

POWER PURCHASE AGREEMENT BETWEEN

SAFI SANA GHANA LIMITED



AND



ELECTRICITY COMPANY OF GHANA LIMITED

THE UNITED STATES OF AMERICA

BEFORE

THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

IN RE

THE ESTATE OF

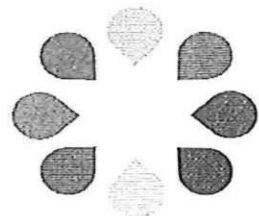
WILLIAM



VS. THE DISTRICT OF COLUMBIA

POWER PURCHASE AGREEMENT BETWEEN

SAFI SANA GHANA LIMITED



safisana

AND



ELECTRICITY COMPANY OF GHANA LIMITED

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POWER PURCHASE AGREEMENT

THIS POWER PURCHASE AGREEMENT is made on the ____ day of ____, 2016 in the Year of Our Lord Two Thousand and Sixteen between:

- (1) **ELECTRICITY COMPANY OF GHANA LTD.**, a government owned electricity distributor incorporated under the Company Laws of Ghana, Act 179 of 1963, with its registered address at 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) **SAFI SANA GHANA LTD.**, a body incorporated under Companies Code 1963 (Act 179), of P.O. Box CT8312, Cantonments, Accra Ghana, whose registered office is at Labone, acting per its Managing Director (hereinafter called the “**Seller**”, which expression shall, where the context so admits or requires, include its successors, agents and assigns).

WHEREAS, the Buyer is a licensed Electricity Distribution Utility and may purchase electrical energy under applicable laws and regulations of the Republic of Ghana; and

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

WHEREAS: The Seller is licensed (License No: EC/GWSL/02-15-063) by the Energy Commission under the Energy Commission Act 1997, (Act 541) and is engaged in the production and sale of renewable Electrical Energy; and

WHEREAS, the Seller plans to build, commission, own and operate and maintain 100KW Nameplate Capacity Plant at Ashaiman in the Ashaiman Municipality in the Greater Accra Region, Ghana (hereinafter called the “**Facility**”); and

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

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1 DEFINITIONS

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

“**Affiliate**” means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person;

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

"Agreement" means this Power Purchase Agreement, as may be amended, modified, supplemented or replaced from time to time;

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

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

"Annual Energy" means the energy produced by the Seller for the Buyer at the Power Delivery Point in a Year;

"Buyer Distribution Network" means the 33-kV sub-transmission system taking off from the relevant Delivery Point and intended for transmitting Capacity and Energy to connected loads served by ECG

"Capacity" means maximum contracted electric power at any point in time, measured in KW, at the Delivery Point, as confirmed by the Commission Test Report;

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

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

- (a) the enactment of any new Applicable Laws;
- (b) the repeal, modification or re-enactment of any Applicable Laws;
- (c) the commencement of any Applicable Law which has not yet entered into effect as of the Commercial Operation 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 which has a material adverse effect;
- (f) the grant of any Consent on terms and conditions which:
 - (i) prejudice the Seller's ability to carry out the Project;
 - (ii) prejudice the financial interest of the Seller; or
- (g) after the date of grant of any Consent, a change in the terms and conditions attaching to such Consent or the attachment of any new terms and conditions to such Consent;
- (h) any enactment of any new, or any changes in the interpretation or application of Distribution Code rules or regulations; or
- (i) save in the case of a Consent which is revoked on the ground of breach by the Seller, any Consent ceasing to remain in full force and effect, or if granted for a limited period, not being renewed on a timely basis on application therefore having been duly made, or being renewed on terms and subject to conditions

which are less favourable to the Seller, its Lenders, investors or contractors than those attached to the original Consent;

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

"Commercial Operation Date" or "COD" means the date that the Seller notifies the Buyer the Facility is Commissioned and Available to produce Energy, which notice shall include the Commissioning Test Report and refer to clause 6.3;

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

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

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

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

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

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

"Connection Agreement" means the connection agreement to be entered into between the Seller and the Buyer for the interconnection of the Facility to Buyer's Distribution System;

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

"Contracted Capacity": means the nameplate of the Facility in kW;

"Construction Contract" means the agreement or agreements to be entered into by the Seller for the design, manufacture, construction and Commissioning of the Project;

"Construction Contractor" means the party or parties to the Construction Contract other than the Seller;

"Contracted Annual Energy" has the meaning ascribed to it Section 3.4 (*Contracted Annual Energy*);

"Decreased Costs" means any (i) sustainable cash quantifiable savings to the Seller that may be passed on to the Buyer or (ii) increased revenues of the Project without an increase in cost to the Seller, each of which can be directly attributable to a Change in Law;

"Default Rate" means 3-months US LIBOR

"Delivery Point" means the physical point at which the Facility is connected to the Buyer's Distribution System and at which the Seller delivers Energy to the Buyer as shown in the line diagram set out in Schedule 2 (*Delivery Point*);

"Development Bond" means an on-demand performance bond in the amount of US\$7,000 drawn on an internationally recognised bank or a recognised bank in Ghana acceptable to the Buyer in an Agreed Form;

"Dispatch Instructions" shall mean instructions from the ETU with respect to the delivery of Energy from the Facility;

"Distribution Code" means the draft National Electricity Distribution Code dated November 2013 specified by the Energy Commission of Ghana for the operation of the Sub transmission and Distribution Network;

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

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

"Electricity Transmission Utility (ETU)" means the Ghanaian national electricity transmission utility, and any successor entity operating the portion of the Ghanaian national electricity transmission grid at the Delivery Point. GRIDCo can be used interchangeably with ETU throughout this Agreement until the effective separation of ETU occurs as per Laws of Ghana;

"End Date" shall mean the last day of the fifteenth (15th) anniversary of the Commercial Operation Date;

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

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

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

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

"Facility" has the meaning ascribed to it in the Preamble;

"Feed-In-Tariff" means the rate of US Cents 17.51/kWh to be charged by the Seller to the Buyer from the Commercial Operation Date to the 10th anniversary following the Commercial Operation Date. Beyond the 10th anniversary of the Commercial Operation Date, the Feed-In-Tariff shall be adjusted every two years with approval from the PURC till the end of the Term;

"Force Majeure Event" has the meaning ascribed to it in Section 14 (*Force Majeure*);

