

CONFIDENTIAL

**NOVATION AND AMENDMENT AGREEMENT**

**OF THE**

**BUILD OWN OPERATE & TRANSFER AGREEMENT,  
BETWEEN THE GOVERNMENT OF GHANA AND AMERI  
ENERGY DATED 10.02.2015**

**JULY 2018**

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**THIS NOVATION AND AMENDMENT AGREEMENT TO THE BUILD, OWN, OPERATE AND TRANSFER AGREEMENT** ("Novation and Amendment Agreement") is entered into as of this [20th] day of July, 2018 ["Signature Date"] by and between:

**THE GOVERNMENT OF THE REPUBLIC OF GHANA** represented by the Minister of Energy or his authorised representative having its principal office at the Main Ministries Area, Accra and of P. O. Box SD 40, Ministries, Accra, Ghana (hereinafter referred to as "GoG")

**VOLTA RIVER AUTHORITY**, a statutory corporation established under the Volta River Authority Development Act, 1961 (Act 46) as amended, with its headquarters at Electro Volta House, 28<sup>th</sup> February Road, P.O Box MB77, Accra, Republic of Ghana, represented by the Chief Executive (hereinafter referred to as the "VRA")

**AFRICA & MIDDLE EAST RESOURCES INVESTMENT GROUP LLC** a company incorporated in Dubai, UAE with its head office located at Emgate Building, Sheikh Zayed Road Dubai UAE, acting through Mr Maher Taresh Obaid Alkharsi Alaleeli (hereinafter referred to as "AMERI ENERGY")

**AMERI ENERGY POWER EQUIPMENT TRADING LLC** a company incorporated in Dubai, UAE with its offices located at Emgate Building, Sheikh Zayed Road Dubai UAE, acting through Mr Maher Taresh Obaid Alkharsi Alaleeli (hereinafter referred to as "AMERI EQUIPMENT")

**MYTILINEOS INTERNATIONAL TRADING COMPANY AG** (hereinafter referred to as the "Company") a company incorporated in Switzerland with its offices located at Zug, represented by its lawful representative, Mr Patrick Kurt Oesch

AND

**POWER PROJECTS SANAYI INSAAT TICARET LIMITED SIRKETI** a company incorporated in Turkey and having its principal place of business at Visnezade Mah, Suleyman Seba Cad. No:44, B 1 Blok D:9, 34357 Besiktas-Akaretier, Istanbul, Turkey, represented by its lawful representative Mr. Evangelos Kamaris (hereinafter referred to as "PPR")

(each of the above shall be referred to as a "Party," and all of them, collectively referred to as the "Parties").

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RECITALS

WHEREAS:

(i) the former Ministry of Power was mandated inter alia to initiate and formulate policies to ensure the effective and efficient generation, transmission and supply of power to all sectors of the economy of Ghana in an environmentally sustainable manner; (ii) the former Ministry of Power has been merged with the former Ministry of Petroleum by virtue of Executive Instrument 28 to form the Ministry of Energy and therefore with effect from 27<sup>th</sup> February 2017 it is the Ministry of Energy which can properly and effectively act in the place of the former Ministry of Power with respect to all agreements executed by the former Ministry of Power, including the BOOT Agreement;

(iii) the GoG entered into a Build, Own, Operate and Transfer Agreement, dated 10<sup>th</sup> February 2015, (hereinafter referred to as the "BOOT Agreement"), with AMERI ENERGY for the provision of a fast track turnkey power generation solution through the construction of a power plant by the installation of 10 new GE TM 2500+ aero derivative gas turbines and all related equipment (hereinafter referred to as the "Plant") and the provision of certain services related to the operation and maintenance of the Plant for the term provided for in the BOOT Agreement and subject to its terms and conditions;

(iv) the BOOT Agreement was ratified by the Parliament of the Republic of Ghana on 20<sup>th</sup> March, 2015;

(v) following the execution of BOOT Agreement, AMERI ENERGY assigned its rights and obligations under the BOOT Agreement to AMERI EQUIPMENT; (both AMERI ENERGY and AMERI EQUIPMENT are hereinafter referred to as the "AMERI PARTIES");

(vi) AMERI EQUIPMENT entered into an Engineering Procurement and Construction and Operations, Maintenance and Management Agreement ("EPC & OM&M Agreement") with PPR on 17<sup>th</sup> July, 2015, under the terms of which PPR agreed to undertake the engineering, procurement, construction, commissioning, operation, maintenance and overall management of the Plant in accordance with the terms and conditions of the EPC & OM&M Agreement;

(vii) AMERI ENERGY AND AMERI EQUIPMENT and PPR on 17<sup>th</sup> July 2015 as a condition precedent to the EPC & OM&M Agreement, also entered into an EPC Deferred Payment

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Facility Agreement which sets out the terms and conditions for the repayment of PPR with respect to the pre-financing by PPR of the installation, erection and commissioning of the Plant;

(viii) the Parties to the BOOT Agreement executed an Addendum to the BOOT Agreement on 27<sup>th</sup> July, 2015 (“Addendum No 1”); the BOOT Agreement and the Addendum No 1 shall be hereinafter collectively referred to as the “Original BOOT Agreements”

(ix) the GoG, by virtue of the assignment agreement, dated 17<sup>th</sup> August, 2016 (hereinafter referred as the “Assignment Agreement”) transferred and assigned to VRA its rights under the BOOT Agreement as set out therein, effective as of the date of execution of the Assignment Agreement, subject to the explicit provision that the assignment made to VRA and the assumption made by the latter as assignee, shall not release the GoG from any of its duties and obligations under the Original BOOT Agreements either before or after the effective date of the Assignment Agreement and that the GoG would continue to remain primarily liable for the full and timely performance of its obligations under the Original BOOT Agreements, notwithstanding the Assignment Agreement;

(x) in accordance with the Original BOOT Agreements and to enable the construction of the Plant and the provision of the AMERI ENERGY Services, VRA granted access and the right of use of the Site, to AMERI EQUIPMENT;

(xi) according to the provisions of the Original BOOT Agreements, AMERI ENERGY constructed the power plant by installing 10 new GE TM 2500<sup>+</sup> aero derivative gas turbines, the required transformers and all relevant equipment and auxiliary parts and components of the Plant (defined in the BOOT Agreement as “AMERI ENERGY Equipment”), which achieved the Commercial Operation Date on 1<sup>st</sup> February 2016;

