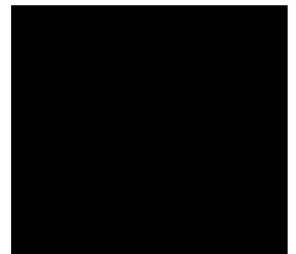


FA 020/08

**20 MW THERMAL GENERATING PLANT
SALTPOND, GHANA**

**POWER PURCHASE AGREEMENT
BETWEEN
ELECTRICITY COMPANY OF GHANA
AND
LUSHANN INTERNATIONAL POWER DEVELOPMENT
(GHANA) LTD.**

May, 2008



MINISTRY OF ENERGY

Tel: 683961-4

Fax: 668262
IDD Code (233-21)
E-mail: moen@energymn.gov.gh



Republic of Ghana

Private Mail Bag
Ministries Post Office
Accra. Ghana.

Post Office Box T.40
Stadium Post Office
Accra. Ghana.

Our Ref: ZA-5/99/01

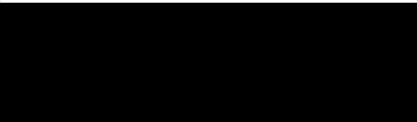
18th July, 2008

HON. KWADWO BAAH-WIREDU (MP)
MINISTER OF FINANCE
MIN. OF FIN. & ECON. PLANNING
ACCRA.

RE: REQUEST FOR GOVERNMENT GUARANTEE TO SUPPORT THE
20MW PPA BETWEEN ECG AND LUSHANN INTERNATIONAL
POWER DEVELOPMENT (GHANA) LIMITED

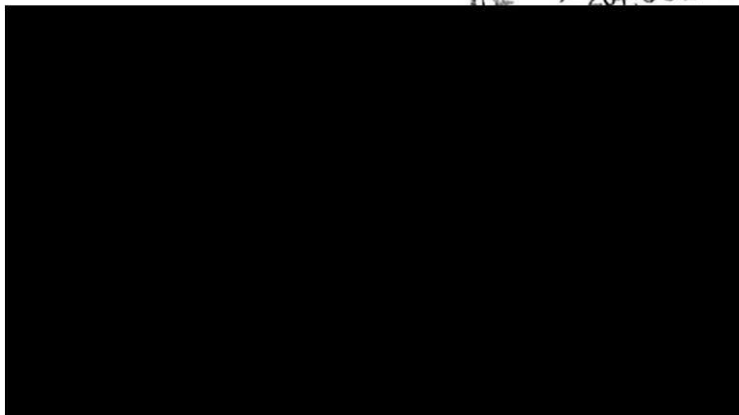
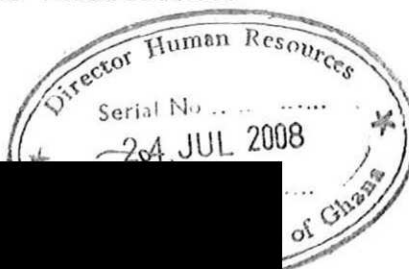
We refer to a letter submitted by the Electricity Company of Ghana (ECG) dated 15th July, 2008 on the above subject a copy of which is attached.

We forward the Power Purchase Agreement between the ECG and Lushan International Power Development (Ghana) Limited for 20MW Thermal Generating Plant at Saltpond for your action.


DINA HAMMOND (MRS)
CHIEF DIRECTOR

cc: The Managing Director, ECG, Electro-Volta House.

Encl.



ELECTRICITY COMPANY OF GHANA LTD.

ELECTRO - VOLTA HOUSE
P.O. BOX 521, ACCRA, GHANA



Tel: 676727/47
Telex: ECG. 2107GH
Fax: 233 - 21 - 666262
Cable: ECG. 050820
E-mail: ecgho@ghana.com

Our Ref. No. WST/IPP/V2/98

Your Ref:

Date 15th July 2008

The Hon. Minister for Energy,
Ministry of Energy,
Accra.

Dear Sir,

**REQUEST FOR GOVERNMENT GUARANTEE TO SUPPORT THE 20MW PPA
BETWEEN ECG AND LUSHANN INTERNATIONAL POWER DEVELOPMENT
(GHANA) LTD.**

The Electricity Company of Ghana (ECG) on 20th May, 2008 entered into a Power Purchase Agreement (PPA) with Lushann International Power Development (Gh) Ltd for the purchase of electrical energy from a 20MW Thermal Generating Plant at Saltpond, using gas from the Saltpond oilfields.

The Strategic significance of this Contract is that Lushann International Power Development (Gh) Ltd (LIPDL) is going to convert the gas which is currently being flared by the Saltpond offshore Production Co. Ltd into electricity at a competitive price for ECG.

The other added advantage to the Ghana economy is that the flared gas will be sold to Lushann International Power Development (GH) Ltd by the Saltpond offshore Production Co. Ltd and the Government of Ghana will get revenue from the sale through royalties that would accrue to GNPC.

Furthermore, the establishment of the 20MW Thermal Plant at Saltpond would create jobs for the people in the area.

To enable LIPDL to access the funds for the project, it needs a Government guarantee as a Payment Security that ECG shall honour the energy purchased when the invoices are due.

We shall be obliged to you if you would request the Ministry of Finance and Economic Planning to give LIPDL the Payment Security to make the Project take off as soon as possible.

