



**MODEL
POWER PURCHASE AGREEMENT**

FOR

**PROCUREMENT OF ELECTRICITY FROM
RENEWABLE POWER PLANT**

BETWEEN

.....
(WHOLESALE SUPPLIER)

AND

.....
(PURCHASER)

Table of Contents

<i>Preamble 4</i>	
<i>Regulatory Provisions</i>	5
<i>INTERPRETATION</i>	5
<i>DEFINITIONS</i>	5
<i>CONDITIONS TO EFFECTIVE DATE</i>	11
<i>Wholesale Supplier Conditions</i>	11
<i>Purchaser Conditions</i>	11
<i>Failure of Wholesale Supplier to achieve Effective Date</i>	12
<i>CONNECTION AGREEMENT</i>	12
<i>CONSTRUCTION & DEVELOPMENT OF THE FACILITY</i>	12
<i>Wholesale Supplier’s Obligations</i>	12
<i>ACCEPTANCE/PERFORMANCE TEST</i>	13
<i>PURCHASER’S VERIFICATION</i>	13
<i>SYNCHRONISATION OF FACILITY TO THE DISTRIBUTION/ TRANSMISSION SYSTEM</i> 14	
<i>COMMISSIONING OF FACILITY</i>	14
<i>PAYMENT OF TAXES</i>	14
<i>METERING SYSTEM</i>	15
<i>Ownership of Meters</i>	15
<i>Meters facility</i>	15
<i>Meter testing, calibration and maintenance</i>	16
<i>On-Site meter reading</i>	17
<i>RECORDS</i> 17	
<i>UNDERTAKINGS OF PARTIES</i>	18
<i>INSURANCE</i>	19
<i>PERFORMANCE BOND</i>	20
<i>LANGUAGE</i>	20
<i>Negotiated Provisions</i>	20

TERM OF AGREEMENT	20
ENVIRONMENTAL CREDITS	21
Obtaining Credits.....	21
Information Sharing	21
Ownership of the Credits.....	21
Pass-through of certain Benefits.....	21
SALE AND PURCHASE OF ENERGY OUTPUT.....	22
Obligations to Sell and Purchase	22
Responsibility for Transmission System Outages and Transmission System Constraints	22
Billing.....	23
Payment of Monthly Bill.....	23
Late Payment Surcharge.....	23
Billing Error.....	23
Billing Dispute.....	23
WARRANTIES OF THE PARTIES.....	24
EVENTS OF DEFAULT.....	25
TERMINATION.....	27
Termination by Wholesale Supplier.....	27
Termination by Purchaser	28
NOTIFICATION AND REPORTS	29
FORCE MAJEURE	29
Force Majeure Exclusion	30
Available Relief for a Force Majeure Event	31
Termination for Continuing Force Majeure Event.....	31
LIMITATION ON LIABILITY.....	32
SETTLEMENT OF DISPUTES.....	32
Arbitration	32
AMENDMENT	33
WAIVERS 33	
CONFIDENTIAL INFORMATION.....	33
NOTICES 34	

SEVERABILITY35
RELATIONSHIP OF THE PARTIES35
GOVERNING LAW.....36
SCHEDULE 240

Preamble

This Power Purchase Agreement is made and entered into on the day of, 20..... at

Between

..... *[Insert name of Wholesale Supplier]*, having its registered office at *[Insert address of the registered office]* (herein referred to as the “Wholesale Supplier”)

And

..... *[Insert the name of the Purchaser]*, having its registered office at *[Insert address of the registered office]* (herein referred to as the “Purchaser”).

Both herein referred to as the Parties.

Whereas:

[.....Wholesale Supplier] is provisionally licensed by the Energy Commission under the Renewable Energy Act, 2011 (Act 832) as a Wholesale Supplier;

[..... Purchaser] is licensed by the Energy Commission under the Energy Commission Act 1997, (Act 541) as a Distribution Company;

The Purchaser is required to purchase a percentage of its electricity requirement from Renewable Energy Sources;

[.....Wholesale Supplier] desires to build and operate a generation facility to generate and sell electrical energy to [..... Purchaser] under the Renewable Energy Act, 2011 (Act 832), Distribution Code/ Grid Code and other relevant regulations; and

[..... Purchaser] desires to purchase such power under the terms and conditions of this Agreement.

NOW THEREFORE THE PARTIES TO THIS AGREEMENT AGREE AS FOLLOWS:

Regulatory Provisions

INTERPRETATION

1 In this Agreement:

- (a) References in the singular shall include references in the plural and vice versa, and words denoting natural persons shall include corporations and any other legal entity and vice versa;
- (b) References to the word “including” are to be construed without limitation;
- (c) References to this Agreement shall include a reference to all Schedules and Appendixes hereto, as the same may be amended, modified, supplemented or replaced from time to time; and
- (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.
- (e) The headings and paragraph numbers are inserted for convenience only and are to be ignored for the purposes of construction; and
- (f) Calculations carried out pursuant to this Agreement shall unless otherwise stated be rounded to two (2) decimal places.

DEFINITIONS

2 In this Agreement, unless the context otherwise requires, the following words and phrases shall have the meanings given to them below:

“Act” means the Renewable Energy Act, 2011 (Act 832), as may be amended from time to time;

“Agreement” means this power purchase agreement, inclusive of all schedules, as may be amended from time to time as provided herein;

“Ancillary Service” means a service necessary to support the transmission of energy from supply sources to loads while maintaining reliable operation of the Transmission System in accordance with Prudent Utility Practice and these services include voltage control, operating reserves, black-starts capability and Frequency Control;

“Arbitrator” means an arbitrator appointed in accordance with the dispute resolution procedure set out in clauses 101 and 102;

"Billing Period" means the period for which the Bill is issued;

“Billing Period Invoice” means a monthly Invoice from the Wholesale Supplier to the Purchaser setting forth payments due;

“Bulk Customer” means a customer that purchases or receives electricity in the amount or level specified by the Energy Commission;

“Business Day” means any day of the week other than a Saturday or Sunday, or public holiday in Ghana;

“Capacity Attributes” means any current or future defined characteristic, certificate, tag, credit or accounting construct associated with the amount of power that the facility can generate at a particular moment and that can be purchased and sold under market rules adopted in the region where the Facility is located;

“Check Meter” is a meter installed by the Wholesale Supplier which provides the source of data for comparison with the main meter;

“Commercial Operation” means that the Facility is ready for regular daily operation, has been connected to the grid and is capable of producing Energy Output in accordance with Prudent Utility Practice;

“Commercial Operation Date”: means the date when the Wholesale Supplier achieves Commercial Operation;

“Commissioning Test” means a test conducted on equipment that is connecting to the grid for the first time or after modification or major maintenance in accordance with Schedule 2;

"Conditions" means the conditions set out in clauses 3 and 4;

