Agreement, the Project or any other Project Agreement is being transferred, provided that in respect of any such failure it shall first be necessary for the affected Party to demonstrate that it is not prohibited by law from obtaining such Consent and that it has first used reasonable endeavours to obtain such Consent (which endeavours shall include full and timely compliance with all procedural requirements relating to the issue of such Consents, and with all the Laws of Ghana which relate to the Seller's (or such other party's as appropriate) activities within the Republic of Ghana) and solely as the result of lack of such Consent, the Seller cannot make Capacity available, generate and deliver Energy and/or perform its obligations under this Agreement;

"Power Evacuation System" means the 161-kV sub-transmission system taking off from the Delivery Point and intended for transmitting Capacity and Energy to connected loads served by the Buyer;

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

"Project Agreements" means, collectively:

- (a) this Agreement;

- (b) the Site Lease;
- (c) the Connection Agreement;
- (d) the Fuel Supply Agreements;
- (e) the EPC Contract;
- (f) the O&M Agreement; and
- (g) any other agreement (other than the Financing Agreements) related to the Project or designated as such by the Seller and the Buyer;

"Prudent Utility Practices" mean

- (a) in the case of both the Buyer and the Seller, the exercise of that degree of skill, diligence and prudence which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of undertaking under the same or similar circumstances and (without prejudice to the rights and remedies available to the Seller in respect of a Change in Law) acting generally in accordance with applicable Laws of Ghana; and
- (b) in the case of the Seller only, the practices, methods, and standards that are generally accepted internationally from time to time by electric utilities for the purpose of ensuring the safe, efficient and economic design, construction, commissioning, operating and maintenance of power generation equipment of the type comprised in the Facility, and which practices, methods and standards shall be adjusted, as necessary, to take account of:
 - (i) operating and maintenance guidelines recommended by the original equipment manufacturers of equipment to be incorporated in the Facility;
 - (ii) without prejudice to the rights and remedies available to the Seller in respect of Change in Law, the Laws of Ghana; and
 - (iii) the physical conditions of the Site;

"PURC" or "Public Utilities Regulatory Commission" means the Public Utilities Regulatory Commission of Ghana, a body corporate established in the Republic of Ghana pursuant to the Public Utilities Regulatory Commission Act, 1997 (Act 538);

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

"Related Agreements" means the Project Agreements, excluding this Agreement;

"Relevant Authority" means any department, authority, instrumentality, body, agency or any other relevant entity within the Republic of Ghana having jurisdiction or authority under Applicable Law with respect to the Seller, the Buyer or the Project, from which a Consent is to be obtained from time to time;

"Scheduled Commercial Operation Date" means the date falling thirty-six (36) months after the Effective Date or such later date as may be agreed between the Parties in their sole discretion;

"Scheduled Effective Date" means date falling twelve (12) months after the Signature Date, as extended pursuant to Clause 16.5(d) *(If the Force Majeure persists continuously for a period of more than twelve (12) Months the Parties shall consider a suitable* by for the situation including termination. In the event that the Parties

have chosen the option of termination of the PPA, the terms and conditions of such termination shall be agreed by the Parties.

Extension of Scheduled Dates and Term), or any extension thereof agreed between the Parties pursuant to Clause 5.7;

"Scheduled Outage" means a planned interruption of the generating capability of the Facility on or after the Commercial Operation Date for the purpose of inspection, testing, major overhauls, preventive maintenance, corrective maintenance, repairs, replacement or improvement of the Facility in accordance with Prudent Utility Practice and the requirements of original equipment manufacturers of equipment incorporated in the Facility;

"Seller Consultation Period" has the meaning ascribed to that term in Clause 21.3(b);

"Seller Preliminary Notice" has the meaning ascribed to that term in Clause 21.3(b);

"Seller Termination Payment" has the meaning ascribed to that term in Clause 21.3(a);

"Signature Date" means the date of execution of this Agreement by the Parties;

"Site" means the land and rights-of-way in Aboadze, Western Region, Ghana, leased by the Seller under the terms and conditions of the Site Lease for the purposes of the Facility, and on which all or any part of the Facility is to be built;

"Site Lease" means the lease for the Site entered into between the Seller and the lessors of the Site;

"Start" means any start of a Unit required as a result of a dispatch instruction from ETU after a shutdown of that Unit, which was not caused by the Seller;

"Tax" means all forms of taxation, duties, imposts, levies and rates whenever imposed and applicable pursuant to Applicable Law and the term "Taxes" shall be construed accordingly;

"Technical Limits" means those parameters and requirements described in Part 2 of Appendix 4 and Appendix 5 of the Connection Agreement, as such parameters and requirements may be amended or modified by mutual agreement of the Seller and ETU from time to time to ensure compliance with the Grid Code;

"Term" means 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 earlier terminated or extended in accordance with the terms of this Agreement;

"Third-Party Claim" has the meaning ascribed to that term in Clause 19.4(a) (*Third-Party Loss Indemnity*);

"Total Electricity Charge" has the meaning ascribed to that term in Clause 8.2;

"Unit" means a set consisting of one gas turbine, generator, switchgear, generator step-up transformer and associated equipment as described in Schedule 7 (*Facility Specification*);

"Unscheduled Outage" means any unplanned interruption of the generating capability of the Facility on or after the Commercial Operation Date that is not caused by Force Majeure, a Political Event, a Grid Event or Buyer Event of Default, and is for the purpose of inspection, testing, major overhauls, preventive maintenance, corrective maintenance, repairs, replacement or improvement of the Facility in accordance with

Prudent Utility Practice and the requirements of original equipment manufacturers of equipment incorporated in the Facility;

“US Dollars” or “USD” means the lawful currency of the United States of America; 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 Clause 1 (*Definitions*);
- (b) the words “herein”, “hereby”, “hereof” and “hereunder” shall refer to this Agreement as a whole and not to any particular Clause of this Agreement;
- (c) all references to Recitals, Clauses, Sub-Clauses and Schedules are references to the corresponding Recital, Clause, Sub-Clause or Schedule of this Agreement unless specific reference is made to a Recital, Clause, Sub-Clause or Schedule of another document or instrument.
- (d) references to this Agreement shall include a reference to all Schedules hereto, as the same may be amended, modified, supplemented or replaced from time to time;
- (e) references to any agreement, document or instrument (other than this Agreement) means such agreement, document or instrument as the same may be amended, modified, supplemented or replaced from time to time;
- (f) references to any Laws means those in effect from time to time
- (g) the words “including”, “includes” and “include” shall be deemed to be followed by the words, “without limitation”;
- (h) words importing the singular shall include the plural and vice versa;
- (i) a person includes a reference to a government, state, state agency, corporation, body corporate, association or partnership;
- (j) a person includes a reference to that person's legal personal representatives, successors and permitted assigns;
- (k) all references to time means references to the time of day in Accra, Ghana, unless otherwise specified;
- (l) all references to days mean calendar days, unless otherwise specified;
- (m) all periods of time shall be based on, and computed according to, the Gregorian calendar, unless otherwise specified;
- (n) the word “agreed” means agreed in writing from time to time between the Buyer and Seller; and
- (o) the headings in this Agreement do not affect its interpretation.

3 SCOPE OF AGREEMENT

3.1 Sale and Purchase of Capacity and Energy

- (a) From and after the Commercial Operation Date and until the expiry of the Term or earlier termination of this Agreement, the Seller shall (i) make Available the Contracted Capacity, and (ii) deliver Dispatched Energy to the Buyer from time to time as requested by the Buyer, and the Buyer shall receive and purchase from the Seller pursuant to Clause 8 (*Pricing*) the Dispatched Energy, respectively, on the terms and subject to the conditions of this Agreement.
- (b) Prior to the Commercial Operation Date, the Seller shall carry out the Commissioning Tests and the Buyer shall receive and purchase from the Seller for the consideration set out in Clause 8 (*Pricing*) the Energy produced during the Commissioning Tests on the terms and subject to the conditions of this Agreement.

3.2 Delivery Point

The Seller shall (i) make Available the Contracted Capacity, and (ii) deliver the Dispatched Energy to the Buyer under this Agreement at the Delivery Point. The ownership of and the risk of loss to the Dispatched Energy delivered in accordance with this Agreement shall pass from the Seller to the Buyer at the Delivery Point.

3.3 Limitation on Obligation to Operate

The obligation of Seller to make available and operate the Facility pursuant to Clause 3.1 (*Sale and Purchase of Capacity and Energy*) is subject to Seller ability to do so in compliance with Dispatch Instructions, Operating Procedures, the Grid Code, Prudent Utility Practices, Laws of Ghana, and within the Technical Limits, and nothing in this Agreement shall be construed to require the Seller to operate the Facility at any time, including during an Emergency, an Outage, a Force Majeure event affecting the Seller, a Political Event, a Grid Event, a Buyer Event of Default, and in any manner inconsistent with Dispatch Instructions, Operating Procedures, the Grid Code, Prudent Utility Practices, Laws of Ghana and the Technical Limits.

4 TERM OF AGREEMENT

Subject to Clause 5.1 (*Conditions Precedent to Effectiveness of Agreement*), this Agreement shall be binding on the Parties hereto and upon the execution thereof, and it shall continue in full force and effect for the Term unless earlier terminated or extended in accordance with its terms.

5 CONDITIONS PRECEDENT TO EFFECTIVENESS OF AGREEMENT

- 5.1 The obligations in this Clause 5, and Clause 1 (*Definitions*), Clause 2 (*Rules of Interpretation*), Clause 22 (*Waivers*), Clause 23 (*Representations and warranties*), Clause 24 (*Governing Law*), Clause 25 (*Settlement of Disputes*), Clause 27 (*Assignment*), Clause 28 (*Non-Disclosure*), Clause 29 (*Amendments*), Clause 30 (*Severability*), Clause 31 (*Relationship of the Parties*), Clause 32 (*No third-party rights*), Clause 34 (*Entire Agreement*), and Clause 35 (*Notices*) shall be binding on the Parties from the Signature Date, and shall not be subject to the satisfaction or waiver of the Conditions Precedent.

5.2 Except as provided in Clause 5.1, the Parties' respective obligations under this Agreement shall commence on the date (the "Effective Date") on which the last of the Conditions Precedent has been satisfied or waived in accordance with Clause 5.4.

5.3 Each Party shall use all reasonable endeavours to satisfy the Conditions Precedent for which it is responsible prior by the Scheduled Effective Date, provided that that Party shall not be liable to the other Party in respect of any failure to satisfy the Condition Precedent relating to it.

5.4 A Party for whose benefit a Condition Precedent is given may, at its sole discretion, 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.

5.5 Seller Conditions Precedent

- (a) The Seller shall have been granted by and received in writing from Relevant Authorities and relevant regulatory bodies, all required Consents and approvals necessary for the operation of and sale of electricity from the Facility;
- (b) The Seller shall have received a duly executed copy of the Connection Agreement, which agreement shall be satisfactory to the Seller;
- (c) The Seller shall have received certified true copies of the constitutional documents of the Buyer;
- (d) 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;
- (e) 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;
- (f) The Seller shall have entered into a Fuel Supply Agreement;
- (g) The Seller shall have received from the Energy Commission a Construction Work Permit for the Facility in accordance with the Energy Commission Act, 1997 (Act 541) and the Licence Application Manual for Service Providers in the Electricity Supply Industry latest revision published by the Energy Commission;
- (h) The Seller shall have received an opinion of legal counsel substantially in the form set out in Schedule 8 (*Form of Buyer's Legal Opinion*) or otherwise in form and substance satisfactory to the Seller with respect to the Buyer's capacity and authority to enter into this Agreement, the due execution of this Agreement and the enforceability of its provisions; and
- (i) The Seller shall have delivered to the Buyer a written notice confirming that the Effective Date has occurred.

5.6 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 an opinion of legal counsel substantially in the form set out in Schedule 9 (*Form of Seller's Legal Opinion*) or otherwise in form and substance satisfactory to the Buyer with respect to the Seller's capacity and authority to enter into this Agreement, the due execution of this Agreement and the enforceability of its provisions;
- (e) The Buyer shall have received the written notice from the Seller confirming that the Effective Date has occurred.

5.7 Either Party may terminate this Agreement prior to the occurrence of the Effective Date by giving written notice to the other Party if any of the Conditions Precedent has not been satisfied or waived on or prior to the Long Stop Effective 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 5.7 unless the Buyer has paid all verifiable costs incurred by the Seller in meeting its obligations prior to the date of termination.

5.8 If this Agreement is terminated in accordance with Clause 5.7 due to the failure of the Effective Date to occur, neither Party shall have any liability whatsoever to the other Party other than as provided in Clause 28 (*Non-Disclosure*).

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 Clause 6 (*Commissioning and Commercial Operation Dates*) (and otherwise to enable the Seller to undertake all other testing required pursuant to this Agreement and the Connection Agreement) and, in particular will, subject to any constraints on the Power Evacuation System, assist in managing the interface with the ETU in respect of the connection to the Power Evacuation System 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, the Seller and the Buyer shall agree and implement procedures for the Commissioning Tests in accordance with the details and procedures described in Schedule 4 (*Commissioning Procedures*).
- (b) The Seller shall give the Buyer no less than ten (10) Days' notice of the date of each Commissioning Tests 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 the Independent Engineer.

6.3 Commercial Operation Date

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 of the Facility.

7 CAPACITY CALCULATION AND TESTING

- 7.1 The Capacity of the Facility for the purposes of the calculation of the Capacity Charge shall be the Available Capacity stated in the day-ahead Availability Declaration delivered to ETU pursuant to the Dispatch Procedures unless a Capacity Test is performed at the request or direction of ETU, Buyer or Seller.
- 7.2 For the purposes of computation of the Capacity Charge except as otherwise provided in this Agreement, Seller shall revise downward the Capacity stated in any Availability Declaration to reflect the actual Capacity of the Facility for the period in question if the Facility was unable to make Available (whether or not dispatched) the amount of Capacity stated in an Availability Declaration due to an Unscheduled Outage, derate or any other reason that would be taken into account in determining Capacity. Seller shall maintain an official log showing the actual Capacity Available for each Availability Period and any event that affects such Capacity, and such log shall be made available to Buyer on request.
- 7.3 Buyer shall have the right to call for a Capacity Test at any time, if it reasonably believes that the Availability Declaration as revised has overstated the actual Capacity of the Facility. Upon receipt of such a request, Seller will promptly conduct a Capacity Test in accordance with Schedule 7 (*Capacity Testing Procedures*), provided that, such Capacity Test must be scheduled with ETU. If the result of any Capacity Test indicates that the Seller has overstated the Capacity in any Availability Declaration, (i) for the purposes of computation of Capacity Charges, the tested Capacity will be used instead of such Availability Declaration, (ii) Seller will pay the costs of such test that are not payable as part of the Energy Charge, and (iii) Seller will not use a Capacity in excess of the tested Capacity in computing any future Capacity payment until Seller demonstrates a higher Capacity through a Capacity Test or through delivery of a level of Dispatched Energy in accordance with a Dispatch Instruction that demonstrates that the Capacity is higher and so certifies to Buyer. If the result of any Capacity Test indicates that Seller has understated the Capacity in any Availability Declaration, (i) for the purposes of computation of Capacity Charges, the tested Capacity will be used instead of such Availability Declaration, and (ii) Buyer will pay the costs of such test that are not payable as part of the Energy Charge.
- 7.4 If at any time from and after the Commercial Operation Date, the Seller is prevented from delivering Energy to the Buyer following a Dispatch Instruction from the ETU as a result of a Grid Event which has occurred and is continuing, the Facility shall be deemed Available and the Available Capacity that otherwise could have been made Available to Buyer shall constitute "**Deemed Available Capacity**", and Buyer shall

make the payments in respect of Capacity Charge due hereunder to Seller for such Deemed Available Capacity calculated in accordance with Clause 8 (*Pricing*).