Please find attached a copy of the signed PPA for your perusal and necessary action.

Counting on your co-operation in this strategic venture.

Yours faithfully,

A black rectangular box redacting the signature of the Managing Director.

JUDE OSAFO ADU-AMANKWAH
MANAGING DIRECTOR

Cc: Special Advisor to the MD (ECG)

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RECITALS

THIS AGREEMENT is made on this 20th day of May in the Year of Our Lord Two Thousand and Eight BETWEEN

- 1) **ELECTRICITY COMPANY OF GHANA LTD**, a government owned power distributing company incorporated under the Company Laws of Ghana (The Companies Code), represented by its Managing Director, (hereinafter called the "Buyer"), which expression shall, where the context so admits or requires, include its successor in title, and whose address is Post Office Box 521, Accra, Ghana, and located at the Electro-Volta House at the Ministries Area, Accra,

And

- 2) **Lushann International Power Development (GHANA) LTD**, an Independent Power Producer, incorporated under the Company Laws of Ghana (The Companies Code), 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, and whose address is Post Office Box NK 23, North Kaneshie, Accra, Ghana and located at # 12, 3rd Ringway, Ringway Estates, Osu, Accra.

WHEREAS the Parties hereto are desirous of entering into a commercial relationship with regard to the supply of electricity by the Seller to the Buyer; and

WHEREAS the Seller and the Buyer have agreed in principle that the Seller shall construct a thermal power generating plant near Saltpond in the Central Region of Ghana, with a capacity of approximately 400 MW, to be implemented in two (2) phases of approximately 20 MW and 380MW, and shall sell the net energy output of the Facility to the Buyer; and

WHEREAS the Buyer has agreed to commit to the first approximately 20 MW (first phase) and has stated that the second approximately 380 MW (second phase) will be committed to thereafter based on the Buyer's and the Country's energy demand; and

WHEREAS the Buyer is permitted to purchase electrical energy under applicable laws and regulations of the Republic of Ghana; and

WHEREAS the Seller is a company existing and operating under the laws of Ghana, has all requisite corporate and legal authority to execute this Agreement, and is permitted by applicable laws and regulations to sell independently produced power; and

WHEREAS the Seller wishes to sell and to deliver, and the Buyer wishes to purchase and to accept delivery of, the offered electrical energy to be produced by the Seller, 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

- 1.1. **"Agreement"** shall mean this Power Purchase Agreement, as may be amended or supplemented, together with all annexes and appendixes;
- 1.2. **"Annual Energy"** shall mean the fixed amount of energy used as reference to define the prices of the energy sold under this Agreement based on a power generating Facility of 20 MW Capacity.
- 1.3. **"Availability"** shall mean the number of hours in a month during which the Seller has made the contracted energy available to the Buyer, divided by the number of hours in a month expressed as a percentage
- 1.4. **"Availability at Point of Delivery"** shall mean the number of hours in a month during which the Seller has made the contracted energy available to the Buyer at a particular Point of Delivery, divided by the number of hours in a month;
- 1.5. **"Capacity"** Means the Capacity of the Plant expressed in MW to generate and deliver electricity. For the purpose of this agreement "Capacity" shall mean (20MW) continuous power;
- 1.6. **"Capacity Charge"** shall mean the part of the cost for energy per kWh that is chargeable by the Seller and payable by the Buyer when the contracted capacity is available, but for which the Buyer is unable to off-take. The rate for Capacity Charge, in US dollars, is as approved by the PURC.
- 1.7. **"Commencement Date"** shall be the date of this Agreement;
- 1.8. **"Commercial Operation Date"** is the date within two (2) years of the signing of this Agreement on which the Seller notifies the Buyer that the 20MW Facility has been commissioned and is available for commercial operations.
- 1.9. **"Energy"** shall mean and refer to electric energy measured in kWh;
- 1.10. **"Energy Charge"** shall mean the cost charged by the Seller to the Buyer for net energy supplied in a month;
- 1.11. **"Energy Output"** shall mean the net amount of electrical energy generated by the Facility and delivered to the Buyer;
- 1.12. **"Facility"** shall mean the Seller's power generating plant;
- 1.13. **"Force Majeure"** shall have the meaning as defined under Section 13 of this Agreement;
- 1.14. **"GWh"** shall mean the electrical energy measuring unit of one Gigawatt-hour (1,000,000 kWh);
- 1.15. **"Heat Rate"** shall mean the measurement of how efficiently the Facility generating equipment converts heat energy into electrical energy, measured in BTU/kWh;