“Connection Agreement” is an agreement between the Purchaser or Electricity Transmission Utility and the Wholesale Supplier that seeks connection of its facilities to the distribution or transmission system and sets out the rights, obligations and liabilities of both parties;

“Consents, Clearances and Permits” mean all authorisations, licenses, approvals, registrations, permits, waivers, privileges, acknowledgements, agreements, or concessions required to be obtained from or provided by any

concerned authority for the purpose of setting up of the generation facilities and/ or supply of power;

"Contracted Capacity" means the capacity of the Facility, as defined in Schedule 1;

"Delivery Point" means the point of physical linkage to or with the Transmission System or Distribution System for the purpose of enabling the delivery of Energy Output;

"Deemed Generated Energy" means the average of the energy output during the same time period as the outage during each of the last three days on which wholesale supplier supplied energy output (where no outage or constraint occurred) multiplied by the length of the outage. By way of example, if an outage occurs between 6am and 11am, the deemed generated energy would be the average of the energy output during the period from 6am to 11am during the last three days of uninterrupted generation, multiplied by the time period between 6am and 11am;

"Disputes" mean any differences, disagreements, disputes, failure to perform or deliver, or failure to resolve any contentious issue of whatever nature and howsoever arising under, out of or in connection with or relating to this agreement between purchaser on one part and wholesale supplier on the other part;

"Distribution System" means the distribution system below 36kV including but not limited to all distribution lines and equipment, transformers and associated equipment, relay and switching equipment and protective devices and safety and communications equipment owned and/or operated by the distribution company;

"Distribution Utility" means a person licensed to distribute and sell electricity without discrimination to consumers in an area or zone designated by the Energy Commission;

"Effective Date" means the date on which all of the Conditions have been satisfied or waived by the Parties;

"Electrical Energy" means electricity measured in MWh delivered by the wholesale supplier to the purchaser;

"Electricity Transmission Utility" means a person licensed to transmit electricity without discrimination to consumers in an area or zone designated by the Energy Commission;

“Energy Output” means net energy delivered from the Facility by Wholesale Supplier for sale to Purchaser at the Delivery Point;

“Energy Output Rate” has the definition given to that term in Schedule 1;

“Energy Commission” means the Energy Commission established under the Energy Commission Act 1997 (Act 541);

“Environmental Attributes” means any and all credits, benefits, emissions reductions, environmental air quality credits, emissions reductions credits attributed to the generation, purchase, sale or use of Energy Output from a renewable energy resource during the term, howsoever entitled or named, resulting from the avoidance, reduction, displacement, or offset of the emission of any gas, chemical, or other substance, including any of the same arising out of legislation or regulation concerned with oxides of nitrogen, sulphur or carbon with particulate matter, soot, or mercury or implementing the United Nations Framework Convention on Climate Change (UNFCCC) or the Kyoto Protocol to the UNFCCC, or its successor;

"Expected Daily Generation" has the definition given to that term in Schedule 1;

“Expiry Date” means the end of the Term of the Agreement, measured from the Commercial Operation Date;

“Facility” has the definition given to that term in Schedule 1;

“Frequency” is the number of alternating current cycles per second (expressed in Hertz) at which a system is running;

“Frequency Control” means the retention of the frequency on the power system within acceptable limits;

"Force Majeure" has the definition given to that term in Clause 85, subject to Clause 86;

“Ghana Cedis” means the currency that is the legal tender of the Republic of Ghana;

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

“Governmental Authority” means any department, authority, instrumentality, agency or other relevant entity of the Government;

“Grid Code” means the code that contains the technical and operational rules of practice and standards of performance rules developed and approved by

the Board of the Energy Commission to facilitate the operations related to the bulk transmission of electricity within the NITS;

“hour” means each continuous period of sixty (60) minutes commencing with the first minute of each of the twenty-four (24) denominated hours in any Day;

“Installed Capacity” has the definition given to that term in Schedule 1;

"Interconnection Facilities" mean all the facilities, to be installed and maintained by wholesale supplier up to the delivery point to enable evacuation of the delivered energy from the power station (which may include without limitation switching equipment and protection, control and metering devices etc.);

“Interest Rate” has the definition given to that term in Schedule 1;

“Invoice” or “Bill” means either a monthly bill or a monthly invoice/raised by any of the Parties;

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

“kV” means kilovolts or 1,000 volts;

“kW” means a kilowatt or 1,000 watts;

“kWh” means one (1) kilowatt hour or one unit;

“Laws of Ghana” means all Laws that apply in the Republic of Ghana;

“Main Meter” is the meter installed by the Purchaser or Electricity Transmission Utility which measures Energy Output for the purposes of this Agreement;

“Metering Equipment” includes meters, time switches, measurement transformers, metering protection and isolation equipment, circuitry and their associated data storage and data communications equipment and wiring which are part of the active energy and reactive energy measuring equipment at or related to a metering point;

“Month” means a calendar month;

“MW” means a megawatt or 1000 kilowatts or 1,000,000 watts;

“MWh” means one (1) megawatt hour;

“Prudent Utility Practice” means 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;

“Purchaser” has the definition given to that term in the Preamble to this Agreement;

"Reactive Power" is the product of voltage and current and the sine of the phase angle between them measured in units of volt-amperes reactive and standard multiples thereof.;

“Scheduled Outage” means an outage by the Wholesale Supplier wherein it does not supply energy output that is notified in accordance with clause 64;

“Tender Process” means the procurement process through which the Wholesale Supplier was engaged under this Agreement;

"Term of Agreement" means the period specified in Schedule 1;

“Transmission System” means an interconnected group of electric transmission lines and associated equipment for moving or transferring electric energy in bulk between points of supply and points at which it is transformed for delivery over the distribution system lines to consumers, or to other electric systems;

"Transmission System Constraint" means a period of time in which conditions on the Transmission System are such that the supply of Energy Output by Wholesale Supplier is impaired but where the event does not constitute a Transmission System Outage;

"Transmission System Outage" means a period of time in which the Transmission System is completely unavailable for the supply of Energy Output by Wholesale Supplier;

“Unscheduled Outage” means an outage by the Wholesale Supplier wherein it does not supply Energy Output other than a Scheduled Outage;

“wholesale supplier” has the definition given to that term in the Preamble to this Agreement.

