

..... 2011

THE REPUBLIC OF GHANA

as Borrower

**REPRESENTED BY
THE MINISTER OF FINANCE
AND ECONOMIC PLANNING**

and

CHINA DEVELOPMENT BANK CORPORATION
as Lender

**US\$ [1,000,000,000]
SUBSIDIARY AGREEMENT
in relation to [Western Corridor Gas
Infrastructure Development]
under the Tranche [B] Facility**

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THIS AGREEMENT is dated [] and made between:

- (1) **THE REPUBLIC OF GHANA** (the "**Borrower**") **REPRESENTED BY THE MINISTER OF FINANCE AND ECONOMIC PLANNING**; and
- (2) **CHINA DEVELOPMENT BANK CORPORATION** a financial institution organised and validly existing under the laws of the People's Republic of China (the "**Lender**").

WHEREAS:

- (A) The Government of the People's Republic of China and the Government of the Republic of Ghana are resolved to expand bilateral relations through harmonious, sustainable and win-win economic co-operation measures, in line with the principles adopted for the Forum on China-Africa Co-operation.
- (B) The Lender seeks to apply its financial support as a means to enhance bilateral economic and trade relations between China and Ghana by extending commercial loans to the Borrower, to be applied by the Borrower on the terms and conditions set out in this Agreement.
- (C) This Agreement is a Subsidiary Agreement as defined in the Master Facility Agreement.
- (D) The Borrower shall apply the proceeds of the Facility on the terms and conditions set out in the Master Facility Agreement and this Agreement.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Unless otherwise defined in this Agreement or the context requires otherwise, terms defined in the Master Facility Agreement shall have the same meanings when used in this Agreement. In addition the following terms shall have the following meanings:

"Commitment" means, in relation to the Lender at any time, as the context requires:

- (a) the obligations (conditional or otherwise) of the Lender, and the corresponding rights of the Borrower against the Lender under this Agreement to require the Lender, to make or maintain any Loan; or
- (b) the currency and maximum aggregate amount at such time of any Loan(s) (whether made at such time or capable of being made thereafter).

"Facility" means the term loan facility made available under this Agreement as described in Clause 2.1 (*The Facility*).

"Final Repayment Date" means the date falling [ten (10)] years after the Signing Date.

"Group" means the Sponsor and its Subsidiaries from time to time.]

[Note: definition of "Group" to be deleted if Clause 11.2 (Disposals) is deleted.]

"Interest Payment Date" means each Interest Payment Date (as defined in the Master Facility Agreement) occurring after the first Loan has been drawn down under this Agreement.

"Loan" means a loan made or to be made under the Facility or the principal amount outstanding for the time being of that loan.

"Loan Certificate" means a certificate issued by the Borrower to the Lender in substantially the same form as set out in Schedule 3 (*Loan Certificate*).

"Margin" means:

- (i) for a Tranche A Facility, (two point nine five per cent. (2.95%) per annum; and
- (ii) for a Tranche B Facility, two point eight five per cent. (2.85%) per annum.

"Master Facility Agreement" means the US\$3,000,000,000 facility agreement dated [●] October 2011 between the Borrower and the Lender.

"Material Adverse Project Effect" means in relation to a Project or any or Sponsor, any event or circumstance which has or could reasonably be expected to have a material adverse effect on the cashflow generated by the Project or the ability of the Borrower to perform any of its obligations under the Finance Documents.

"Party" means a party to this Agreement.

"Project" means [Western Corridor Gas Infrastructure Development, comprising development of "Early Phase Ghana Gas Infrastructure" and associated deployment of "ICT-enhanced Surveillance and Monitoring Facilities".]

"Project Budget" means the work program and budget prepared by the Sponsor and delivered by the Borrower to the Lender pursuant to paragraph 3.2 of Part II (*Conditions precedent for utilisation*) of Schedule 1 (*Conditions Precedent*), as the same may be amended from time to time with the Lender's prior written consent.

"Project Construction Start Date" means [●].<<<<<<

[Note: to be inserted following review of the Project Documents.]

"Project Costs" means all costs, expenses and fees properly incurred by and/or on behalf of the Sponsor in connection with the design, engineering, procurement of equipment, material, parts and consumables, management, construction and commissioning of the Project at the times and for the purposes specified in and permitted under the Project Budget.