8 PRICING

8.1 In consideration for the Seller making Available Capacity and delivering Energy to the Buyer, on the terms and subject to the conditions of this Agreement, the Buyer undertakes to pay to the Seller the Total Electricity Charge for each Billing Period.

8.2 The total electricity charge (the "**Total Electricity Charge**") in respect of each Billing Period shall be the sum of the Capacity Charge and the Energy Charge and shall be due and payable on or prior to the Due Date or within thirty (30) Days after the Due Date for that Billing Period. More specifically, the Total Electricity Charge shall be calculated and denominated in US Dollars in accordance with the formulas set out in Clause 8.3(a) (*Calculation of the Total Electricity Charge*) and each element of the Total Electricity Charge in respect of each Billing Period shall be calculated as follows:

- (a) a Capacity Component (the "**Capacity Charge**") calculated in accordance with the formulas set out in Clause 8.3(b) (*Calculation of the Capacity Charge*) for Capacity made Available to the Buyer for that Billing Period; and
- (b) an Energy Component (the "**Energy Charge**") calculated in accordance with the formulas set out in Clause 8.3(c) for the Energy delivered to the Buyer for that Billing Period.

8.3 Calculation of the Total Electricity Charge, Capacity Charge and Energy Charge

(a) Calculation of the Total Electricity Charge

The Total Energy Charge, TEC_{bp} , in respect of any Billing Period, bp , shall be calculated in accordance with the following formula:

$$TEC_{bp} = (CAPACITY\ CHARGE_{bp}) + (ENERGY\ CHARGE_{bp}) + (EXCESS\ STARTS\ CHARGE_{bp})$$

which is equivalent to the following formula:

$$TEC_{bp} = (CCH_{bp}) + (ECH_{bp}) + (ESCH_{bp})$$

Where:

TEC_{bp} = Total Electricity Charge in US Dollars for the relevant Billing Period bp ;

CCH_{bp} = the Capacity Charge in US Dollars applicable for the relevant Billing Period, bp , as calculated in accordance with Clause 8.3(b) (*Calculation of the Capacity Charge*);

ECH_{bp} = the Energy Charge in US Dollars applicable for the relevant Billing Period, bp , as calculated in accordance with Clause 8.3(c) (*Calculation of the Energy Charge*); and

bp = a subscript indicating the relevant Billing Period for which the Total Electricity Charge is being calculated

(b) Calculation of the Capacity Charge

The Capacity Charge, CCH_{bp} , for the relevant Billing Period, bp , shall be calculated in accordance with the following formula:

$$CCH_{bp} = ACAP_{bp} \times (CRTC + FOMC_{bp})$$

Where:

CCH_{bp} = the Capacity Charge in US Dollars calculated for the relevant Billing Period, bp ;

$ACAP_{bp}$ = the total Available Capacity (actual Capacity only) in kWh for the relevant Billing Period, bp ; and

$CRTC$ = the non-escalatable capital recovery and tax component of the Capacity Charge tariff equal to 0.0356 US Dollars per kWh which represents recovery of the financial investment in the Facility and corporate taxes payable by the Seller; and

$FOMC_{bp}$ = the escalatable fixed operating and maintenance costs tariff component of the Capacity Charge tariff in US Dollars per kWh applicable for the relevant Billing Period, bp , which represents recovery of the fixed operating and maintenance costs of the Facility as calculated as follows:

$$FOMC_{bp} = FOMC_{base} \times \frac{PPI_{bp}}{PPI_{base}}$$

Where:

$FOMC_{base}$ = 0.008215 US Dollars per kWh being the fixed operating and maintenance costs component of the Capacity Charge tariff as of the Reference Date;

PPI_{bp} = the Producer price Index of billing period(t) as published by US Bureau of Labour Statistics (series id CUUR0000SA0) and

PPI_{base} = Base Producer Price Index as published by US Bureau of Labour Statistics on the date of approval of PURC tariff (series id CUUR0000SA0).

(c) Calculation of the Energy Charge

The Energy Charge, ECH_{bp} , for the relevant Billing Period, bp , shall be calculated in accordance with the following formula:

$$ECH_{bp} = ED_{bp} \times [HR_{bp} \times [(\%_{LCO, bp} \times FuelP_{LCO, bp}) + (\%_{GAS, bp} \times FuelP_{GAS, bp}) + (\%_{DFO, bp} \times FuelP_{DFO, bp})] + VOMC_{bp}]$$

Where:

ECH_{bp} = the Energy Charge in US Dollars calculated for the relevant Billing Period, bp ;

ED_{bp} = the total Energy in kWh delivered from the Facility to the Buyer at the Delivery Point for the relevant Billing Period, bp , and

$$ED_{bp} = ED_{GAS,bp} + ED_{DFO,bp}$$

Where

$ED_{LCO,bp}$ = the total Energy in kWh delivered from the Facility to the Buyer at the Delivery Point for the relevant Billing Period, bp ; in respect of the periods when the Facility is fuelled with Light Crude Oil;

$ED_{GAS,bp}$ = the total Energy in kWh delivered from the Facility to the Buyer at the Delivery Point for the relevant Billing Period, bp ; in respect of the periods when the Facility is fuelled with Natural Gas; and

$ED_{LCO,bp}$ = the total Energy in kWh delivered from the Facility to the Buyer at the Delivery Point for the relevant Billing Period, bp ; in respect of the periods when the Facility is fuelled with Distillate Fuel Oil

HR_{bp} = the Heat Rate of the Facility in mmBTU per kWh for the relevant Billing Period, bp ;

$\%_{LCO,bp}$ = the percentage of Energy delivered in respect of the periods when the Facility is fuelled with Light Crude Oil during the relevant Billing Period, bp , relative to the total Energy delivered during that Billing Period, bp , as calculated as follows:

$$\%_{LCO,bp} = \frac{ED_{LCO,bp}}{ED_{bp}}$$

$\%_{GAS,bp}$ = the percentage of Energy delivered in respect of the periods when the Facility is fuelled with Natural Gas during the relevant Billing Period, bp , relative to the total Energy delivered during that Billing Period, bp , as calculated as follows:

$$\%_{GAS,bp} = \frac{ED_{GAS,bp}}{ED_{bp}}$$

$\%_{LCO,bp}$ = the percentage of Energy delivered in respect of the periods when the Facility is fuelled with Light Crude Oil during the relevant Billing Period, bp , relative to the total Energy delivered during that Billing Period, bp , as calculated as follows:

$$\%_{GAS,bp} = \frac{\text{[REDACTED]}}{\text{[REDACTED]}}$$

$FuelP_{LCO,bp}$ = the total price of Light Crude Oil fuel in US Dollars per mmBTU applicable for the relevant Billing Period, bp , which shall be subject to Quarterly price adjustments and fixed Quarterly through the Fuel Supply Agreement;

$FuelPGAS_{bp}$ = the total price of Natural Gas fuel in US Dollars per mmBTU applicable for the relevant Billing Period, bp , which shall be subject to Quarterly price adjustments and fixed Quarterly through the Fuel Supply Agreement; and

$FuelPLCO_{bp}$ = the total price of Light Crude Oil fuel in US Dollars per mmBTU equivalent applicable for the relevant Billing Period, bp , which shall be subject to Quarterly price adjustments and fixed Quarterly through the Fuel Supply Agreement; and

$VOMC_{bp}$ = the escalable variable operating and maintenance costs tariff component of the Energy Charge tariff in US Dollars per kWh applicable for the relevant Billing Period, bp , which represents recovery of the variable operating and maintenance costs of the Facility as calculated as follows:

$$VOMC_{bp} = VOMC_{base} \times \frac{PPI_{bp}}{PPI_{base}}$$

Where:

$VOMC_{base}$ = 0.004537US Dollars per kWh being the variable operating and maintenance costs component of the Energy Charge tariff as of the Reference Date;

PPI_{bp} = the Producer price Index of billing period(t) as published by US Bureau of Labour Statistics(series id CUUR0000SA0); and

PPI_{base} = Base Producer Price Index as published by US Bureau of Labour Statistics on the February 01, 2014 (series id CUUR0000SA0)

- (d) At any point in time, the Seller shall assess the world market price of the two fuels that could possibly be used to operate the plant and use the most competitive fuel to operate the plant. This arrangement however, shall be done within technically feasible operational limits.

8.4 The cost of LCO Exchange Rate hedging shall be included in full on the price of electricity

8.5 Payment by the Buyer for Energy supplied during the Commissioning Tests

The Buyer shall pay the Energy Charge for all Energy supplied by the Seller to the Buyer during Commissioning of the Facility and prior to the Commercial Operation Date.

8.6 Participation in PURC approval process

The Buyer agrees that the Seller shall have the right to attend any relevant PURC approval proceeding and the Seller shall have all reasonable rights to note its position on issues raised in such a proceeding.

9 INCREASED COSTS

- 9.1 The Seller shall subject to agreeing with the Buyer 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.
- 9.2 The Seller shall, on the occurrence of any Increased Cost Event, promptly notify the Buyer in writing with available substantiating material (the **"Increased Cost Initial Notice"**). Within five (5) Business Days of the Increased Cost Initial Notice, the Seller shall provide the Buyer with its best estimation in writing with substantiation or evidence of the likely impact of the relevant Increased Cost Event (the **"Increased Cost Follow-Up Notice"**). Within five (5) Business Days of the Follow-Up Notice, the Parties shall meet to 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, and in any event no more than ten (10) Business Days after the Increased Cost Follow-Up Notice, 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 and will have the right to make an application directly to the PURC at least ten (10) Business Days after the Increased Cost Follow-Up Notice.
- 9.3 The contract price as indicated in this clause shall be subject to the tariff approval by the PURC in accordance with the laws of Ghana. The tariff approved by PURC from time to time shall be the applicable tariff. If the tariff approved by PURC is not the same as the agreed contract price, then the rights of the seller under Schedule 11 shall apply.
- 9.4 On the occurrence of an Increased Cost Event the Seller shall have the option, to raise competitive financing to cover any Increased Costs. The cost of such further capital (including all applicable fees, interests 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.

10 DECREASED COSTS

- 10.1 The Buyer shall be entitled to request from the PURC (with accompanying 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 in excess of the amount set forth in Schedule 11 (*Effect of Change in Law*).
- 10.2 The Buyer shall include with any request made pursuant to Clause 10.1 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. Any dispute in respect of such application shall be resolved by the reference of such dispute to an Expert pursuant to Clause 25.2 (*Expert Determination*).

11 BILLING AND PAYMENT

11.1 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 tenth (10th) Day of that Month (or, if such Day is not a Business Day, the immediately following Business Day) in relation to the amounts due in respect of the preceding Month.
- (b) The Invoice, which shall substantially be in the form set out in Schedule 1 (*Pro-forma Monthly Invoice*), shall contain reasonably detailed calculations of the amounts payable under it, together with such further supporting documentation, parameters and information as the Parties may agree.
- (c) Save as provided in Clause 11.2 (*Billing Dispute*), the Buyer shall pay the amount due as identified in each Invoice on or prior to the Due Date.
- (d) If part of an Invoice is disputed by the Buyer pursuant to Clause 11.2 (*Billing Dispute*), the Buyer shall pay the undisputed amount of the Invoice on or prior to the Due Date.
- (e) The Invoice shall apply any required Taxes applicable at the time of invoicing in respect of such Invoice.
- (f) All local cost shall be billed and paid in Ghana Cedis

11.2 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 and the institution that has issued the Account as defined in Clause 12.1 prior to the Due Date for such Invoice.
- (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 (1) 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 an Expert in accordance with Clause 25.2 (*Expert Determination*).
- (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 together with interest at the Default Interest Rate thereon.

11.3 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.

11.4 Payment

- (a) All amounts payable under this Agreement shall be paid in full on or prior to the Due Date to such bank account of the Seller as shall have been previously notified by Seller to the Buyer.
- (b) Any payments received by the Seller under this Agreement shall be applied in or towards settlement of amounts owed and outstanding with the longest outstanding such amount being settled first.
- (c) Unless required by the Laws of Ghana, 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.
- (d) The Seller shall be entitled to charge the Buyer interest at the Default Interest Rate for any payment due to Seller from the Buyer that is overdue (i.e. beyond the Due Date) for at least thirty (30) Days.

11.5 Currency of payment and establishment of Exchange Rate Hedging Arrangements

- (a) From the Commercial Operation Date until the expiry or earlier termination of this Agreement, for every Quarter, the Seller shall enter into an Exchange Rate Hedge Agreement for Ghana Cedi converting to US Dollar between Seller and a reputable Commercial Bank in Ghana which gives the most competitive rate. And the Seller shall provide the Buyer true copies of the Exchange Rate Hedge Agreement which spells out the applicable Ghana 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.
- (b) The Seller shall provide the Buyer copies of the Exchange Rate Hedge Agreement which shall set out the applicable Hedged Exchange Rate and the terms of the Exchange Rate Hedging Arrangements.
- (c) The Buyer shall pay all the costs of and relating to the Exchange Rate Hedge Arrangements pursuant to Clause 8.4 (*LCO Exchange Rate hedging*).
- (d) 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 payment.
- (e) In the event that the Seller, after diligent efforts, is unable to renew its Exchange Rate Hedge Agreement for a period, then the Buyer shall use its best efforts to cooperate with the Seller to acquire the required hedge from the financial market.

- (f) In the event that despite the best efforts of the Parties under clause 11 (e) above, the Seller is unable to renew an Exchange Rate Hedge Agreement, the prevailing PURC rate shall be used.
- (g) Any additional costs arising from the difference between the prevailing PURC rate and the actual/market conversion rate obtained and used by the Parties shall be included in the price of electricity in the next Billing Period.

12 SECURITY FOR PAYMENTS

Prior to the Commercial Operations Date (COD), the Seller and its bankers shall work together to establish a suitable payment guarantee which shall be serviced and maintained in value at all times during the Term of this Agreement by the Buyer, and shall be used to secure the timely payments of invoices by Buyer of all amounts due to the Seller in accordance with this Agreement.

- 12.1 The bank guarantee shall be established by a reputable bank acceptable to the Seller and the Buyer in an amount equal to two (2) Months of invoicing ("the Account"). The Account shall be used as a form of security to guarantee payment of Invoices raised by the project.
- 12.2 The Buyer shall be informed in writing, the establishment of the Account. If at any time, Account falls short of any amount specified in Article 12.1 above, the Account shall be restored within fourteen (14) days by the Buyer.
- 12.3 If the Buyer fails to pay an Energy Payment or part thereof thirty (30) days after the Due Date, the Seller may draw upon the Account for an amount equal to such payment or part thereof plus interest, if applicable, by presenting to the relevant institution issuing the Account, the following documents:
 - (i) a copy of the Invoice which has remained unpaid by the Buyer;
 - (ii) a certificate from the Seller to the effect that the bill at item (a) above, or specified part thereof, has remained unpaid beyond the Due Date; and
 - (iii) calculations of applicable interest, if any.

12.4 The Buyer shall ensure that the Account shall be renewed not later than thirty (30) days prior to its expiry. All costs relating to opening and maintenance of the Account shall be borne by the Buyer.

12.5 The Buyer acknowledges that the Seller may transfer or assign the Account only to or for the benefit of the parties to the Financing Agreements or their assignees or designees or to the Seller's successors or permitted assignees.