CONDITIONS TO EFFECTIVE DATE

Wholesale Supplier Conditions

3 The Wholesale Supplier must:

- (a) obtain from the relevant regulatory or government bodies, all required Consents, Clearances and Permits necessary for the construction of the Facility;
- (b) provide the Purchaser with duly executed certified true copies of the incorporation documents of the Wholesale Supplier;
- (c) provide the Purchaser with certified true copies of resolutions adopted by those charged with the governance and management of the Wholesale Supplier, authorising the execution, delivery and performance of this Agreement;
- (d) execute the Performance Bond (as that term is defined in Schedule 1); and
- (e) enter into a Connection Agreement with the Purchase or Electricity Transmission Utility responsible for the operation of the Interconnection Facilities with which the Facility interconnects at the Delivery Point with the Distribution or Transmission System
- (f) provide the Purchaser with a certificate from a reputable insurance advisor confirming that the insurance taken out by the Wholesale Supplier is typical and reasonable for a project of such a nature in accordance with normal industry practice and having regard to the nature of the insurance market at such time

Purchaser Conditions

4 The Purchaser must:

- (a) provide the Wholesale Supplier with certified true copies of the incorporation documents of the Purchaser;
- (b) provide the Wholesale Supplier with certified true copies of resolutions adopted by those charged with the governance and management of the Purchaser, authorising the execution, delivery and performance of this Agreement.

5 Either party may by written notice waive any of the Conditions that are obligations of the other party

Failure of Wholesale Supplier to achieve Effective Date

6 Where the Effective Date does not occur on or before the Long Stop Effective Date, either party may terminate this Agreement, with the result that the Purchaser is entitled to claim from the Wholesale Supplier any direct loss, cost or expense incurred as a result of the Effective Date not occurring.

7 The Purchaser may not exercise the right under clause 6 if the Purchaser:

- a) has not provided the documents stated in clause 4 in the required form; and
- b) has not used reasonable endeavours to assist the Wholesale Supplier in satisfying the Conditions.

CONNECTION AGREEMENT

8 The Wholesale Supplier shall complete the construction of the Connection Facilities and any required new transmission line and associated equipment prior to the Scheduled Commercial Operation Date.

9 All cost associated with the design, procurement, construction, installation, operation and maintenance of the Interconnection Facilities shall be paid by Wholesale Supplier in accordance with the Connection Agreement provisions.

10 Any future changes, relocations, additions or modifications whatsoever to the Interconnection Facilities, or any rearrangements or reinforcement of the Interconnection Facilities that may become necessary to meet the changing requirements or conditions solely required due to the operation of the Facility, shall be the Wholesale Supplier's responsibility and at its expense.

CONSTRUCTION & DEVELOPMENT OF THE FACILITY

Wholesale Supplier's Obligations

11 A Wholesale Supplier shall undertake to:

- (a) construct and develop the Facility at its own cost;

- (b) obtain all Consents, Clearances and Permits and maintain all Consents, Clearances and Permits in full force and effect during the Term of this Agreement;
- (c) design, construct, erect, commission, complete and test the Facility in accordance with the Distribution/Transmission Code, the terms and conditions of this Agreement and Prudent Utility Practices;
- (d) connect the Facility switchyard with the Interconnection Facilities at the Delivery Point;
- (e) commence supply of power up to the Contracted Capacity to the Purchaser no later than the Scheduled Commercial Operation Date and continue the supply of power throughout the Term of this Agreement; and
- (f) own the Facility throughout the Term of this Agreement free and clear of encumbrances, except those expressly permitted by the Purchaser (such permission not be unreasonably withheld).

12 The Wholesale Supplier shall be required to share with the Purchaser all information with regard to the Interconnection Facilities as is reasonably necessary to enable it to design, install and operate all interconnection plant and apparatus on the Wholesale Supplier's side of the Delivery Point to enable delivery of electricity at the Delivery Point.

ACCEPTANCE/PERFORMANCE TEST

13 Prior to synchronisation of the Facility, the Wholesale Supplier shall be required to get the Facility certified for the requisite acceptance/performance test as may be laid down by the Purchaser or Transmission Utility.

PURCHASER'S VERIFICATION

14 The Wholesale Supplier shall be further required to provide entry to the site of the Facility in reasonable times to the Purchaser or Purchaser's representative for inspection and verification of the works being carried out by the Wholesale Supplier at the site of the Facility.

SYNCHRONISATION OF FACILITY TO THE DISTRIBUTION/ TRANSMISSION SYSTEM

15 The Wholesale Supplier shall give the Purchaser at least [60] days advanced preliminary written notice and at least [30] days advanced final written notice, of the date on which it intends to synchronise the Facility to the Distribution/Transmission system.

16 The Facility shall be synchronised to the Distribution/Transmission system when it meets all the connection conditions prescribed in the National Electricity Distribution Code or National Electricity Grid Code for synchronisation to the Distribution/Transmission system.

17 The synchronisation equipment shall be installed by the Wholesale Supplier at its Facility at its own cost.

18 The Wholesale Supplier shall immediately after each synchronisation inform the Distribution Utility or Electricity Transmission Utility in accordance with the National Electricity Distribution Code or National Electricity Grid Code.

COMMISSIONING OF FACILITY

19 The Wholesale Supplier must achieve Commercial Operation by the Scheduled Commercial Operation Date.

20 Where Commercial Operation does not occur on or before the Scheduled Commercial Operation Date, and that failure is caused by Wholesale Supplier, then for each month of delay (and limited to three months in total) the Wholesale Supplier must compensate Purchaser for the expected Energy Output the Facility would have provided for that month of operations at the Energy Output Rate. The expected generation for the month will be calculated using the Expected Daily Generation set out in Schedule 1.

21 If Commercial Operation is not achieved within three months of the Scheduled Commercial Operation Date, the Purchaser is entitled to terminate the Agreement.

22 The commissioning tests shall be carried out in accordance with the procedures outlined in Schedule 2.

PAYMENT OF TAXES

23 The Purchaser shall pay all applicable Government taxes/levies legally imposed on the sales of Energy Output.

METERING SYSTEM

24 The Wholesale Supplier and Purchaser or Electricity Transmission Utility shall follow and be bound by the Distribution/Transmission Code for installation, testing, calibration, reading of meters and all matters incidental thereto.

Ownership of Meters

25 The Distribution Utility or Electricity Transmission Utility receiving Energy Output from the Wholesale Supplier shall have responsibility for the provision and installation of the metering facility (including the Main Meter) at the Delivery Point.

26 The Wholesale Supplier or Bulk Customer shall have the right for the provision and installation of Check Meters at appropriate locations at their own expense.

27 Main metering data shall be used as the primary source of metering data for billing purposes.

28 Check metering data shall be used for validation, substitution in the event of the failure of the Main Meter and account estimation of revenue metering data.

Meters facility

29 The metering facility shall:

- (a) measure the Energy Output delivered at the Delivery Point;
- (b) comply with the prescribed standards and equipment shall be manufactured to prescribed and internationally recognized quality standards;
- (c) be:
 - (i) secure,
 - (ii) registered with the Distribution Utility or Electricity Transmission Utility, and
 - (iii) capable of providing data for electronic transfer to a metering database maintained by the Distribution Utility or Electricity Transmission Utility;

- (d) be capable of maintaining historical data in the metering database for thirteen months in accessible format and for six years in archive;
- (e) be capable of communicating from the site of the metering facility to the metering database located at any site that may be specified by the Distribution Utility or Electricity Transmission Utility;
- (f) have the capability of electronic data transfer.
- (g) include facilities for storing metering data for at least thirty-five days; and
- (h) measure and locally display at least the kW, kWh, kVar, kVarh and kVA with features for pulse output.