"Project Cost Overrun" means, at any particular time, all costs, expenses and fees incurred or to be incurred for the Project in excess of Project Costs specified and permitted at such time.

"Project Document" means:

- (a) each document listed in paragraph 2(d) (*Project Documents*) of the application for Subsidiary Agreement in the form set out in Schedule 2 (*Application for Subsidiary Agreement*) of the Master Facility Agreement, submitted by the Borrower in connection with the Project and the Facility;
- (b) [*list any additional documents required by CDB or the Borrower arising out of due diligence*];
- (c) any other document designated as such by the Borrower and the Lender,

and "**Project Documents**" means all of them.

"**Repayment Date**" means each date as set out in Schedule 2 (*Tranche [B] Repayment Schedule*) of this Agreement, up to and including the Final Repayment Date.

"**Repayment Instalment**" and "**Repayment Instalments**" have the meanings set out in sub-Clause 6.1.1 (*Repayment of the Loans*).

"**Signing Date**" means the date of this Agreement.

"**Sponsor**" means [*Ghana National Gas Company Limited.*]

"**Subsidiary Loan Disbursement Account**" has the meaning given to it in the Accounts Agreement.

"**Utilisation**" means a disbursement of a Loan under the Facility.

"**Utilisation Date**" means the date of a Utilisation, being the date on which the relevant Loan is to be made.

1.2 Construction

The rules of construction set out in clause 1.2 (*Construction*) of the Master Facility Agreement shall apply to this Agreement to the extent applicable.

1.3 Third party rights

A person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 of England to enforce or to enjoy the benefit of any term of this Agreement.

2. THE FACILITY

2.1 The Facility

Subject to the terms of this Agreement and the Master Facility Agreement, the Lender makes available to the Borrower a Dollar term loan facility in an aggregate amount equal to the Commitment.

2.2 Commitments

2.2.1 Subject to Clause 2.2.2 below, the currency and amount of the Commitment on the Signing Date is US\$[●].<<<<<<<<

[Note: amount to be inserted should be equal to the total amount of the Loans available under this Subsidiary Agreement.]

2.2.2 The Commitment is subject to any cancellation or reduction thereof in accordance with this Agreement and the Master Facility Agreement.

3. PURPOSE

3.1 Purpose

The Borrower shall apply all amounts borrowed by it to invest in, or provide funds to the Project, including by payment to Approved Contractors involved in the Project.

3.2 Monitoring

The Lender may but is not obliged to monitor the application of the use of proceeds of the Facility by the Borrower.

4. CONDITIONS OF UTILISATION

4.1 Initial conditions precedent

The Borrower may not deliver a Utilisation Request unless the Lender has received all of the documents and other evidence listed in and appearing to comply with the requirements of Part I (*Initial conditions precedent*) of Schedule 1 (*Conditions precedent*) and Clause 4.2 (*Further conditions precedent*) below in form and substance satisfactory to the Lender. The Lender shall notify the Borrower promptly upon receiving such documents and other evidence.

4.2 Further conditions precedent

The Lenders will be obliged to comply with clause 5.4 (*Loan*) of the Master Facility Agreement only if:

4.2.1 on the date of the Utilisation Request and on the proposed Utilisation Date:

- (A) the Lender has received all documents and other evidence listed in Part II (*Conditions precedent for Utilisation*) of Schedule 1 (*Conditions precedent of a Subsidiary Agreement*) of this Agreement;
- (B) the Lender has received evidence that the fees then due from the Borrower under clauses 11 (*Fees*) and 15 (*Costs and expenses*) of the Master Facility Agreement have been paid;
- (C) no Default or Mandatory Prepayment Event is continuing or would result from the proposed Loan; and
- (D) the representations made by the Borrower under clause 16 (*Representations*) of the Master Facility Agreement and Clause 9 (*Representations*) are true in all material respects;

- (E) the Borrower has opened an Subsidiary Loan Disbursement Account with the Lender in respect of this Agreement; and
- (F) the Lender has received a Loan Certificate issued by an authorised signatory of the Borrower in substantially the form as Schedule 3 (*Loan Certificate*).

4.2.2 on or before the fifth Business Day prior to the proposed Utilisation Date the conditions specified in clause 3.2.1 of the Accounts Agreement have been satisfied.