13 STANDARD OF PERFORMANCE

13.1 In performing its obligations under this Agreement the Seller undertakes, subject to Clause 3.3 (*Limitation on Obligation to Operate*):

- (a) to operate and maintain the Facility in all material respects in accordance with Prudent Utility Practices;
- (b) to operate and maintain the Facility in all material respects in accordance with the Grid Code;
- (c) to operate and maintain the Facility in all material respects in accordance with the Operating Procedures and within the Technical Limits;
- (d) to operate and maintain the Facility in all material respects in accordance with Dispatch Procedures;
- (e) to maintain all consents and approvals necessary for the Seller to fulfil its obligations under this Agreement; and
- (f) 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.

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

- (a) to act in accordance with Prudent Utility Practices, the Connection Agreement 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.

14 CONTINUITY OF SUPPLY

14.1 Subject to the rights of the Seller under Clause 14.3 below, which may prevent the Seller from doing so, the Seller shall stand ready to supply Dispatched 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.

- 14.2 The Seller and the Buyer, with the support of the ETU, shall use all reasonable efforts to remove or to assist in removing the cause of any interruption in the supply of Dispatched Energy with the minimum of delays and in accordance with Prudent Utility Practices, and as soon as practicable, after the removal of any such cause, to resume or normalise the supply of Dispatched Energy under the terms of this Agreement.
- 14.3 The Seller shall have the right at all times to discontinue the supply of Dispatched Energy to the Buyer at the Delivery Point (a) without notice for the purpose of safeguarding life or property, or (b) if instructed to do so by the ETU, pursuant to the Grid Code or the Connection Agreement, as the case may be, or (c) due to Force Majeure affecting the Seller; or (d) upon giving at least twenty-four (24) hours' notice for the purpose of emergency maintenance, seventy-two (72) hours' notice for replacement or repair of the apparatus, equipment or works of the Seller; in the event of a Buyer Event of Default occurring and continuing, (f) in the event of a Political Event occurring and continuing, (g) in the event of a Grid Event occurring and continuing. 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.
- 14.4 Any interruption or restriction to the Seller's supply of Dispatched Energy shall not relieve the Buyer of its obligation to continue to pay to the Seller the applicable Total Electricity Charge for each Month calculated in accordance with Clause 8 (*Pricing*).
- 14.5 In the event that any Invoice has not been paid by the thirtieth (30th) Day after the Due Date and Seller has failed to obtain payment for such overdue amount by drawing of funds under the Account as defined under Clause 12, the Seller shall have the right to discontinue making available Contracted Capacity and delivery of Dispatched Energy to the Buyer at the Delivery Point until such payment has been made in full pursuant to Clause 11 (*Billing and Payment*).

15 INFORMATION

- 15.1 The Seller requires certain information from the Buyer, including Yearly and Monthly best estimates forecasts of the Buyer's demand for Energy, to be able to co-ordinate and manage issues relating to fuel supply, the operation and maintenance of the Facility, and the provision of information and forecasts to and interaction with ETU, and relevant Governmental Authorities, Relevant Authorities and the other contractual counterparties of the Seller, in order to comply with its obligations under the Project Agreements, and the Laws of Ghana. The Buyer shall provide to the Seller the information required pursuant to this Clause 15 (*Information*).
- 15.2 Prior to the Commercial Operation Date and from time to time thereafter as the Seller may reasonably require, the Seller acting reasonably will state to the Buyer the information it requires for the purposes set out in Clause 15.1 and the timing of when such information is to be provided by the Buyer. Any such proposal shall be based on the requirements of the Grid Code, ETU, Relevant Authorities, relevant Governmental Authorities and commercially reasonable requirements of the Seller and Seller's contractual counterparties. Buyer will have a period of not less than thirty (30) Days to review and comment on such proposal and if the Parties do not reach agreement, either Party may refer the dispute to be resolved by an Expert in accordance with Clause 25.2

(*Expert Determination*). The Seller may propose changes to the information requirements from time to time thereafter to reflect any Changes in Law and/or any requirements of the relevant Governmental Authorities, Relevant Authorities, and any obligation that it may have to provide such information under applicable regulations or the terms of the Financing Agreements or Related Agreements, and any proposed changes shall be subject to the foregoing procedures, provided that if such a change is necessary in a shorter time period than defined in the foregoing procedure in order for the Seller to meet legal or regulatory requirements, the Buyer will use its reasonable endeavours to provide such information in time for the Seller to meet its obligations pending the completion of the foregoing procedure.

16 FORCE MAJEURE

16.1 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**")

- (a) but only to the extent that:
 - (i) such circumstance, event or condition, despite the exercise of diligence, cannot be prevented, avoided or overcome by the Affected Party;
 - (ii) 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);
 - (iii) 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;
 - (iv) 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;
 - (v) such circumstance, event or condition is without fault or negligence of the Affected Party;
- (b) 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, typhoons, or tornados;
 - (iii) epidemics, plagues or quarantines;

16.2 Duty to Report Force Majeure

- (a) The Affected Party, when claiming relief for Force Majeure under this Clause 16 (*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 Clause 16.2(a) 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.

16.3 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 event 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 Practices.

16.4 Consequences of Force Majeure

Subject to Clause 16.5 (*Payments During Force Majeure*), if the Affected Party claims relief in respect of Force Majeure in accordance with this Clause 16 (*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.

16.5 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.
- (d) If the Force Majeure persists continuously for a period of more than twelve (12) Months the Parties shall consider a suitable remedy for the situation including termination. In the event that the Parties have chosen the option of termination of the PPA, the terms and conditions of such termination shall be agreed by the Parties.

16.6 Extension of Scheduled Dates and Term

Where an event of Force Majeure affecting the Buyer or the Seller (or any contractor or sub-contractor of the Seller of any tier), a breach by the Buyer of this Agreement, a breach by ETU of the Connection Agreement affects the Seller:

- (a) before the Scheduled Effective Date or the Scheduled Commercial Operation Date, the respective dates which have not then occurred shall be revised automatically on a day-for-day basis to new dates which reflect the period of delay in achieving the Scheduled Effective Date or the Scheduled Commercial Operation Date, as the case may be, resulting from such Force Majeure or breach of this Agreement, or Connection Agreement;
- (b) after the Commercial Operation Date, the Term shall be extended automatically on a day-for-day basis to the extent of delay resulting from such Force Majeure or breach of this Agreement, or Connection Agreement.

17 INSURANCE

The Seller shall:

- (a) at its sole cost and expense, obtain and maintain, in full force and effect all typical and reasonable insurance policies with a level of cover being that as generally taken out by international independent power producers acting in accordance with Prudent Utility Practice, with such insurances being available on commercially reasonable terms, such insurance policies being placed with reputable insurance companies;
- (b) provide to the Buyer copies of all policies obtained by Seller 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 Utility 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 twenty (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.

18 CAPACITY AND ENERGY MEASUREMENT, METER READINGS AND ADJUSTMENT OF MEASUREMENT DEVICES

18.1 Capacity and Energy measurement

- (a) The parties agree that the measurement of Capacity and Energy from the Facility shall be done in accordance with the provisions of the Grid Code. All provisions in this Clause shall apply only if the Grid Code has not made provision for them.
- (b) The Main 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. The Main Meter and the Check Meter shall be clearly marked. During the operation of this Agreement, neither Party can change the Main Meter or Check Meter without the other's prior approval. Under normal circumstances, the parties shall take the meter reading data of the Main Meter as the basis of electricity calculation. The metering data of the Check Meter will be used for cross-checking the readings of the Main Meter, or in substitution for the Main Meter when it becomes defective.
- (c) 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.
- (d) 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.
- (e) The point of measuring for billing purposes shall be at the Delivery Point, but shall otherwise be determined jointly by the Seller and the Buyer. If the equipment for measuring at the Delivery Point is connected at a location other than the Delivery Point, the readings shall be corrected to give results such as would be obtained by instruments connected at the Delivery Point and the corrections procedures shall be agreed upon by the Seller and the Buyer.
- (f) The measurement device used for billing shall have at any time two seals, one installed by the ETU on behalf of the Buyer and the other installed by the Seller.

- (g) 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.
- (h) 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.
- (i) 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.
- (j) 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.
- (k) 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.
- (l) The power metering devices should have functions that conform to the provisions of the Grid Code. The functions include the following:
 - (i) Complete electronic metering devices;
 - (ii) Bi-directional metering function: from power plant to network, and, from network to power plant;
 - (iii) Keep the memory for recording at least two months metering data;
 - (iv) The accuracy must be Level of 0.2S for active power, and Level of 1.0 for inactive power;
 - (v) Connection mode must be 3 phase 4 wires;
 - (vi) Display running time;
 - (vii) Communication port with RS485, RS232, DMP3, fibre optic;
 - (viii) And other functions that meet the requirements of IEC standard.
- (m) 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.
- (n) The technical alteration of the metering system can only be made after being approved in writing by both parties.

- (o) 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.
- (p) 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.
- (q) 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.

18.2 Meter readings

- (a) The Buyer is entitled to reading the meters with the Seller and ETU 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.
- (b) The records from the meters dated and duly signed in three original copies shall be taken and kept by the Seller, the Buyer and DU.
- (c) The records shall be kept and maintained by the Seller, the Buyer and ETU for at least five (5) years following the delivery of a bill.
- (d) The date of the meter reading will be extended in case of holidays to the immediately following Business Day.
- (e) If any one party of Seller or Buyer does not arrive for the meter reading within two hours after the time agreed pursuant to Clause (a), the other party can proceed and read the meters after the issuance of Notice to the party absent, ETU and such reading would be considered as consented by the Seller and the Buyer, which shall be used for billing for that Month.

18.3 Adjustment of measurement devices

- (a) 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.
- (b) If for any reason, any of the meters is unserviceable, the Energy consumed shall be estimated on the basis of following priority order:
 - (i) The meter's data of the line recorded in the meters to be installed by ETU at the end of the line in its substation;
 - (ii) The sum of all meter readings on all main transformers at the 33-kV side in the Facility;

- (iii) That it is the same as for other Days, preferably of the same Month, on which similar load existed.

19 LIABILITY

19.1 Mitigation of Loss

A Party establishing or alleging a claim based on breach of contract, warranty, tort or otherwise arising out of 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 Limitation of Liability

- (a) Subject to Clauses 19.2(b) and 19.3 (*Consequential and Indirect Loss*), the aggregate liability of one Party to the other Party (whether based on breach of contract, warranty, tort or otherwise) arising out of or in connection with this Agreement in any Year during the Term, or in any Year thereafter in respect of any obligations that survive the expiry or termination of this Agreement, shall not exceed (a) US\$5,000,000 in any Year during the Term and (b) an aggregate of US\$30,000,000 for the term of this Agreement. The limitation of US\$5,000,000 in any Year shall be increased to US\$30,000,000 (subject to the aggregate limitation noted in (b) below) in the final Year prior to any Transfer of the Facility in accordance with Clause 21.2 (*Termination upon default of the Seller*) or Clause 21.4 (*Force Majeure Termination*).
- (b) The limitation of liability set out in Clause 19.2(a) shall not apply to (i) the liability of the Buyer for the payment of sums contractually due hereunder, including Invoices issued in accordance with this Agreement, or (ii) payment of any termination payment pursuant to Clause 21.2 (*Termination upon default of the Seller*) and Clause 21.3 (*Termination upon Default of the Buyer*), or (iii) any liability pursuant to Clause 19.4(a).

19.3 Consequential and Indirect Loss

- (a) Without prejudice to payment of termination and other payments expressly provided for under this Agreement, neither Party shall be liable to the other Party for any indirect or consequential losses or damages, including but not limited to loss of profit, loss of use, loss of contract or loss of opportunity whether arising in contract, tort, warranty or otherwise in connection with this Agreement.
- (b) The Parties agree that this Clause 19.3 (*Consequential and Indirect Loss*) shall not affect any obligation to pay Increased Costs or compensation on termination of this Agreement, subject to Clause 19.2 (*Limitation of Liability*).

19.4 Indemnification

- (a) Third-Party Loss Indemnity

Each of the Seller and the Buyer respectively, as the indemnifying Party ("**Indemnifying Party**"), shall indemnify, defend, and hold harmless the other Party, as the indemnified Party ("**Indemnified Party**"), from and against all losses or damages relating to third-party claims (whether for illness, injury or

death of any person or damage to property of any person) ("**Third-Party Claim**") arising from:

- (i) the breach of any representation, warranty, covenant or obligation of the Indemnifying Party under this Agreement; and
- (ii) from any other act, omission or event for which the Indemnifying Party is liable pursuant to this Agreement.

(b) **Seller Indemnity**

The Seller shall indemnify the Buyer and defend and hold the Buyer harmless in respect of any damages, losses, costs, expenses, or liabilities suffered or incurred by the Buyer in respect :

- (i) illness, injury or death to any Buyer Indemnified Party; and
 - (ii) damage to or loss of the property of any Buyer Indemnified Party,
- to the extent the Loss or damage is caused by the act or omission of a Seller Indemnified Party.

(c) **Buyer Indemnity**

The Buyer shall indemnify the Seller and defend and hold the Seller harmless in respect of any damages, Losses, costs, expenses, or liabilities suffered or incurred by the Seller in respect :

- (i) illness, injury or death to any Seller Indemnified Party; and
 - (ii) damage to or loss of the property of any Seller Indemnified Party,
- to the extent the Loss or damage is caused by the act or omission of a Buyer Indemnified Party.

(d) **Indemnification Procedures**

- (i) The Indemnified Party shall promptly notify the Indemnifying Party of the assertion or commencement of any claim, demand, investigation, action, suit or other legal proceeding for which indemnity or defence is or may be sought under this Agreement, provided that this notice requirement shall not apply to any claim, demand, investigation, action, suit or other legal proceeding in which the Parties are adversaries.
- (ii) The failure by the Indemnified Party to so notify the Indemnifying Party shall not relieve the Indemnifying Party of its obligations under this Clause 19.4, except to the extent, if any, that it has been prejudiced by the lack of timely and adequate notice.
- (iii) The Indemnifying Party shall at the Indemnified Party's request assume the defence or settlement of any Third-Party Claim with legal counsel reasonably satisfactory to the Indemnified Party provided however, that the Indemnifying Party shall not settle or compromise any Third-Party Claim without the Indemnified Party's prior written consent to such settlement or compromise.
- (iv) Notwithstanding the foregoing:

- (A) the Indemnified Party shall have the right, at its option and expense, to participate fully in the defence or settlement of any Third-Party Claim; and
 - (B) if the Indemnifying Party does not diligently defend or settle any Third-Party Claim within a reasonable period of time (in the light of the circumstances) after it is notified of the assertion or commencement thereof, then the Indemnified Party shall have the right, but not the obligation, to undertake the defence or settlement of such Third-Party Claim for the account and at the risk of the Indemnifying Party and the Indemnifying Party shall be bound by any defence or settlement that the Indemnified Party may make as to such Third-Party Claim.
- (v) The Indemnified Party shall cooperate with the Indemnifying Party in the defence or settlement of any Third-Party Claim and, at the expense of the Indemnifying Party, and subject to obligations of confidentiality to other Persons, the Indemnified Party shall furnish any and all materials in its possession and try to make any and all witnesses under its control available to the Indemnifying Party for any lawful purpose relevant to the defence or settlement of the Third-Party Claim.