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

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

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

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

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

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

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

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

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

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

"kWh" means a kilowatt-hour;

"Laws" means any national, provincial or local law, orders, rules, regulations, bye-laws, statutory orders, statutory reversionary orders, executive orders, policies, judicial

decisions, notifications, administrative decisions or other similar directives made pursuant thereto, or legally binding instructions, policies, guidelines, codes (industry or otherwise) or standards issued by any Governmental Authority, as any of them may be amended from time to time;

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

"Lenders" means the lenders party to the Loan Documents and the persons who, from time to time, make other credit facilities available to the Seller, together, in each case, with their respective successors and assigns;

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

"Liquidated Damages" has the meaning ascribed in Section 6.4;

"Loan Documents" means all loan agreements, note, indentures, security agreements, interest rate hedging agreements, guarantees and other documents entered or to be entered into relating to the construction and permanent financing (including financing of working capital requirements and refinancing for construction and permanent financing) of the Project or any part thereof.

"Long Stop Commercial Operation Date" means three (3) months after the Scheduled Commercial Operation Date or as extended, or any extension thereof agreed between the Parties pursuant to Section 6.4 (*Liquidated Damages*);

"Long Stop Effective Date" means three (3) months after the Target Effective Date or as extended, or any extension thereof agreed between the Parties pursuant to Section 5 (*Conditions Precedent to Effectiveness of Agreement*);

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

"Maximum Annual Energy" means the maximum Annual Energy (expressed as kWh) that Seller expects to deliver to the Buyer pursuant to Schedule 4, and mutually determined following the Commissioning Test Report, which shall be reviewed after every 12 months;

"Minimum Annual Energy" means the minimum Annual Energy (expressed as kWh) that Seller agrees to deliver to the Buyer pursuant to Schedule 4, and mutually determined following the Commissioning Test Report, and shall be reviewed after every 12 months;

"Month" means one calendar month;

"MW" means one thousand kW;

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

"Nameplate Capacity" means installed generation capacity (expressed in kW or MW) of the Facility as defined by the generation equipment manufacturer;

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

- (a) acts of God (including lightning, fire earthquake, flood, storm, floods, , tidal wave and);
- (b) epidemic, plague; and
- (c) explosion or chemical contamination (or than resulting from a Political Event);

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

"Performance Bond" means an on demand performance bond in the amount of US\$7,000 drawn on an internationally recognised bank or a recognised bank in Ghana acceptable to the Buyer and/or in a form agreed by both parties;

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

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

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

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

"Prudent Utility Practices" means the generally accepted design, practices, methods and operation of a power system, to achieve safety, dependability, efficiency and economy, and to meet utility and industry codes, standards and regulations in the Republic of Ghana, or neighbouring countries;

"PURC" means the Public Utilities Regulatory Commission of Ghana;

"Quarter" means a period of three consecutive calendar Months in a Year;

"Scheduled Commercial Operations Date" shall mean twenty-one (21) Months after Target Effective Date .

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

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

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

"Target Effective Date" shall mean twelve (12) months after the Signature Date;

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

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

"Term" shall mean the period of time starting at the Effective Date of the Agreement and ending at the Fifteenth (15th) anniversary of the Commercial Operation Date unless extended in accordance with the terms of this Agreement;

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

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

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

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

"Year" means each full 12-month period following the Commercial Operation Date.

Terms not otherwise defined in this Section 1 but defined elsewhere shall have the meanings ascribed to such terms in this Agreement.

2 RULES OF INTERPRETATION

In this Agreement:

- (a) Capitalised terms not defined in Section 1 (*Definitions*) and used in this Agreement shall have the meanings ascribed to such terms;
- (b) the words "herein", "hereby", "hereof" and "hereunder" shall refer to this Agreement as a whole and not to any particular Section of this Agreement;
- (c) references to Sections, Schedules and Appendices are references to sections, schedules and appendices to this Agreement;
- (d) references to this Agreement shall include a reference to all Schedules and Appendices hereto, as the same may be amended, modified, supplemented or replaced from time to time;

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

3 SCOPE OF AGREEMENT

3.1 Sale and Purchase of Energy

From and after the Commercial Operation Date and until the expiry or earlier termination of this Agreement, the Seller shall supply and deliver Energy to the Buyer and the Buyer shall receive and purchase 100% of the Energy produced and delivered by the Seller to the Delivery Point on the terms and conditions established by this Agreement.

3.2 Commissioning

Prior to the Commercial Operation Date, the Seller shall carry out the Commissioning Tests as procedures agreed between the Seller and the Buyer. The Buyer shall purchase the Energy produced during the commissioning period and pay the Seller under the terms established by this Agreement. The commissioning period for the Facility shall be twelve (12) calendar months.

3.3 Delivery Point

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

3.4 Contracted Annual Energy

The Parties agree that the Contracted Annual Energy under this Agreement shall be 658.95MWh in accordance with Schedule 4:

- (a) The Seller shall have made all commercially reasonable efforts to supply the Contracted Annual Energy to the Buyer and the Buyer shall have made all commercially reasonable efforts to receive it. The Party that fails to supply or receive Annual Energy shall compensate the other Party in accordance with the terms contained in Section 7.5 (*Compensation for failures to receive or deliver Annual Energy*);

- (b) This notwithstanding, the Parties acknowledge that within the first Year of the Commercial Operation Date the actual Energy supplied by the Seller may be less than the Minimum Annual Energy and hereby the compensation terms described in Section 7.5 is not applicable;
- (c) The Parties also acknowledge that within the first Year of operation starting from the Commercial Date until the End Date or earlier termination of this Agreement, for every single Year, the actual Annual Energy supplied from the Seller's Facility to the Buyer may be more than the Maximum Annual Energy (685MWh) and hereby the Buyer shall pay the difference as part of the energy supplied at the agreed tariff.

4 TERM OF AGREEMENT

Subject to Section 5, this Agreement shall be binding on the Parties hereto and upon the execution thereof, and it shall continue in force for a period of fifteen (15) years from the Commercial Operation Date until the End Date, unless earlier terminated or extended in accordance with its terms.