(xii) following the Commercial Operation Date, the Plant generated power and PPR provided operation and maintenance services in accordance with the provisions of the EPC & OM&M Agreement;

(xiii) the GoG wishes to establish a new contractual framework safeguarding the generation of power and the continuance of the proper operation and maintenance of the Plant by an experienced entity for a term of fifteen (15) years from the Novation and Amendment Effective Date (as defined in Section 3.1) during which the provision of operation and maintenance

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services and all related services shall be undertaken by the Company.;

(xiv) all Parties agree that any and all of the rights and obligations of AMERI PARTIES under the Original BOOT Agreements are transferred and novated in their entirety to the Company, which shall replace AMERI PARTIES mutatis mutandis in the performance of their obligations and the exercise of their rights under the Original BOOT Agreements, which (BOOT Agreement) shall be amended as per the terms of this Agreement;

(xv) GoG, VRA and AMERI PARTIES shall from the Novation and Amendment Effective Date be deemed to have settled fully any and all pending issues, disputes or liabilities in connection with or arising out of the Original BOOT Agreements, accepting mutually to release each other from any rights, obligations, claims, causes of action and liabilities ; In addition, following the full settlement of their outstanding issues, both GOG/VRA and AMERI PARTIES acknowledge and accept that the Company shall have no liability or obligation arising out or connected with the performance of the Original BOOT Agreements for the time period before the entry into force of this Novation and Amendment Agreement and agree to hold the Company harmless from any such liability or obligation. Notwithstanding the foregoing provision and any other provision in this Agreement, it is GoG's understanding that the Company has entered into a separate agreement with the AMERI PARTIES regarding all existing financial obligations between GoG and the AMERI Parties under the Original BOOT Agreements such that, subject to the effectiveness of this Agreement and the provisions of Clause 2.7, GoG shall have no financial obligations whatsoever to the AMERI PARTIES and the Company arising out of the performance of the Original BOOT Agreements until the Novation and Amendment Effective Date;

(xvi) as of the Novation and Amendment Effective Date and during the entire term of fifteen (15) years, the Company, having acquired the ownership and the right of use of AMERI ENERGY EQUIPMENT, shall assume all rights, liabilities, responsibilities and the performance of the obligations of the AMERI PARTIES towards GoG and VRA in accordance with the Original BOOT Agreements as amended by this Novation and Amendment Agreement and accordingly GoG and VRA shall continue to assume the rights, liabilities, responsibilities and the performance of the obligations of the GoG towards the Company set out in the Original BOOT Agreements as amended by this Novation and Amendment Agreement.

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**NOW, THEREFORE**, in consideration of the foregoing premises and the mutual covenants set forth in this Novation and Amendment Agreement, the Parties hereby agree as follows:

This Agreement is in three parts: Part I relates to the novation of the Original BOOT Agreements, Part II relates to the amendments to the Original BOOT Agreements and Part III comprises of General Provisions.

**PART I**

**NOVATION – CONDITIONS PRECEDENT – CONDITIONS SUBSEQUENT**

**ARTICLE 1.**

**DEFINITIONS**

1. Capitalised terms used herein without definition shall have the meanings assigned to them in the Original BOOT Agreements except for the definitiosn amended by virtue of this Novation and Amendment Agreement which shall have the meaning ascribed herein..

**ARTICLE 2.**

**NOVATION**

2.1. The Parties agree that, as of the Novation and Amendment Effective Date , the rights and liabilities of the AMERI PARTIES under the Original BOOT Agreements, as amended by this Novation and Amendment Agreement shall be deemed to be so novated to the Company in accordance with the terms of this Novation and Amendment Agreement (without the requirement to execute any further instrument or to follow additional formalities).

2.2. In this regard, the Company undertakes and acknowledges that, as of the Novation and Amendment Effective Date:

- It shall perform and observe in a timely manner the remaining obligations and duties of the AMERI PARTIES under the Original BOOT Agreements and shall be bound by their terms, as amended by this Novation and Amendment Agreement, in all respects until the end of the Term as this is defined in Part II of this Novation and Amendment Agreement.

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- It shall assume the responsibilities, warranties and representations of the AMERI PARTIES towards the GoG/VRA under the Original BOOT Agreements in regards to the performance of the assumed obligations, including without limitation the performance of operation and maintenance services and the transfer of ownership of the AMERI ENERGY Equipment to the GoG at the end of the Term, subject to the terms and conditions of the Original BOOT Agreements, as amended by virtue of this Novation and Amendment Agreement.

2.3. The Company shall as of the Novation and Amendment Effective Date have all of the AMERI PARTIES' entitlements, rights, rights of action and remedies under the Original BOOT Agreements as amended by the Novation and Amendment Agreement, including but not limited to the right to receive the Required Payments for the whole Term and any other amounts payable by the GoG under the Original BOOT Agreements, as amended by this Novation and Amendment Agreement.

2.4. The GoG/VRA undertake and acknowledge that, as of the Novation and Amendment Effective Date:

- i. they shall perform and observe in a timely manner and shall be bound by their obligations and duties under the Original BOOT Agreements as amended by this Novation and Amendment Agreement, in all respects until the end of the Term
- ii. GoG/VRA responsibilities, liabilities, warranties and representations provided for in the Original BOOT Agreements as amended by this Novation and Amendment Agreement are owed and addressed to the Company.

2.5. VRA shall from the Novation and Amendment Effective Date assume together with GOG all the rights and obligations of the GoG under the Original BOOT Agreements as amended by this Novation and Amendment Agreement. As of the Novation and Amendment Effective Date, the Company shall issue its invoices to VRA and the GoG represents and warrants that, the GoG together with VRA remains jointly and severally liable towards the Company for the payments to be made to the Company under the Original BOOT Agreements as amended by this Novation and Amendment Agreement.

2.6. AMERI PARTIES agree, accept and explicitly consent to the novation of their rights and

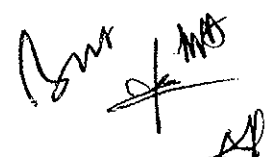
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obligations under the Original BOOT Agreements to the Company, as of the Novation and Amendment Effective Date.