20 EVENTS OF DEFAULT

20.1 Defaults by the Seller

The Seller shall be deemed to have committed an Event of Default under this Agreement if one of the following events occurs. However, no event shall be an Event of Default under this Clause 20.1 (*Defaults by the Seller*) if it is caused in whole or material part by an act or omission of the Buyer or, or a default by the Buyer under, this Agreement (including any Event of Default under Clause 20.2 (*Defaults by the Buyer*)), a breach by ETU pursuant to the Connection Agreement, an Emergency or if it occurs as a result of Force Majeure or a Political Event or Grid Event:

- (a) the Seller is unable to deliver Energy to the Buyer after a Dispatch Instruction has been issued by the ETU; or
- (b) the repudiation of this Agreement by the Seller; or
- (c) except for the purpose of amalgamation or reconstruction that does not affect the ability of the amalgamated or reconstructed entity, as permitted successor or assignee of the Seller, to meet its obligations under this Agreement, the occurrence of any of the following events:
 - (i) any proceeding being validly instituted under the Laws of Ghana for the dissolution of the Seller that is not stayed or suspended within sixty (60) Days;
 - (ii) the passing of a resolution for the dissolution or winding up of the Seller;
 - (iii) the voluntary filing by the Seller of a winding up petition;
 - (iv) the appointment of a provisional liquidator in a proceeding for the winding up of the Seller after notice to the Seller and due hearing, which appointment has not been set aside or stayed within sixty (60) Days of such appointment;

- (v) the making by a court with jurisdiction over the Seller of an order winding up the Seller that is not stayed or reversed by a court of competent jurisdiction within sixty (60) Days; or
- (vi) any act of insolvency or event analogous to the events listed under Clauses 20.2(c)(i) to 20.2(c)(v) (inclusive) above; or
- (d) any representation or warranty made by the Seller in this Agreement proving to have been incorrect, in any material respect, when made or when reaffirmed and such incorrect representation or warranty having a material adverse effect on the Seller's ability to perform its obligations under this Agreement or having a material adverse effect on the rights or obligations of the Buyer hereunder; or
- (e) failure by the Seller to obtain and maintain any Consents required under the Laws of Ghana or by a Relevant Authority in order for it to perform its obligations pursuant to this Agreement where the Seller has failed to use all reasonable endeavours to obtain or renew such Consents; or
- (f) any material breach or material default by the Seller of this Agreement (other than any breach or default referred to in Clause 20.1(a) – (e)) which is not commenced to be remedied by the Seller within sixty (60) Days after notice from the Buyer to the Seller stating that a material breach or default has occurred under this Agreement and is continuing, and identifying the material breach or default in question in reasonable detail or if not capable of remedy within sixty (60) days, the remedy is not actively pursued by Seller

20.2 Defaults by the Buyer

The Buyer shall be deemed to have committed an Event of Default under this Agreement if one of the following events occurs. However, no such event shall be an Event of Default under this Clause 20.2 (*Defaults by the Buyer*) if it is caused in whole or material part by a breach by the Seller of, or a default by the Seller under, this Agreement (including any Event of Default under Clause 20.1 (*Defaults by the Seller*)), an Emergency, or if it occurs as a result of Force Majeure affecting the Buyer:

- (a) the failure by the Buyer to pay an Invoice for thirty (30) Days after the Due Date;
- (b) the repudiation of this Agreement by the Buyer;
- (c) except for the purpose of amalgamation or reconstruction that does not affect the ability of the amalgamated or reconstructed entity, as permitted successor or assignee of the Buyer, as the case may be, to perform its obligations under this Agreement, the occurrence of any of the following events:
 - (i) any proceeding being validly instituted under the Laws of Ghana for the dissolution of the Buyer that is not stayed or suspended within sixty (60) Days;
 - (ii) the passing of a resolution for the dissolution or winding up of the Buyer;
 - (iii) the voluntary filing by the Buyer of a winding up petition;
 - (iv) the appointment of a provisional liquidator in a proceeding for the winding up of the Buyer after notice to the Buyer and due hearing, which appointment has not been set aside or stayed within sixty (60) Days of such appointment;

- (v) the making by a court with jurisdiction over the Buyer of an order winding up the Buyer that is not stayed or reversed by a court of competent jurisdiction within sixty (60) Days; or
- (vi) any act of insolvency or event analogous to the events listed under Clauses 20.2(c)(i) to 20.2(c)(v) (inclusive); or
- (d) any representation or warranty made by the Buyer in this Agreement proving to have been incorrect, in any material respect, when made or when reaffirmed and such incorrect representation or warranty having a material adverse effect on the Buyer's ability to perform its obligations under this Agreement or having a material adverse effect on the rights or obligations of the Seller hereunder;
- (e) any material breach or material default by the Buyer of this Agreement (other than any breach or default referred to in Clause 20.2(a) - (d)) which is not remedied within sixty (60) Days after notice from the Seller to the Buyer, stating that a material breach or default has occurred under this Agreement and is continuing, and identifying the material breach or default in question in reasonable detail.

21 TERMINATION

21.1 Expiry of the Term

This Agreement shall expire on the last Day of the Term unless earlier terminated in accordance with Clause 21.2, Clause 21.3, Clause 21.4 or Clause 21.5.

21.2 Termination upon default of the Seller

- (a) If the Event of Default referred to in Clause 20.1(a) occurs, then, the Buyer may (provided that the occurrence of the Event of Default is not actively contested by Seller by use of the dispute resolution procedure hereunder, or if contested, that final judgment that an Event of Default giving rise to the right of termination has occurred, has been rendered) immediately terminate this Agreement upon thirty (30) Days prior written notice to the Seller whereupon this Agreement shall terminate, in which case all further obligations of Buyer to Seller shall cease except for any Accrued Rights and Obligations pursuant to Clause 21.6.
- (b) If an Event of Default referred to in Clause 20.1 (other than Clause 20.1(a)) occurs then:
 - (i) at any time after the Buyer becoming aware of the occurrence of such Event of Default, and provided that such Event of Default is continuing, the Buyer may give a written notice (the "**Buyer Preliminary Notice**") to the Seller of its intention to terminate this Agreement and, for a period of sixty (60) Days following the receipt of the Buyer Preliminary Notice by the Seller (the "**Buyer Consultation Period**"), the Seller and the Buyer shall consult as to what steps should be taken to mitigate the consequences of and remedy such Event of Default as soon as reasonably practicable;
 - (ii) during the Buyer Consultation Period:

- (A) the Parties shall continue to perform their respective obligations to the fullest extent possible; and
- (B) the Seller shall use all reasonable endeavours to remedy its default and the Buyer shall assist the Seller, and shall not, whether by act or omission, impede or otherwise interfere with the Seller's reasonable endeavours to remedy the Seller's Event of Default; and
- (iii) upon the expiry of the Buyer Consultation Period, or during the Buyer Consultation Period if the Seller fails to comply with Clause 21.1(b)(ii)(A) and (B) above, unless the circumstance giving rise to the Seller's Event of Default shall have ceased to exist or shall have been remedied, the Buyer may give a written notice to the Seller to terminate this Agreement whereupon this Agreement shall terminate in which case all further obligations of Buyer to Seller shall cease except for any Accrued Rights and Obligations pursuant to Clause 21.6.

21.3 Termination upon Default of the Buyer

- (a) If the Event of Default referred to in Clause 20.2(b) has occurred and is continuing, the Seller shall be entitled to terminate this Agreement upon thirty (30) Days prior written notice to the Buyer whereupon this Agreement shall terminate and the Buyer shall pay to the Seller the termination payment ("**Seller Termination Payment**") to be agreed by the Parties taking cognizance of the prevailing market value of the Facility in consideration for the purchase of the Facility by Buyer, and upon payment by Buyer or its designee, the Facility shall be transferred in accordance with Schedule 13 (*Transfer procedures*).
- (b) If an Event of Default referred to in Clause 20.2 (*Defaults by the Buyer*) (other than Clause 20.2 (b)) occurs then:
 - (i) at any time after the Seller becoming aware of the occurrence of such Event of Default, and provided that such Event of Default is continuing, the Seller may give a written notice (the "**Seller Preliminary Notice**") to the Buyer of its intention to terminate this Agreement and, for a period of sixty (60) Days following the receipt of the Seller Preliminary Notice by the Buyer (the "**Seller Consultation Period**"), the Seller and the Buyer shall consult as to what steps should be taken to mitigate the consequences of and remedy such Event of Default as soon as reasonably practicable;
 - (ii) during the Seller Consultation Period:
 - (A) the Parties shall continue to perform their respective obligations to the fullest extent possible; and
 - (B) the Buyer shall use all reasonable endeavours to remedy its default and the Seller shall assist the Buyer, and shall not, whether by act or omission, impede or otherwise interfere with the Buyer's reasonable endeavours to remedy the Buyer Event of Default; and
 - (iii) upon the expiry of the Seller Consultation Period, or during the Seller Consultation Period if the Buyer fails to comply with

Clauses 21.3(b)(ii)(A) and (B) above, unless the circumstance giving rise to the Buyer Event of Default shall have ceased to exist or shall have been remedied, the Seller may give a written notice to the Buyer to terminate this Agreement whereupon this Agreement shall terminate and the Buyer shall pay to the Seller the Seller Termination Payment in consideration for the purchase of the Facility by Buyer, and upon payment by Buyer or its designee the Facility shall be transferred in accordance with Schedule 13 (*Transfer procedures*).

21.4 Force Majeure Termination

- (a) Either Party shall be entitled to terminate this Agreement by giving notice in writing to the other Party if an event of Force Majeure continues for more than a continuous period of twelve (12) Months and then a cooling off period of six (6) months.
- (b) For the purposes of this Clause 21.4, Force Majeure shall not include a Political Event and termination for a Political Event shall be dealt with pursuant to Clause 21.5 below.

21.5 Political Event Termination

If:

- (a) Political Event occurs and the Seller is not otherwise paid all the Increased Costs in relation to that Political Event; or
- (b) any Change in Law occurs resulting in:
 - (i) any material undertaking or obligation of the Buyer under this Agreement becoming unenforceable, invalid, or void; or
 - (ii) it becoming unlawful for the Seller or the Lenders to make or receive any payment, to perform any obligation or to enjoy or to enforce any material right or material benefit under this Agreement,

the Seller shall have the right to terminate this Agreement by notice in writing to the Buyer and the Buyer shall pay the Seller Termination Payment in consideration for the purchase of the Facility by Buyer, and upon payment by Buyer or its designee, the Facility shall be transferred in accordance with Schedule 13 (*Transfer procedures*) and this Agreement shall terminate.

21.6 Accrued Rights and Obligations

On the termination or expiry of this Agreement, the Parties shall have no further obligations or liabilities hereunder except the Accrued Rights and Obligations of the Parties as at the date of termination or expiry, which shall remain enforceable, and shall not affect the operation of any provisions of this Agreement expressly or by implication intended to continue following such termination or expiry in order to allow the full enjoyment of such Accrued Rights and the enforcement of any Accrued Obligations.

21.7 Other Remedies

- (a) The exercise of the right of a Party to terminate this Agreement does not prejudice or preclude such Party from exercising other remedies that are provided in this Agreement or are available at law, provided, however, that no

Party shall have a right to terminate or treat this Agreement as repudiated except in accordance with the provisions of this Agreement.

- (b) Except as may otherwise be provided in this Agreement, remedies are cumulative, and the exercise of, or failure to exercise, one or more of them by a Party shall not limit or preclude the exercise of, or constitute a waiver of, other remedies by such Party.

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 REPRESENTATIONS AND WARRANTIES

23.1 Representations and Warranties of the Seller

The Seller hereby represents and warrants that:

- (a) the Seller is a company duly organised and validly existing under the Laws of Ghana;
- (b) it has full power, authority and legal right to assume the obligations contained in this Agreement, to execute and deliver this Agreement, and to perform and observe the terms and provisions hereof;
- (c) the obligations assumed by it under this Agreement constitute legal, valid, binding and enforceable obligations in accordance with the terms hereof;
- (d) there are no actions, suits or proceedings pending or to the Seller's knowledge, threatened against or affecting the Seller before any court or administrative body or arbitral tribunal which might materially and adversely affect the ability of the Seller to perform its obligations under this Agreement;
- (e) all necessary action has been taken to authorise the execution, delivery and performance of this Agreement and such execution, delivery and performance will not contravene any provision of, or constitute a default under, any other agreement or instrument to which it is a party or by which it or its property may be bound; and
- (f) all the obligations and the covenants contained herein constitute unconditional direct obligations of the Seller.

23.2 Representations and Warranties of the Buyer

The Buyer hereby represents and warrants that:

- (a) the Buyer is a company duly organised and existing under the Laws of Ghana;
- (b) it has the full power, authority and legal right to assume the obligations contained in this Agreement, to execute and deliver this Agreement, and to perform and observe the terms and provisions hereof;
- (c) the obligations assumed by it under this Agreement constitute legal, valid, binding and enforceable obligations in accordance with the terms hereof;
- (d) there are no actions, suits or proceedings pending or to the Buyer's knowledge, threatened against or affecting the Buyer before any court or administrative body or arbitral tribunal which might materially and adversely affect the ability of the Buyer to perform its obligations under this Agreement;
- (e) all necessary action has been taken to authorise the execution, delivery and performance of this Agreement and such execution, delivery and performance will not contravene any provision of, or constitute a default under, any other agreement or instrument to which it is a party or by which it or its property may be bound; and
- (f) all the obligations and the covenants contained herein constitute unconditional direct obligations of the Seller.

24 GOVERNING LAW

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

25 SETTLEMENT OF DISPUTES

25.1 Amicable Settlement

- (a) Except as expressly stated to the contrary in this Agreement or where this Agreement provides that a dispute, controversy or claim shall be referred to the Expert for resolution, if any dispute, controversy or claim shall arise between the Parties out of or in connection with this Agreement, whether in tort, contract, under statute or otherwise, including any question regarding its existence, validity, interpretation, breach or termination (a "**Dispute**"), the Parties shall attempt in good faith and use their best efforts to settle the Dispute in an amicable manner, which settlement shall be evidenced by written terms of settlement duly signed by an authorised representative of each Party.
- (b) If the Dispute is not settled, as evidenced by the signing of the written terms of settlement as described in Clause 25.1(a), within the first thirty (30) 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 pursuant to Clause 25.3 (*Arbitration*).

25.2 Expert Determination

- (a) Any Party may by notice in writing refer any dispute arising under Clause 9 (*Increased Costs*), 10 (*Decreased Costs*) or 11 (*Billing and Payment*) (or under any other Clause, paragraph or Schedule agreed by the Parties) (an "**Expert Dispute**") to an expert (the "**Expert**") selected in accordance with this Clause 25.2 (*Expert Determination*).

- (b) The Expert shall be agreed by the Parties or, failing agreement within thirty (30) Days of the notice in writing, shall be appointed by the Ghana Arbitration Centre within thirty (30) Days of any application for such appointment by either Party.
- (c) The Expert shall be wholly independent of the Parties.
- (d) The Expert shall act as an Expert and not as an arbitrator.
- (e) If the Expert resigns or becomes incapable of performing the functions of an Expert after his appointment and before his or her decision has been rendered, a replacement Expert shall be appointed in accordance with the procedure in this Clause 25.2 (*Expert Determination*).
- (f) Within seven (7) Days of appointment in relation to a particular Expert Dispute, the Expert shall require the Parties to such Expert Dispute to submit in writing their respective arguments. No other written submissions can be made to the Expert without the prior written agreement of the Expert. The Expert shall send copies of one Party's written submissions to the other for comment. In addition, the Parties shall, if requested, make available to the Expert any documentation that the Expert, in his absolute discretion, considers necessary or helpful in reaching his decision on the issues between the parties. The Expert shall, in his absolute discretion, consider whether a hearing is necessary in order to resolve the Expert Dispute.
- (g) The Expert shall act impartially and may take the initiative in ascertaining the facts and the law.
- (h) The Expert shall use his or her best endeavours to provide to both Parties a written decision on the Expert Dispute within twenty eight (28) Days of appointment (or such other period as the Parties may agree after the reference), or forty two (42) Days from the date of reference if the Party which referred the Expert Dispute agrees. In any event, the Expert shall provide his or her decision on the Expert Dispute no later than three (3) months from the date of reference. The Expert shall state reasons for his decision.
- (i) The Expert's decision, except in the case of manifest error, shall be final and binding upon the Parties, who shall forthwith give effect to that decision. Within thirty (30) Days of the Expert's decision, either Party may give notice pursuant to Clause 25.3(a) (*Arbitration*) that it wishes to refer the dispute determined by the Expert to arbitration; such Dispute can only be referred to Arbitration if such Expert determination has been sought and obtained. Should the Expert's opinion be appealed pursuant to this Clause 25.2(i), it shall be binding upon the Parties pending such appeal.
- (j) The Expert is not liable for anything done or omitted in the discharge or purported discharge of his functions as Expert unless the act or omission is in bad faith.
- (k) Any sum payable as a result of the Expert's decision shall be payable within fourteen (14) Business Days of the Parties receiving notification of the decision.
- (l) The Expert's costs arising from any reference shall be borne equally by the Parties.