30 The Wholesale Supplier shall be entitled to access the metering database in respect of its own production, demand or consumption of power and energy;

31 Energy drawn from the Distribution or Transmission system and consumed at the Facility shall be measured by using a revenue meter and the Wholesale Supplier shall pay for this energy.

Meter testing, calibration and maintenance

32 The Purchaser or Electricity Transmission Utility and Wholesale Supplier shall test and seal the meters at least once a year and recalibrate or replace such meters if found to be outside the acceptable accuracy stipulated in the Grid Code.

33 The Purchaser or Electricity Transmission Utility shall notify the Wholesale Supplier when the Main or Check meters are due to be tested.

34 Suitable isolation facilities shall be provided to facilitate testing and calibration of the metering facility.

35 The Wholesale Supplier may request the Distribution Utility or Electricity Transmission Utility to arrange for a test of any Metering Equipment where it has cause to believe that the performance of the equipment is not within the accuracy limits specified in the Grid Code. The requested test shall be carried out by the Distribution Utility or Electricity Transmission Utility or an independent party approved by the parties and may be witnessed by concerned parties if they so wish.

36 Where the Metering Equipment fails the requested test, the Distribution Utility or Electricity Transmission Utility shall pay for the cost of the test; but where the meter equipment passes the test, the Wholesale Supplier who requested for the test shall pay for the cost of the test.

37 Maintenance of Metering Equipment shall only be performed at pre-appointed times after notice has been given to all interested parties.

38 Maintenance of the Metering Equipment at the Delivery Point shall be performed by the Distribution Utility or Electricity Transmission Utility for a Main Meter and by the Wholesale Supplier for a Check Meter in the presence of the other party who may have elected to be present.

39 All test results, maintenance programs and sealing records shall be kept for the life of the equipment. The equipment data and test records shall be made available to authorised parties.

40 Upon the Wholesale Supplier or the Distribution Utility or Electricity Transmission Utility observing that a meter may not be operating properly, each affected entity shall be notified, as soon as reasonably practicable of the existence of a fault and the length of time the fault may have existed.

41 The meter owner shall ensure that repairs are made to the metering facility as soon as reasonably practicable after becoming aware of the fault or malfunction.

42 Until any Metering Equipment affected by an outage, defect or malfunction is repaired, adjusted or replaced, the Wholesale Supplier and the Purchaser or Electricity Transmission Utility shall ensure that suitable proxy data is obtained or estimated and recorded for the period of time the fault condition persists.

On-Site meter reading

43 Where on-site meter reading is necessary, it shall be witnessed by authorised representatives of all concerned parties on the agreed date and time and as stipulated in the Connection Agreement.

RECORDS

44 Each Party shall keep complete and accurate records of all other data required by each of them for the purposes of proper administration of this Agreement and the operation of the Facility. Such other records and data shall

in the case of the Wholesale Supplier include an accurate and up-to-date operating log at the Facility with records of:

- (a) hourly logs of real and reactive power generation, frequency, transformer tap position, bus voltage(s) and any other data mutually agreed.
- (b) any unusual conditions found during operation/inspections.
- (c) chart and printout of event loggers, if any, for system disturbances/outages.
- (d) relevant renewable energy resource data and other weather parameter.

UNDERTAKINGS OF PARTIES

45 The Wholesale Supplier undertakes to:

- (a) acquire and maintain at its expense, all Consents, Clearances and Permits required from time to time by all regulatory/ statutory authorities in order to enable it to perform its obligations under this Agreement;
- (b) be responsible for all the technical, logistical, environmental, commercial and any other matter whatsoever relevant to the supply of Energy Output required under this Agreement;
- (c) maintain Energy Output supplied within the limits in accordance with the Distribution/Transmission Code and any amendment thereto;
- (d) deliver, at the Point of Delivery, alternating three phase power up to the contracted capacity, having frequency of 50 Hertz and at the agreed nominal voltage;
- (e) provide voltage and frequency control equipment to ensure smooth interconnection with the Distribution/Transmission system in accordance with the Distribution/Transmission Code and any amendment thereto; and
- (f) comply with standards of performance prescribed by the Energy Commission under the Renewable Energy Act and Energy Commission Act.

46 The Purchaser undertakes to:

- (a) contract with the Wholesale Supplier to take the Energy Output at the Delivery Point in a safe manner, in accordance with Prudent Utility Practices and the Distribution/ Transmission Code;
- (b) take Energy Output at all times in such a 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 5%. If at any time the said difference exceeds 5%, the Purchaser shall so adjust its load as to comply with the requirements of this clause;
- (c) pay compensation to the Wholesale Supplier when the use of the power is in such a manner that the power factor is less than 0.90; and
- (d) ensure that the harmonic content of the current resulting from the design of the network or due to the operation of the network does not exceed 5% of the magnitude of the total current.

INSURANCE

47 The Wholesale Supplier at its own cost and expense shall obtain and maintain in full force and effect all typical and reasonable insurance policies with a level of cover being generally taken by international power producers acting in accordance with Prudent Utility Practices.

48 The Wholesale Supplier shall provide to Purchaser copies of all policies obtained by it and evidence that the premiums payable thereunder have been paid, including the normal waivers of subrogation, and a representation from a reputable, independent insurance broker that such coverages conform to Prudent Utility Practices:

- (a) prior to the Effective Date;
- (b) prior to Commercial Operation Date;
- (c) annually prior to each anniversary of Commercial Operation Date; and
- (d) each time insurance coverages are changed in any respect.

49 The Wholesale Supplier shall on reasonable notice, provide access to Purchaser or its representatives to its offices during office hours to inspect the original policies.

50 If the Wholesale Supplier fails to procure or maintain any insurance which is required in accordance with clause 47, Purchaser shall have the right to procure such insurance at the Wholesale Supplier's expense, provided that the Purchaser shall give [20] days prior notice to the Wholesale Supplier of its intention to exercise such rights, unless such notice arises from the Wholesale Supplier's non-payment of premiums for existing insurance, in which case Purchaser shall provide at least [5] days prior notice of such intention.

51 If Wholesale Supplier fails to reimburse the Purchaser for any such premiums within [7] days of being notified to do so, the Purchaser shall be entitled to payment of such amount by deducting such amount or amounts with interest from Invoices for Energy Output due in the immediately following periods until the amount of such premiums has been fully repaid.

PERFORMANCE BOND

52 The Purchaser may utilise the Performance Bond for any amounts owing from Wholesale Supplier under this Agreement in respect of the Wholesale Supplier's obligations prior to the achievement of Commercial Operation.

53 The Performance Bond is released upon the Wholesale Supplier achieving Commercial Operation (to the extent not already called upon by the Purchaser).