- 1.16. **"Independent Power Producers" or "IPP"** shall mean private Power and Energy producing companies;
- 1.17. **"kW"** shall mean the electrical Energy measuring unit of one kilowatt or one thousand watts (1,000 watts);
- 1.18. **"kWh"** shall mean the electrical Energy measuring unit of one kilowatt-hour;
- 1.19. **"Laws of Ghana"** shall include, but not limited to, all laws, legislations, instruments, decrees, of regulatory agencies and bodies set up under the said laws, legislative instruments and decrees for the control of the Energy Industry in Ghana;
- 1.20. **"Liquidated Damages"** shall mean predetermined costs assessed against one Party by the other Party as a result of a breach of the terms of this Agreement.
- 1.21. **"Metering Point"** means the point where metering of the Seller's net energy output takes place, and where title to energy delivered by the Seller passes to the Buyer. Metering Point is shown as Point M in Appendix B;
- 1.22. **"Month"** shall mean a calendar month;
- 1.23. **"Monthly Energy"** shall mean the portion of the Annual Energy measured at the Point of Delivery in a Month based on a power generating Facility of 20 MW Capacity.
- 1.24. **"MW"** shall mean the electrical power measuring unit of one thousand kilowatt or one million watts (1,000,000 watts);
- 1.25. **"Operational Procedures"** shall mean the detailed procedures for switching on the electric system to be developed by the Parties and to be attached to this Agreement as Appendix A;
- 1.26. **"Party" or "Parties"** shall mean the entities executing this Agreement;
- 1.27. **"Point of Delivery"** shall mean Saltpond 33kV Primary Substation;
- 1.28. **"Power"** shall mean and refer to electric power measured in kW;
- 1.29. **"Prudent Utility Practices"** shall mean accepted International practices, standards, engineering and operational considerations including but not limited to manufacturer's recommendations, and the exercise of reasonable skill, diligence, foresight and prudence that will be generally followed in the operation and maintenance of facilities similar to the Facility;
- 1.30. **"P.U.R.C."** shall mean the Public Utility Regulatory Commission;
- 1.31. **"Quarter"** shall mean a group of three consecutive calendar months, starting either in January, April, July or October;
- 1.32. **"Scheduled Outage"** shall mean the interruption of the flow of energy as a consequence of the disconnection of generation or transmission facilities in a previously scheduled program;

- 1.33. **"Technical Limits"** shall mean the operating limits and constraints described under Section 11 of this Agreement;
- 1.34. **"Unscheduled Outage"** shall mean any interruption in the flow of energy due to a fault or defect in the generation facility that requires an immediate disconnection of the facility, or as soon as the systems will allow;
- 1.35. **"Working Day"** shall mean any day of the week other than a Saturday, Sunday or other day on which banking institutions are required by law to remain closed;
- 1.36. **"Year"** shall mean calendar year starting on January 1st and finishing on December 31st.

2. RULES OF INTERPRETATION

Unless otherwise required by the context in which any term appears:

- (a) capitalized terms used in this Agreement shall have the meanings specified in the Section 1;
- (b) the words "herein", "hereby", "hereof" and "hereunder" shall refer to this Agreement as a whole and not to any particular section or subsection of this Agreement;
- (c) references to this Agreement shall include a reference to all appendices, annexures, schedules and exhibits hereto, as the same may be amended, modified, supplemented or replaced from time to time;
- (d) references to any Agreement, document or instrument shall mean such Agreement, document or instrument as the same may be amended, modified, supplemented or replaced from time to time, but only to the extent such amendment, modification, supplement or replacement is not prohibited by the terms of this Agreement; and
- (e) the words "including", "includes" and "include" shall be deemed to be followed by the words, "without limitation".

3. SCOPE OF AGREEMENT

3.1 Sale and Purchase of Energy and Capacity

The Seller shall, within the terms of this Agreement, supply and sell contracted capacity and energy to the Buyer and the Buyer shall take and purchase the contracted capacity and energy from the Seller under the conditions established in this Agreement

3.2 Point of Delivery

The energy shall be supplied at the Point of Delivery. The Seller shall be responsible for all aspects involved in the delivery of energy to the Point of Delivery.

The Power shall be supplied at the nominal voltage of 33 kV and up to the contracted capacity measured at the Point of Delivery.

3.3 Annual Energy and Monthly Energy

The Annual Energy used to determine the price of the energy sold under this Agreement is approximately 0.1752 GWh, based on a power generating Facility of 20 MW Capacity. The portion of the Annual Energy defined at the Point of Delivery in a Month is called the Monthly Energy for that Point of Delivery.

In the event that the Buyer and the Seller exercise their options to expand the Facility capacity from 20 MW to 400 MW, the Annual Energy used to determine the price of the energy sold under this proposed Arrangement is approximately 3.5 GWh based on a power generating Facility of 400 MW Capacity.

Based on the expanded size of Facility, the actual amount of Energy supplied under this Arrangement will range between approximately 3.3 GWh and 3.5 GWh per Year based on the minimum Availability of the Facility.

4. TERM OF AGREEMENT

This Agreement shall be binding on the Parties hereto and upon the execution thereof, and it shall continue in force for a period of twenty (20) years immediately after the execution of this Agreement unless earlier terminated or extended in accordance with the terms of this agreement.

The Seller shall give 30 days written notice to the Buyer prior to commencing energy delivery and the Buyer shall give written response to acknowledge receipt of the notice within 15 days of receipt of such notice from the Seller.

5. CONDITIONS PRECEDENT TO EFFECTIVENESS OF AGREEMENT

This Agreement shall become effective when the following conditions are fulfilled

- 1) A firm arrangement for the supply of gas from the Saltpond gasfield to the Generating Plant site is in place.
- 2) Physical interconnection infrastructure between Seller's Generating Plant and ECG's Saltpond 33kV Primary Substation is in place.
- 3) Environmental Protection Agency (EPA) approvals have been granted.
- 4) Energy Commission (EC) Operational License and Approvals have been obtained by the Seller.

If any of the above conditions precedent has not been satisfied, waived or any extensions mutually agreed on, on or before two (2) years from the date of this Agreement, then this Agreement is deemed to be terminated and no party shall have any liability whatsoever to the other party other than as provided in Section 26.