25.3 Arbitration

- (a) Any Dispute which is unresolved pursuant to Clauses 25.1(a) or which is the subject of an appeal of an Expert's decision pursuant to Clause 25.2(i) shall be finally resolved by arbitration under the Alternative Dispute Resolution Act, 2010 (Act 798) (the "**Arbitration Rules**"), which Arbitration Rules are deemed to be incorporated by reference into this Clause.
- (b) The tribunal shall consist of three arbitrators appointed in accordance with the Arbitration Rules.
- (c) If there is more than one claimant party and/or more than one respondent party, the claimant parties shall together appoint one arbitrator and the respondent parties shall do likewise and the parties shall be treated as a single claimant or a single respondent (as the case may be) pursuant to the Arbitration Rules.
- (d) If any Dispute raises questions which are substantially the same as or connected with issues raised in a Dispute which has already been referred to arbitration under this Agreement or any other Related Agreement (an "**Existing Dispute**") then the tribunal appointed or to be appointed in respect of any such Existing Dispute shall also be appointed as the tribunal in respect of any Dispute, save where the tribunal or both Parties consider that such appointment would be inappropriate.
- (e) Upon the request of a Party or Parties to this Agreement, the tribunal may join any other person to the arbitration proceedings commenced in accordance with this Clause 25.3 (*Arbitration*) in order that the tribunal can make an award(s) to dispose of the dispute(s) between the Parties effectively. Each of the Parties to this Agreement and/or to any other Related Agreement hereby agrees to be joined to any reference to arbitration proceedings in relation to any Dispute at the request of a party to that Dispute, and to accept the joinder of a party requesting to be joined pursuant to this Clause 25.3 (*Arbitration*)
- (f) The place and the seat of the arbitration shall be Accra, Ghana.
- (g) The language of the arbitration shall be English.
- (h) Nothing in this Clause 25.3 (*Arbitration*) shall be construed as preventing any Party from seeking conservatory or similar interim relief from a court of competent jurisdiction.
- (i) Any award of the tribunal shall be made in writing and shall be binding on the Parties. The Parties undertake to carry out the award without delay.
- (j) The Parties hereby waive any right to apply to any court of law and/or other judicial authority to determine any preliminary point of law and/or review any question of law and/or the merits, insofar as such waiver may be validly made. The Parties shall not be deemed, however, to have waived any right to challenge any award on the ground that the tribunal lacked substantive jurisdiction and/or on the ground of serious irregularity affecting the tribunal, the proceedings or the award.

25.4 Waiver of Immunity

The Buyer hereby agrees that the execution, delivery and performance by it of this Agreement constitute private and commercial acts and waives generally all governmental immunity it or its assets (presently owned or subsequently acquired, and

Party shall have a right to terminate or treat this Agreement as repudiated except in accordance with the provisions of this Agreement.

- (b) Except as may otherwise be provided in this Agreement, remedies are cumulative, and the exercise of, or failure to exercise, one or more of them by a Party shall not limit or preclude the exercise of, or constitute a waiver of, other remedies by such Party.

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 REPRESENTATIONS AND WARRANTIES

23.1 Representations and Warranties of the Seller

The Seller hereby represents and warrants that:

- (a) the Seller is a company duly organised and validly existing under the Laws of Ghana;
- (b) it has full power, authority and legal right to assume the obligations contained in this Agreement, to execute and deliver this Agreement, and to perform and observe the terms and provisions hereof;
- (c) the obligations assumed by it under this Agreement constitute legal, valid, binding and enforceable obligations in accordance with the terms hereof;
- (d) there are no actions, suits or proceedings pending or to the Seller's knowledge, threatened against or affecting the Seller before any court or administrative body or arbitral tribunal which might materially and adversely affect the ability of the Seller to perform its obligations under this Agreement;
- (e) all necessary action has been taken to authorise the execution, delivery and performance of this Agreement and such execution, delivery and performance will not contravene any provision of, or constitute a default under, any other agreement or instrument to which it is a party or by which it or its property may be bound; and
- (f) all the obligations and the covenants contained herein constitute unconditional direct obligations of the Seller.

23.2 Representations and Warranties of the Buyer

The Buyer hereby represents and warrants that:

- (a) the Buyer is a company duly organised and existing under the Laws of Ghana;
- (b) it has the full power, authority and legal right to assume the obligations contained in this Agreement, to execute and deliver this Agreement, and to perform and observe the terms and provisions hereof;
- (c) the obligations assumed by it under this Agreement constitute legal, valid, binding and enforceable obligations in accordance with the terms hereof;
- (d) there are no actions, suits or proceedings pending or to the Buyer's knowledge, threatened against or affecting the Buyer before any court or administrative body or arbitral tribunal which might materially and adversely affect the ability of the Buyer to perform its obligations under this Agreement;
- (e) all necessary action has been taken to authorise the execution, delivery and performance of this Agreement and such execution, delivery and performance will not contravene any provision of, or constitute a default under, any other agreement or instrument to which it is a party or by which it or its property may be bound; and
- (f) all the obligations and the covenants contained herein constitute unconditional direct obligations of the Seller.

24 GOVERNING LAW

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

25 SETTLEMENT OF DISPUTES

25.1 Amicable Settlement

- (a) Except as expressly stated to the contrary in this Agreement or where this Agreement provides that a dispute, controversy or claim shall be referred to the Expert for resolution, if any dispute, controversy or claim shall arise between the Parties out of or in connection with this Agreement, whether in tort, contract, under statute or otherwise, including any question regarding its existence, validity, interpretation, breach or termination (a "**Dispute**"), the Parties shall attempt in good faith and use their best efforts to settle the Dispute in an amicable manner, which settlement shall be evidenced by written terms of settlement duly signed by an authorised representative of each Party.
- (b) If the Dispute is not settled, as evidenced by the signing of the written terms of settlement as described in Clause 25.1(a), within the first thirty (30) 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 pursuant to Clause 25.3 (*Arbitration*).

25.2 Expert Determination

- (a) Any Party may by notice in writing refer any dispute arising under Clause 9 (*Increased Costs*), 10 (*Decreased Costs*) or 11 (*Billing and Payment*) (or under any other Clause, paragraph or Schedule agreed by the Parties) (an "**Expert Dispute**") to an expert (the "**Expert**") selected in accordance with this Clause 25.2 (*Expert Determination*).

whether related to this Agreement or not) may otherwise have in any jurisdiction, including, but without limitation, immunity in respect of:

- (a) the giving of any relief, including interim relief, or order for specific performance or for the recovery of land or other assets or revenues;
- (b) legal process of any sort whatsoever including the issue of any process against its assets or revenues for the enforcement of a judgment, order or award or, in an action in remedy, for the arrest, detention or sale of any of its assets and revenues;
- (c) inconvenient forum; and
- (d) any effort to confirm, enforce, or execute any decision, settlement, award, judgment, service of process, execution order, attachment (including pre judgment attachment) or other remedy that results from an expert determination, arbitration or any judicial or administrative proceedings commenced pursuant to this Agreement.

26 NOT USED

27 ASSIGNMENT

This Agreement shall not be assigned or sub-contracted in any way without the written approval of both Parties.

28 NON-DISCLOSURE

28.1 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 Clause 25 (*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 Clause 28 (*Non-Disclosure*) shall not apply to Confidential Information which is in the public domain other than by reason of breach of this Clause 28 (*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 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;
 - (D) any insurer or reinsurer under a policy of insurance in respect of the Facility;
 - (E) any securities exchange or regulatory authority in respect of a prospective listing; or
 - (F) any prospective investor of the Seller or any prospective purchaser of the assets of the Facility or any of their professional advisors and/or consultants;
- (iii) to an Expert or an arbitral tribunal appointed in accordance with Clause 25 (*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.

- 28.2 The restrictions on the disclosure of Confidential Information in this Clause 28 (*Non-Disclosure*) shall continue to be in force for a period of three (3) years after the expiry or termination of this Agreement for any reason.

29 AMENDMENTS

- 29.1 This Agreement and any of its provisions may not be amended except by mutual agreement of the Parties in writing.
- 29.2 If the Seller or the Buyer believe 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 Clause shall be without prejudice to the Seller's rights under Clause 9 (*Increased Costs*) or the Buyer's rights under Clause 10 (*Decreased Costs*)

30 SEVERABILITY

If any provisions of this Agreement or part thereof is rendered void, illegal or unenforceable in any respect the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby and this Agreement shall be construed, if possible, in a manner to give effect by means of valid provisions to the intent of the Parties to that particular provision or part thereof rendered void, illegal or unenforceable; and the Parties shall negotiate in good faith to agree upon a substitute provision that is legal and enforceable whilst maintaining as near as possible the original intent and effect of the original provision and this Agreement. 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.

31 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 entities, 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.

32 NO THIRD-PARTY RIGHTS

A person who is not a Party shall have no right under the Contracts (Rights of Third Parties) Act, 1960 (Act 25), to enforce or to enjoy the benefit of any the term of this Agreement, unless expressly provided to the contrary in this Agreement.

33 MISCELLANEOUS: CALCULATIONS, ACCRUAL OF INTEREST AND CHANGE OF INDEX

33.1 Calculations

All calculations made pursuant to this Agreement shall be made to three (3) decimal places with a fourth digit of five (5) being rounded up.

33.2 Change of index

- (a) If any index referred to in this Agreement ceases to be published or is not published during any period relevant to the application of any formula set out in this Agreement, then such alternative index, which the Parties agree produces as nearly as possible the same result, shall be substituted therefor, and if the reference date used in compilation of any such index shall change, the figure shown in such index shall be taken to be the figure which would have been shown in the index if the original reference date had been retained.
- (b) If it becomes impossible, by reason of any change after the date hereof in the method used to compile any such index or for any other reason whatsoever, to calculate the amount by which the sums payable hereunder should be adjusted by reference to any such index or any alternatives thereto, the Parties shall agree such alternative method of adjusting the relevant sum as a basis for the making of subsequent payments under this Agreement as most closely reflects the intent of this Agreement.
- (c) If any Dispute or difference shall arise between the Parties as to the construction or effect of this Clause 33.2 (*Change of index*) or as to the calculation of the sums payable hereunder in the circumstances referred to in Clauses 33.2(a) or 33.2(b) (and a Dispute shall be deemed to have arisen if the Parties have not reached agreement within one (1) Month of the occurrence of the event referred to in Clause 33.2(a) or 33.2(b)) the same shall be referred to the Expert for determination in accordance with Clause 25.2 (*Expert Determination*).

34 ENTIRE AGREEMENT

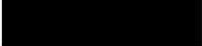
This Agreement contains and expressly refers to the entire agreement between the Parties with respect to its subject matter and, except as provided herein, expressly excludes any warranty, condition or other undertaking implied at law or by custom and supersedes all previous agreements and understandings 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 except as provided herein.

35 NOTICES

35.1 All notices hereunder, including service of processes in relation to any legal proceedings commenced under this Agreement, shall be in writing and delivered or sent by registered mail or facsimile to the recipient at the address, and marked for the attention of the person, specified in this Clause 35 (*Notices*) and any such notice shall be deemed to have been duly given as follows:

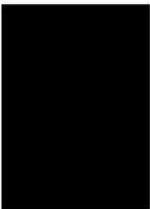
- (a) when delivered by hand, upon delivery at the address of the relevant Party;
- (b) when sent by registered mail, fourteen (14) Days after the date of posting;
- (c) when sent by facsimile, upon confirmation of uninterrupted transmission by a transmission report provided that any notice given by 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 Clause.

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

(a) The Seller: The Chief Executive Officer
BXC COMPANY (GHANA) LIMITED
P.O. Box KN 5723
Ghana
Tel: 
Tel: 

(b) The Buyer: The Managing Director
Electricity Company of Ghana
Electro Volta House, 28th February Road
P.O. Box GP 521, Accra
Accra, Ghana
Tel: 0302 676762
Tel: 0302 676747
Fax: 0302 666262

35.3 A Party may notify the other Party of a change in its notice details specified in Clause 35.2 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 authorised representatives on the day and year first above within:

SIGNED, SEALED AND DELIVERED on behalf of)
BXC COMPANY (GHANA) LIMITED by)
)



Name: LIU XIAOQING

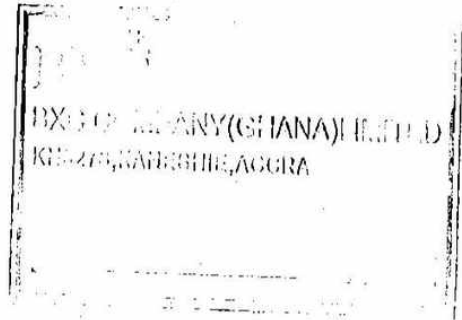
Title: VICE CHAIRMAN - BOARD

In the presence of witness:

Name: [Redacted]

Address: [Redacted]

Occupation/Title: [Redacted]



SIGNED, SEALED AND DELIVERED on behalf of
ELECTRICITY COMPANY OF GHANA LIMITED
by



Name: ROBERT DWAMENA

Title: MANAGING DIRECTOR



In the presence of witness:

Name: [Redacted]

Address: [Redacted]

Occupation/Title: [Redacted]

SCHEDULE 1
PRO-FORMA MONTHLY INVOICE

FROM:

TO:

BXC COMPANY (GH) LIMITED

DZORWULU, ACCRA
P.O. BOX KN5273
GHANA

ELECTRICITY COMPANY OF GHANA
ELECTRO-VOLTA HOUSE
28TH FEBRUARY ROAD
P. O. BOX 521, ACCRA GPO
ACCRA, GHANA

INVOICE FOR: *[INSERT DAY, MONTH AND YEAR FOR THE START AND END DATES OF THE BILLING PERIOD]*

INVOICE NO.: *[INSERT INVOICE NUMBER]*

INVOICE DATE: *[INSERT INVOICE DATE]*

INVOICE DUE DATE: *[INSERT INVOICE DUE DATE]*

All terms defined in the Agreement shall have the same meaning when used in this Invoice

A. INVOICE PARAMETERS

LINE	PARAMETERS	UNIT	VALUE
[A]	Total Available Energy for the Billing Period	kWh	[A = Aii]
[A ii]	Actual Electricity Delivered(measured through metering)	kWh	[•]
[B]	Capacity Charge	USD/kWh	[B = Bi + B ii]
[Bi.]	Capital recovery tariff component	USD/kWh	[•]
[B ii.]	Fixed operating and maintenance costs tariff component applicable for the Billing Period	USD/kWh	[•]
[C]	Energy Charge	USD/kWh	[C = Ci + Cii.]
[Ci.]	Fuel Charge	USD/kWh	[•]
[C ii.]	Variable Operations and Maintenance Charge	USD/kWh	[•]
[D]	Total Energy delivered for the Billing Period	kWh	[D = Di + Dii.]
[Di]	Total Energy delivered during the Billing Period when the Facility is fuelled with Natural Gas	kWh	[Di = E * D]
[Dii]	Total Energy delivered during the Billing Period when the Facility is fuelled with Natural Gas	kWh	[Dii = F * D]
[E]	Proportion of Energy delivered in respect of the periods when the Facility is fuelled with Natural Gas during the Billing Period	Ratio	[E = %is * D]