4.3 **Maximum number of Utilisation Requests**

No more than five (5) Utilisation Requests may be issued in respect of this Agreement in each year.

5. **UTILISATION**

5.1 **Delivery of a Utilisation Request**

The Borrower may utilise the Facility by delivery to the Lender of a Utilisation Request duly completed in accordance with clause 5 (*Utilisation*) of the Master Facility Agreement.

5.2 **Completion of a Utilisation Request**

In addition to the requirements set out in Clause 5.2 (*Completion of a Utilisation Request*), each Utilisation Request will not be regarded as having been duly completed unless:

- 5.2.1 in respect of a Utilisation Request issued in respect of amounts to be paid to a PRC Contractor, the Utilisation Request specifies that the proceeds of the Loan shall be disbursed by the Lender directly to an account of that PRC Contractor opened with the Lender's Dalian Branch or Hong Kong branch or such other account as the Lender may agree; and
- 5.2.2 in respect of a Utilisation Request issued in respect of amounts to be paid to an Other Contractor, the Utilisation Request specifies that the proceeds of the Loan shall be disbursed by the Lender directly to an account of that Other Contractor.

6. **REPAYMENT**

6.1 **Repayment of Loans**

- 6.1.1 The Borrower shall repay the aggregate amount of the Loans under this Agreement in instalments (each a "**Repayment Instalment**") in the amounts and on the Repayment Dates set out in Schedule 2 (*Tranche [B]Repayment Schedule*) of this Agreement. The aggregate of the Repayment Instalments under this Agreement shall be collectively referred to as the "**Repayment Instalments**".
- 6.1.2 Without prejudice to sub-Clause 6.1.1 above, all outstanding amounts of all Loans shall be repaid on or before the Final Repayment Date.

6.1.3 For the avoidance of doubt, the Repayment Dates in respect of each Loan shall coincide with the Interest Payment Dates.

6.2 **Reborrowing**

The Borrower may not reborrow any part of the Facility which is repaid.

7. **PREPAYMENT AND CANCELLATION**

7.1 The Borrower may cancel the whole or any part of the Commitment in accordance with clause 7.2 (*Voluntary cancellation*) of the Master Facility Agreement; and

7.2 The Borrower may prepay the whole or any part of a Loan in accordance with clause 7.3 (*Voluntary prepayment of Loans*) of the Master Facility Agreement.

8. **TERMS OF THE MASTER FACILITY AGREEMENT**

Without prejudice to the application of any other provisions of the Master Facility Agreement to this Agreement, clauses 7.1 (*Illegality*), 7.4 (*Mandatory prepayment of Loans*), 7.5 (*Restriction*), 8 (*Interest*), 9 (*Interest periods*), 10 (*Changes to the calculation of interest*), 30 (*Immunity*), 31 (*Governing law*) and 32 (*Dispute resolution*) of the Master Facility Agreement shall apply to this Agreement, *mutatis mutandis*, as if the same had been set out in full herein with references in such clauses to "this Agreement", "a Subsidiary Agreement", "single Subsidiary Agreement", "that Subsidiary Agreement" or "each Subsidiary Agreement" shall be construed as a reference to this Agreement.

9. **REPRESENTATIONS**

In addition to the representations and warranties made by the Borrower under clause 16 (*Representations*) of the Master Facility Agreement, the Borrower makes the representations and warranties set out in this Clause 9 (*Representations*) to the Lender on the Signing Date.

9.1 **Status**

9.1.1 The Sponsor is an entity duly established or registered and validly existing under the laws of [the Republic of Ghana].

[Note: may be amended subject to due diligence on the Sponsor.]

9.1.2 The Sponsor has the power to own its assets and carry on its business as it is being conducted.

9.2 **Binding obligations**

The obligations expressed to be assumed by each of the Borrower and/or the Sponsor (as the case may be) in each Project Document to which it is a party are legal, valid, binding and enforceable obligations and each Project Document is in the proper form for enforcement in the Republic of Ghana.

9.3 **Non-conflict with other obligations**

The entry into and performance by each of the Borrower and/or the Sponsor (as the case may be) of, and the transactions contemplated by, the Project Documents to which it is a party do not and will not conflict with:

- 9.3.1 any law or regulation applicable to it;
- 9.3.2 the Constitution of the Republic of Ghana;
- 9.3.3 [the constitutional documents of the Sponsor];
- 9.3.4 any agreement or instrument binding upon the Borrower, or any of the assets of the Borrower and as representative for and on behalf of the Republic of Ghana; or
- 9.3.5 any agreement or instrument binding upon the Sponsor, or any of its assets.