LANGUAGE

54 All agreements, correspondence and communications between the Parties relating to this Agreement and all other documentation to be prepared and supplied under the Agreement shall be written in English, and the Agreement shall be construed and interpreted in accordance with English language.

55 If any of the agreements, correspondence, communications or documents is prepared in any language other than English, the English translation of such agreements, correspondence, communications or documents shall prevail in matters of interpretation.

Negotiated Provisions

TERM OF AGREEMENT

56 This Agreement shall remain in full force and effect until the end of the Term of the Agreement (defined in Schedule 1).

ENVIRONMENTAL CREDITS

Obtaining Credits

57 The Wholesale Supplier must use its reasonable efforts to obtain Environmental Credits associated with the energy generated by the Facility and shall undertake all activities as may be necessary to apply for and obtain any Environmental Credits.

Information Sharing

58 The Purchaser undertakes to:

- (a) co-operate with the Wholesale Supplier and its contractor (as the case may be), and to provide such information and assistance as may be reasonably requested of Purchaser in relation to the application for and obtaining Environmental Credits; and
- (b) issue and execute all documents at the Wholesale Supplier's cost which may be required in order for the Wholesale Supplier to procure full benefits from the Environmental Credits.

Ownership of the Credits

59 The Parties agree that the Wholesale Supplier is the sole and exclusive owner of all Environmental Credits (if any) derived or generated as a result of the Facility and shall have all rights to trade, sell or otherwise dispose of, in its sole discretion, any and all Environmental Credits associated with the energy generated by the Facility, and further agree, for the avoidance of doubt, that Purchaser will have no rights, obligations or liabilities in respect of any Environmental Credits earned by the Wholesale Supplier or deficiency thereof for the duration of this Agreement.

Pass-through of certain Benefits

60 The Wholesale Supplier agrees that half of the net benefit derived by the Wholesale Supplier from the Environmental Credits shall be provided to Purchaser in accordance with Public Utilities Regulatory Commission's formula.

SALE AND PURCHASE OF ENERGY OUTPUT

Obligations to Sell and Purchase

61 The parties agree that:

- (a) beginning on the Commercial Operation Date, the Wholesale Supplier shall operate the facility in accordance with the Distribution/Transmission Code and prudent industry practice and generate and deliver energy output at the Delivery Point to the Purchaser who accepts and purchases that energy output.
- (b) both the Facility's electrical production Capacity Attributes and the renewable energy output associated Environmental Attributes are excluded and remains outside the subject of this Agreement. Such Attributes shall be the property of the Wholesale Supplier and Wholesale Supplier keeps the title and interest of these aforesaid Attributes unless otherwise decided by the Wholesale Supplier.
- (c) Ancillary Services shall not be initially provided to Purchaser under this Agreement but may be agreed separately by the parties.

62 If the Parties agree that because of material changes in circumstances not contemplated by the parties any of the provisions hereof impose an inequity or undue burden upon the other Party, such that the balance of benefits and equities reasonably contemplated by the Parties when they entered into this Agreement have been materially altered to the disadvantage of one Party, the Parties must in good faith meet and attempt to agree amendments or supplements to this Agreement (such as the Energy Output Rate).

Responsibility for Transmission System Outages and Transmission System Constraints

63 On and from the Commercial Operation Date until the Expiry Date, if the Wholesale Supplier could have generated energy output but because of a Transmission System Outage or because Purchaser breached this Agreement the Wholesale Supplier was unable to do so, Purchaser will pay Wholesale Supplier for the Deemed Generated Energy for the period of the inability to deliver energy output at the Energy Output Rate in this Agreement. Any such amounts payable will be invoiced by the Wholesale Supplier in the same way as energy output. This clause does not apply to a Transmission System Constraint, and this clause does not apply to the extent the Transmission System Outage was caused by a Force Majeure Event.

64 The Wholesale Supplier must provide at least [...] days' notice to Purchaser of any Scheduled Outage.

Billing

65 The Wholesale Supplier must prepare and submit to Purchaser Billing Period Invoice not later than [15] days following any month during which metered Energy Output is supplied to the Purchaser.

66 The Billing Period Invoice must be sent to Purchaser initially by fax or e-mail followed by a hard copy.

Payment of Monthly Bill

67 The Purchaser must:

- (a) make payments not later than [15] days following the receipt of the Billing Period Invoice, by direct bank transfer to the nominated bank account given to the Purchaser by the Wholesale Supplier in this Agreement.
- (b) provide an escrow account or a suitable form of payment guarantee in an amount equivalent to [2] months bill's proceeds.

68 The Purchaser is entitled to set-off any amounts owing from the Wholesale Supplier to the Purchaser against any amounts owing for Energy Output.

Late Payment Surcharge

69 Any amount due in arrears, except to the extent in dispute, bears interest at the Interest Rate until the date of payment.

Billing Error

70 An error in the amounts billed in any invoice submitted by the Wholesale Supplier will be adjusted in the next bill, provided that such a claim has been made by the Wholesale Supplier or Purchaser as applicable.

Billing Dispute

71 Where the Purchaser does not dispute a Monthly Bill raised by the Wholesale Supplier within [3] months of receipt of the bill, such Bill shall be taken as conclusive.

72 Amounts withheld, once established to be legitimately due for payment must be paid with interest at the Interest Rate from the date the amount was withheld until the actual date of payment.

73 The Wholesale Supplier must respond within [5] business days clarifying or justifying in writing the disputed item.

74 After receipt of the Wholesale Supplier's written clarification or justification of the disputed items, the Purchaser must notify the Wholesale Supplier of its agreement or disagreement with such clarification or justification.

75 Where the Purchaser agrees therewith, the Wholesale Supplier may invoice the items agreed in a new invoice or adjust the following invoice.

76 Where the Purchaser disagrees therewith, authorised representative(s) of the Purchaser and Wholesale Supplier must meet and make best endeavours to amicably resolve such dispute within [30] days of receipt of the bill disagreement notice.

77 Where the Parties do not amicably resolve the Dispute within the notice period in clause 76, the dispute must be resolved in accordance with the dispute resolution provisions in this Agreement.

WARRANTIES OF THE PARTIES

78 Each Party warrants that:

- (a) it is complying with all relevant laws, and will provide any information required (acting reasonably) by the other party as evidence of this.
- (b) there is no action, suits or proceedings existing, pending or to its knowledge, threatened against or affecting it before any court or administrative body or arbitral tribunal which might materially and adversely affect its ability to perform its obligation under this Agreement.
- (c) if any action, suit or proceedings arises that would be a breach of clause 78(a), the relevant party will as soon as reasonably practicable disclose that fact to the other party.