6. PRICING

6.1 Energy and Capacity Charges

The Buyer undertakes:

To pay each month to the Seller the total Energy Charge and total applicable Capacity Charge. The total Energy Charge is the Energy Charge at the Point of Delivery. The total applicable Capacity Charge is the Capacity Charge at the Point of Delivery as defined in this Agreement.

6.1.1 Energy Charge

The Energy Charge at the Point of Delivery is calculated in accordance with the following formula:

$$TEC = NE1 \times EP1$$

Where:

- TEC = Total Energy Charge at the Point of Delivery
- NE1 = Net energy at the Point of Delivery as measured by the meter.
- EP1 = Unit Energy Price of 3.89 US cents/kWh as negotiated and approved by the PURC.

6.1.2 Capacity Charge 1

The Capacity Charge 1 is the Capacity Charge when the Facility is available and the Buyer is accepting the Energy at the Point of delivery and it is calculated as follows:

$$CC1 = NE1 \times CCR$$

Where

- CC1 = Total Capacity Charge when the Facility is available and delivering Energy at the Point of delivery.
- NE1 = Net Energy at the Point of delivery as measured by the meter.
- CCR = Capacity Charge Rate of US \$ 0.030/kWh as approved by the PURC.

6.1.3 Capacity Charge 2

The Capacity Charge 2 is the Capacity Charge when the Facility is available but the Seller is unable to sell to the Buyer due to the Buyer's decision not to receive the available Energy and it is calculated as follows:

$$CC2 = [(CP \times \text{Available Hours} \times \text{Available Days}) - (NE1)] \times CCR$$

Where:

- CC2 = Total Capacity Charge when the Facility is available but the Seller is unable to sell to the Buyer due to the Buyer's decision not to receive

the available Energy.
 CP = Capacity of Facility (20MW) as defined in this Agreement.
 NE1 = Net Energy at the Point of delivery as measured by the meter.
 CCR = Capacity Charge Rate of US\$0.030/kWh as approved by the PURC.

In the event that the CC2 is zero or negative, then the Capacity Charge is not applicable.

The total Energy Charge and the applicable Capacity Charges will be invoiced monthly in United States Dollars to the Buyer.

6.2 Energy Price and Capacity Charge Price Adjustment Formula

PURC will review the Energy Price of 3.89 US cents per kWh and Capacity Charge of 3.0 US cents per kWh for this facility from time to time during the 20 year term of this Agreement.

The Energy Price adjustments shall be based on fuel price changes as they occur and annual inflation allowance. The Energy price shall be reviewed annually to account for annual inflation. The Energy Price indicated in Section 9 of this Agreement is based on Natural Gas fuel at a cost of US\$4 per MMBTU of Natural Gas from the future West Africa gas pipeline. The actual price adjustment shall be equal to the change in fuel costs per kWh, whether for Natural Gas fuel or liquid fuel (diesel, LCO or HFO), from the base fuel cost assumptions indicated above, and inflation allowance per year calculated in accordance with the following formula:

$$EP \text{ (new)} = EP \text{ (old)} + FPA + AIA$$

Where:

EP (new) = Total new energy price
 EP (old) = Old Energy price per kWh in lawful currency of the United States of America
 FPA = Energy price adjustment resulting from changes in fuel cost
 AIA = Annual inflation allowance as approved by the PURC

7. ENERGY MEASUREMENT

The Energy supplied and consumed, to be used in billing at the Point of Delivery, shall be measured by measuring devices provided, installed and maintained properly by the Seller and counter-checked with the Buyer's meter.

The measuring equipment shall be so arranged as to measure and record Power and Energy with accuracy of 2.0%. The accuracy of the measuring equipment shall be certified by a recognized independent authority, at a cost to the Seller, at six (6) months intervals. The Seller shall give Buyer written notice of the time and date of the certifications to be performed not less than seven (7) days prior thereto. The Buyer shall have the right to participate in the certification of the measuring devices.

If, as a consequence of the certification, it is determined that the measuring equipment is measuring or recording energy without the accuracy of 2.0%, then the inaccurate equipment shall be so corrected, not excluding replacement, so as to measure and record

the energy with accuracy as close to 100% as possible.

The point of measuring for billing purposes shall be as near as practicable to the Point of Delivery, but shall otherwise be determined jointly by the Seller and the Buyer. If the equipment for measuring at a Point of Delivery is connected at a location other than near that Point of Delivery, the readings shall be corrected to give results such as would be obtained by instruments connected at the Point of Delivery, and the corrections procedures shall be agreed upon by the Seller and the Buyer.

The measuring device and the check meter to be used for purposes of billing shall have at any time two seals, one installed by the Seller and the other installed by the Buyer.

The records from the meters shall be taken and kept by the Seller. The forms shall be dated and jointly signed by the authorized representatives of the Seller and the Buyer. Copies of the billing records shall be made available to the Buyer.

Access to any measuring equipment belonging to one Party and on the premises of the other Party shall be free to the interested Party at any and all times, and the owner of the equipment may test, calibrate, adjust, remove or change its measuring equipment at any reasonable time with the consent of the other party. The Party owner of the premises shall be advised at least three (3) days in advance of the intention of the other Party to do so.