LINE	PARAMETERS	UNIT	VALUE
[F]	Proportion of Energy delivered in respect of the periods when the Facility is fuelled with Natural Gas during the Billing Period	Ratio	[F = %lg * D]
[G]	Price of Natural Gas applicable for the Billing Period	USD/mmBTU	[•]
[H]	Price of Natural Gas applicable for the Billing Period	USD/mmBTU	[•]
[I]	Heat Rate for the Facility using Natural Gas for the Billing Period	mmBTU/kWh	[•]
[J]	Heat Rate for the Facility using Natural Gas for the Billing Period	mmBTU/kWh	[•]
[K]	Allowable Number of Starts	No.	[50]
[L]	Total Number of Starts For the Billing Period	No.	[•]

B. TOTAL ELECTRICITY CHARGE

LINE	PARAMETERS	UNIT	AMOUNT
[P]	Capacity Charge	USD	[P = A * B]
[Q]	Energy Charge	USD	[Q = A * C]
[S]	Total Electricity Charge for the Billing Period	USD	[S = P + Q]
[T]	Add: Outstanding balance ([INSERT DAY, MONTH AND YEAR FOR PREVIOUS PERIOD START AND END DATES])	USD	[•]
[U]	Deduct: Amount paid this Billing Period ([INSERT MONTH AND YEAR])	USD	[•]
[V]	Net Total amount payable	USD	[•]
[W]	Applicable Hedged Exchange Rate for the Quarter from [dd/mm/yy] to [dd/mm/yy]	GHS/USD	[•]
[X]	Total amount payable in GHS equivalent	GHS	[•]
[Y]	Due Date	[dd/mm/yy]	[•]

C. TAXES

LINE	PARAMETERS	UNIT	AMOUNT
[A]	VAT	GHS	[•]
[B]	NHIL	GHS	[•]
[C]	Total VAT and NHIL Payable (i.e., [A] + [B])	GHS	[•]

E. INTEREST ON AMOUNTS OVERDUE

LINE	PARAMETERS	UNIT	AMOUNT
[D]	Amount overdue	USD	[•]
[E]	Default Interest Rate	Percent p.a.	[•]

LINE	PARAMETERS	UNIT	AMOUNT
[F]	Interest accrued for the current Billing Period on amounts overdue (i.e., $\left(\frac{\text{Interest Rate}}{360} \times \text{No. of Days of Default}\right) \times [E]$)	USD	[•]
[G]	Add: Interest payable prior balance ([INSERT MONTH AND YEAR FOR PREVIOUS PERIOD])	USD	[•]
[H]	Deduct: Interest paid this Billing Period ([INSERT MONTH AND YEAR])	USD	[•]
[I]	Total interest payable (i.e., [G] – [H])	USD	[•]

F. EXCHANGE RATE HEDGING COSTS

LINE	PARAMETERS	UNIT	AMOUNT
[J]	Exchange Rate Hedging Costs for the Billing Period	USD	[•]
[K]			
[L]	Total Exchange Rate Hedging Costs payable (i.e., [J])	USD	[•]

G. ADDITIONAL/DEDUCTIBLE

LINE	PARAMETERS	UNIT	AMOUNT
[M]	Additional [DETAILS TO BE STATED HERE]	USD	[•]
[N]	Deductible [DETAILS TO BE STATED HERE]	USD	[•]
[O]	Total additional/deductible payable (i.e., [M] + [N])	USD	[•]

H. TOTAL AMOUNTS PAYABLE: TOTAL ELECTRICITY CHARGE, INTEREST ON OVERDUE PAYMENTS, EXCHANGE RATE HEDGING COSTS AND ADDITIONAL/DEDUCTIBLE

LINE	PARAMETERS	UNIT	AMOUNT
[P]	Total amount payable in respect of the Total Electricity Charge (i.e., [S = P + Q + R])	USD	[•]
[Q]	Total interest payable (i.e., [I])	USD	[•]
[R]	Total exchange rate hedging costs (i.e., [K])	USD	
[S]	Total additional/deductible payable (i.e., [O])	USD	[•]
[T]	TOTAL AMOUNTS PAYABLE (i.e., [P] + [Q] + [R] + [S])	USD	[•]
[U]	TOTAL AMOUNTS PAYABLE (in GHS equivalent) (i.e., [T] × 0)	GHS	[•]

ENCLOSURES:

- A. Light Crude Oil, Natural Gas and Light Crude Oil invoices for the Month [*INSERT MONTH AND YEAR*]
- B. Energy Meter readings for the Billing Period for operation on Light Crude Oil, Natural Gas and Light Crude Oil [*INSERT MONTH AND YEAR*]
- C. Exchange Rate Hedging Agreement for the Quarter from [dd mmm yyyy] to [dd mmm yyyy]
- D. Other relevant information

Signature of Buyer Representative

Stamp of Buyer

**SCHEDULE 2
FACILITY SPECIFICATION**

PART A

SPECIFICATION FOR FACILITY BASED ON
GENERAL ELECTRIC 9E.03 GAS TURBINES AND STEAM TURBINES

Site Conditions	
Design Ambient Dry Bulb Temp./Relative Humidity	28°C/ 85%
Maximum Ambient Dry Bulb Temp./	60°C
Minimum Ambient Dry Bulb Temp./Relative Humidity	18°C / 85%
Barometric Pressure	1 BAR
Elevation	200M above sea level
Location	Aboadze, Western Region – Ghana
Water Level	N/A – Evaporative Cooling Tower
Seismic Criteria	1997 UBC; Zone 1 Soil Profile Type Spc. Importance Factor = 1.00 Occupancy Category III
Wind Design	1997 UBC; Exposure C Importance Factor = 1.0 Basic Wind Speed = 70 mph Summer Prevailing – SSW Winter Prevailing – NW
Annual Rainfall	1.2M
Maximum Rainfall Rate	10cm/hr and 5 Minute Duration
Snow Load	10 psf; importance factor 1.1
Circulating Cooling Water	
Design Condenser Inlet Temp. @ Design Ambient Temp.	20°C
Maximum Condenser Inlet Temp. @ Maximum Ambient Temp.	33°C
Minimum Condenser Inlet Temp. @ Minimum Ambient Temp.	4°C
Auxiliary equipment Inlet Temp.	5°C Above the Condenser Inlet Temperature

Fuel	
Primary, Secondary	Natural Gas, LCO, Diesel (Pilot),
Preheating	Included for Natural Gas IP Economizer used for Heat Source Heat to 185°C
Gas Fuel Booster Compressor	Not Included. Assumes Gas Fuel Available @36BAR at Terminal Point

Combustion Turbine Equipment/System

Gas Turbine	Two (2) FRAME 9E Units
Exhaust System	No Bypass Stack Included
Starting Means	Static Start Shared LCI
Air Filtration	Self-cleaning
Inlet Air Cooling	Not included Provisions for future fogger installation
Compressor/Turbine Cleaning	Off-line & On-line Compressor Water Wash
Emissions Control Natural Gas Unfired	Dry Low NOx (9 ppm)
Heat Recovery Steam Generator (HRSG)	Two(2) Natural Circulation Reheat Units
Pressure Levels	Three (3)
Supplemental Firing	Fired
Emissions Control (SCR)	SCR to achieve 3.5 ppm Nox for Unfired and fired HRSG.
CO Catalyst Spool Place	Included, provision for future installation of CO Catalyst
Stack Closure Damper	Included
Economizer Recirculation	Included
Economizer Tubes	Included: heavy wall
24" x 24" HRSG Access Doors	Included
HRSG Stack Lifting Bean	Included: one (1) per HRSG
HRSG Double Drain Valves	Included
FAA Stack Lighting	Included on both HRSGs
Steam Vent Silencers	Included: 105 dBA Design Level

Steam Cycle	Three (3) Pressure Reheat
Deaeration	Deaerating Condenser
Total Plant Bypass Capability	
HP/IP	Cascaded bypass @ 100% Unfired flow & 100% Pressure per HRSG
LP	100% Unfired flow & 110% Pressure per HRSG
Economizer Bypass	Not Included
Steam Turbines	One (1) 130 MW Unit
Configuration/Code	Cased; Factory Assembled, Combined HP/IP; Field Assembled, Single Flow LP; D11
Steam Inlet Conditions	1900 psis, 1050°F / 1050°F
Last Stage Bucket (LSB)	40 in.
Exhaust Flow	Down
Back Pressure	1.5 in. HgA@59F unfired condition
Generators	Two (2) Gas Turbine Units and One (1) Steam Turbine Unit
Model	
Gas Turbine Generators	Packaged
Steam Turbine Generator	Unpackaged
Cooling	Hydrogen
Terminal Voltage	18 kV
Frequency	50 Hz
Power Factor (pf)	0.85 Lagging
Generator Excitation	EX21 Static Auxiliary Bus Fed
Generator Seal Oil System	Scavenging Design
Enclosures	
Gas Turbine Generator	Outdoor
Steam Turbine Generator	Indoor
HRSG	Outdoor

Cooling System

Gas Turbines/Steam Turbine/ Generators/Auxiliaries	Closed H ₂ O to H ₂ O
Steam Turbine Condenser	Lake Water Evaporative Cooling Tower
Control Systems	
Plant	Mark VI and Distributed Control Systems (DCS)
CT and Steam Turbine Generators	SPEEDTRONIC™ Mark VI (TMR)
HRSG Burner Management	Included
Continuous Emissions Monitoring Systems (CEMS)	Not Included
Emergency Power Capability	Included Emergency transformer for critical services)
Black Start Capability	Included
Generator Breaker	Low Side Included
Freeze Protection	Included

2.1.4 Plant Operation

Operating Mode	Base Loaded, 52 Start-ups per Year (weekend shutdowns)-4060% Capacity Factor
Plant Control Philosophy	Remote Manual Startup/Shutdown; Automatic Operation Under Load
Remote Monitoring and Load Change Capability	Included through supplied RTU
Remote Dispatching Capability	Not Included

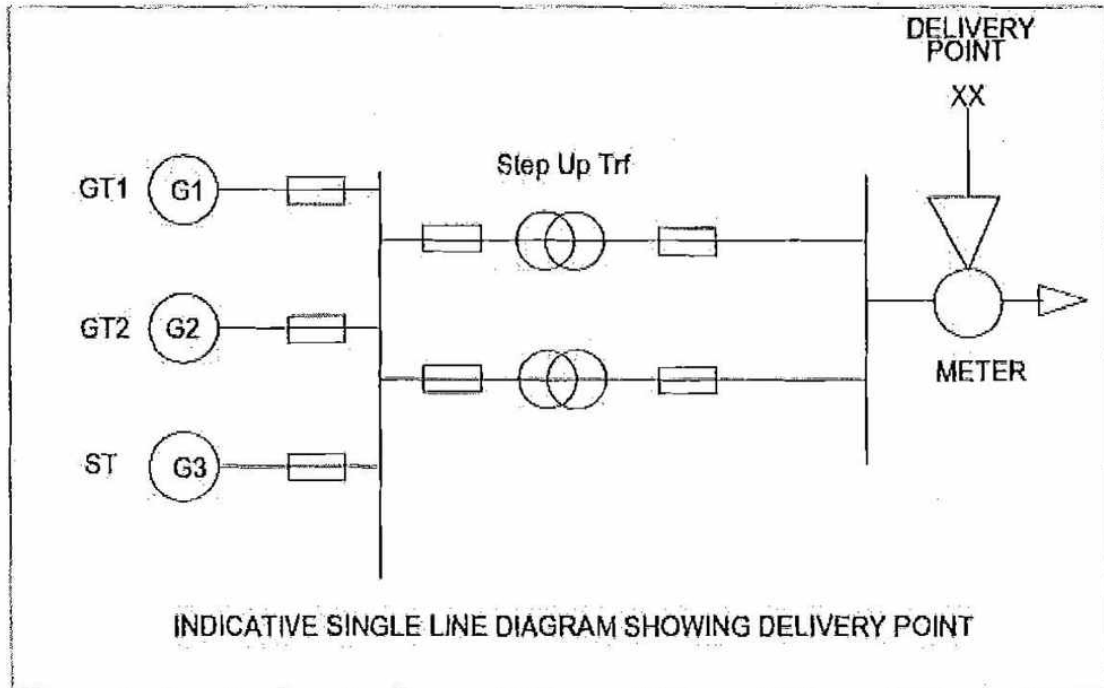
2.1.5 Expected Noise Levels

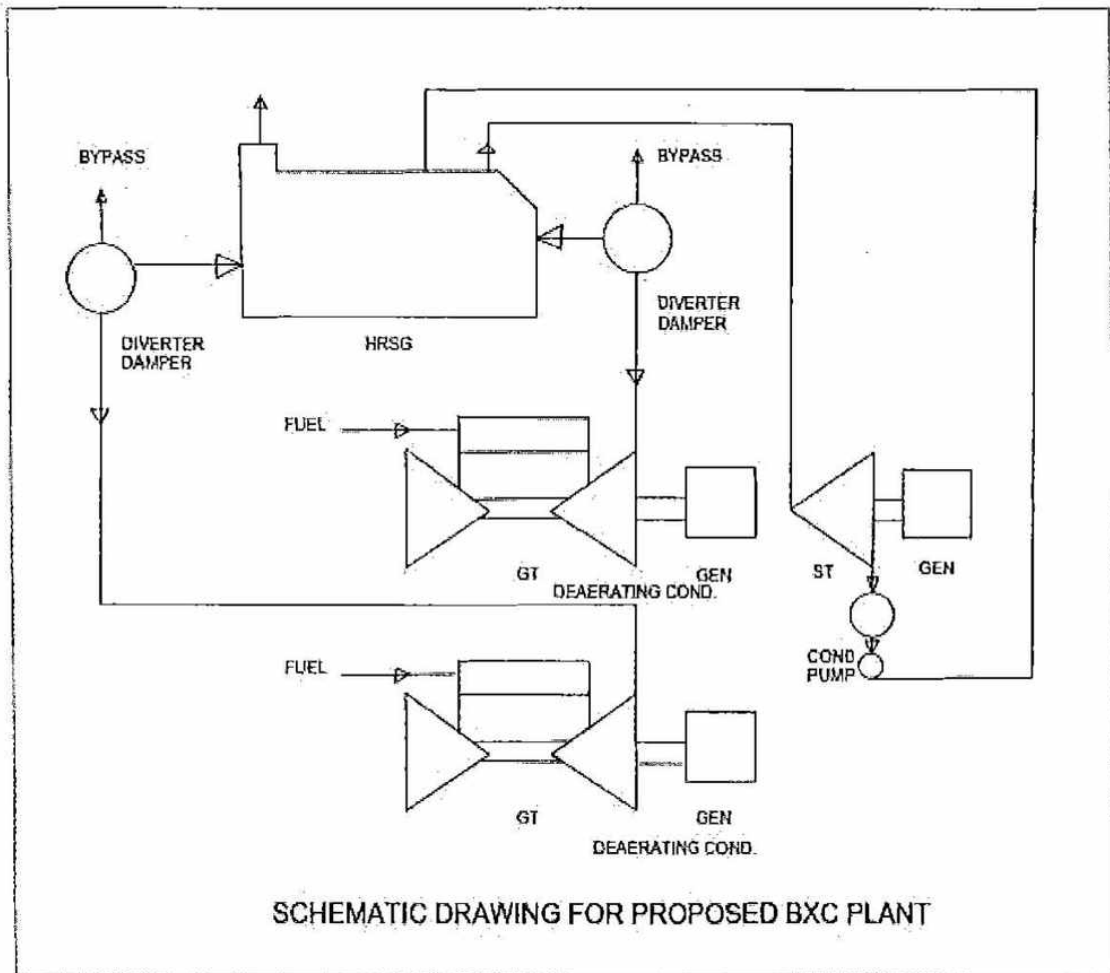
Gas Turbine-Generator Near Field	93 dBA
Steam Turbine-Generator Near Field	95 dBA

PART B
PLANT PERFORMANCE CHARACTERISTICS & DEGRADATION

**SCHEDULE 3
DELIVERY POINT**

The Delivery Point is marked **XX** on the single-line diagram below





SCHEDULE 4 COMMISSIONING PROCEDURES

1. Scope of Commissioning Procedures

The Commissioning Procedures shall, in respect of the Facility, among other things, set out:

- (a) the Commissioning program outlining the planned activities and dates of the commissioning of the Facility;
- (b) the details of the Commissioning Tests, which shall include all tests required under the Grid Code and the Connection Agreement;
- (c) the process for coordination between the EPC Contractor, Seller, ETU and Buyer during the Commissioning Period;
- (d) safety co-ordination in respect of the Facility and the Power Evacuation System during commissioning; and
- (e) the details of the acceptance tests, including the Commissioning Certificate, the successful completion of which shall be a condition precedent to the taking over of the Facility by Seller from the EPC Contractor.