5 CONDITIONS PRECEDENT TO EFFECTIVENESS OF AGREEMENT

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

5.1 The Seller Conditions Precedent

- (a) The Seller shall have been granted by and received in writing from the relevant Government Authority, all required Consents and approvals necessary for the operation of and sale of electricity from the Facility;
- (b) The Seller shall have received the Connection Agreement;
- (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 PURC providing for rates and terms of service in accordance with this Agreement;
- (f) The Seller shall have received from the Buyer a written notice confirming that the Effective Date has occurred.

5.2 The Buyer Conditions Precedent

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

5.3 Either Party may terminate this Agreement by giving written notice to the other Party if any of the Conditions Precedent has not been satisfied or waived by the Target 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 Section 5.3 unless the Buyer has paid all verifiable costs incurred by the Seller in meeting its obligations prior to the date of termination.

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

5.5 Failure by Seller to achieve Effective Date

On or prior to the Effective Date, the Seller shall provide to the Buyer the Development Bond.

If the Effective Date does not occur on or before the Long Stop Effective Date, then, subject always to (i) the Buyer having provided the documents detailed in paragraphs (c) (d) and (f) Section 5.1 (*Seller Conditions Precedent*) in the required form and (ii) the Buyer having used its reasonable endeavours to assist the Seller in satisfying the condition precedent detailed in sub-paragraph (a) (b) and (e) of Section 5.1 (*Seller Conditions Precedent*) above prior to the Long Stop Effective Date, the Buyer may, as its sole and exclusive remedy against the Seller for any direct or indirect loss, cost or expense it incurs as a result of the Effective Date not occurring on or before the Long Stop Effective Date, take all steps necessary to obtain payment for such direct or indirect loss, cost or expense by a drawing upon the Development Bond.

If the Effective Date is achieved prior to the Long Stop Effective Date, the Development Bond shall be cancelled and returned to the Seller.

6 COMMISSIONING AND COMMERCIAL OPERATION DATE

6.1 Buyer Cooperation

The Buyer shall cooperate with the Seller so as to enable the Seller to Commission the Facility in accordance with this Section 6 (*Commissioning and Commercial Operation Date*) and, in particular will, subject to any constraints on Buyer Distribution Network, assist in managing the interface in respect of the connection to Buyer Distribution Network and otherwise facilitate in terms of dispatch or providing the requisite load to the extent reasonably required by the Seller for such purposes.

6.2 Commissioning Tests

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

6.3 Commercial Operation Date

The Facility shall be commissioned and the Commercial Operations Date shall occur within five (5) Working Days following the issuance of the Commissioning Test Report confirming the Capacity of the Facility.

6.4 Liquidated Damages

In the event that the Commercial Operation Date does not occur prior or by the Long Stop Commercial Operation Date, liquidated damages shall be payable by the Seller to the Buyer at a rate of USD500 per day for each day that the Commercial Operation Date is delayed beyond such date and the Buyer shall have the right to draw from the Performance Bond the amount of the liquidated damages.

6.5 Performance Bond

On or prior to the Effective Date and with effect therefrom, the Seller shall procure and provide to the Buyer the Performance Bond.

Unless payment in full of the Performance Bond is earlier demanded by the Buyer under Section 6.4 and paid, the Performance Bond shall continue in force until three months after the date on which Commissioning Certificate has been delivered and the liability for liquidated damages calculated by the Seller and stated in a letter to the Buyer and immediately thereafter the Performance Bond shall be deemed to have elapsed and shall be returned to the Seller.

In the event that the Buyer exercises its rights pursuant to section 6.4, the Buyer may take all steps necessary to obtain the requisite payments under the Performance Bond (which is provided therein, shall be the Buyer's sole and exclusive remedy against the Seller for any direct loss, cost or expense the Buyer incurs as a result of the event described in Section 6.4 (Liquidated Damages).

7 PRICING

7.1 Total Energy Charge

7.2 The Total Energy Charge shall be the product of the Feed-In-Tariff and the Energy generated from the Facility and delivered to the Buyer at the Delivery Point in kWh. The Total Energy Charge shall be invoiced monthly in the United States Dollars to the Buyer and payable in Ghana Cedis using the agreed Hedged Exchange Rate at the time of the payment.

7.3 Exchange Rate

From the Commercial Operation Date until the End Date or earlier termination of the Agreement, for every Quarter after the first Year, the Seller shall enter an Exchange Rate Hedge Agreement for Ghana Cedi converting to US Dollars between Seller and a reputable Commercial Bank in Ghana which gives the most competitive rates. 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 Feed-In-Tariff for the Seller. The Hedged Exchange Rate shall also be reviewed quarterly in line with PURC's quarterly automatic tariff adjustments.

7.4 Pre-Commercial Operation Date Charges

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

7.5 Compensation for Failure to Receive or Deliver Annual Energy

Following the Commercial Operation Date until the End Date or earlier termination of this Agreement, for every Quarter, the Parties shall perform a calculation of the actual Annual Energy supplied from the Seller's Facility to the Buyer. If the actual Annual Energy:

- (a) delivered by the Seller to the Buyer at the Delivery Point is less than the Minimum Annual Energy (632.9MWh) for reasons attributable to the Seller, the Seller shall pay the Buyer the actual cost difference in Energy that the Buyer has purchased at the prevailing system marginal price or from the spot market as a result of the Seller's failure to deliver the Minimum Annual Energy for the

difference between the actual energy received by Buyer and the Minimum Annual Energy; or

- (b) received by the Buyer at the Delivery Point is less than the Minimum Annual Energy for any reasons attributable to the Buyer, the Buyer shall pay to the Seller an amount equal to the shortfall in Annual Energy received by the Buyer below the Minimum Annual Energy multiplied by the Feed-In-Tariff

The shortfall payment shall be paid immediately into the entitled Party's designated bank account before the end of the Month in which the calculation is made in US Dollars or its equivalent Cedis converted in accordance with agreed Hedged Exchange Rate specified in Section 7.2. Further, to the extent the shortfall to the Seller can be projected based on historical delivery of Energy and or the equivalent electricity amount in terms of gas flared for reasons attributable to the Buyer, the Seller shall be entitled to receive estimated Monthly shortfall payments from Buyer, which shall be included in an Invoice as such.