The Buyer shall have the right to request to test any measuring equipment in the presence of a representative of the Seller by giving to the Seller seven (7) days prior notice in writing of the Buyer's intention to test the measuring equipment.

If for any reason any of the meters is determined to be malfunctioning, then the energy consumed shall be estimated on the basis that it is the same as for other days, preferably of the same month, on which similar load existed.

The Seller shall repair or replace and retest defective meters or measuring equipment within the shortest possible time. During the down time of the Seller's meter, the Buyer's meter shall be used for billing. If for any reason, any of the meters is malfunctioning, then the energy consumed shall be estimated on the basis that it is the same as for other days, preferably of the same month, on which similar load existed.

8. ADJUSTMENT OF MEASURING DEVICES

In the event it is determined that the reading from any measuring device has been inaccurate, the Seller shall repair or replace the device and adjust the readings of such device and the adjusted reading shall reflect the next regular Monthly invoice delivered hereunder.

In the event that Seller's measuring device is determined to be defective, the corresponding measurement device of the Buyer shall be used for billing, if they are determined to be accurate until such time that the Seller shall repair or replace the said measuring device.

9. BILLING

9.1 Billing Rate for 20 MW Facility

For the proposed 20 MW Facility, the Buyer shall pay the Seller for energy sold and received by the Buyer, in lawful currency of the United States of America, **(six point eight nine) 6.89 US Cents per kWh**, or alternatively the prevailing adjusted Energy Price (refer to Section 6.2 of this Agreement). Applicable taxes are extras. After the end of the first 10 years of operation, the Energy price shall be re-negotiated with PURC and the Buyer.

The energy price of **(six point eight nine) 6.89 US Cents per kWh** is based on fuel cost of US\$4 per MMBTU of Natural Gas from the future gas from the West Africa gas pipeline. In the event that the fuel price is increased or reduced, the Energy Charge shall be adjusted in accordance with the Section 6.2 of this Agreement

The Buyer shall pay the Seller for Capacity Charges, in lawful currency of the United States of America, **(three) 3.0 US Cents per kWh**, or the prevailing adjusted Capacity Charge as approved by the PURC. This Capacity Charge is only applicable when the Buyer is unable to off-take an otherwise available contracted capacity. Applicable taxes are extras. After the end of the first 10 years of operation, the Capacity Charge shall be re-negotiated with PURC and the Buyer.

9.2 Billing Procedure

The Seller shall submit monthly invoices for the amount of energy sold to the Buyer, and for the applicable Capacity Charges as defined by this Agreement, within four (4) days after the month to which the invoice relates, in accordance with this Agreement.

Capacity Charges shall be invoiced monthly based on the total kWh that were capable of being generated in the month (available Plant Capacity times number of hours in the month), less the electrical Energy delivered to and accepted by the Buyer in the month, less Capacity reduced as a result of Unscheduled Outages (from the Seller).

The invoice shall contain enough details about the consumption of Energy at the Point of Delivery, details of the Capacity Charges, details of fuel cost adjustments, and any other applicable charges, in order to allow the Buyer to confirm the accuracy of the charges with respect to this Agreement.

The invoice shall include all the taxes applicable to the Buyer.

9.3 Billing Dispute

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 in writing to the Seller within ten (10) working days from the date of receipt of such invoice, but shall make payment on the undisputed portion thereof. The Seller shall clarify or justify, in writing, the otherwise disputed item within ten (10) working days after receiving the Buyer's written justification for the dispute.

After receipt of the Seller's written clarification or justification of the otherwise disputed item, the Buyer shall notify the Seller of its agreement or disagreement with such clarification or justification.

If the Buyer agrees therewith, the Seller will invoice the items agreed upon on a new invoice. If the Buyer disagrees therewith, the dispute may be resolved in pursuant of the terms of Section 23.

Within sixty (60) days after the date of an invoice, any Party may notify the other Party that the invoice is in dispute.

The dispute shall be resolved in accordance with this Agreement, and any payment that arises as a consequence of the resolution shall be paid within ten (10) working days after the Parties are notified of the resolution of the dispute.

9.4 Billing Error

In the event 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.

Any erroneous amount paid to the Seller by the Buyer as a result of a billing error shall be refunded to the Buyer within fourteen (14) 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 fourteen (14) days after determination of the error.

10. PAYMENT OF INVOICES

Payment for energy produced by the Seller and sold to the Buyer as provided for in the monthly billed invoices, and payment for Capacity Charges, if applicable, as defined in this Agreement, and payment for fuel cost adjustments as determine by PURC shall be effected within sixty (60) days of the dispatch of such invoices. The total invoice shall be paid in US dollars or its GH cedi equivalent converted in accordance with the average interbank exchange rate of the US dollar at the time of the payment.