2. Preparation of Commissioning Procedures:

- 2.1. The Commissioning Procedures shall be prepared by the EPC Contractor in consultation with Seller and ETU.
- 2.2. The EPC Contract shall include a detailed draft outline of the Commissioning Procedures, a copy of which shall be provided to Buyer upon the signing of the EPC Contract.
- 2.3. The EPC Contractor, in consultation with Seller and ETU shall, based on the outline in the EPC Contract, prepare a final Commissioning Procedure.
- 2.4. Buyer shall be provided with a copy of the Commissioning Procedure prior to the start of the Commissioning Period.

3. Commissioning Procedures operative function under this Agreement

Seller shall ensure that the Commissioning Procedures are consistent with this Agreement, including, but not limited to the inclusion of Buyer's right to witness Commissioning Tests as detailed in Clause 6.2 (*Commissioning Tests*) of this Agreement.

SCHEDULE 5
DISPATCH PROCEDURES

1. Introduction

1.1. Scope of Procedures

The Dispatch Procedures shall, in respect of the Facility, among other things, set out:

- (a) The responsibilities of ETU, Seller and Buyer in the scheduling and dispatch process of the Facility;
- (b) Load forecasting obligations, procedures and methodologies to meet the day-ahead forecast requirements;
- (c) Operational criteria for the preparation of the generation schedule and procedures for issuance of Dispatch Instructions;
- (d) The process and requirements for the preparation of the generation schedule;
- (e) The central dispatch procedures; and
- (f) Requirements for availability for dispatch of sufficient ancillary services including requirements during an Emergency.

1.2. Preparation of Dispatch Procedures

- (a) The Dispatch Procedures shall be prepared by Seller and ETU prior to the start of Commissioning;
- (b) The Dispatch Procedures shall be based on the provisions of Article 10 (*Scheduling and Dispatch Sub-Code*) of the Grid Code and the Connection Agreement;
- (c) Buyer shall be provided with a copy of the Dispatch Procedures prior to the Commercial Operation Date.

1.3. Dispatch Procedures operative function under this Agreement

- (a) Seller shall ensure that the Dispatch Procedures are consistent with this Agreement, including, but not limited to the inclusion of a Capability and Availability Declaration which shall state the Available Capacity for each Availability Period in accordance with Article 10.28 of the Grid Code
- (b) The establishment of a record of Available Capacity and any adjustment to Available Capacity resulting from changes to Available Capacity between the time of the issuing of the Capability and Availability Declaration and the actual time of dispatch

1.4. Changes in Procedures

- (a) Seller and ETU shall agree a procedure to review and make changes to the Dispatch Procedures.
- (b) Seller shall inform Buyer, promptly, of any such changes to the Dispatch Procedures agreed with ETU.

SCHEDULE 6 OPERATING AND MAINTENANCE PROCEDURES

1. Scope of the Operating Procedures

1.1. Contents of the Operating Procedures

The Operating Procedures shall include, but not be limited to, the following:

- methods of day-to-day communication among Seller, Buyer and the ETU;
- safety and maintenance co-ordination in respect of the Facility and the Power Evacuation System;
- clearances and switching practices;
- contingency planning in the event of a partial or total shut-down of the Power Evacuation System; and
- incident reporting.

The Operating Procedures shall be consistent with:

- terms and conditions of this Agreement, including in particular, the provisions of this Schedule 6 (*Operating and Maintenance Procedures*);
- the operating manuals supplied by the EPC Contractor;
- The Environmental and Social Impact Assessment and environmental permit granted for the Facility
- Prudent Utility Practices;
- the Connection Agreement;
- the Grid Code;
- and
- the Laws of Ghana.

1.2. Future amendments to the Operating Procedures

Either Party may from time to time propose amendments to the Operating Procedures that are consistent with the requirements of this Agreement by giving notice to the other Party stating the reasons for the proposed amendments. Within thirty (30) Days after receiving notice of a request to amend the Operating Procedures, the receiving Party shall notify the requesting Party of its objections, if any, to the proposed amendments and the modifications it requires. The Parties shall meet to discuss the proposed amendments and try to reach agreement on the revised Operating Procedures. If the Parties fail to reach agreement within forty-five (45) Days of receipt of the notice of request to amend the Operating Procedures, either Party may refer the matter to the Expert for determination pursuant to Clause 25.2 (*Expert Determination*) of this Agreement.

1.3. Effective date of future amendments

Any amendment to the Operating Procedures shall take effect on the date agreed by the Parties or determined by the Expert or, if there is no objection to the proposed amendments to the Operating Procedures, the expiry of the relevant objection period.

2. Preparation of Operating Procedures

- 2.1. The Operating Procedures shall be prepared by the O&M Contractor in consultation with the EPC Contractor, Seller and ETU;
- 2.2. The O&M Agreement shall include a detailed draft outline of the Operating Procedures, a copy of which shall be provided to Buyer upon the signing of the O&M Agreement;
- 2.3. The O&M Contractor shall, in consultation with the EPC Contractor, Seller and ETU, based on the outline in the O&M Agreement, prepare final Operating Procedures; and
- 2.4. Buyer shall be provided with a copy of the final Operating Procedures prior to the Commercial Operation Date.

SCHEDULE 7

CAPACITY TESTING PROCEDURES

Capacity Testing

General

The Capacity test procedure shall be similar to the procedures that will be agreed by the Seller and the EPC Contractor to establish the plant performance when the plant is Commissioned. These procedures will be finalised with the EPC Contractor during the plant Construction phase but will be based on well recognised and established international test practices and procedures.

Test procedures

The Capacity test procedure shall be based on the following test codes and standards:

- (a) Gas turbine: ASME PTC22, ISO: 2314 or equivalent international test code
- (b) Natural gas flow measurement: ISO 5167 (or ISO9951 for turbine type meters)
- (c) Natural gas properties: ISO 6976/AGA Report No 8
- (d) Measurement of electrical output: IEC: 953-2
- (e) ASME PTC 19 Supplement on Instruments and Apparatus where applicable.
- (f) NO_x emissions shall be measured in accordance with EPA Method or World Bank Standard. Sampling of gaseous emissions should be carried out in accordance with World Bank Standard.
- (g) Oxygen content shall be measure in accordance with World Bank Standard or EPA Method. Carbon monoxide shall be measured in accordance with World Bank Standard.

Measurement of noise levels at the boundaries of the Site shall be measured in accordance with the approach defined in ISO 6190 "Acoustics - measurement of sound pressure levels of gas turbine installations for evaluating environmental noise - survey method"

Notwithstanding the first paragraph of this schedule, unless requested otherwise by a Party, a Capacity Test shall not be required to be performed with equipment and personnel not available at the Facility during normal operation. In the event that one or more of the codes and standards listed in this schedule defines equipment or personnel not available at the Facility during normal operation, the equipment and/or personnel that closest meets the codes and standard shall be used. In the event a Party requests that equipment and/or personnel not available at the Facility during normal operation is made available, such Party shall pay the costs for making such equipment and/or personnel available.

The Capacity Test shall comprise not less than two valid test runs. Each run shall be a minimum of 1-hour duration. The test result shall be the corrected average of all valid test runs.

Test requirements

Capacity of the Facility shall be tested on fuel gas in simple cycle operating mode. In the event that the Facility is operating on distillate fuel oil at the time of the test, the Facility shall be tested on the fuel it is then currently operating. The net electrical power generated shall be defined as the power at the Delivery Point, less any power used for internal consumption at the Facility during the test imported to the Facility through other connections than the Delivery Point.

The Main Meter shall be utilised for the Capacity Test. Should the reference conditions at the time of the tests differ from the Guarantee Conditions then corrections shall be applied to produce a corrected capacity.

Guarantee Conditions

All testing results shall be referenced and corrected to the following datum conditions (the "Guarantee Conditions"):

Parameter	Reference
Ambient air dry bulb:	30°C
Ambient air pressure:	1012 mbar
Relative humidity:	60 per cent
Generator power factor	0.8 lagging
Power Evacuation System system voltage	161 and 330 kV
Power Evacuation System frequency	50 Hz

Test conditions

During the Capacity Test the Facility shall be operated in a normal mode which is representative of a long term operating configuration with all equipment operating as designed and within specification and alarm limits consistent with good power generation industry practice. No normally operating systems shall be taken out of service including jumpering or suppressing of alarms unless specifically allowed in the test procedure. During test the following plant conditions shall apply:

- (a) The gas turbine shall be operated at full load
- (b) All standby auxiliaries shall be operational
- (c) Variations exceeding steady state conditions, as defined in the relevant ASME test code, shall invalidate the test run and the test shall be repeated
- (d) Emissions as measured on the calibrated CEMS equipment shall be maintained within guaranteed criterion

Correction to guarantee basis conditions

The tests results recorded during the Capacity Test shall be corrected, as applicable, to those which would have been achieved had the test been carried out at the Guarantee Conditions by using agreed correction curves and/or formulae.

These correction curves and/or formulae shall include, but may not necessarily be limited to:

- (a) Correction for ambient temperature
- (b) Correction for humidity
- (c) Correction for barometric pressure
- (d) Correction for fuel calorific value
- (e) Correction for power factor

- (f) Correction for frequency
- (g) Correction for degradation and or deterioration in performance in accordance with Part B of Schedule 2 (*Facility Specification*)

Curves and correction factors shall be based on the equipment vendor's standard correction curves as submitted by the EPC Contractor.

Ambient test conditions shall be as recorded on the weather station at the Site.

Metering

The electrical output of each turbine generator shall be measured by the Main Meter

Procedures for measurement of other parameters, such as ambient temperature, barometric pressure, relative humidity etc., shall be fully detailed in the performance test procedure.

Capacity Test report

A final test report shall be produced within seven (7) Days of the test. The test reports shall as a minimum include:

- (a) A brief test summary
- (b) Test procedure
- (c) Data collected during tests including instrument readings and environmental conditions
- (d) Test calculations
- (e) Corrected and uncorrected results
- (f) A copy of all correction curves
- (g) Copy of test log sheets and instrument calibration records

SCHEDULE 8
FORM OF BUYER'S LEGAL OPINION

[][Date]

To: BXC Company (GH) Limited

P.O. Box KN 5273
Ghana

[Name and address of the agent and the Lenders]

Dear Sirs,

BXC Aboadze Generation Project: Power Purchase Agreement

We have acted as counsel to Electricity Company of Ghana Limited (the “**Buyer**”) as to the Laws of Ghana in connection with the power purchase agreement (the “**PPA**”) dated [] between the Buyer and BXC Company (Ghana) Limited

All terms defined in the PPA shall have the same meaning when used in this opinion.

We have inspected the PPA and the following documents:

We have also examined originals or copies, certified or otherwise identified to our satisfaction, of such documents, corporate records, certificates of public officials and other instruments and have conducted such other investigations of fact and law as we have deemed necessary or advisable for the purpose of this opinion.

We are of the following opinion:

- 1 The Buyer is a corporation duly organised, validly existing and in good standing under the Laws of Ghana.
- 2 The Buyer has the power to own its own assets and to carry on its business as it is being currently conducted and no step has been taken or is being taken to appoint a receiver, administrator, liquidator or similar insolvency representative in respect of the Buyer or any of its assets.
- 3 The Buyer has full corporate and other power to enter into, deliver and to exercise its rights and perform its obligations under the PPA and all corporate and other action required to authorise the execution and delivery of the PPA by the Buyer and the performance of its obligations and the exercise of its rights thereunder has been duly taken.
- 4 The PPA constitutes the legal, valid and binding obligations of the Buyer enforceable against the Buyer.
- 5 All authorisations, approvals, licences, consents, registrations, exemptions, filings or declarations (if any) required by or otherwise appropriate under the Laws of Ghana in order for the Buyer:
 - (a) to execute and deliver the PPA and all other documents and instruments to be delivered by it pursuant thereto;
 - (b) to perform and observe the terms and provisions thereof; and

- (c) to render the PPA legal, valid, binding and enforceable,
have been duly obtained or effected and are in full force and effect.
- 6 The execution and delivery of the PPA by the Buyer and the exercise of its rights and the performance of its obligations thereunder and compliance with the terms thereof do not and will not:
- (a) contravene any provision of any law, statute, decree, judgment, rule or regulation to which the Buyer or any of its subsidiaries on any of its or their respective assets or revenues is subject; and
 - (b) violate any provision of the constitutional documents of the Buyer.
- 7 Neither the Buyer nor any of its assets has any immunity from suit or proceedings or the enforcement of any judgment (whether on the grounds of sovereign immunity or otherwise) under the Laws of Ghana.
- 8 There is no legal requirement under the Laws of Ghana in order to ensure the legality, validity, or enforceability of the PPA or any other document be filed, recorded, registered or enrolled with any court or authority in the Ghana or that any other action (including, without limitation, notarisation) be taken in relation thereto.
- 9 No stamp, registration, documentary or similar taxes is or will be payable in connection with the execution, delivery, performance of obligations or enforcement of the PPA.

Yours faithfully

SCHEDULE 9
FORM OF SELLER'S LEGAL OPINION

[] [Date]

To: Electricity Company of Ghana Limited
Electro-Volta House, 28th February Road
Accra, Ghana

Dear Sirs

BXC Aboadze Generation Project: Power Purchase Agreement

We have acted as counsel to BXC Company (Ghana) Limited (the "Seller") as to the Laws of Ghana in connection with the power purchase agreement (the "PPA") dated [] between the Seller and Electricity Company of Ghana Limited.

All terms defined in the PPA shall have the same meaning when used in this opinion.

We have inspected the PPA and the following documents:

We have also examined originals or copies, certified or otherwise identified to our satisfaction, of such documents, corporate records, certificates of public officials and other instruments and have conducted such other investigations of fact and law as we have deemed necessary or advisable for the purpose of this opinion.