7.6 Excess Energy Produced Beyond Maximum Annual Energy

From the second Year following the Commercial Operation Date until the End Date or earlier termination of this Agreement, for every single Year, the Parties shall perform a calculation of the actual Annual Energy supplied from the Seller's Facility to the Buyer not later than 10th of the Month of the ensuing Year. If the actual Annual Energy exceeds the Maximum Annual Energy (685MWh), the Seller shall be entitled to receive a Discount from the Seller equal to the Annual Energy in excess of the Maximum Annual Energy multiplied by the Feed-In-Tariff. This amount shall be calculated at the end of a Year and be paid to the Seller on a subsequent invoice from Seller.

8 INCREASED COSTS

- 8.1 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 Energy Charge or Feed-In-Tariff (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, Change in Law that result in an increased cost; or
- (b) after the Signature Date, any change in the interpretation or application of any Prudent Utility Practices.

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

required Increased Costs the Seller shall be permitted to make an application directly to the PURC.

- 8.3 On the occurrence of an Increased Cost Event the Seller shall have the option, to charge an additional amount as a surcharge to cover any Increased Costs. To the extent additional capital is required to be raised, cost of such further capital (including all applicable fees, margins and expenses) shall also be an Increased Cost which shall be reflected in the adjustment to the Total Energy Charge upon the agreement of the Parties.

9 DECREASED COSTS

- 9.1 If Buyer believes there is an event triggering a Decreased Cost, the Buyer shall first discuss such event with the Seller and its impact and potential resolution with the Seller. Upon agreement by the Parties, a joint application by the Parties shall be made to PURC. In the event of any dispute, the Buyer shall be entitled to request from 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.
- 9.2 The Buyer shall include with any request made pursuant to Section 9 (*Decreased Costs*) above an indication of the nature of the Decreased Cost and documentation in reasonable detail evidencing the same and a proposal as to how the reduction in tariff shall take effect.

10 BILLING AND PAYMENT

10.1 Billing Procedure

- (a) Each Month, commencing with the Month following the Month in which the Commercial Operation Date occurs, the Seller shall submit an invoice (an "Invoice") to the Buyer or its designated agent by the 10th day of that Month in relation to the amounts due in respect of the preceding Month and if validated, Buyer shall pay amount on invoice on Due Date after invoice submission. Any payment which is not paid when due shall bear interest at the Default Rate
- (b) The Invoice shall contain reasonably details set forth in Schedule 1 (*Pro-Forma Invoice*), including Total Energy Charge payable in Ghana Cedis using the agreed Hedged Exchange Rate at the time of the payment, together with such further supporting documentation and information as the Parties may agree.
- (c) The Invoice shall apply any required VAT charge applicable at the time of invoicing in respect of such Invoice.

10.2 Billing Dispute

- (a) In the event that any or all amounts in an Invoice are disputed by the Buyer, the Buyer shall submit a justification for such dispute, including details of the basis

for the dispute and the portion of the Invoice that is subject to such dispute, in writing (an "Invoice Dispute Notice") to the Seller prior to the Due Date for such Invoice.

- (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 ninety (90) days from the Due Date, and if Buyer has not issued an Invoice Dispute Notice within such time such invoice shall be considered correct and complete and conclusive between the Parties in the absence of fraud or manifest error.
- (c) The Parties shall use their respective reasonable endeavours to resolve any dispute identified in an Invoice Dispute Notice as soon as reasonably practicable. In the event that within fourteen (14) days of the delivery of a valid Invoice Dispute Notice the dispute regarding the Invoice is not resolved between the Parties, the Seller or the Buyer may refer the dispute to be resolved by arbitration pursuant to Section 24 (*Settlement of Disputes*).
- (d) If the Expert resolves that the amount disputed in the Invoice Dispute Notice is due and payable, the Expert shall confirm this in writing and the Buyer shall immediately pay the amount detailed in the notice.

10.3 Billing Error

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

10.4 Payment

- (a) After the Commercial Operation Date, for every Quarter after the first Year, the Seller shall enter an Exchange Rate Hedge Agreement for Ghana Cedi converting to US Dollar between Seller and a reputable Commercial Bank in Ghana. And the Seller shall provide the Buyer true copies of the Exchange Rate Hedge Agreement which spells out the applicable Ghana Cedi to US Dollar Exchange Rate.
- (b) The Total Energy Charge will be invoiced monthly in US dollars and will be payable in Ghana Cedis using the agreed Hedged Exchange Rate at the time of the payment.
- (c) All amounts payable under this Agreement shall be paid on or before the Due Date to such account of the Seller as shall have been previously notified to the

Buyer. If part of an Invoice is disputed by the Buyer pursuant to Section 10.2 (*Billing Dispute*), the Buyer shall pay the undisputed amount of the Invoice on the Due Date.

- (d) All amounts payable under this Agreement shall be made free and clear from, and without any set-off, deduction or withholding on account of, any amount or Taxes.
- (e) The local cost component of the tariff which is 20% of the total tariff shall be billed and paid in Ghana Cedis. The remainder which is 80% of the agreed tariff shall be billed in USD and the Ghana Cedi equivalent paid by the off-taker.
- (f) The Seller shall be entitled to charge the Buyer interest at the Default Rate for any payment due to Seller from the Buyer that is overdue (i.e. beyond the Due Date) for at least thirty five (35) days.

11 SECURITY OF PAYMENT

11.1 NOT USED

12 STANDARD OF PERFORMANCE

12.1 In performing its obligations under this Agreement the Seller undertakes:

- (a) to operate and maintain the Facility in all material respects in accordance with the Prudent Utility Practices;
- (b) to operate and maintain the Facility in all material respects in accordance with the Distribution Code;
- (c) to maintain all Consents and approvals necessary for the Seller to fulfil its obligations under this Agreement;
- (d) to provide such assistance and information as the Buyer may reasonably require in connection with the Buyer's discussions regarding its base rate with PURC.

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

- (a) to act in accordance with the Prudent Utility Practices and the Distribution 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.

12.3 Emergencies

- (a) The Parties will establish policies and procedures to maintain smooth operations, including in cases of Emergencies, and will periodically review and update such policies and procedures as required.