11. STANDARD OF PERFORMANCE

11.1 The Seller Undertakes:

- (a) To be responsible for all the technical, logistical, environmental, commercial and all regulatory matters relevant to the provision of energy to be supplied under this Agreement; and
- (b) To deliver, at the Point of Delivery three phase AC Power up to the net output, having a frequency of fifty (50) Hertz and a nominal voltage of 33kV. The frequency shall be subject to normal variations of three percent (+/- 3%), and the voltage shall be subject to normal variations of five percent (+/- 5%). Variations outside the r

specified herein are permitted provided any such variations do not have durations longer than five (5) minutes at a time. If a Regulatory Agency issues regulations with respect to these matters, the Seller shall comply with such regulations; and

- (c) To co-operate with the Buyer at all times, by all means possible, to fulfill the objects of this Agreement; and
- (d) To achieve an average Availability of 90% or better; and
- (e) To comply with the standards of performance prescribed by the Energy Commission under the Energy Commission Act 1997 in respect of this Agreement; and
- (f) To agree with Buyer on setting of protective relays in order to achieve selectivity on fault clearing, and ensure that the running of its system is done in synchronism with the Saltpond distribution grid; and
- (g) Prior to the Commercial Operation Date and thereafter on or before 1st December of each subsequent Year, the Seller shall furnish to the Buyer an annual forecast that includes the following: (i) anticipated monthly generation availability, and (ii) Scheduled Outages for the following Year; provided, however, the Seller has no liability to the Buyer and shall be subject to no penalty in the event that the actual amount of electrical energy delivered to the Buyer, or the times of said delivery, differ from the amounts or times shown in the said forecasts.
- (h) The Seller shall notify the Buyer one month in advance of Scheduled Outages, including a non-binding estimate of expected length, and as soon as possible of any Unscheduled Outages, including a non-binding estimate of expected length.

11.2 The Buyer Undertakes:

- (a) To take the Energy at the Point of Delivery in a safe manner, in accordance with good engineering practices.
- (b) At all times, to take the Energy in such manner that the current will be taken from the three phases equally as nearly as practicable, and, in any event, the difference between any two phases shall not be greater than five percent (5%). If at any time the said difference exceeds five percent (5%), the Buyer shall so adjust his load as to comply with the requirements of this Clause.
- (c) To use, at all times, suitable, standard commercial apparatus and plant, and to operate and maintain the apparatus and plant so as to minimize disturbance to or fluctuation in the Seller's energy supply or system.
- (d) To co-operate with the Seller at all times, by all means possible, to fulfill the objects of this Agreement.
- (e) To notify the Seller sufficiently in advance of the Buyer's requirement for an additional 380 MW power plant capacity to enable the Seller to plan accordingly for an expansion;

12. CONTINUITY OF SUPPLY

Subject to any operational circumstances which may prevent the Seller from doing so, the Seller shall supply energy in a continuous manner during the twenty-four (24) hours of every day at the Point of Delivery, except as otherwise provided in this Agreement.

The Seller and the Buyer shall use their best efforts to remove or to assist in removing the cause of any interruption in the supply of energy with the minimum of delays, and, as soon as practicable, after the removal of any such cause, to resume or normalize the supply of energy under the terms of this Agreement.

The Seller shall have the right at all times to discontinue the supply of energy to the Buyer at the Point of Delivery for the purpose of safe-guarding life or property in an emergency.

The Seller shall also have the right to discontinue supply for the purpose of operations, maintenance, or replacement or extension of apparatus or equipment in a maintenance schedule already agreed to between the Seller and the Buyer.

All such interruptions shall be of a minimum duration and, when possible, in coordination with the Buyer, or if the coordination is not possible, after a notice has been given to the Buyer with the utmost urgency.

In the event of any extended interruption or restriction to the Seller's supply of energy, the Buyer may, with notice to the Seller, pursue alternative arrangement with third parties to meet the shortfall in supply of Annual Energy by the Seller.

When the Seller confirms that the interruption is removed or rectified, the Buyer and Seller shall agree on the resumption date.

13. FORCE MAJEURE

Neither Party to this Agreement shall be liable for the consequences of any failure to perform its obligations under this Agreement, or any of those obligations, if that failure is caused by Force Majeure.

Where there has been any such failure, the said failure shall not be considered as non-compliance with any term or condition of this Agreement, and all the obligations and terms which, because of such failure, could not be fulfilled shall be deemed to have been suspended while the failure continues.

For the purposes of this Agreement, a failure shall be regarded as caused by Force Majeure by act of God only if the Party failing proves that:

- (i) the failure is caused by Force Majeure as defined in paragraph (5) of this Section; and
- (ii) the Force Majeure is outside the control of the Party failing and is not caused by that Party's fault; and
- (iii) the Party failing has taken all proper precautions, due care and reasonable alternative measures with the object of avoiding the failure or mitigate the effects of such failure, and of carrying out its obligations hereunder.

Only such loss, damage or injury as could not have been avoided by the taking of proper precautions and due care can be regarded as the consequences of any failure caused by Force Majeure.

For the purpose of this Agreement, Force Majeure shall mean war(whether declared or not and including existing war); accident to its works; revolution; invasion; insurrection; riot; civil commotion; mob violence or destruction by the elements; acts of God; explosion; fire; storm; earthquake; epidemic; quarantine measures; strikes, unless restricted solely to the employees of the Seller or its sub-contractor.

Each Party shall give notice to the other party as soon as possible of any Force Majeure situation it is in.

Subject to the provisions of paragraphs (1) to (6) of this Section; either Party who fails, due to Force Majeure, to perform its obligations hereunder, shall, upon the cessation of Force Majeure, take all reasonable steps within its power, to make good and resume with the least possible delay, compliance with the obligations under this Agreement.

14. PAYMENT GUARANTEES

Buyer shall endeavour to pay Seller all invoices promptly when they are due. All arrears shall attract an interest at the Ghana inter-bank interest rate at the time of default.