9.4 **Power and authority**

Each of the Borrower and/or the Sponsor (as the case may be) has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, the Project Documents to which it is a party and the transactions contemplated by those Project Documents.

9.5 **Validity and admissibility in evidence**

All Authorisations required or desirable:

- 9.5.1 to enable each of the Borrower and/or the Sponsor (as the case may be) to lawfully enter into, exercise its rights and comply with its obligations in the Project Documents to which it is a party;
- 9.5.2 to make the Project Documents to which the Borrower and/or the Sponsor (as the case may be) is a party admissible in evidence in the Republic of Ghana; and
- 9.5.3 for the Borrower and/or the Sponsor (as the case may be) to carry on its business, and which are material,

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

9.6 **Governing law and enforcement**

- 9.6.1 The choice of [●] law as the governing law of the Project Documents will be recognised and enforced in the Republic of Ghana.
- 9.6.2 Any judgement obtained in [●] in relation to a Project Document will be recognised and enforced in the Republic of Ghana.

[Note: The language of this representation may be amended depending on the governing law of the Project Documents. Under the current law of Ghana, foreign judgements will not be recognised unless the foreign country has a reciprocal arrangement with Ghana]

(i.e. a fresh action must be taken in the courts in Ghana even if a judgement in relation to the same issue has been obtained in a foreign court).

*At present, countries that have such reciprocal arrangements with Ghana are Brazil, France, Israel, Italy, Japan, Lebanon, Senegal, Spain, United Arab Republic, and the **United Kingdom**. Therefore, if the Project Document is not governed under the laws of any of these countries, the Borrower will not be able to provide the representation given in sub-Clause 9.6.2.]*

9.7 No misleading information

All information supplied by the Borrower and/or the Sponsor (as the case may be) in connection with the transactions contemplated by the Project Documents, is true, complete and accurate in all material respects as at the date it was given and, to the knowledge of the Borrower (having made all reasonable enquiries) is not misleading in any respect.

9.8 No proceedings pending or threatened

No litigation, arbitration or administrative proceedings of or before any court, arbitral body, agency or other competent authority (including any arising from or relating to Environmental Law) has, to the best of its knowledge and belief, been started or threatened against the Borrower and/or the Sponsor (as the case may be) which will or could reasonably be expected to have a Material Adverse Project Effect.

9.9 No breach of laws

Neither the Borrower nor the Sponsor has breached any law or regulation (whether such breach is of the laws of the Republic of Ghana, the laws of any other state, public international law or otherwise) which breach has or is reasonably likely to have a Material Adverse Effect or a Material Adverse Project Effect.

9.10 No omissions

None of the representations and warranties set out in this Clause 9 omits any matter the omission of which makes any of such representation and warranty misleading in any material respect.

[Note: additional representations or warranties specific to the Project and/or the Sponsor may be inserted following completion of due diligence on the Project and Sponsor.]

9.11 Repetition

The representations set out in Clauses 9.1 (*Status*) to 9.10 (*No omissions*) (inclusive) shall be deemed to be made by the Borrower by reference to the facts and circumstances then existing on the date of the Utilisation Request, the date of each Utilisation, each Repayment Date and each Interest Payment Date.

10. INFORMATION UNDERTAKINGS

The undertakings in this Clause 10 (*Information undertakings*) are in addition to the undertakings made by the Borrower under clause 17 (*Information undertakings*) of the

Master Facility Agreement, and remain in force from the Signing Date for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

10.1 **Information**

The Borrower shall supply to the Lender:

10.1.1 promptly, such further information regarding the financial and economic condition, business and operations of the Sponsor or any other Public Entity relevant to the transactions under the Project Documents as the Lender may reasonably request, provided that the Borrower shall not be required to supply any information which:

- (A) would result in a breach of any confidentiality obligation binding on it; or
- (B) constitutes a state secret of the Republic of Ghana;

10.1.2 promptly upon becoming aware of such details, the details of:

- (A) any material alteration or modification to its law, constitutional documents and/or any other instrument governing its establishment or incorporation; and
- (B) any decision of any Governmental Agency known to the Borrower which envisages the introduction of such alteration or modification,

in each case, which has or could reasonably be expected to have a Material Adverse Project Effect; and

10.1.3 promptly upon becoming aware of them, any event or condition which has or may reasonably be expected to have a Material Adverse Project Effect.