2.7. AMERI ENERGY confirms:

- i. that it has received, as per the terms of the Original BOOT Agreements, all payments due from the achievement of the Full Commercial Operation Date until January 2017. From the invoiced amounts for the period commencing February 2017 until June 30<sup>th</sup>, 2018, AMERI ENERGY confirms that from a total invoiced value of One hundred and fifty one million, six hundred and sixty thousand, five hundred and sixty United States Dollars [USD151,660,560] AMERI ENERGY has received the amount of sixty nine million United States Dollars [USD69,000,000] whilst there are outstanding payments of the amount of eighty two million, six hundred and sixty thousand, five hundred and sixty United States Dollars [USD82,660,560].
- ii. that an invoice in the sum of USD8.5million plus the variable charge shall be due and submitted to GoG/VRA on 31<sup>st</sup> July 2018.
- iii. and consents that from the amounts stated in 2.7(i) and 2.7(ii), GoG/VRA shall pay only the amount of thirty nine million United States Dollars ( USD39,000,000), being the amount owed to PPR for its services as at 31<sup>st</sup> July, 2018; .
- iv. further consents that the remaining amount of fifty two million, one hundred and sixty thousand, five hundred and sixty United States Dollars (USD52,160,560) is not acknowledged by GoG/VRA and shall not be paid by GOG/VRA and that all such charges shall be waived and cancelled without any liability whether in contract or otherwise to GoG/VRA.
- v. that from the 1st August, 2018 till the Novation and Amendment Effective Date, AMERI ENERGY shall invoice and VRA shall pay only the amount of six million United States Dollars (USD 6.000.000,00) per month.

For the avoidance of doubt, this clause 2.7 shall be effective on the entry into force of this Novation and Amendment Effective Date.

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2.8. AMERI PARTIES and GoG/VRA upon the Novation and Amendment Effective Date , release and discharge each other from the performance and the observance of the BOOT Agreement and from all past and future claims, demands and liabilities arising thereunder or in respect thereof. In this respect, AMERI PARTIES and GoG/VRA agree and represent to the Company that no claim, right, demand or liability shall be referred/addressed/raised to the Company arising out of or connected with the Original BOOT Agreements and their performance, including any claims for loss or damages either for breach of contract or in tort, for taxes, social security contributions, levies, fees, duties, penalties of any kind, up to the Novation and Amendment Effective Date.

**ARTICLE 3.**

**CONDITIONS PRECEDENT**

3.1 This Agreement shall enter into force upon the fulfilment or waiver of the conditions precedent (Conditions Precedent) referred to in this Article 3.1 (hereinafter referred to as the Novation and Amendment Effective Date). The novation agreed under Article 2, the agreed amendments of the Original BOOT Agreements as PART II of this Novation and Amendment Agreement and the performance of obligations and rights under the Original BOOT Agreements between the GoG/VRA and the Company as amended hereunder, are subject to the prior fulfilment or waiver, where applicable, of the following Conditions Precedent:

- (i) Ratification of this Novation and Amendment Agreement by the Parliament of Ghana;
- (ii) The GoG/VRA shall have provided to the Company access to and the right of use of the Site ;
- (iii) Board resolutions by VRA, the Company, AMERI Parties and PPR authorising their lawful representatives as signatories for the purposes of the execution of the Agreement.
- (iv) The GoG/VRA shall have paid the amount referred to in Clause 2.7 (iii) and (v)
- (v) The GoG shall have established and delivered the Letter of Credit to the Company in accordance with the requirements of Section 5 of the Original BOOT

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Agreements as amended by this Novation and Amendment Agreement; for the sake of clarity it is noted that the existing SBLC under the Originals BOOT Agreements, shall remain in force until this Novation and Amendment Agreement comes into effect and force;

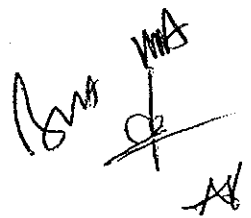
(vi) The Company shall have provided to GoG an irrevocable Performance Guarantee in accordance with the requirements of Section 5 of the Original BOOT Agreement as amended by this Novation and Amendment Agreement.

3.2. Unless sooner required under the provisions of this Novation and Amendment Agreement, the Parties shall be required to fulfill all Conditions Precedent within ninety (90) days following the signature date. GoG/VRA and the Company may by mutual agreement in writing extend the ninety (90) days' aforementioned period. In the event that the Conditions Precedent are not fulfilled, extended or waived (as applicable) within such period, this Agreement may be terminated by fifteen (15) days' notice in writing by GoG/VRA or the Company and, in such a case, the Company shall have no liability towards the other Parties and the relations of the GoG/VRA and AMERI PARTIES shall be governed by the Original BOOT Agreements.

**ARTICLE 4.**

**CONDITION SUBSEQUENT**

GoG in accordance with its obligation under the Original BOOT Agreements obtained tax exemptions for taxes specified under parliamentary approval dated 23<sup>rd</sup> December, 2016. Following the effectiveness of this Novation and Amendment Agreement GoG shall procure that additional tax exemptions granted for the benefit of the plant, the Company and its subcontractors from all Local Taxes as defined in Part II of this Novation and Amendment Agreement. Such tax exemption shall be granted to the Company within 90 days from the Effective Date of this Novation and Amendment Agreement. In the event that no tax exemption is granted for whichever reason or in the event that the tax exemption granted is not covering all Local Taxes, for whichever reason the provisions of Section 13(b) of the BOOT Agreement shall apply.

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**ARTICLE 5.**

**PPR REPRESENTATION**

PPR, under its capacity as contractor, operator and lender of the Plant, under the EPC O&M&M Agreement and EPC Deferred Payment Facility Agreement and the associated agreements, hereby represents and warrants that, without assuming any obligation or liability towards any of the Parties to this Novation and Amendment Agreement, it consents to the transfer, novation and assignment in their entirety of any and all rights and obligations of AMERI PARTIES under the Original BOOT Agreements, as amended, to the Company and the substitution of AMERI PARTIES by the Company in the performance of their remaining obligations and the exercise of their rights under the Original BOOT Agreements as amended. The Parties in this Novation and Amendment Agreement, acknowledge and accept that PPR by entering into this Agreement as a third contracting party, solely for the purpose of providing its consent to this contractual arrangement, assumes no obligations or liabilities towards the Parties and may not be held liable for any reason whatsoever connected with or arising out of this Novation and Amendment Agreement.