- (d) all necessary action has been taken to authorise the execution, delivery and performance of this Agreement and such execution, delivery and performance shall not contravene any provision of, or constitute a default under, any other agreement or instrument to which it is a party or by which it or its property may be bound.
- (e) all the obligations contained herein constitute unconditional direct obligations of that party
- (f) Related solely to the Wholesale Supplier, all information provided in written form as part of the Tender Process is accurate (including by omission) in all material respects.

EVENTS OF DEFAULT

79 The Wholesale Supplier commits a Wholesale Supplier Event of Default if the Wholesale Supplier:

- (a) or its employee or agent wilfully alters or tampers with the Interconnection Facilities without prior written consent of Purchaser or Electricity Transmission Utility, except in situations where such actions are taken to prevent immediate injury, death or damage to property and the Wholesale Supplier uses its best efforts to provide Purchaser and Electricity Transmission Utility with advance notice of the need for such actions.
- (b) abandons the operation of the Facility after the Commercial Operation Date.
- (c) assigns any of its rights and/ or obligations under this Agreement without the Purchaser's written consent (not to be unreasonably withheld). For the purposes of this clause "assigns" includes a change in the corporate control of the Wholesale Supplier
- (d) is, or is in Purchaser's opinion (acting reasonably) likely to be, adjudged bankrupt, suffers dissolution, or is liquidated (or any similar event).
- (e) repudiates this Agreement and does not rectify such breach even within a period of [30] days from a notice from the Purchaser in this regard.
- (f) fails to make an undisputed payment when due and non-payment continues for more than [60] days.

- (g) wilfully tampers with the Metering Equipment.
- (h) does not comply with the Distribution/Transmission Code in a way that is material and persistent.
- (i) makes any statement, representation or warranty in this Agreement proving to be incorrect, in any material respect, when made or when reaffirmed and such incorrect statement, representation or warranty having a material adverse effect on the Wholesale Supplier's ability to perform its obligations under this Agreement or having a material adverse effect on the rights or obligations of Purchaser hereunder.
- (j) breaches any law or Related Agreement which, in the reasonable opinion of the Purchaser, undermines the Wholesale Supplier's ability to perform its obligations under this Agreement (including in relation to reputational impacts on Purchaser). For the purposes of this clause, 'Related Agreement' means: *[insert related agreements]*.
- (g) makes or attempts to make any improper payments in relation to the Tender Process, or obtaining, retaining or amending this Agreement.

80 The Purchaser commits a Purchaser Event of Default if the Purchaser:

- (a) fails to pay an invoice (unless disputed in good faith) for Energy Output purchased within the time period for payment, and this failure is not rectified within [60] days;
- (b) wilfully tampers with the Metering Equipment;
- (c) repudiates this Agreement and does not rectify such breach within a period of [30] days from a notice from the Wholesale Supplier in this regard;
- (d) makes any statement, representation or warranty in this Agreement proving to be incorrect, in any material respect, when made or when reaffirmed and such incorrect statement, representation or warranty having a material adverse effect on the Purchaser's ability to perform its obligations under this Agreement.

TERMINATION

Termination by Wholesale Supplier

81 Separate from the termination rights existing under clauses 6 and 20, if a Purchaser Event of Default occurs:

- (a) Wholesale Supplier may give written notice to Purchaser of that fact, requiring Purchaser to remedy the default within [40] business days, and requiring Purchaser to provide a plan for remedying the default;
- (b) If Purchaser does not remedy that default within the time period specified in clause 81(a), Wholesale Supplier shall be entitled to immediately terminate this Agreement;
- (c) In the event of such termination, Purchaser shall pay Wholesale Supplier (and such payment shall constitute full and final settlement of any claim Wholesale Supplier has against Purchaser under or in connection with this Agreement):
 - i. any outstanding payments for Energy Output to the date of termination;
 - ii. an amount equal to the aggregate of all reasonable costs Wholesale Supplier incurred in connection with this Agreement, including the cost of building the Facility, and excluding all costs related to the Tender Process, less any depreciation on the Facility and other such assets accruing up to the date of termination;
 - iii. an amount sufficient to provide Generator with the Return on Equity set out in Schedule 1 for the period from the date of termination until the date that is 1 year from the date of termination, as certified by an independent auditor jointly appointed by the parties,

and upon such payments being made, the Facility shall become the property of Purchaser. Any amounts paid late shall bear interest at the Interest Rate set out in Schedule 1. For clarity, any other right of termination that Wholesale Supplier may have that arises after Commercial Operation is achieved may only be exercised as if it were a Purchaser Event of Default in accordance with the foregoing provisions.

Termination by Purchaser

82 Separate from the termination rights existing under clauses 6 and 20, if a Wholesale Supplier Event of Default occurs:

- (a) Purchaser may give written notice to Wholesale Supplier of that fact, requiring Wholesale Supplier to remedy the default within 40 business days, and requiring Wholesale Supplier to provide a plan for remedying the default;
- (b) During the period set out in clause 81(a) the parties will co-operate in good faith and use reasonable endeavors to remedy the default
- (c) If Wholesale Supplier does not remedy that default within 40 business days after the giving of notice under clause 81(a), Purchaser shall be entitled to immediately terminate this Agreement;
- (d) In the event of such termination, Purchaser shall pay Wholesale Supplier (and such payment shall constitute full and final settlement of any claim Purchaser has against Wholesale Supplier under or in connection with this Agreement):
 - i. any outstanding payments for Energy Output to the date of termination;
 - ii. an amount equal to 85 percent of the aggregate of all reasonable costs Wholesale Supplier incurred in connection with this Agreement, including the cost of building the Facility (to the extent such costs have been incurred), and excluding all costs related to the Tender Process, less any depreciation on the Facility and other such assets accruing up to the date of termination,

and upon such payments being made, the Facility shall become the property of Purchaser. Any amounts paid late shall bear interest at the Interest Rate set out in Schedule 1. For clarity, any other right of termination that Purchaser may have that arises after Commercial Operation is achieved may only be exercised as if it were a Wholesale Supplier Event of Default in accordance with the foregoing provisions.

NOTIFICATION AND REPORTS

83 If a breach occurs, the defaulting party must notify the other party as soon as reasonably practicable, after which the defaulting Party must take immediate measures to remedy the default.

84 The Wholesale Supplier must as soon as reasonably possible notify the Purchaser if an Unscheduled Outage occurs or any other event occurs which a prudent generator would notify the Purchaser of. If the Purchaser requests, the Wholesale Supplier will provide further information (such as in a report) on the matter reported within the time requested by Purchaser (acting reasonably).