10.2 **Project Information**

10.2.1 The Borrower shall procure the Sponsor to prepare quarterly construction reports and/or operating reports (as the case may be) for each three-month period beginning from the Project Construction Start Date and the Borrower shall deliver to the Lender copies of such reports within fifteen (15) Business Days of the end of each such three-month period.

10.2.2 The Borrower promptly, and in any event within fifteen (15) Business Days of receipt of the same, supply to the Lender copies of all reports, work programs and budgets, accounts and other documents prepared by or delivered to the Borrower by the Sponsor, or otherwise received by the Borrower in respect of the Project.

10.2.3 The Borrower shall promptly supply to the Lender such information in relation to the Project Documents and Project as the Lender may from time to time reasonably require.

10.2.4 The Borrower shall promptly notify the Lender of:

- (A) any circumstances becoming known to it which have led or may lead to any Project Cost Overrun;
- (B) any circumstances becoming known to it which have led or may lead to any Project Document not being in full force and effect;
- (C) it becoming aware of any party to any Project Document having failed to comply with any terms of it in any respect which may be material; and
- (D) any circumstances becoming known to it (whether as a result of a force majeure event or for any other reason) which have led or may lead to any obligation of any party under the Project Documents being suspended or incapable of fulfilment.

10.2.5 The Borrower shall:

- (A) promptly provide to the Lender a copy of any agreement or document which is proposed to be entered into to amend, waive or suspend any of the terms of any of the Project Documents, and it shall forthwith upon any such agreement or document being entered into, deliver to the Lender copies of such agreement or document; and
- (B) immediately upon receipt, deliver to the Lender a copy of any termination notice served under any Project Document.

10.2.6 The Borrower shall, promptly upon becoming aware of it, notify the Lender of:

- (A) any proposal or threat to suspend the construction or operation of the Project, or any part of the Project, or to abandon the Project in whole or in part;
- (B) details of any damage or destruction to the whole or part of the Project; and
- (C) details of any other event or circumstance which could reasonably be expected to affect the implementation of the Project in accordance with the Project Documents.

[Note: Additional information undertakings specific to the Project and/or the Sponsor may be inserted following completion of due diligence on the Project and the Sponsor.]

11. GENERAL UNDERTAKINGS

The undertakings in this Clause 11 (*General undertakings*) are in addition to the undertakings made by the Borrower under clause 18 (*General undertakings*) of the Master Facility Agreement, and remain in force from the Signing Date for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

11.1 Compliance with laws

The Borrower shall, and shall procure that the Sponsor shall, comply in all respects with all laws to which it may be subject, if failure so to comply would materially impair the ability

of the Borrower and/or the Sponsor (as the case may be) to perform its obligations under the Project Documents to which it is a party.

11.2 [Disposals]

11.2.1 The Borrower shall ensure that the Sponsor will not enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, transfer or otherwise dispose of any asset.

11.2.2 Clause 11.2.1 above does not apply to any sale, lease, transfer or other disposal:

- (A) made in the ordinary course of trading of the disposing entity;
- (B) of assets in exchange for other assets comparable or superior as to type, value and quality and for a similar purpose; or
- (C) where the higher of the market value or consideration receivable (when aggregated with the higher of the market value or consideration receivable for any other sale, lease, transfer or other disposal by members of the Group, other than any permitted under paragraphs (A) and (B) above) does not exceed [●] (or its equivalent in another currency or currencies) in any financial year.

[Note: figure to be inserted following completion of due diligence by CDB.]

[Note: the undertaking in Clause 11.2 (Disposals) is relevant only if the Sponsor is a special purpose entity.] <<<<<<<

11.3 Merger

The Borrower shall ensure that the Sponsor will not enter into any amalgamation, demerger, merger or corporate reconstruction which has or could reasonably be expected to have a Material Adverse Project Effect.

[Note: the undertaking in Clause 11.3 (Merger) is relevant only if the Sponsor is a special purpose entity.] <<<<<<<

11.4 Change of business

The Borrower shall procure that no substantial change is made to the general nature of the business of the Sponsor from that carried on at the date of this Agreement which has or could reasonably be expected to have a Material Adverse Project Effect.]