15. INSURANCE

The Seller shall provide protection for the Buyer for damage or injury including death to the Buyer's personnel or property and the Buyer's customers or property only if such damage, injury or death to the Buyer's property or personnel or customers, as the case may be, is the direct result or consequence of the Seller's negligence or default in the discharge of its obligations under this Agreement. Likewise the Buyer shall maintain adequate insurance to cover the damages it may cause to the Seller's facility due to negligence.

16. ENVIRONMENT PROTECTION REQUIREMENTS

The Seller shall provide to the Buyer written assurances on its policies, procedures and conduct regarding Environmental matters, in compliance with the appropriate Environmental laws and the approved Environmental license for this Facility.

17. SAFETY OPERATIONS PROCEDURES

The detailed Operating Procedures for switching and protection setting shall be developed by the Parties and be attached to this Agreement as Appendix A.

18. LIABILITY AND INDEMNITY

Subject to the provisions of this Agreement specified hereunder, to the maximum extent permitted by law, each Party shall defend, indemnify and hold harmless the other Party and affiliated companies, and those with whom it may be associated as a joint venture or co-lessee, and the directors, employees and agents of any of the foregoing, from and against any loss, damage, claim, suit, fine, liability, other cost of litigation and judgment thereon, arising out of personal injury, death or disease, including but not limited to, employees of those entities mentioned above and their respective subsidiaries or subcontractors, or pollution resulting therefrom, incidental and/or in connection with the operation or performance of this Agreement, except to the extent that the injury, disease, death or damage is caused by the negligence or misconduct of the entity otherwise indemnified. The other Party shall have the right, but not the duty, to participate in the defence of any such claim or suit arising out of non-compliance with any obligations hereunder. Any Party shall, as soon as practicable after receiving notice of any suit brought against it, deliver to the other Party, full particulars within its knowledge thereof and shall render all reasonable assistance requested by any Party in the defense of such suit. The obligations, indemnities and liabilities assumed by the Parties hereunder shall not be limited by any limits on insurance contained within this Agreement.

19. DEFAULT

19.1 Default by the Seller

If the Seller fails to begin delivery of energy under this Agreement within the term indicated in Section 5 of this Agreement, the Seller shall be deemed to have defaulted on its obligations under this Agreement, except where the Seller has been delayed by circumstances or conditions beyond his control and the term has been extended by mutual agreement between the Seller and the Buyer.

If the Seller fails to supply an adequate amount of energy to the Buyer to the extent that over a period of ninety (90) days, the aggregate energy supplied to the Buyer is less than 60% of the corresponding portion of the anticipated Annual Energy over the period, the Seller shall be deemed to have defaulted on its obligations under this Agreement.

19.2 Default by the Buyer

If the Buyer fails to pay for the energy purchased under this Agreement and the failure is not rectified after 60 days, the Buyer shall be deemed to have defaulted on its obligations under this Agreement.

Where the Buyer, contrary to the terms and conditions contained herein, cancels this Agreement at any time after its execution, and prior to completion of the facility construction, the Buyer shall be deemed to have defaulted on its obligations under this Agreement.

20. LIQUIDATED DAMAGES

20.1 Default by the Seller

Upon the default of the Seller, the Buyer may assess penalties in accordance with this Agreement as follows:

Where the Seller fails to begin delivery of energy under this Agreement within the term indicated in Section 5 of this Agreement, the Buyer may assess Liquidated Damages in accordance with section 20.2 of this agreement, except where the Seller has been delayed in Facility completion by circumstances or conditions beyond his control and the term has been extended by mutual agreement between the Seller and the Buyer.

Where the Seller fails to supply an adequate amount of energy to the Buyer to the extent that over a period of ninety (90) days, the aggregate energy supplied to the Buyer is less than 60% of the corresponding portion of the anticipated Annual Energy over the period, the Buyer may assess Liquidated Damages in accordance with section 20.2 of this Agreement.

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

20.2 Liquidated Damages Payment

The parties shall perform an evaluation of the actual energy supplied every three months for each contractual month not later than the 5th day of the fourth month.

In the event that the energy measured during the three month period is less than 0.04 GWH, and for reasons attributable to the Seller, the Seller shall pay the Buyer the cost difference between the spot market price (as determined by GRIDCO) and the contracted price for the energy shortfall.

In the event that the Buyer is unable to buy all 0.04 GWH during the three month period for reasons not attributable to the Seller, the Buyer shall pay the Seller the capacity charge as defined in this Agreement.

20.3 Default by the Buyer

Upon the default of the Buyer, the Seller may assess penalties as follows:

Where the Buyer fails to pay for the Energy purchased under the Agreement, and this failure is not rectified after 60 days, the Buyer may be assessed the prevailing inter-bank interest charges as outlined Section 10 of this Agreement.

Where the Buyer continues to fail to pay for the invoice of energy received from the Seller, the Seller on providing due notice, and establishing a reasonable period for negotiation, may without liability therefore, discontinue delivery of energy to the Buyer, but no such discontinuance shall relieve the Buyer from any obligation under this Agreement or lessen or change any of the Buyer's obligations.

Where the Buyer, contrary to the terms and conditions contained in this agreement cancels this Agreement at any time after execution of this Agreement and prior to

completion of the facility construction, the Buyer shall be liable for Liquidated Damages equal to all costs incurred by the Seller up to the date of cancellation, plus all costs to be incurred by the Seller for a period of two (2) months after the date of cancellation in order to allow time for the Seller to "wind down" the project execution activities.