**PART II**

**AMENDMENTS TO THE ORIGINAL BOOT AGREEMENTS**

As of the Novation and Amendment Effective Date, the following provisions shall apply in relation to the Original BOOT Agreements:

**1. Definitions**

All references to the Original BOOT Agreements to AMERI ENERGY, AMERI ENERGY Default, AMERI ENERGY Equipment, AMERI ENERGY Parties, AMERI ENERGY Personnel, AMERI ENERGY Services shall read **Company, Company Default, Company Equipment, Company Parties, Company Personnel, Company Services.**

All references to GoG shall be deemed to refer also to VRA .

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*[Signature]*

The definition of "Additional Amounts" shall be deleted in its entirety.

The definition of "Annexes" shall be replaced to read: "Annexes" means the Annexes to this Agreement, consisting of: (i) Annex A (Equipment Specifications); (ii) Annex B (Operating Specifications); (iii) Annex C (Required Payments and Pricing) DELETED; (iv) Annex D (Letter of Credit); (v) Annex E (Company and GoG responsibility summary); (vi) Annex F (Performance Bond Template); (vii) Annex G – DELETED (viii) Annex H (Pricing and Required Payments), (ix) Annex I (Correction and Degradation Curves), (x) Annex J (Form of Performance Guarantee), (xi) Annex K (Form of SBLC)  
All references to Annex C and/or Annex G in this Agreement shall be deemed to refer to Annex H.

Definition of "Capacity Charge" shall be added and shall read: "Capacity Charge" has the meaning set forth in Annex H of this Agreement.

The existing definition of "Contract Price" shall be replaced to read: "Contract Price" means the aggregate amount of the Required Payments corresponding to the whole one hundred and eighty (180) month Term of this Agreement as consideration for the Company Equipment and for the performance of the Company Services, as may be adjusted from time to time in accordance with this Agreement and does not include any type of Local Taxes.

Definition of "Early Termination Charge" shall read "Early Termination Charge" means: «the amount equal to the Capacity Charge specified in the Required Payments for the unexpired portion of the Term i.e. from the Termination Date until the expiry of the 180-months', less the fixed operation and maintenance cost, as defined in Annex H of this Agreement,

The existing definition of "Excusable Outage" shall be deleted in its entirety and replaced to read as follows: "Excusable Outage" means any shortfall in kWhr produced by the Company Equipment that are due to circumstances that are outside of the Company's control, i.e.: (i) the failure of the GoG to provide fuel that meets the Minimum Fuel Specifications; (ii) the failure of the GoG to provide fuel in sufficient quantities to operate the Company Equipment; (iii) trips due to grid frequency and voltage fluctuation outside of the parameters set forth in the Operating Specifications; (iv) the failure of any GoG Components, interconnection or transformers; (v) a Force Majeure Event; and (vi) the

failure of the GoG to properly or timely fulfill any of its obligations and responsibilities under this Agreement which evidently causes a disruption or suspension of the operation of the Company's Equipment or a shortfall in kWhr produced by the Company;

The existing definition of "Local Taxes" shall be deleted in its entirety and replaced to read as follows: "Local Taxes" means any and all present and future import and export and customs duties and taxes, consumption taxes, excise taxes, stamp taxes and duties, value-added taxes (VAT), NHIL, taxes and duties in relation to the transfer of the Equipment to the Company or GoG, taxes based on property value (including the value of assets and/or the Company Equipment), imposed by the Republic of Ghana related to the operation of the Company Equipment, the generation of electricity by the Company Equipment, the provision of any of the Company Services or the GoG Responsibilities.

At the end of the existing Definition of Local Taxes the following provision shall be added: For the avoidance of doubt, income tax and corporate tax in relation to Operation and Maintenance Services and taxes on items available in Ghana shall not be considered as Local Taxes and shall thus be fully paid by the Company.

A definition of "Operating Hours" shall be added and shall read as follows: "Operating Hours" means the number of hours that the Company Equipment is in operation during which the Electricity generated is dispatched in the network and is measured either on a monthly or an annual basis, as the case may be.

"Purchase Price" shall have the meaning described in Section 25.

The existing definition of "Term" shall be deleted in its entirety and replaced to read as follows: "Term" means one hundred eighty (180) months, commencing on the Novation and Amendment Effective Date.

## 2. Effective Date and Term Options

Section 2 shall read as follows:

"This Agreement, as amended by Novation and Amendment Agreement, shall have a Term of one hundred eighty (180) months commencing from the Novation and Amendment Effective Date".

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3. Performance Securities

Section 5 shall be renamed to read: "Performance Securities" and shall be replaced as follows:

I. Letter of Credit

(a) Upon the Novation and Amendment Effective Date, GoG shall have delivered to the Company an irrevocable letter of credit for the benefit of the Company (the "Letter of Credit") in the amount of thirty seven million, five hundred thousand United States Dollars (USD37,500,000) that is six months of the Total Monthly Required Payments as calculated in Annex H. The Letter of Credit shall be issued or confirmed by a bank acceptable to both Parties in the form of Annex D to this Agreement. The Letter of Credit is assignable by the beneficiary to its bank or lender. The GoG shall pay any fees, commissions, confirmation charges and other charges associated with obtaining, confirming and maintaining the Letter of Credit.

(b) The expiry date of the Letter of Credit shall occur ninety (90) days after the scheduled expiration date of the Term.

(c) Under the Letter of Credit, the Company shall be able, at any given time during the Term, and upon fourteen (14) days' notice in writing to GoG to draw down funds to obtain the following:

(i) any Required Payments then past due pursuant to Section 11(f) of this Agreement, upon Company's presentation of Company's written certification specifying the amount of the Required Payment that is then past due;

(ii) any Nationalization Damages incurred or suffered by the Company or any amounts required to be paid as a result of Nationalization pursuant to Section 20(a) of this Agreement;

(iii) any Local Tax payments reimbursable by the GoG pursuant to Section 13(c); and

(iv) the payment of any other amounts due and payable by the GoG under this Agreement including the Early Termination Charge and for the purchase of the Company Equipment in each case, where applicable.