FORCE MAJEURE

Definition of Force Majeure

85 For the purposes of this Agreement, “Force Majeure” means any circumstance, event or condition or combination thereof beyond the reasonable control, directly or indirectly, of the Affected Party that materially and adversely affects that party’s ability to perform its obligations but only to the extent that:

- (e) such circumstance, event or condition, despite the exercise of diligence, cannot be prevented, avoided or overcome by the Affected Party.
- (f) such circumstance, event or condition prevents the performance by the Affected Party of its obligations under this Agreement;
- (g) the Affected Party has taken all reasonable precautions, due care and measures to prevent, avoid or overcome the effect of such circumstance, event or condition on its ability to perform its obligations under this Agreement and to mitigate its consequences;
- (h) such circumstance, event or condition is not the direct or indirect result of a breach or failure by the Affected Party to perform any of its obligations under this Agreement;
- (i) such circumstance, event or condition is without fault or negligence of the Affected Party; and
- (j) it shall include the following events or circumstances to the extent that they satisfy the preceding definition:
 - (i) any act of war, invasion, armed conflict or act of vandalism, military or other usurpation of power, blockade, embargo, revolution, riot, strike, industrial dispute, insurrection, civil commotion, sabotage or act of terrorism;

- (ii) an act of God including but not limited to lightning, earthquakes, volcanic activity, floods or storms;
- (iii) disaster, fire, explosion, epidemics, plagues or quarantines; and
- (iv) any political event.

Force Majeure Exclusion

86 Events or circumstances which may constitute Force Majeure shall not include:

- (a) late delivery of machinery or other materials or a delay in the performance of any contractor or supplier (except where such late delivery or delay is itself attributable to a Force Majeure event);
- (b) normal wear and tear or random flaws in materials and equipment or breakdown in equipment;
- (c) hazards, including but not limited to lightning or the growth of trees which can be reasonably anticipated in normal utility operations and planned for as part of Prudent Utility Practice; and
- (d) any event which
 - (i) is caused by the gross negligence or wilful misconduct of a Party, Party's agents or employees, and
 - (ii) a diligent Party could reasonably have been expected to take into account, avoid or overcome in the carrying out of its obligations.

Duty to Report Force Majeure

87 The Affected Party must 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.

88 Any notice pursuant to clause 87 shall set out full particulars of:

- (a) the nature of the events or circumstances constituting Force Majeure which is the subject of any claim for relief under this Agreement;

(b) the effect which such Force Majeure is having on the Affected Party's performance of its obligations under this Agreement; and

(c) the measures which the Affected Party is taking, or proposes to take, to mitigate the impact of Force Majeure.

89 For so long as the Affected Party continues to claim to be affected by Force Majeure, it shall provide the other Party with progress reports describing:

(a) the measures which the Affected Party is taking, or proposes to take, to mitigate the impact of Force Majeure; and

(b) such other information as the other Party may reasonably request about the Affected Party's claim.

Duty to Mitigate

90 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 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.

Available Relief for a Force Majeure Event

91 Neither Party to this Agreement shall be liable for the consequences of any failure to perform or default in performing its obligation under this Agreement if that failure is caused by Force Majeure.

92 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 Force Majeure continues.

93 Once a Force Majeure event ends, the parties will resume the performance of their obligations under this Agreement.

Termination for Continuing Force Majeure Event

94 Either party may terminate this Agreement if a Force Majeure event occurs and continues for longer than [3 months]. No payments will be required from Purchaser to Wholesale Supplier as a result of termination under this clause.

LIMITATION ON LIABILITY

95 Each party's liability per breach under this Agreement is limited to the Limitation of Liability amounts set out in Schedule 1.

96 Neither party is liable to the other for any indirect or consequential losses.

97 Each party must, to the extent reasonably possible, mitigate the losses they incur as a result of the other party breaching this Agreement.

98 If either party is found liable to the other (whether in contract, tort or otherwise), and the claiming party has contributed to the loss or damage, the amount of the liable party's liability to the claiming party shall be reduced to the extent that the claiming party has contributed to the loss or damage.

SETTLEMENT OF DISPUTES

99 If any dispute arises between the Parties in connection with this Agreement, the Parties must use their best efforts to resolve the dispute.

100 If the dispute is not settled within [30] days after one Party declares in writing to the other the existence of the dispute, any of the Parties may declare in writing its intention to take the matter to arbitration.

Arbitration

101 Dispute resolution shall be by arbitration, in accordance with the Alternative Dispute Resolution Act, 2010 (Act 798) and the Laws of Ghana.

102 Arbitration will be carried out by [3] arbitrators, unless the Parties otherwise agree. In composing the arbitral panel, each Party nominates [1] arbitrator, and the [2] arbitrators so appointed together appoint a third arbitrator.

AMENDMENT

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

WAIVERS

104 Any waiver by the Wholesale Supplier or Purchaser is be limited to the particular instance and is not be deemed to be a waiver of 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.

105 No delay or forbearance by either Party in exercising any right, power, privilege or remedy provided by Law or under this Agreement constitutes a waiver of such right, power, privilege or remedy unless agreed in writing.

106 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.

CONFIDENTIAL INFORMATION

107 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 Facility 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 arbitration in accordance with clauses 101 and 102 must be treated as confidential and may not be disclosed by either Party to any third party without the prior written consent of the other Party.

108 Clause 107 does not apply to:

- (a) The Energy Output Rate, Inflating Portion of the Energy Output Rate, Inflation Rate and the Currency
- (b) Confidential Information which is in the public domain 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;

109 A Party may disclose Confidential Information:

- (c) as required by law or regulation;
- (d) at the request of a Governmental Authority;
- (e) at the request of a lender in connection with providing a loan to the Wholesale Supplier or the Purchaser as the case may be;
- (f) prior to the Effective Date, was already known by the receiving Party;
- (c) if it became known to the receiving Party through a source lawfully in possession of the information and owing no obligation of confidentiality under this Agreement;
- (d) to shareholders, agents, advisers, directors, employees and contractors whose duties reasonably require such disclosure; or
- (e) to an arbitral panel appointed in accordance with this Agreement.

110 Notwithstanding any other provision in this Agreement, the restrictions on the disclosure of Confidential Information continue in force for [3] years after the expiration or termination of this Agreement.

111 The Wholesale Supplier and the Purchaser acknowledge and agree that the disclosure of confidential information may cause serious and irreparable harm to the non-disclosing Party which could not adequately be compensated for in damages and in the event of a breach, or an anticipated breach, by a Party of any of such provisions such Party hereby consents to an injunction being issued against it restraining it from such anticipated breach or any further breach of such provision, as applicable, but such action will not be construed as limiting the remedies available to the other party in the event of such breach or anticipated breach.

NOTICES

112 All notices or other communications which are required to be given under this Agreement must be in writing.

113 If to the Wholesale Supplier, all notices or other communications which are required must be delivered by email, by hand, by registered mail, fax or any other method duly acknowledged to the address below:

Address:
Attention:

Email:
Fax No.:
Telephone No.:

114 If to Purchaser, all notices or communications must be delivered by email, by hand, by registered mail, fax or any other mode duly acknowledged to the address below:

Address:
Attention
Email:
Fax No.:
Telephone No.:

115 All notices are deemed validly delivered upon receipt evidenced by an acknowledgement of the recipient, unless the Party delivering the notice can prove in case of delivery through the registered post that the recipient refused to acknowledge the receipt of the notice despite efforts of the postal authorities.