21. WAIVERS

Any waiver by the Seller or Buyer, or failure by the Seller or the Buyer to exercise its rights or enforce its remedies 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. GOVERNING LAW

The governing law shall be the laws of the Republic of Ghana.

23. SETTLEMENT OF DISPUTES

23.1 Amicable resolution

If any dispute shall arise between the Parties hereto in connection with any matter arising out of this Agreement, the Parties shall use their best efforts to resolve the dispute.

If the dispute is not settled within the first 30 days after one Party declares in writing to the other the existence of the dispute, any of the Parties may call for arbitration except that a party not satisfied with the arbitration decision may seek redress from the court of law.

23.2 The arbitration shall be conducted by an Arbitration Committee formed by three arbitrators. When any Party declares its intention to solve a dispute by means of arbitration, each Party shall appoint, within the following fourteen (14) days, one member of the Arbitration Committee. The third arbitrator shall be agreed to by the two previously appointed arbitrators. In the absence of that agreement, the third arbitrator shall be appointed by the Ghana Chamber of Commerce. The Arbitration Committee shall have thirty (30) days to resolve the dispute. The decision of the Arbitration Committee shall be taken by a simple majority.

24. ASSIGNMENT

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

25. AMENDMENTS

The Parties, by mutual consent, may amend, change, or otherwise alter any/or all provisions of this Agreement. Amendments to this Agreement shall be in writing and shall be signed by both Parties.

26. CONFIDENTIALITY

The parties shall hold confidential all information regarding this Agreement, including the entire contents of this PPA, as well as all information each of the parties shall acquire in respect of the other party and its business, obtained as a result of the negotiations of this Agreement and shall not at any time, without prior written consent of the other party, disclose such information to any other person or business entity, except to its officers and/or employees, its professional consultants who require it for the performance of their duties, or as required by law.

27. NOTICES

All notice hereunder shall be deemed as given when addressed and delivered by hand or dispatched by registered mail to:

The Seller: Lushann International Power Development (GH) Ltd.
12, 3rd Ringway,
Ringway Estates,
Osu, Accra.
P. O. Box NK 23, North Kaneshie,
Accra

The Buyer: Electricity Company of Ghana Ltd.
Electro-Volta House, Ministries.
Post Office Box 521,
Accra.

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



SIGNED, SEALED AND DELIVERED on behalf
Of Lushann International Power Development (Ghana) Ltd by:

Mr. Howard D. Rickel
Chairman of the Board

In the presence of: [Redacted]
Name [Redacted]
Address [Redacted]
Occupation/Title..... [Redacted]

SIGNED, SEALED AND DELIVERED on behalf
Of Electricity Company of Ghana Ltd. by:

Mr. Jude Osafo Adu-Amankwah
Managing Director

In the presence of: [Redacted]
Name [Redacted]
Address [Redacted]
Occupation [Redacted]



ATTACHMENTS

Appendix A

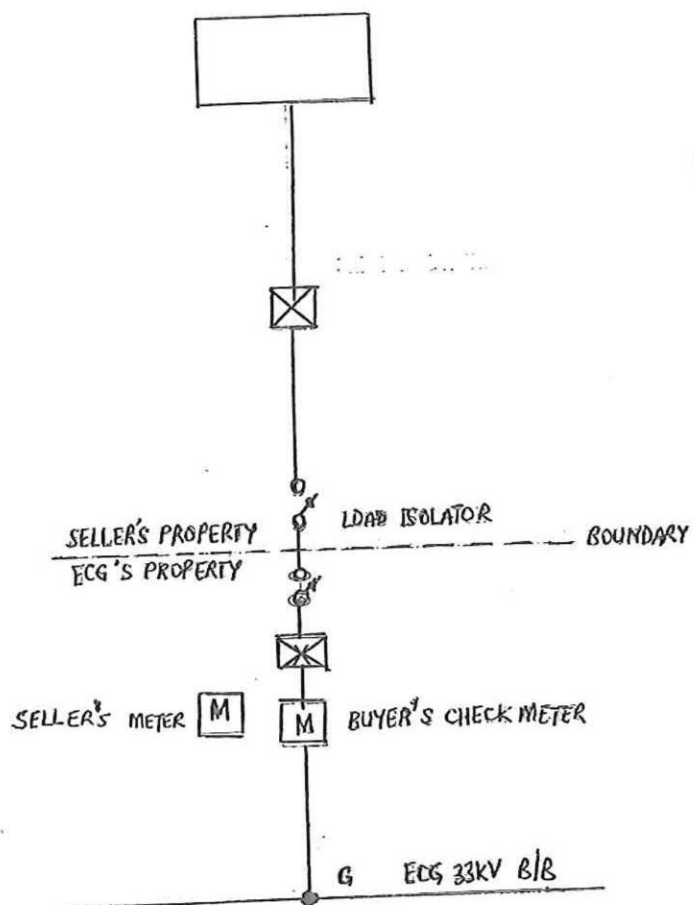
Operating Procedures for switching and protection relay settings

The Parties agree to develop the operating procedures for switching and the protection relay setting together.

Appendix B

APPENDIX B

SINGLE LINE DIAGRAM OF POWER PRODUCER'S FACILITY



LEGEND



Circuit Breaker



Metering Points

G

Grid Point