(d) Upon Company's receipt of any drawing under the Letter of Credit prior to the termination of this Agreement, the GoG shall be obligated, within seven (7) Business Days of notice thereof, to increase the amount available under the Letter of Credit to the Required Amount.

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II. Performance Guarantee

Upon the Novation and Amendment Effective Date, the Company shall have provided to GoG a Performance Guarantee (the "Performance Guarantee") in the form of a bank guarantee from a bank acceptable to GoG for the benefit of GoG and in the form of Annex J to this Agreement. The Performance Bank Guarantee is in the amount of Ten Million USD (\$10,000,000) and shall be valid for two years from the Novation and Amendment Effective Date. The Company shall renew the bank guarantee no later than 45 days prior to its expiry for the following two years and the same procedure shall be followed until the end of the Term. The Company shall pay any fees, commissions, confirmation charges and other charges associated with obtaining and maintaining the Performance Guarantee.

4. **Nature of the Agreement**

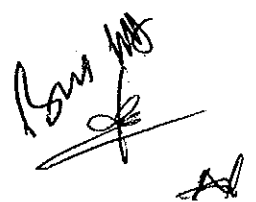
Section 7 (Nature of Agreement) shall be amended to read as follows:

"(a) The transactions contemplated by this Agreement constitute a build, own, operate and transfer of the Company Equipment by the Company to the GoG.

(b) The Company Equipment is, and shall at all times be and remain, solely and exclusively the property of the Company subject to Section 25 (End of Term Purchase Price), and no right, title or interest in the Company Equipment shall pass to the GoG at any time notwithstanding that the Company Equipment may now be, or hereafter become, in any manner affixed or attached to the GoG Components or any other personal or real property located at the Site.

(c) The Company and the GoG confirm their intent that this Agreement shall not constitute or be characterised as a financing transaction. Neither the execution nor the filing of any financing statement with respect to any of the Company Equipment or with respect to this Agreement, nor the recording of this Agreement, shall in any manner imply that the relationship between the Company and the GoG is anything other than that of an independent service provider to GoG, nor in any manner change or impact the ownership of the Company Equipment by the Company.

(d) Without the Company's prior written consent, the GoG shall not make any alterations, additions or improvements to the Company Equipment, the Software, connections or configurations or its connection to the data stream, and will not add tags, links to local area networks, or other devices or systems or otherwise change the Company Equipment's setup, functioning, and configuration or connectivity if the setup was performed by the Company.

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(e) Without the Company's prior written consent, the GoG shall not move or relocate any of the Company Equipment following its installation at the Site.

**5. Company Obligations**

- (a) Section 8 (e) is replaced to read as follows: "maintain appropriate records of the operation and maintenance of the Company Equipment from the Novation and Amendment Agreement Effective Date till the expiration of the Term and provide such records to the GoG/VRA, upon request. In particular, Company shall submit to VRA a monthly operations and maintenance report. The report shall contain but not limited to operational issues, maintenance activities that were carried out and any other relevant issues relating to the operations and maintenance of the Plant".
- (b) Subsection (i) is added to Section 8 to read as follows: "install, commission and maintain gas metering and gas chromatograph equipment as per Annex A (Equipment Specifications)".
- (c) Subsection (j) is added to Section 8 to read as follows: "Performance Tests – Performance tests should be carried out on each unit using installed calibrated fuel meters. Performance tests shall be conducted annually, by an independent assessor. The cost of the tests shall be borne by the Company. Tests reports shall be issued after the tests are conducted and shall contain all the correction curves, as per Annex I and (equipment specifications), used to achieve the results".

**6. GoG Obligations**

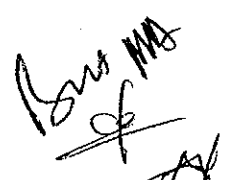
Subsection (e) of Section 9 is replaced to read as follows: "provide at the Company's cost demineralized water in adequate quantity and acceptable quality for the ongoing operation of the Company Equipment as fully set out in the Operating Specifications".

Subsections (b), (l), (n), (p) and (q) of Section 9 are deleted.

**7. Required Payments**

Section 10(a) shall read as follows:

"During the Term, in consideration of making available, operating and maintaining the Company Equipment and of the provision of the Company Services, the GoG/VRA shall be obligated to make payments to the Company on a monthly basis as required under this





Agreement (the "Required Payments"), calculated in accordance with the adjustments and other provisions of Annex H to this Agreement".

Sections 10(b) and 10(c) are deleted.

Section 10(d)(iii) related to the demineralized water is deleted.

Section 10(d) (iv) shall read as follows:

"the currently applicable laws of the Republic of Ghana. Should there be any material changes to prudent industry practice and the laws of the Republic of Ghana specifically affecting the performance of the Company's obligations and the provision of the Company's Services as well as its receivables and costs, the provisions of Section 14 shall apply.

## 8. Invoicing

Section 11(a) shall read as follows:

The Required Payments for the Company Equipment will begin to accrue on the Novation and Amendment Effective Date.

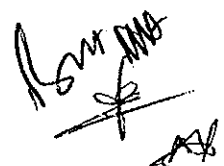
Section 11(d) shall be amended to read as follows:

"Within ten (10) Business Days after the end of the calendar month in which the Novation and Amendment Effective Date occurs and within ten (10) Business Days after the end of each subsequent month, the Company shall prepare an invoice that specifies the Required Payments for the preceding month and any other charges and adjustments to such Required Payments provided by the terms of this Agreement. Each invoice shall be supported by sufficient detail to allow the GoG to confirm that the invoice is consistent with the terms of this Agreement.

The invoice for each calendar month shall inter alia, reflect the following:

- a) The Required Payment for such calendar month and
- b) Any liquidated damages payable under Section 12(c) of the Agreement for such calendar month due to shortfalls in Availability

In the event that the Term ends on a date that it is not the last day of a calendar month, then the Required Payment for such month shall be proportionately adjusted to reflect the actual number of days that elapse during such month until the end of the Term. The Parties shall treat the last day of the Term as the end of the month for purposes of invoicing and payment".