We are of the following opinion:

- 1 The Seller is a corporation duly organised, validly existing and in good standing under the Laws of Ghana.
- 2 The Seller has the power to own its own assets and to carry on its business as it is being currently conducted and no step has been taken or is being taken to appoint a receiver, administrator, liquidator or similar insolvency representative in respect of the Seller or any of its assets.
- 3 The Seller has full corporate and other power to enter into, deliver and to exercise its rights and perform its obligations under the PPA and all corporate and other action required to authorise the execution and delivery of the PPA by the Seller and the performance of its obligations and the exercise of its rights thereunder has been duly taken.
- 4 The PPA constitutes the legal, valid and binding obligations of the Seller enforceable against the Seller in accordance with its terms. Our attention has been directed specifically to the terms of the transfer option and share purchase option and our opinion explicitly covers those provisions.
- 5 All authorisations, approvals, licences, consents, registrations, exemptions, filings or declarations (if any) required by or otherwise appropriate under the Laws of Ghana in order for the Seller:
 - (a) to execute and deliver the PPA and all other documents and instruments to be delivered by it pursuant thereto;
 - (b) to perform and observe the terms and provisions thereof; and
 - (c) to render the PPA legal, valid, binding and enforceable,

have been duly obtained or effected and are in full force and effect.

- 6 The execution and delivery of the PPA by the Seller and the exercise of its rights and the performance of its obligations thereunder and compliance with the terms thereof do not and will not:
 - (a) contravene any provision of any law, statute, decree, judgment, rule or regulation to which the Seller or any of its subsidiaries on any of its or their respective assets or revenues is subject; and
 - (b) violate any provision of the constitutional documents of the Seller.
- 7 Neither the Seller nor any of its assets has any immunity from suit or proceedings or the enforcement of any judgment (whether on the grounds of sovereign immunity or otherwise) under the Laws of Ghana.
- 8 There is no legal requirement under the Laws of Ghana in order to ensure the legality, validity, or enforceability of the PPA or any other document be filed, recorded, registered or enrolled with any court or authority in the Ghana or that any other action (including, without limitation, notarisation) be taken in relation thereto.
- 9 No stamp, registration, documentary or similar taxes is or will be payable in connection with the execution, delivery, performance of obligations or enforcement of the PPA.

Yours faithfully

SCHEDULE 10
NOT USED

SCHEDULE 11
EFFECT OF CHANGE IN LAW

A claim for Increased Costs due to one or more Changes in Law under Clause 9 (*Increased Costs*) or a claim for a reduction in tariff due to Decreased Costs under Clause 10 (*Decreased Costs*) may only be made if, due to the relevant one or more Changes in Law,

- (a) the Sellers's costs directly attributable to the Project are increased or revenue decreased (if Clause 9 (*Increased Costs*) applies) or Seller's revenues increased or costs decreased (if Clause 10 (*Decreased Costs*) applies) in the aggregate by not less than (five thousand) 5,000.00 US Dollars in any Year compared to the cost and revenue assumptions detailed in the financial model prepared by the Seller or in respect of any amount of increased costs or revenues or decreased costs or revenues in excess of twenty five thousand (25,000) US Dollars in the aggregate over the remainder of the Term;
- (b) the Seller is required to undertake capital expenditure attributable to the Project after the Effective Date of not less than (five thousand) 5,000.00 US Dollars in any year compared to the capital expenditure assumptions detailed in the financial model prepared by the Seller or in respect of any amount of increased costs or revenues or decreased costs or revenues in excess of twenty five thousand (25,000) US Dollars in the aggregate; or
- (c) there is imposition of any new Tax or any change in the application of any Tax including without limitation, the time or rate at which such Tax is payable) in the aggregate by not less than (five thousand) 5,000.00 US Dollars in any Year compared to the assumptions detailed in the financial model prepared by the Seller or in respect of any amount of increased costs or revenues or decreased costs or revenues in excess of (twenty five thousand) 25,000.00 US Dollars in the aggregate.

SCHEDULE 12
PAYMENTS ON TRANSFER

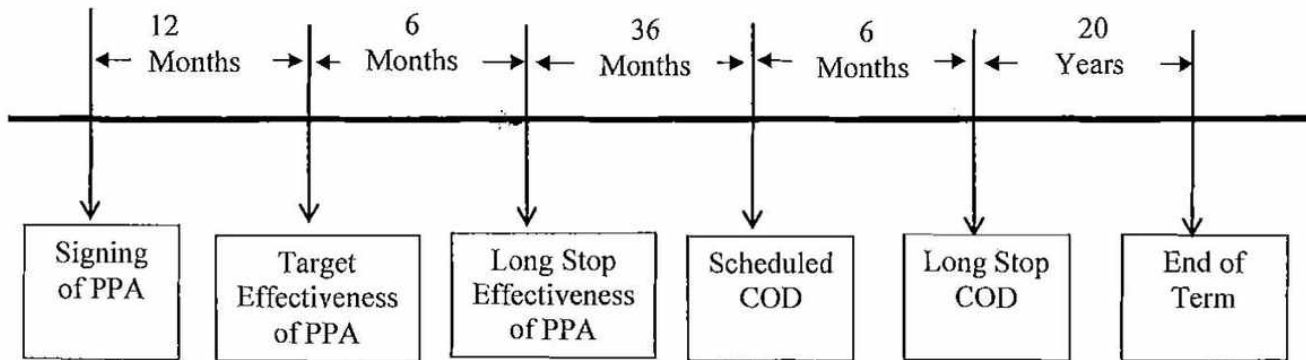
NOT USED

SCHEDULE 13
TRANSFER PROCEDURES

- (a) Within 30 days of receipt of the Option Notice or the Expiry Option Notice (as the case may be), the Parties will meet to agree the procedure for transferring the Facility from the Seller to the Buyer (or its nominee) and the date on which the transfer shall take effect (the "**Transfer Date**") and shall attempt to structure the transfer in the most tax efficient manner including whether such transfer should be undertaken as an asset transfer or pursuant to a share transfer.
- (b) Upon request of the Buyer, Seller shall transfer or assign agreements useful in the operation of the Facility and not to object to the work force employed in operation or maintenance of the Facility to accept employment with the Buyer or the subsequent owner of the Facility, and in that connection will offer to transfer employment contracts, in each case subject to the rights of such personnel to terminate or decline such employment.
- (c) If the Parties are unable to agree upon a Transfer Date within a period of 30 days after receipt of the Option Notice or the Expiry Option Notice (as the case may be), the Transfer Date shall be the date falling 60 days after the date of receipt of the Option Notice or the Expiry Option Notice (as applicable).
- (d) The Seller shall on the Transfer Date transfer all rights, title and interest in the Facility to the Buyer (or its nominee) provided that the transfer shall only occur if the Seller has received the applicable Option Price in cleared funds. The Seller shall have no obligation to transfer the Facility unless and until the applicable Option Price has been paid.
- (e) The Facility shall be transferred to the Buyer (or its nominee) with support information under Section 3.3 and warranties provided by the Seller, whether express or implied, in respect of the Facility except as provided in Section 23 (*Representations and Warranties*)

On the Transfer Date, the Parties shall execute all such documents and instruments and do all such other acts and things as are necessary to ensure that the transfer of the Facility is, or the shares in the Seller are, effected in a legal, valid and enforceable manner on the Transfer Date. The Seller and the Buyer agree to work in all good faith to complete the transfer of the Facility in a commercially reasonable manner and to avoid any forfeiture or unnecessary loss from being suffered by either Party, and the procedures and time periods included in this Agreement shall be adapted as necessary for such purposes.

SCHEDULE 14 INDICATIVE PROJECT MILESTONES



SCHEDULE 15 PURC APPROVED TARIFF

Below is the PURC Approved Tariff for the project.

(1)

(1)

(1)

(1)





PUBLIC UTILITIES REGULATORY COMMISSION

OFFICE LOCATION:
53 LIBERATION ROAD
AFRICA LIBERATION CIRCLE
ACCRA, GHANA

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P.O. BOX CT 3095
CANTONMENTS, ACCRA
TEL: (233-302) 244180-4 / 2440046
(233-302) 218300
FAX: (233-302) 244188
E-MAIL: info@purcghana.com
www.purc.com.gh

Our Ref: PURC/BXC-378MW/ECG/ss/sya

March 23, 2016

The Managing Director
Electricity Company of Ghana Limited
Accra

The Board Chairman
BXC Company (Ghana) Limited
P O Box KN 5273
Kaneshie
Accra

Dear Sirs,

REQUEST FOR APPROVAL OF TARIFF FOR BXC COMPANY LIMITED

We write in reference to your application of March 18, 2016 in respect of approval of Power Generation Tariff for your 378MW Thermal Power Plant Project.

As per your tariff proposal submissions including both technical and financial data in with PURC's Technical and Financial Normative Operating Parameters Framework for determination and approval of tariffs for Independent Power Producers, the Commission has approved for your Power Plant, tariffs indicated in Table-1 and Table-2.

1.0 Approved Tariff Using Light Crude Oil (LCO) As Fuel

The approved tariff using LCO as fuel is provided in Table-1.

Table-1 Summary of PURC Approved Tariff for 378MW BXC COMPANY LIMITED
Power Plant Project Using LCO As Fuel

Tariff Type	Unit	PURC Approved Tariff
Capital Recovery Charge	UScents/kWh	3.0142
Fixed O & M Recovery Charge	UScents/kWh	0.8215
Fuel Recovery Charge	UScents/kWh	7.8469
Non-Fuel Variable O&M Recovery Charge	UScents/kWh	0.4537
Applicable Generation Tariff Excluding Tax	UScents/kWh	12.1363
Tax Recovery Charge	UScents/kWh	0.5458

The Fuel Cost Recovery Charge of UScents 7.8469/kWh indicated in Table-1 is based on Light Crude Oil Price of US\$56.84/bbl including Premium and Handling Charges of US\$2.50/bbl.



2.0 Approved Tariff Using Natural Gas As Fuel

The approved tariff using Natural Gas as fuel is provided in Table-2

Table-2 Summary of PURC Approved Tariff for 378MW BXC COMPANY LIMITED
Power Plant Project Using Natural Gas As Fuel

Tariff Type	Unit	PURC Approved Tariff
Capital Recovery Charge	UScents/kWh	3.0142
Fixed O & M Recovery Charge Excluding Tax	UScents/kWh	0.8215
Fuel Recovery Charge	UScents/kWh	7.1083
Non-Fuel Variable O&M Recovery Charge	UScents/kWh	0.3425
Applicable Generation Tariff Excluding Tax	UScents/kWh	11.2865
Tax Recovery Charge	UScents/kWh	0.5458

The Fuel Cost Recovery Charge of UScents 7.1083/kWh indicated in Table-2 is based on Natural Gas Price of US\$10.00/MMBTU.

3.0 Approved Methodology for Recovery of Fuel Charge

The Approved Fuel Recovery Charge which is a pass-through cost shall be recovered using the following formula:

$$\text{Fuel Recovery Charge (US\$/kWh)} = \text{Heat Rate (Btu/kWh)} \times \text{Fuel Price (US\$/MMBtu)} \times 10^6$$

The Approved Power Purchase Cost to ECG (UScents/kWh) as presented in Table-1 and Table-2, will be adjusted from time to time within the context of PURC's Automatic Adjustment Formula (AAF), taking cognisance of changes in the following variables so as to ensure both BXC COMPANY LIMITED and ECG continue to attain a fair risk adjusted rate of return on their investments.

1. Price of Light Crude Oil where applicable
2. Price of Natural Gas where applicable
3. Ghana Cedi (GHS)-US Dollar Exchange Rate where applicable
4. Fuel Mix where applicable

The Approved Power Purchase Cost presented in Table-1 and Table-2, adjusted on the basis of changes in the four variables noted above, shall at anytime, be included in the determination of the Bulk Generation Tariff (BGT) to be gazetted/published by PURC.

4.0 Indexation

The Commission has also approved an indexation mechanism for your 378MW Power Plant Project using Approved Base Costs indicated in Table-3.

Table-3 Summary of PURC Approved Base Costs for 378MW BXC COMPANY LIMITED Power Plant Project

Tariff Type	Unit	Tariff (UScents/kWh)
Capital Recovery Charge	UScents/kWh	3.0142
Fixed O & M Recovery Charge Excluding Tax	UScents/kWh	0.8215
Non-Fuel Variable O & M Recovery Charge-LCO	UScents/kWh	0.4537
Non-Fuel Variable O & M Recovery Charge-Natural Gas	UScents/kWh	0.3425
Tax Recovery Charge	UScents/kWh	0.5458



The indexation of the Capacity Recovery Charge and Non-Fuel Variable Operating and Maintenance Charge components is described below.

4.1 Capacity Recovery Charge

For Capital and Fixed O&M Recovery Charges, the following indexation mechanism will apply:

$$CC_{bp(t)} = CRC + FOMC_{base} * (1 + CPI_{bp}/CPI_{base})$$

Where:

CC_{bp} Capacity Charge payable in billing Period (t)

CRC Base Capital Recovery Charge as Approved by PURC (shown in Table-3)

$FOMC_{base}$ Base Fixed Operation and Maintenance Recovery Charge as Approved by PURC (shown in Table-3)

CPI_{bp} Consumer Price Index of billing period (t) as Published by US Bureau of Labour Statistics (series id: CUUR0000SA0).

CPI_{base} Base Consumer Price Index as published by US Bureau of Labour Statistics on April 01, 2016 (series id: CUUR0000SA0).

4.2 Non-Fuel Variable Operating and Maintenance Charge

For Non-Fuel Variable Operating and Maintenance Charge, the following indexation mechanism will apply.

$$NFVOMC_{bp(t)} = NEG_{bp(t)} * NFVOC_{base} * (1 + CPI_{bp}/CPI_{base})$$

Where:

$NFVOMC_{bp}$ Non-Fuel Variable Operating and Maintenance Charge payable in billing Period (t)

NEG_{bp} Net Electricity Generated in Billing Period (t)

$NFVOMC_{base}$ Base Non-Fuel Variable Operating and Maintenance Charge as Approved by PURC (shown in Table-3)

CPI_{bp} Consumer Price Index of billing period (t) as Published by US Bureau of Labour Statistics (series id: CUUR0000SA0).

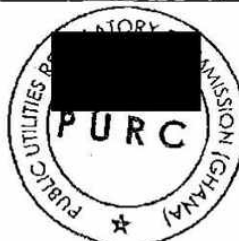
CPI_{base} Base Consumer Price Index as Published by US Bureau of Labour Statistics on April 01, 2016 (series id: CUUR0000SA0).

5.0 Take and Pay Capacity Payments

As a result of current increases in generation capacity, which position, in PURC's expectation, is likely to result in a mismatch between supply and demand for power in the short to medium-term, the Approved Payment Structure of Capacity Charge for your 378MW Power Plant Project indicated in Table-4, is on a Take and Pay Basis.

Table-4 Summary of PURC Approved Capacity Charge for 378MW BXC COMPANY LIMITED Power Plant Project

Tariff Type	Unit	Tariff (USCents/kWh)
Capital Recovery Charge	UScents.kWh	3.0142
Fixed O & M Recovery Charge Excluding Tax	UScents/kWh	0.8215
Tax Recovery Charge	UScents/kWh	0.5458
Approved Capacity Charge	UScents/kWh	4.3815



The Commission however wishes to state that your Power Plant may be considered for capacity procurement from Ancillary Services Charge or capacity payment in the future, when the mismatch between power supply and demand in the country is resolved.

The Commission would like to use this opportunity to encourage both BXC COMPANY LIMITED and ECG to conclude all negotiations and finalise the Power Purchase Agreement (PPA) as soon as practicable and forward a copy to PURC.

Yours faithfully


Samuel Sarpong
Executive Secretary