116 Any Party may by notice of at least [15] days to the other Party change the address and/or addresses to which such notices and communications to it are to be delivered or mailed.

SEVERABILITY

117 If any provision of this Agreement is declared or found to be illegal, unenforceable or void, it does not affect the legality, validity or enforceability of the other provisions of this Agreement.

RELATIONSHIP OF THE PARTIES

118 It is expressly understood that the Wholesale Supplier, on the one hand and the Purchaser 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 interests. Neither the Purchaser, on the one hand, nor the Wholesale Supplier, on the other hand, 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.

GOVERNING LAW

119 The governing law of this Agreement is the laws of Ghana, and the parties submit to the exclusive jurisdiction of the Courts of Ghana.

120 ***[Insert Purchaser’s indemnities for changes in specific areas of law, if applicable]***

IN WITNESS WHEREOF, the Parties or their duly authorised representatives have executed this Agreement on the day, month and year first mentioned above.

WHOLESALE SUPPLIERS is hereto signed in

Presence of:

.....

MANAGING DIRECTOR

WITNESS

PURCHASER is hereto signed in

Presence of:

.....

MANAGING DIRECTOR

WITNESS

Schedule 1

KEY TERMS AND CONDITIONS

The Facility

1. **Facility:** the [type of generation] generation facility located at [location] in [District/Region], with the Installed Capacity set out in clause 2 in this Schedule and the Technical Specifications set out in clause 3 of this Schedule.
2. **Installed Capacity:** [...] MW, or the approved name plate capacity of all the units of the facility (reckoned at the generator terminals), approved by the appropriate commission from time to time, if different from the aforementioned capacity.
3. **Technical Specifications:**
 - (a) Reactive power:
 - (b) Maximum power per day output: [...] kVA;
 - (c) [insert any other appropriate specifications].

The Energy Output Rate

4. **Energy Output Rate:** [Insert tariff rate] inclusive of local indirect taxes and [Insert tariff rate] exclusive of local indirect taxes per kWh in the Currency specified in clause 8 of this Schedule and subject to Clause 5. The Energy Output Rate will increase in each year after the first year of the Term in accordance with Clause 6 of this Schedule.
5. **Taxes:** Any local indirect taxes chargeable in respect of the services provided by Wholesale Supplier to Purchaser under this Agreement shall be reimbursed by Purchaser to the Wholesale Supplier based on the Energy Output Rate specified in Clause 4 of this Schedule.
6. **Inflating Portion of Energy Output Rate:** The Inflating Proportion of the Energy Output Rate will be [percentage of tariff related to costs subject to inflation], and the Inflating Proportion will increase [annually] at the Inflation Rate.
7. **Inflation Rate:** [Insert reference rate].
8. **Currency:** [Ghana Cedis].

Term and Key Milestones

9. **Term of agreement:** [25] years.

10. **Long Stop Effective Date:** the Conditions must be satisfied on or before [insert date].
11. **Scheduled Commercial Operation Date:** the Facility must achieve Commercial Operation by [insert date].
12. **Performance Bond:** A performance bond of [insert percentage] of the total cost of the Facility.

Liability, late payment interest rates and termination compensation

13. **Expected Daily Generation:** [...] MWh.
14. **Limitation of liability** (per breach):
 - (d) Wholesale Supplier: [Insert]
 - (e) Purchaser: [Insert].
15. **Interest Rate:** The Interest Rate (for late payments) will be [insert interest rate].
16. **Return on Equity** for the purposes of termination payments is: **[Insert percentage]**.

SCHEDULE 2

TESTING AND COMMISSIONING OF FACILITY

Test and Commissioning procedure

17. Upon completion of construction of the Facility, it shall be subjected to Testing and Commissioning at the expense of the Wholesale Supplier.
18. The procedure for any tests which may require, result in or involve a temporary connection to the Distribution or Transmission system shall be jointly agreed, scheduled and performed by the Wholesale Supplier and the Purchaser or Electricity Transmission Utility.
19. Where the tests are considered to be successful and the installation ready for operation, the Wholesale Supplier shall submit to the Purchaser or Electricity Transmission Utility, a statement of readiness to connect, which shall include the test results and the commissioning report.
20. The Purchaser or Electricity Transmission Utility may within fourteen days after the receipt of the statement of readiness to connect, perform at its sole discretion, any tests it deems necessary so as to accept or decline the statement of readiness to connect.
21. Upon acceptance of the statement of readiness to connect received from the Wholesale Supplier, the Purchaser or Electricity Transmission Utility shall issue a Certificate of Approval to Connect and arrange to connect the facility at the convenience of the Wholesale Supplier as may be appropriate.
22. The physical connection to the Distribution or Transmission system shall be made only after the Certificate of Approval to Connect has been issued by the Purchaser or Electricity Transmission Utility.

Commissioning program

23. The Wholesale Supplier of the Facility shall advise the Purchaser or Electricity Transmission Utility in writing of the commissioning program including test procedures and proposed test equipment to be used in the commissioning at least three months prior to the proposed commencement of commissioning.

24. The Purchaser or Electricity Transmission Utility shall, within fifteen working days of receipt of such advice notify the Wholesale Supplier either that it agrees with the proposed commissioning program and test procedures or that it requires changes in the interest of power system security, safety or quality of supply.
25. If the Purchaser or Electricity Transmission Utility requires changes, the parties shall cooperate to reach agreement and finalise the commissioning program within a reasonable period.
26. The Wholesale Supplier shall not commence commissioning until the commissioning program has been finalised.
27. The Purchaser or Electricity Transmission Utility shall not unreasonably delay finalising a commissioning program.

Commissioning Tests

28. The Purchaser or Electricity Transmission Utility may, at its sole discretion, witness the commissioning tests of the Facility or the accurate metering of energy.
29. The Purchaser or Electricity Transmission Utility shall, within a reasonable period of receiving advice of the commissioning tests, notify the Wholesale Supplier whether or not it wishes to witness or observe the commissioning tests and finds the proposed commissioning times to be suitable.
30. The Wholesale Supplier shall submit to the Purchaser or Electricity Transmission Utility the commissioning test results demonstrating that the Facility complies with the provisions of the Grid Code or the relevant Connection Agreement.
31. If the commissioning tests conducted demonstrate non-compliance with one or more requirements of the Grid Code or the relevant Connection Agreement then the “Wholesale Supplier shall promptly meet with the Purchaser or Electricity Transmission Utility to agree on a process aimed at the achievement of compliance of the Facility with the provisions of the Grid Code.
32. The Purchaser or Electricity Transmission Utility may independently or at the request of the Wholesale Supplier direct that the commissioning and subsequent connection of the Facility must not proceed if particular equipment does not meet the technical requirements and applicable standards.