13 CONTINUITY OF SUPPLY

- 13.1 Subject to Section 13.3 (*Continuity of Supply*) below, which may prevent the Seller from doing so, the Seller shall stand ready to supply Contracted Annual Energy in a continuous manner during the six (6) hours of every day at the Delivery Point, and shall do so in accordance with Dispatch Instructions, except as otherwise provided in this Agreement.
- 13.2 The Seller, and Buyer, shall use all reasonable 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.
- 13.3 The Seller shall have the right at all times to discontinue the supply of Energy to the Buyer at the Delivery Point (a) without notice for the purpose of safe-guarding life or property, or (b) due to Seller Force Majeure Event; or (c) upon giving 72 hours' notice for the purpose of emergency maintenance, replacement or repair of the apparatus, equipment or works of the Seller. The Seller shall, where relevant, use its reasonable endeavours to ensure that all such interruptions shall be rectified as soon as reasonably practicable and, when possible, in coordination with the Buyer.
- 13.4 In the event that any Invoice has not been paid within 35 days after the Due Date, the Seller shall have the right to discontinue the supply of Energy to the Buyer at the Delivery Point until such payment has been made pursuant to Section 10 (*Billing and Payment*).

14 FORCE MAJEURE

14.1 Definition of Force Majeure

For the purposes of this Agreement, a "Force Majeure Event" means the occurrence of, a Natural Event, that affects a Party ("Affected Party") but only to the extent that:

- (a) such circumstance, event or condition cannot be prevented, avoided or overcome by the Affected Party;

- (b) such circumstance, event or condition prevents the performance by the Affected Party of its obligations under or pursuant to this Agreement (save for payment obligations);
- (c) the Affected Party has taken all commercially reasonable precautions, due care and measures to prevent, avoid or overcome the effect of such circumstance, event or condition on its ability to perform the applicable obligation under this Agreement and to mitigate its consequences; and
- (d) such circumstance, event or condition is not the direct or indirect result of a material breach or failure by the Affected Party to perform the applicable obligation under this Agreement.

14.2 Duty to Report Force Majeure Event

- (a) The Affected Party, when claiming relief for a Force Majeure Event under this Section 14 (*Force Majeure*), shall notify the other Party in writing of the occurrence of a Force Majeure Event 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 Event would be likely to have an impact on its performance of its obligations under this Agreement.
- (b) Any notice pursuant to Section 14.2(a) (*Duty to Report Force Majeure*) shall set out full particulars of:
 - (i) the nature of the events or circumstances constituting the Force Majeure Event which is the subject of any claim for relief under this Agreement;
 - (ii) the effect which such Force Majeure Event is having or is expected to have 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 the Force Majeure Event.
- (c) For so long as the Affected Party continues to claim to be affected by a Force Majeure Event, 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 the Force Majeure Event; and
 - (ii) such other information as the other Party may reasonably request about the Affected Party's claim.

14.3 Duty to Mitigate

- (a) For so long as an event of Force Majeure which is the subject of any claim under this Agreement is continuing, the Affected Party shall take such steps as are

reasonably practicable in accordance with the Prudent Utility Practices to minimise the duration and severity of the impact of such Force Majeure Event 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 Event.

- (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 the part of the Facility not so affected if it is capable of independent or partial operation in accordance with Prudent Utility Practice.

14.4 Consequences of Force Majeure Events

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

14.5 Payments During Force Majeure Event

- (a) Upon the occurrence of any Force Majeure Event after the Commercial Operation Date affecting the Seller's ability to deliver Annual Energy, the Buyer shall still 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 on an Affected Party, then during such Force Majeure Event, the Affected Party shall notify the Other Party. The Seller shall inform 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 Event in respect of its payment obligations pursuant to the terms of this Agreement.

15 INSURANCE

The Seller shall, and shall cause its Construction Contractor to:

- (a) at their 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 Buyer and evidence that the premiums payable thereunder have been paid, including the normal waivers of subrogation, and a representation from a reputable, independent insurance broker that such coverages conform to Prudent Operating Practice (i) prior to the Effective Date; (ii) prior to COD, (iii) annually prior to each anniversary of COD, and (iv) each time insurance coverages are changed in any respect;
- (c) provide access (on reasonable notice) to the Buyer or its representatives to its offices during office hours to inspect the original policies;
- (d) name its Lenders as additional insured under such insurance policies
- (e) if the Seller fails to procure or maintain any insurance which is required in accordance with (a) above, the Buyer shall have the right to procure such insurance at the Seller's expense, provided that the Buyer shall have given 20 Days prior notice to the Seller of its intention to exercise such right, unless such notice arises from the Seller's non-payment of premiums for existing insurance, in which case the Buyer shall provide at least five (5) Days prior notice of such intention. If the Seller fails to reimburse the Buyer for any such premiums within seven (7) Days of being notified to do so, the Buyer shall be entitled to payment of such amount by deducting such amount or amounts from the Total Electricity Charge due in the immediately following period until the amount of such premiums has been fully repaid.

16 ENERGY MEASUREMENT

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

- 16.1 At the same metering point, one set of power meters (Main Meter) and one set of power meters of the Seller (Check Meter) shall be installed. The Principal meter and the Check Meter shall be clearly marked. During the operation of this Agreement, neither party can change the Principal or Check Meters without the other's prior approval. In normal instance, the Parties shall take the meter reading data of the Principal Meter as the basis of electricity calculation. The metering data of the Check Meter will be used for cross-checking the readings of the Principal Meter, or in substitution for the Principal Meter when it becomes defective. The Principal Meter and the Check Meter shall be installed at the same metering point and the same metering circuit, and have the same accuracy levels and same inspection term.