The following sentence shall be added to the beginning of Section 11(f):  
Payment in a timely manner is of the essence.

**9. Performance Warranties**

In Section 12(a) mistaken reference to Section 22 is corrected to Section 21.

Section 12(c) shall include the following additional wording: The Parties agree that the formula for calculating Availability is as stated in Annex B, Section 7.

Section 12(e) shall read as follows:

"The annual liquidated damages payable by the Company during the Term for a shortfall in availability or dispatch performance during the Term shall in no event exceed an amount equal to ten percent (10%) of annual Capacity Charge and is included in the limitation set forth in Section 21(b). For the avoidance of doubt, if a Turbine is deemed unavailable in accordance with the Operating Specifications, dispatch penalties shall not apply. Dispatch penalties referred to in Section 12(d) only apply to Turbines deemed available for operation per the Operating Specifications".

Section 12(h) shall read as follows:

"The financial remedies set forth in this Section 12 are exclusive and in lieu of any and all other warranties, representations, guarantees and remedies, either express or implied, in this Agreement, or which may arise under law or equity, whether based on contract, indemnity, warranty, tort (including negligence and strict liability), or otherwise".  
Fraudulent misrepresentations shall be outside the scope of this Section 12(h).

**10. Taxes**

Section 13 is deleted in its entirety and shall be replaced to read as follows:

- (a) "The calculation of the Contract Price has been based on the Parties' agreement that the Company will be exempted from all Local Taxes (the "Tax Exemption"). Therefore, the Contract Price does not include any Local Taxes.
- (b) In the event that any amounts to be paid by the GoG to the Company under this Agreement (including any Required Payments) become subject to any Local Taxes, the amount to be paid by the GoG to the Company shall be adjusted accordingly so as to achieve the receipt of the amounts to be paid by the GoG to the Company under this Agreement (the "Tax Adjustment").



(c) In the event that GoG fails to make the Tax Adjustment or in the event that, although the Tax Adjustment has been made, payment of the full amount of the Contract Price is not achieved, then, subject to submission of appropriate supporting documentation to GoG, the GoG shall reimburse the Company in United States Dollars (calculated at the exchange rate in effect at the time payment of such Local Taxes was made) for the amount of such Local Taxes within ten (10) Business Days of the date on which the Company provides the GoG with a written request for reimbursement”.

**11. Changes in Laws and Standards**

The following sentence shall be added at the end of **Section 14(b)**:

“For the avoidance of doubt, the abovementioned adjustments shall apply only for changes that have a proven impact on the costs and receivables of the Company”.

**Section 14(c)** shall be deleted.

**Section 14(d)** shall read as follows:

“In the event that the Company reasonably and acting in good faith deems that the equitable adjustment to the Required Payments under this Agreement is not a practical means by which to address any such changes, then the Company may elect to terminate this Agreement for commercial impracticability and the GoG shall remain liable to the Company in respect of any existing obligations and liabilities arising under this Agreement prior to and upon termination. In this regard, the Company shall exercise its rights as described in **Section 23(b)**”.

**12. Health and Safety Matters**

**Section 15 (g) (i)** shall read as follows:

“The GoG shall provide the Company, a suitable site with utilities for the Company and the Company shall pay for the cost of such utilities”.

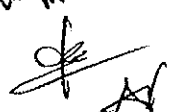
**Section 15(h) Company’s Insurance and 15(i) GoG’s Insurance and Sections 15(j), (k), (l), (m)** are deleted in their entirety and replaced as follows:

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13. Insurance

The Company shall:

- (h) at its sole cost and expense, procure and maintain or cause to be procured and maintained in full force and effect for the term of this Agreement all typical and reasonable insurance policies listed hereunder (i to iv) with a level of cover being that as generally taken out by international independent power producers acting in accordance with insurance coverage of good industry practice, with such insurances being available on commercially reasonable terms, such insurance policies being placed with reputable insurance companies;
- (i) provide to the GoG:
  - (i) evidence of the insurances obtained by the Company in the form of certificates of insurance;
  - (ii) evidence that the premiums payable, as of the inception date of each policy, has been paid; and
  - (iii) a representation from a reputable independent insurance broker that such coverages meet the requirements of paragraph (a) above,
- (j) provide access to GoG or its representatives to its offices during office hours to inspect the original policies;
- (k) if the Company fails to procure or maintain any insurance which is required in accordance with paragraph (a) above, GoG shall have the right to procure such insurance at the Company's expense, **provided that** GoG shall have given twenty (20) Days prior notice to the Company of its intention to exercise such right, unless such notice arises from the Company's non-payment of premiums for existing insurance, in which case GoG shall provide at least five (5) Days prior notice of such intention. If the Company fails to reimburse GoG for any such premiums within seven (7) Days of being notified to do so, GoG shall be entitled to payment of such amount by deducting such amount or amounts from the Required Payments due in the immediately following period until the amount of such premiums has been fully repaid.

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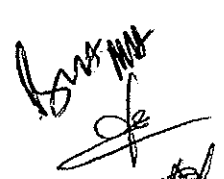
(i) All Risk Property Insurance: This insurance shall cover buildings, contents, machinery, equipment and all other real and personal property forming part of the facility against "all risks" of physical loss or damage, including (but not limited to) the perils of machinery and electrical breakdown, fire, lightning, explosion, spontaneous combustion, storm, wind, tempest, flood, hurricane, water damage, earthquake, tsunami and collapse. Coverage shall be in an amount not less than the full replacement value of the Facility. The GoG and VRA shall be included as additional named insured as respects physical damage only, for their respective rights and interests.

(ii) Loss of Revenue Following All Risks Property Insurance Incident: The All Risk Property insurance shall also cover against loss of revenue due to reduction in available capacity and/or loss of output as a direct consequence of loss of or damage to the Facility caused by a peril insured under all risks insurance. Coverage shall be in an amount not less than three (3) Months' estimated fixed costs including debt service.