[Note: the undertaking in 11.4 (Change of business) is only relevant if the Sponsor is a special purpose entity.] <<<<<<<

11.5 Environmental compliance

The Borrower shall, and shall ensure that the Sponsor shall, comply in all material respects with Environmental Laws and take all reasonable steps in anticipation of known or expected future changes to, or obligations under, any Environmental Law.

11.6 Environmental Claims

The Borrower shall inform the Lender in writing as soon as reasonably practicable upon becoming aware of:

- 11.6.1 any claim, proceeding or investigation by any person in respect of any Environmental Law which has been commenced or (to the best of the Borrower's knowledge and belief) is threatened against it or the Sponsor (as the case may be),
or
- 11.6.2 any facts or circumstances which will or might reasonably be expected to result in any claim, proceeding or investigation by any person in respect of any Environmental Law being commenced or threatened against it or the Sponsor (as the case may be),

in each case where such claim, proceeding or investigation might reasonably be expected, if determined against the Borrower or the Sponsor, to have a Material Adverse Project Effect.

11.7 Project Undertakings

The Borrower shall, and shall procure that the Sponsor shall:

- 11.7.1 duly and punctually perform all obligations assumed or to be assumed by it under each Project Document and under all leases, permissions, Authorisations, easements, rights of way and other rights to which it is, from time to time, a party; and
- 11.7.2 take all steps necessary or desirable to protect, maintain, exercise and enforce all its rights (if any) with respect to the Project Documents to procure the due performance by each other party to the Project Documents of such party's respective obligations under each of the Project Documents; and
- 11.7.3 acquire at the appropriate time for the Project to be implemented in accordance with the Project Documents and then preserve all such property, rights and interests as are necessary for the performance of its obligations under each of the Project Documents.

11.8 Project Cost Overrun

The Borrower shall ensure and procure that all Project Cost Overruns are or will be met by it and/or the Sponsor and will, in relation to any Project Cost Overrun notified to the Lender from time to time, provide the Lender with a certificate from an authorised signatory of the Sponsor confirming that such Project Cost Overruns have been met or that provisions have been set aside or made by it and/or the Sponsor to meet payment of such Project Cost Overruns

[Note: additional undertakings specific to the Project and/or the Sponsor may be inserted following due diligence on the Project.] <<<<<<<

12. EVENTS OF DEFAULT

In addition to the events or circumstances set out in clauses 19.1 (*Non-payment*) to 19.15 (*Material adverse change*) of the Master Facility Agreement, each of the events or circumstances set out in the following sub-Clauses of this Clause 12 (*Events of default*) is an Event of Default.

12.1 Misrepresentation

Any representation or statement made or deemed to be made by the Borrower and/or the Sponsor (as the case maybe) in the Project Documents or any other document delivered by or on behalf of the Borrower and/or the Sponsor (as the case maybe) under or in connection with any Project Document is or proves to have been incorrect or misleading in any material respect when made or deemed to be made unless the circumstances giving rise to the misrepresentation are capable of being remedied and are remedied within twenty (20) days of the earlier of the Lender giving notice to the Borrower or the Borrower becoming aware of the misrepresentation or incorrectness.

12.2 Creditors Process

Any expropriation, attachment, sequestration, distress or execution affects any asset or assets of the Sponsor or the Project that has or could reasonably be expected to have a Material Adverse Project Effect.

12.3 Insolvency

12.3.1 The Sponsor:

- (A) is or is presumed or deemed to be unable (or is deemed by any law or court to be) or admits inability to pay its debts as they fall due;
- (B) stops or suspends (or announces an intention to stop or suspend) making payments on any of its Financial Indebtedness; or
- (C) by reason of actual financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness.

12.3.2 Any step is taken or event occurs in any jurisdiction which would have an analogous or equivalent effect to those set out in sub-Clause 12.3.1 above.

12.4 Insolvency proceedings

Any corporate action, legal proceedings or other procedure or step is taken in relation to:

- (A) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration, provisional supervision of the Sponsor;
- (B) a composition, compromise, assignment or arrangement with any creditor of the Sponsor; or
- (C) enforcement of any Security over any assets of the Sponsor,

or any procedure or step is taken in any jurisdiction which would have an analogous or equivalent effect.