- 16.2 The accuracy of the measuring equipment shall be verified by a recognized independent authority at six (6) month intervals. The Seller shall give the Buyer written notice of the time and date of the verifications to be performed not less than five (5) days prior thereto. The Buyer shall have the right to participate in the verifications of the measurement devices.
- 16.3 If, as a consequence of the verification it is determined that the measuring equipment is measuring or recording Energy outside the accuracy level of $0.2S$, then the inaccurate equipment shall be so recalibrated or replaced as to measure and record the Energy with the required accuracy.
- 16.4 The point of measuring for billing purposes shall be at the Delivery Point, but shall otherwise be determined jointly by the Seller and the Buyer. If the equipment for measuring at 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.
- 16.5 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.
- 16.6 The Seller shall provide, in its metering station, space for the Buyer-owned check metering equipment and permit the use of the Seller's current and potential transformers free of charge, for such metering purposes as may be requested by the Buyer.
- 16.7 Access to any measuring equipment belonging to the Buyer and on the premises of the Seller shall be granted free of charge to the Buyer at any and all times, and the Buyer may test, calibrate, adjust, remove or change its measuring equipment at any reasonable time with the consent of the Seller. After consultation between the parties and proper metering measures being taken, when possible the Seller shall be advised at least three (3) days in advance of the intention of the Buyer to test, calibrate, adjust, remove or change its measuring equipment.
- 16.8 Either Party shall have the right to request to test any measuring equipment in the presence of a representative of the other Party by giving to the other Party seven (7) days prior notice in writing of the Party's desire to test the measuring equipment.
- 16.9 The Party whose equipment is found to be defective shall within a reasonable time repair or replace and retest any meter or measuring equipment found after such verification to be defective.
- 16.10 The power metering devices include: power meter, voltage transformer (V.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 (V.T.) windings for metering must be Level of 0.2 , while the accuracy of the current transformer (C.T.) must be Level of $0.2S$.

- 16.11 The power metering devices should have functions that conform to the provisions of the prevailing Distribution Code. The functions include the following:
- (a) Complete electronic metering devices;
 - (b) Bi-directional metering function: from power plant to network, and, from network to power plant;
 - (c) Keep the memory for recording at least two months metering data;
 - (d) The accuracy must be Level of 0.2S for active power, and Level of 1.0 for inactive power;
 - (e) Connection mode must be 3 phase 4 wires;
 - (f) Display running time;
 - (g) Communication port with RS485, RS232, DMP3, Fibre Optic;
 - (h) And other functions that meet the requirements of IEC standard.
- 16.12 The power metering devices should have remote metering capability and be connected into the remote metering systems of the Seller or the Buyer. The communications shall meet the requirements of IEC standard.
- 16.13 The technical alteration of the metering system can only be made after being approved in writing by both parties.
- 16.14 The connecting wires of the transformer secondary circuit shall be made of insulated single core copper wire. The cross-sectional area of the secondary current circuit connecting wires shall be determined by the calculation of the rated secondary load of current transformer, but it shall not be less than 4mm^2 . 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 2.5mm^2 .
- 16.15 The actual secondary burden of the transformer shall be within 25 to 100 per cent of the rated secondary load; the power factor of the rated secondary load of current transformer shall be 0.8 – 1.0; the rated secondary power factor of the voltage transformer shall be close to the actual secondary load power factor.
- 16.16 The rated primary current of the current transformer shall be guaranteed such that during normal operation the actual load current to reach 60 per cent of the rated value and not fall below 30 per cent of the rated value. In such an event, High-Moving-Heat stable current transformer shall be utilized to reduce the bias.

17 METER READINGS

- 17.1 The Buyer is entitled to reading the meters with the Seller at the end of each month at 12:00 GMT or at a time agreed upon by the Parties for calculation of the electrical energy delivered.
- 17.2 The records from the meters dated and duly signed in three original copies shall be taken and kept by the Seller, and the Buyer.

- 17.3 The records shall be kept and maintained by the Seller and the Buyer for at least five (5) years following the delivery of an Invoice.
- 17.4 The date of the meter reading will be extended in case of holidays to the immediately following business day.
- 17.5 If any one Party does not arrive for the meter reading within two hours after agreed time in Section 17.1.1, the other party can proceed and read the meters and such reading would be considered as consented by the Seller and the Buyer, which shall be used for Invoicing for that Month.

18 ADJUSTMENT OF MEASUREMENT DEVICES

- 18.1 In the event it is determined that the reading from any measuring devices has been inaccurate, the Party who owns such inaccurate devices shall correct the inaccuracy and adjust the readings of the affected devices and the appropriate billing correction shall be reflected in the next regular Monthly invoice delivered hereunder.
- 18.2 If for any reason, any of the meters is unserviceable, the Energy consumed shall be estimated on the basis of following priority order:
- (a) The meter's data of the line recorded in the meters to be installed by the ETU at the end of the line in its substation;
 - (b) The sum of all meter readings on all main transformers at 161kV side in the Facility;
 - (c) That it is the same as for other days, preferably of the same Month, on which similar load existed;

19 INDEMNIFICATION AND LIABILITY

- 19.1 A Party establishing or alleging a claim based on breach of contract, warranty, tort or otherwise arising out or in connection with this Agreement shall be under a duty to take commercially reasonable efforts to mitigate the loss which has occurred, provided that it can do so without unreasonable inconvenience or unreasonable cost.
- 19.2 Subject to the provisions of this Agreement specified hereunder, to the maximum extent permitted by law, each Party shall defend, indemnify and hold harmless the other Party and affiliated companies, and those with whom it may be associated in a joint venture, and the directors, employees and agents of any of the foregoing, from and against any loss, damage, claim, suit, fine, liability, other cost of litigation and judgment thereon, arising out of breach of or non-compliance with this Agreement, personal injury or death in connection with the construction, operation and maintenance of the Facility, except to the extent that the breach, non-compliance, injury, death or damage is caused by the negligence and/or omission of the entity otherwise indemnified. To the event the injury or damage results from joint or concurrent negligent or intentional acts or omissions of the Parties, each Party shall be liable under this indemnification in proportion to its relative degree of fault.

- 19.3 The other Party shall have the right, but not the duty, to participate in the defense of any such claim or suit.
- 19.4 Any Party shall, as soon as practicable after receiving notice of any suit brought against it, deliver to the other Party, full particulars within its knowledge thereof and shall render all reasonable assistance requested by any Party in the defence of such suit.

20 EVENTS OF DEFAULT

20.1 Defaults by the Seller

If the Seller fails to supply an adequate amount of energy to the Buyer to the extent that over a period of continuous 180 days after the COD, the aggregate energy supplied to the Buyer is less than 80% of the corresponding portion of the Minimum Annual Energy over same the period

20.2 Defaults by the Buyer

If the Buyer (i) fails to pay for Energy delivered within the time frame stipulated in Clause 10.4e, then the Buyer shall be deemed to have defaulted under the Agreement.

20.3 Consequences Upon Default

Once a default has occurred by either Buyer or Seller, the non-defaulting party has the right to request in writing that the other Party to remedy the default. After receipt of the notice of default, the defaulting party shall take immediate measures to remedy the default.