(iii) Political Violence Insurance: This insurance shall cover buildings, content, machinery, equipment and all other real and personal property forming part of the Facility against physical loss or damage resulting from sabotage, terrorism, riot, strikes, civil commotion and malicious damage. Such insurance shall be extended to cover against loss of revenue due to reduction in available capacity and/or loss of output as a direct consequence of loss of or damage to the Facility caused by a peril insured by the policy. Coverage shall be in an amount not less than \$50,000,000. Where possible, some perils listed above may be insured under the All Risks Property Insurance. The GoG and VRA shall be included as additional named insured as regards physical damage only, for their respective rights and interests.

(iv) Commercial/ General Liability: This insurance shall cover against legal liability to any third party for bodily injury or damage to property arising out of the ownership, operation and/or maintenance of the Facility. Coverage shall be for US\$ twenty five (25) million for anyone claim or such other amount as may be agreed from time to time. The GoG /VRA Shall be included as additional insured.

Workers' Compensation and Employers' Liability: This insurance will include workers' compensation, temporary disability and other similar insurance required by



the Applicable Law. Additionally, coverage under this subsection shall include a voluntary compensation and employers' liability endorsement for employees not subject to the workers' compensation laws. "

### 13. Representations and Warranties

Section 18(a) (i) shall read as follows:

The Company is a company incorporated under the laws of Switzerland.

### 14. Force Majeure and Related Matters

In Section 19, subsection (i) is renamed to (f) and shall read as follows:

"If either Party, having become entitled to do so, decides to terminate this Agreement, the Company shall be entitled to:

(i) receive from the GoG

(a) the Required Payments and any payments under this Agreement that have become due and payable as at the date of termination and

(b) the Early Termination Charge discounted by 25%, less the eventual insurance proceeds payable to the Company.

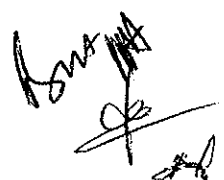
(ii) exercise any other right or remedy which may be available to it under the laws of the Republic of Ghana".

### 15. Limitation of Liability

Sections 21(a), (b) and (c) shall be deleted in their entirety and replaced to read as follows:

"(a) Without prejudice to section 21 (c), in no event, shall either Party be liable towards the other Party whether as a result of breach of contract, warranty, indemnity, tort (including negligence), strict liability or otherwise, for loss (whether direct or indirect) of profit, revenue, savings, business, business opportunities, turnover, reputation or goodwill; cost of capital; cost of substitute equipment, services or replacement power; damage to associated equipment or facilities; or any special, consequential, incidental, indirect or exemplary damages. For the avoidance of doubt, liquidated damages provided for in this Agreement shall not be considered as indirect damages.

(b) Without prejudice to Section 21 (c), the total aggregate liability of one Party to the other Party with respect to all claims of any kind whether in contract, warranty, indemnity, tort



(including negligence), or other contractual or extra contractual liability of any nature, strict liability, or otherwise, and under any system, theory or principle of law, arising out of the performance or breach of this Agreement, shall in no event exceed fifteen percent (15%) of the aggregate Annual Capacity Charge.

(c) The limitation of liability under Section 21(a) and 21(b) above shall not apply to any liabilities, payments or adjustments to the Contract Price expressly provided for under this Agreement, including but not limited to:

- (i) the liability of GoG for the payment of invoices issued in accordance with this Agreement, relating to the Required Payments, Change Orders (if any), Tax adjustments, Change in Law Adjustments the indemnifications provided for in Section 22 or elsewhere in this Agreement;
- (ii) the liability of GoG for the payment of the Early Termination Charge where due under the terms of this Agreement;
- (iii) the liability of GoG for the payment of any amounts payable for the transfer of the ownership title of the Company Equipment;
- (iv) the liability of GoG for the payment of Nationalization Damages;
- (v) any liability of the Company which may be incurred in accordance with Section 22(a) (vi);
- (vi) the liability of the Parties for willful misconduct or fraud”.

In Section 21(h) mistaken reference to Section 22 is corrected to Section 21.

#### 16. Indemnification

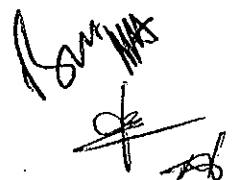
The following provision shall be added in Section 22 (a) after point (v):

“(vi) (A) any improper handling or disposal of any Hazardous Materials by the Company or any other Company Party; or (B) any Hazardous Materials brought on to the Site or produced thereon at any time by the Company”.

In Section 22(c) mistaken reference to Section 23 is corrected to Section 22.

#### 17. Default and Remedies

Section 23 (a) (iv) and (v) shall be applicable only to VRA.

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Section 23(b) shall read as follows:

“Upon the occurrence of any GoG Default, the Company may exercise one or all of the following :

- (i) terminate this Agreement and receive from the GoG:
  - (a) the Required Payments and any payments under this Agreement that have become due and payable as at date of termination; and
  - (b) the Early Termination Charge, less the amount actually drawn down from the Letter of Credit;
- (ii) exercise any other right or remedy which may be available to it under any applicable law of the Republic of Ghana.

In Section 23 (c) the following provision shall be added after point (ii):

(iii) winding-up, dissolution, or liquidation (excluding procedures used for the purposes of a corporate restructuring), the appointment of a liquidator, a receiver, administrative receiver, compulsory manager or similar officer over, the whole or any material part, of its property or assets

Section 23(d) is replaced as follows and points (d) and (e) shall be renamed to (e) and (f) respectively:

Upon the occurrence of any Company Default, GoG may exercise one or all of the following:

- (i) terminate this Agreement; and draw down on the Performance Guarantee for any amounts due and payable by the Company under this Agreement and/or
- (ii) exercise any other right or remedy which may be available to it under any applicable law of the Republic of Ghana.

In such a case, the Company shall be entitled to:

- (i) receive from the GoG the Required Payments past due and any payments under this Agreement that have become due and payable upon termination less the amount actually drawn down from the Letter of Credit and
- (ii) demobilise the Company Equipment, unless GoG exercises the option to purchase the Company Equipment by paying the market price, of the Company Equipment determined by an independent expert acceptable to the Parties, which shall be reduced by twenty five percent (25%); and/or



(iii) exercise any other right or remedy which may be available to it under any applicable law”.

**18. Termination and Effect of Termination**

In Section 24 (a) (iii) mistaken reference to Section 20 is corrected to Section 19.

In Section 24 (a) (iv) mistaken reference to Section 24 is corrected to Section 23.