12.5 Unlawfulness

It is or becomes unlawful for the Borrower and/or the Sponsor (as the case may be) to perform any of its obligations under the Project Documents to which it is a party.

12.6 Repudiation

The Borrower or the Sponsor repudiates a Project Document or evidences an intention in writing to repudiate a Finance Document to which it is a party.

12.7 Cessation of business

The Sponsor suspends or ceases to carry on all or a material part of its business or of the business.

12.8 Material Adverse Project Effect

Any other event or series of events occurs which has or could reasonably be expected to have a Material Adverse Project Effect.

[Note: additional events of default may be added following due diligence on the Project and Sponsor.]

This Agreement has been entered into on the date stated at the beginning of this Agreement.

SCHEDULE 1
CONDITIONS PRECEDENT

Part I - Initial conditions precedent

1. THE BORROWER

1.1 [Confirmation that there has been no change made since the Execution Date to Article 58 of the Constitution of the Republic of Ghana and Sections 1(3)(b) and 4 of the Loans Act, 1970 (Act 335) of the Republic of Ghana.]/ [Evidence that the changes made to [Article 58 of the Constitution of the Republic of Ghana and] [Sections 1(3)(b) and/or 4 of the Loans Act, 1970 (Act 335) of the Republic of Ghana] do not affect the mandate given to the Minister for Finance and Economic Planning to execute the Subsidiary Agreement on behalf of the Republic of Ghana.]

[Note: one option to be deleted, depending whether there has been any change in the identity of the Minister for Finance and Economic Planning, the Constitution of the Republic of Ghana, and/or the relevant provisions of the Loans Act 1970 (Act 335) of the Republic of Ghana, in each case, since the Execution Date.]

1.2 Evidence that the Borrower has:

1.2.1 approved the terms of, and the transactions contemplated by, this Agreement and all the Project Documents to which it is a party and resolving that it execute this Agreement and all the Project Documents to which it is a party ;

1.2.2 authorised a specified person or persons to execute this Agreement and all the Project Documents to which it is a party on its behalf; and

1.2.3 authorised a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including, if relevant, the Utilisation Request) to be signed and/or despatched by it under or in connection with the this Agreement and all the Project Documents to which it is a party.

1.3 A specimen of the signature of each authorised person referred to in sub-paragraph 1.2 above.

1.4 Certification from the Borrower confirming that borrowing the Loan up to the Commitment would not cause any borrowing or similar limit binding on it to be exceeded.

1.5 Certification from an authorised signatory of the Borrower that each copy document relating to it specified in this Schedule 1 is correct, complete and in full force and effect as at a date no earlier than the Signing Date.

2. THE SPONSOR

- 2.1 A copy of the [**Articles of Incorporation**] documents of the Sponsor.
- 2.2 A copy of a resolution of the [**Board of Directors**] of the Sponsor:
 - 2.2.1 approving the terms of, and the transactions contemplated by, the Project Documents to which it is a party and resolving that it execute the Project Documents to which it is a party;
 - 2.2.2 authorising a specified person or persons to execute the Project Documents to which it is a party on its behalf; and
 - 2.2.3 authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices to be signed and/or despatched by it under or in connection with the Project Documents to which it is a party.
- 2.3 A specimen of the signature of each person authorised by the resolution referred to in subparagraph 2.2 above.
- 2.4 Certification from an authorised signatory of the relevant Obligor that each copy document relating to it specified in this Schedule 1 (*Conditions precedent*) is correct, complete and in full force and effect as at a date no earlier than the date of this Agreement.

Part II -Conditions precedent for Utilisation

3. PROJECT

- 3.1 Copies of each Project Document.
- 3.2 A copy of the Project Budget, comprising the total budget for the whole Project prior to the first Utilisation and the most recent quarterly budget.
- 3.3 Copies of commercial invoices issued by the relevant Approved Contractor(s) in relation to the Project that are to be financed from the proceeds of the Utilisation together with a copy of the disbursement request and all other documents (such as, completion certificates and milestone confirmations) delivered by the Sponsor requesting funds to make payment to an Approved Contractor.