20.4 If either Party defaults, the other Party has the right to seek indemnification and request for compensation for all reasonable out of pocket losses incurred during the period of default.

21 TERMINATION

21.1 This Agreement shall terminate on the End Date or as provided elsewhere in this Agreement.

21.2 Termination upon default of the Seller

- (a) Upon the Seller's failure to remedy the default within the determined period, the Buyer may terminate this Agreement.
- (b) Default on the part of the Seller shall not relieve the Buyer from the obligation of payments for Energy effectively supplied, less an amount equivalent to the Supplier's liabilities to the Buyer as a result of Seller's default.

21.3 Termination upon default of the Buyer

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

21.4 The termination upon other Grounds

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

- (a) The other Party applies to be declared bankrupt or is in liquidation;
- (b) The occurrence of a Force Majeure Event prolonged for a continuous period of thirty-six (36) months which renders it impossible for the Seller to provide the Buyer with Energy; or
- (c) The merger of other Party with another entity that is not an Affiliate of such Party, the merging or transfer of most of its assets to another entity that is not an Affiliate of such Party, and where the succeeding entity cannot or will not be fully committed to all the obligations of this Party under the Agreement.

21.5 Upon termination of this Agreement, the Seller shall be entitled to remove its equipment and related materials from the site of the Facility to extent such equipment and related materials would not be considered fixtures and immobile or unmovable.

22 WAIVERS

22.1 Any waiver by the Seller or the Buyer shall be limited to the particular instance and shall not be deemed to waive any other right or remedy, or extend to any other matter under this Agreement or in any other way affect the validity of this Agreement.

22.2 No delay or forbearance by either Party in exercising any right, power, privilege or remedy provided by law or under this Agreement shall operate to impair or be construed as a waiver of such right, power, privilege or remedy.

22.3 Any waiver must be in writing, or if that is not practicable under exigent circumstances, reduced to writing as soon as practicable and delivered to the other party in the same manner as a Notice.

23 GOVERNING LAW

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

24 SETTLEMENT OF DISPUTES

24.1 Amicable Settlement

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

24.2 Arbitration

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

25 ASSIGNMENT

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

26 NON-DISCLOSURE

- 26.1 The terms and conditions of this Agreement and all information relating to this Agreement or to financial, commercial, technical, operational, personnel, management aspects of the Project or a Party, which is disclosed to, discovered or acquired by the other Party or received from the first-mentioned Party, or its auditors, professional advisers or consultants or contractors, and any disclosure made in the course of any

reference of a dispute to the Expert or to arbitration in accordance with Section 24 (*Settlement of Disputes*) ("Confidential Information") shall be treated as confidential and shall not be disclosed by either Party to any third party without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed), provided that:

- (a) this Section 26 (*Non-Disclosure*) shall not apply to Confidential Information which is in the public domain other than by reason of breach of this Section 26 (*Non-Disclosure*), or which was already in the rightful possession of the recipient Party, or which was obtained by the recipient Party in good faith from a third party entitled to disclose it;
- (b) a Party may disclose Confidential Information:
 - (i) to the extent required by law, or any securities exchange or regulatory or governmental body to which it is subject;
 - (ii) subject to obtaining undertakings to keep the same confidential (except where professional duties already impose an obligation of confidentiality) to:
 - (A) its shareholders, agents, advisers, directors, employees and contractors whose duties reasonably require such disclosure;
 - (B) any prospective assignee of the Party and to such assignee's advisers;
 - (C) any bank or financial institution from whom the Party is seeking or has obtained finance; and
 - (D) to any prospective investor of the Seller; and
 - (iii) to an arbitral tribunal appointed in accordance with Section 23 (*Settlement of Disputes*)

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

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

27 AMENDMENTS

- 27.1 This Agreement and any of its provisions may not be amended except by mutual agreement of the Parties in writing.

27.2 If any provisions of this Agreement or part thereof is rendered void, illegal or unenforceable in any respect under any law:

- (a) the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby;
- (b) In the event that any part of this agreement is declared invalid or illegal or unenforceable, the Parties shall agree to amend this agreement so as to maintain as near as possible its original intent and effect.

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

27.4 In the event that amendments are required, the Parties hereby agree to execute a separate amendment which will become a part of this Agreement and fully enforceable under the terms and conditions of this Agreement.

28 SEVERABILITY

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

29 RELATIONSHIP OF THE PARTIES

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

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

30 ENTIRE AGREEMENT

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

Parties acknowledges and confirms that it does not enter into this Agreement in reliance on any representation, warranty or other undertaking by the other Party.

31 NOTICES

31.1 All notices hereunder, including service of processes in relation to any legal proceedings commenced under this Agreement, shall be in writing and may be delivered or sent by registered mail or facsimile to the recipient at the address, and marked for the attention of the person, specified in Section 31 (*Notices*) and any such notice shall be deemed to have been duly given as follows:

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

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

The Seller: The Managing Director
Safi Sana Ghana Limited
P.O. Box CT8312
Cantonments
Accra, Ghana

The Buyer: The Managing Director
Electricity Company of Ghana
Electro Volta House
P.O. Box GP521
Accra, GHANA
Tel: (0302) 676762
Tel: (0302) 676747
Fax No: (0302) 666262

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

[signature page attached]

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)

Safi Sana Ghana Limited

Name: A.W. VAN DEN BEUKEL

Title: DIRECTOR

In the presence of witness:



SAFI SANA GH. LTD.
Managing Director

Name

Address

Occupation



SIGNED, SEALED AND DELIVERED on behalf of

Electricity Company of Ghana Limited

Name: ROBERT DWAMENA

Title: MANAGING DIRECTOR

In the presence of witness:



Name

Address

Occupation



SCHEDULE 1 PRO-FORMA MONTHLY INVOICE

From:

Electricity Company of Ghana Ltd.

P.O. Box CT8312
Cantonments, Accra

To: Safi Sana Ghana Ltd.