Section 24(b) is deleted in its entirety and replaced to read as follows:

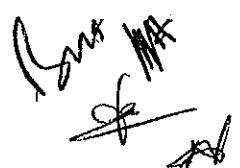
“Effect of Termination. In the event of the termination of this Agreement, specific provisions for each case as per the provisions of this Agreement shall apply and the following provisions shall survive termination as follows:

- (i) the obligations of the Parties under Section 8 (Company Obligations), Section 9 (GoG Obligations), and Section 15 (Health and Safety Matters) of this Agreement, during the Removal Period;
- (ii) the provisions of Section 17 (Confidentiality Information) for a period of two (2) years from the Termination Date;
- (iii) the obligations of the Parties under Section 22 (Indemnification) of this Agreement for a period of two (2) years from the Termination Date;
- (iv) the obligations of the GoG under Section 13 (Taxes) of this Agreement; and
- (v) the provisions of Section 21 (Limitations of Liability), Section 28 (Waiver of Immunity) and Section 32 (Miscellaneous) of this Agreement”.

**19. End of Term, Purchase Price and Assessment**

Section 25 is replaced and shall read as follows:

- (i) upon the expiration of the Term, the GoG shall purchase the Company Equipment for a price of One United States Dollar (US\$ 1) (the “Purchase Price”).
- (ii) In the event that the GoG properly exercises its option to acquire the ownership title of the Company Equipment, then, on the Termination Date, (i) the GoG will make all due payments in freely transferable United States Dollars by wire transfer to a bank account of the Company that shall be designated by the Company in writing, (ii) upon receipt of all payments as the case may be, the Company shall transfer the Company Equipment to the GoG, and (iii) the Company shall transfer to the GoG good title to the Company Equipment, free and clear of all liens, claims and



encumbrances . The GoG shall be responsible for any applicable taxes, duties, impositions, levies, fees, duties or other similar charges imposed or resulting from the transfer of the Company Equipment.

**20. Miscellaneous**

Section 32(h) is deleted.

**21. Additional Annexes**

- (i) Annex H is added as follows: (Pricing and Required Payments)
- (ii) Annex I is added as follows: (Correction and Degradation Curves)
- (iii) Annex J is added as follows: (Form of Performance Guarantee)
- (iv) Annex K is added as follows: (Form of SBLC)

The remaining provisions of the Original Boot Agreements shall remain in force and unaffected and shall also govern the contractual relationship of the Parties as from the Novation and Amendment Effective Date and until the expiry of the Term.

The amendments of the Original Boot Agreements, included in this Part II of this Novation and Amendment Agreement, shall come into effect and force on the Novation and Amendment Effective Date and shall have no retrospective effect.

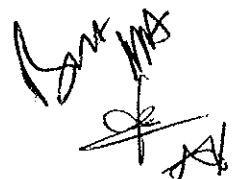
**PART III.**

**GENERAL PROVISIONS**

**1. SETTLEMENT OF DISPUTES**

The Parties agree and acknowledge that all disputes arising out of or connected with this Novation and Amendment Agreement, the Original BOOT Agreements as amended by this Novation and Amendment Agreement shall be settled according to the provisions of Section 32 (f) (Dispute Resolution) of the Original BOOT Agreement.

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



2. ENTIRE AGREEMENT

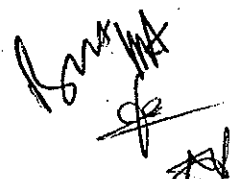
2.1. This Agreement, together with the Original Boot Agreements as amended hereunder constitute the entire agreement between the Parties and supersede all prior commitments, arrangements, agreements and contracts (whether written or oral) made between the Parties with respect thereto prior to the date of execution of this Agreement.

2.2. No amendment or other variation of the terms of this Novation and Amendment Agreement and the Original Boot Agreements, as amended by this Agreement, shall be effective unless it is in writing, expressly referred to this Agreement and the Original Boot Agreements as amended by this Agreement and is signed by a duly authorized representative of each Party.

2.3. To the extent the enforcement or operation of any term or provision of this Novation and Amendment Agreement, or the Original Boot Agreements as amended by this Agreement is prohibited by Law or if any of their provision are by Law rendered void, invalid or unenforceable, such prohibition, voidness, invalidity or unenforceability shall not affect the validity or enforceability of any other term or provision of this Agreement or the Original Boot Agreements as amended by this Agreement, unless this Agreement, or the Original Boot Agreements as amended by this Agreement would not have been concluded without the void, invalid or unenforceable provision.

3. MISCELLANEOUS

The Parties hereby declare, represent and warrant that they have the authorization and the legal capacity to enter into this Novation and Amendment Agreement, to amend the BOOT Agreement, to assume the obligations deriving from this Novation and Amendment Agreement and the Original BOOT Agreements as amended by this Agreement, to make the representations and warranties provided for in this Novation and Amendment Agreement and in the Original BOOT Agreements as amended by this Agreement, to accept to settle their disputes in arbitration, without having other conditions to be fulfilled prior to the conclusion of this Agreement. The Parties hereby represent and warrant that they will diligently perform any action required for this Agreement to become effective and they have the authorisation and the legal capacity to consummate the transaction contemplated and resume any internal procedures deemed necessary in order to safeguard the fulfillment of the Conditions Precedent in a timely and proper manner.



**IN WITNESS WHEREOF** each of the Parties has executed this Agreement as of this date:

**Government of Ghana (Ministry of Energy)**

Signature: \_\_\_\_\_

Name:

Witness:

Signature:

Name:

**Volta River Authority**

Signature: \_\_\_\_\_

Name:

Witness:

Name:

**Africa & Middle East Resources Investment Group LLC**

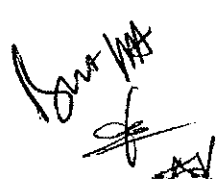
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Signature:

Name:

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**Ameri Energy Power Equipment Trading**

Name:

Witness:

Signature:

Name:

**Mytilneos International Trading Company LLC**

Signature: \_\_\_\_\_

Name:

Witness:

Signature:

Name:

**Power Projects Sanayi Insaat Ticaret Limited Sirketi**

Signature: \_\_\_\_\_

Name:

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# ANNEXES

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# ANNEX H

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