4. LEGAL OPINIONS

- 4.1 A legal opinion in relation to English law from [*insert name of law firm*] as English law counsel to the Lender addressed to the Lender. <<<<<<<<
- 4.2 A legal opinion as to Ghanaian law from [*insert name of law firm*] as Ghana counsel for the Lender addressed to the Lender. <<<<<<<

5. OTHER DOCUMENTS AND EVIDENCE

- 5.1 A copy of any other Authorisation or other document, opinion or assurance which the Lender considers to be necessary or desirable (if it has notified the Borrower accordingly) in connection with the entry into and performance of the transactions contemplated by any Finance Document and Project Document or for the validity and enforceability of any Finance Document and Project Document .
- 5.2 Certification by a director or authorised signatory of the Sponsor that the proceeds of the Utilisation are required by the Borrower to fund up to eighty-five per cent. (85%) of the Project Costs then required to be funded under the relevant Utilisation Request in accordance with the Project Budget, and evidence that the Sponsor has already funded at least fifteen per cent. (15%) of such Project Costs.
- 5.3 Evidence satisfactory to the Lender that:
 - 5.3.1 there are no Project Cost Overruns; or
 - 5.3.2 all Project Cost Overruns have been funded.

[Note: additional conditions precedent may be included following due diligence on the Project and Sponsor.]<<<<<<<<

SCHEDULE 2
[TRANCHE B/TRANCHE A] REPAYMENT SCHEDULE

[Repayment Schedule to be inserted]

[Note: the concept of the "grace period" given for the principal repayment under each Loan should be reflected in the Repayment Schedule. Such grace period shall be equal to the construction period in respect of the relevant Project provided that no grace period shall be in excess of 5 years from the Signing Date.]

**SCHEDULE 3
LOAN CERTIFICATE**

From: the Republic of Ghana represented by the Minister for Finance and Economic Planning

To: China Development Bank Corporation

Dated:

Dear Sirs

US\$3,000,000,000 Master Facility Agreement dated October 2011 (the "Master Facility Agreement") and US\$[1,000,000,000 ●] Subsidiary Agreement dated [●] (the "Subsidiary Agreement")

1. We refer to the Master Facility Agreement and the Subsidiary Agreement (together the "**Relevant Facility Agreements**"). This is a Loan Certificate in respect of the Utilisation Request dated [●] (the "**Utilisation Request**"). Terms defined in the Relevant Facility Agreements shall have the same meaning in this Loan Certificate.
2. We confirm the information set out below is accurate:

(a) **Total amount utilised as at the date of this Loan Certificate**

- (i) Total amount utilised under the Tranche [B] Facility up to the date of this Loan Certificate (US\$) [●]
- (ii) Total amount paid to PRC Contractors from the amount described in paragraph (a)(i) above up to the date of this Loan Certificate (US\$) [●]
- (iii) Proportion of the amount described in paragraph (a)(i) above paid to PRC Contractors up to the date of this Loan Certificate (%) [●]

(b) **Amount requested in the Utilisation Request**

- (i) Proposed amount to be utilised under the Tranche [B] Facility (US\$) [●]
- (ii) Amount to be paid to PRC Contractors from the amount described in paragraph (b)(i) above (US\$) [●]
- (iii) Proportion of the amount described in paragraph (b)(i) above to be paid to PRC Contractors (%) [●]

(c) **Total amount to be utilised following disbursement of the Loan requested in the Utilisation Request**

- (i) Total amount utilised under the Tranche [B] Facility following disbursement of the Loan requested in the [●]

Utilisation Request (US\$)

- (ii) Total amount paid to PRC Contractors from the amount described in paragraph (c)(i) above following disbursement of the Loan requested in the Utilisation Request (US\$) [●]

- (iii) Proportion of the amount described in paragraph (c)(i) above paid to PRC Contractors following disbursement of the Loan requested in the Utilisation Request (%) [●]

Yours faithfully

.....

authorised signatory for

**THE REPUBLIC OF GHANA REPRESENTED BY
THE MINISTER FOR FINANCE AND ECONOMIC PLANNING**

SIGNATURE PAGE

Borrower

**THE REPUBLIC OF GHANA
REPRESENTED BY THE
MINISTER OF FINANCE
AND ECONOMIC PLANNING**

By:

Name: [●]

Title: [●]

Lender

CHINA DEVELOPMENT BANK CORPORATION

By:

Name: [●]

Title: [●]