Electro Volta House P.O. Box 521
Accra, Ghana

Invoice for [Insert Month and Year]

Invoice No.:

Invoice Date:

Invoice Due Date:

Line	PARAMETERS	UNIT	AMOUNT
a	Monthly Energy Delivery	KWh	
b	Specified Feed-In-Tariff (as agreed in PPA)	USD/KWh	

TOTAL ELECTRICITY CHARGE			
c	Monthly Energy Charge (a X b)	USD	
d	Applicable Exchange Rate	USD to GHS	
e	VAT	GHS	-
f	NHIL	GHS	-
TOTAL ENERGY CHARGE of THIS MONTH (OCT)		USD	
Add: OUTSTANDING BALANCE (September)		USD	
Deduct: ELECTRICITY CHARGE PAID THIS MONTH (OCT)		USD	
TOTAL ELECTRICITY CHARGE PAYABLE		USD	

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

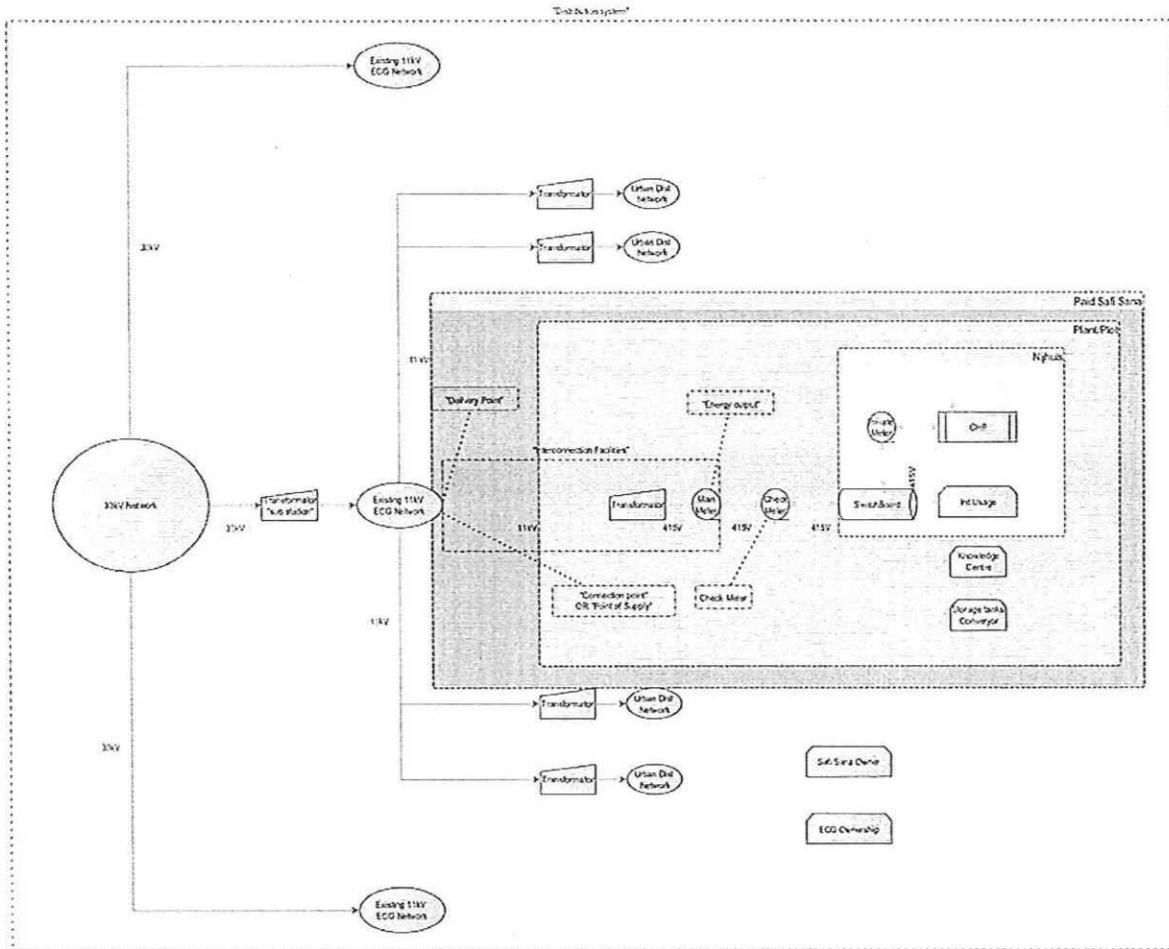
ADDITIONAL AND DEDUCTABLE			
Additional: [Details Here]		USD	
Deductable: [Details Here]		USD	
TOTAL AMOUNT PAYABLE		USD	

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

ATTACHMENT:

1. Meter Reading for [Insert Month and Year]
2. Exchange Rate Hedging Agreement

SCHEDULE 2: DELIVERY POINT



**SCHEDULE 3
NOT USED**

SCHEDULE 4: ANNUAL ENERGY COMPUTATION
Maximum Annual Energy

Name Plate Capacity of CHP	100	kW
Capacity available for use (minus internal consumption, down time and losses	85	kW
Days of operation in a year	365	Days
Hours of Operations in a year	8760	Hours
Availability @ 92%	0.92	92%
Max. Annual Capacity	685032	kWh

Minimum Annual Energy

Name Plate Capacity of CHP	100	kW
Capacity available for use (minus internal consumption, down time and losses	85	kW
Days of operation in a year	365	Days
Hours of Operations in a year	8760	Hours
Availability @ 85%	0.85	85%
Min. Annual Capacity	632910	kWh

SCHEDULE 5 **SAMPLE BILLING METER READING SHEET**

STATION
DATE
REPORT No:

SERVICE METER							
Metered Qty	Previous Dial Reading	Current Dial Reading	Current Energy Supplied	Previous Energy Supplied	Cumm. Energy Supplied	Previous Max. Demand	Current Max. Demand
KWh							
KVARh							
KVAh							
CHECK METER							
KWh							
KVARh							
KVAh							

Reading Team:

Name: _____ Signature: _____
(Safi Sana Limited)

Prepared By:

Name: _____ Signature: _____
(Safi Sana Ghana Ltd.)

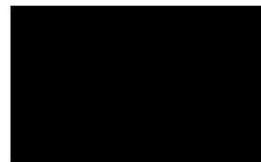
Name: _____ Signature: _____
(Electricity Company of Ghana)

Approved By:

Name: _____ Signature: _____
(Plant manager - Safi Sana Ghana Ltd)

Approved By:

Name: _____ Signature: _____



SCHEDULE 6
INDICATIVE PROJECT MILESTONES

