

PARLIAMENT OF GHANA LIBRARY

ADDENDUM NUMBER 2

TO

BUILD OWN OPERATE AND TRANSFER AGREEMENT (BOOT)

BETWEEN

THE GOVERNMENT OF THE REPUBLIC

OF GHANA

AND

AMERI ENERGY POWER EQUIPMENT TRADING LLC

NOVEMBER, 2018

THIS ADDENDUM NO 2 is made this day of 2018

BETWEEN

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

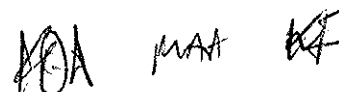
AND

AMERI ENERGY POWER EQUIPMENT TRADING LLC (hereinafter referred to as "AMERI"), a company incorporated in Dubai, UAE with its office located at 27th Floor, Sheikh Zayed Road, Dubai UAE.

Each individually a "Party" and collectively the "Parties".

WHEREAS:

- A. GoG represented by the erstwhile Ministry of Power entered into a Build, Own, Operate and Transfer Agreement, dated 10th February 2015, (hereinafter referred to as the "**BOOT Agreement**"), with Africa and Middle East Resources Investment Group LLC 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 "**Project**") and the provision of certain services related to the operation and maintenance of the Project for the term provided for in the BOOT Agreement and subject to its terms and conditions;
- B. The BOOT Agreement was ratified by the Parliament of Ghana on 20th March 2015;
- C. Following execution of BOOT Agreement, Africa & Middle East Resources Investment Group LLC assigned its rights and obligations under the BOOT Agreement to AMERI;
- D. Addendum No.1 to the BOOT Agreement was executed by the Parties on 27th July, 2015 to amend certain technical requirements and contemplated timelines stated in the BOOT Agreement;
- E. Commercial Operations Date (COD) for the Project was achieved on 1st February 2016 and all payments were duly made by GoG until January 2017;
- F. Since February 2017 until July 2018, partial or in some cases, no payments have been made by GoG on accepted invoices;
- G. In the interest of the country and the people of Ghana, AMERI has agreed to work together with GoG to structure a mutually agreed formulation and finding a suitable way forward, wherein the inherent interests of each of the Parties, and most importantly, the interest of the people of Ghana will be safeguarded;



- H. In view of the foregoing, the Parties have executed a Memorandum of Understanding (MOU) dated 30th of September 2018;
- I. Whereas under the MOU, the Parties have agreed to restructure the complete payment mechanism under the BOOT Agreement, wherein the Required Payments to AMERI for provision of AMERI Energy Services under the original terms of the BOOT Agreement are being spread over 72 months rather than 60 months, thereby offering an extended payment period to the Government of Ghana;
- J. In consideration of GoG's commitment to clear the complete payment backlog under the BOOT Agreement (from February 2017 till July 2018), AMERI agreed to waive its variable charge (0.005US\$) from September 2018 until the remainder of the term of the BOOT Agreement (expiring January 2021), capped at a ceiling of US\$16.6 million per year, generating savings for the Government of Ghana of up to US\$41.5 million in total;
- K. As a confirmation of its commitment towards the Project, AMERI also agreed to grant a further discount of Seven (7) Million United States Dollars to GoG on the total outstanding amount towards GoG for the last year of the term of the BOOT Agreement;
- L. AMERI has also agreed to discount the invoices to be paid by GoG to AMERI during the last year of the revised term of the BOOT Agreement, if the Government makes timely payments of each monthly invoice during that period;
- M. The Parties for good consideration have agreed to make the following changes to the BOOT Agreement.
- N. The Parties have obtained all required approvals to enter into this Addendum.

NOW THEREFORE THIS AGREEMENT WITNESSETH AS FOLLOWS:

- 1.1 GoG undertake to clear AMERI's complete backlog of payments (starting from February 2017 until July 2018) latest by 1st March 2019 – Total outstanding payment to be made to AMERI by GoG is approximately US\$90 Million (actual amount to be calculated and any accumulated interest shall be waived by AMERI). This outstanding payment shall be made by GoG as per the following schedule:
- 1st November 2018 - US\$10 Million
 - 1st January 2019 - US\$30 Million
 - 1st February 2019 - US\$25 Million
 - 1st March 2019 – US\$25 Million - Pay amount equivalent to outstanding backlog balance
2. GoG and AMERI agree that the payment mechanism under the BOOT Agreement effective from August 2018 shall be as follows:
- a. GoG shall pay to AMERI US\$ 6.375 Million every month for the remainder of the five-year term of the BOOT Agreement. For the avoidance of doubt, the Parties

hereby agree that GoG shall pay AMERI a monthly payment of **US\$6.375 Million from August 2018 until expiry of the term of the BOOT Agreement.**

- b. The remaining amount of US\$56.75 Million (calculated as US\$2.125 Million x 30 months = US\$ 63.75 Million less US\$7 Million discount (referred to in (d) below) = \$56.75 million), shall be paid by GoG to AMERI in **12 equal installments of US\$4.73 Million United States Dollars per month, after completion of the original five (5) year BOOT term.** It is also agreed between the Parties that AMERI shall not charge any interest on this payment of US\$56.75 Million throughout the term of this twelve (12) months period. It is further agreed that the payments of these invoices shall be made by GoG to AMERI in accordance with the same timelines followed under Section 11(Monthly Invoicing) of the BOOT Agreement.
 - c. AMERI further agrees that if GoG pays the aforementioned installments (that would be payable after completion of the original five (5) year term) on time, AMERI will give an additional 5% discount per month on each invoice being paid on time, as an incentive to GoG.
 - d. AMERI undertakes to grant GoG a further discount of 7 Million United States Dollars over the total outstanding amount of \$ 63.75 Million, as reflected in the calculation made in Clause 2 (b).
3. GoG agrees to the timely payment of invoices submitted to it in accordance with the terms of the BOOT Agreement, starting from August 2018 until the end of BOOT term;
 4. GoG shall provide a timely confirmation of the Letter of Credit, in accordance with the terms of the BOOT Agreement, for seventy-two (72) months including the remaining term of the BOOT Agreement and the additional one year during which remaining payments owed by GoG will be made.
 5. GoG shall immediately facilitate the outstanding tax exemptions by the Parliament of Ghana;
 6. AMERI shall accept a waiver of its variable charge (0.005US\$) from September 2018 until the remainder of the term of the BOOT Agreement (expiring January 2021), capped at a ceiling of US\$16.6 Million per year generating a savings of up to US\$41.5 million in total;
 7. AMERI will hand over the power plant to GoG after the five (5) year term but will only transfer the title (title deed) of the ownership of the asset to GoG, after receipt of full settlement of payment towards AMERI as per the terms of this Addendum.

PURSUANT to the agreement reached, the BOOT Agreement is amended as follows:

1. **Section 2 - Effective Date and Term Options**

The Parties hereby agree to amend Sub-Section 2(a) to read as follows:

1. **Section 2(a):** Subject to the provisions of Section 25 of this Agreement, this Agreement shall have a Term commencing on the Effective Date and continuing until seventy-two (72) months after the Full Commercial Operation Date.

2. For the purposes of clarity, the additional 12 months have been included to allow the Government to pay AMERI ENERGY, the payments provided for under Section 1.2 (b) of this Addendum.

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2. **Section 8 - Certain AMERI ENERGY Obligations**

The Parties hereby agree to amend the following Sub-Sections to read as follow:

a. **Section 8(b):** Operate, maintain and repair the AMERI ENERGY Equipment in accordance with the instructions of the manufacturers of the AMERI ENERGY Equipment and Prudent Industry Practice only for the term of 60 months, starting from the Effective Date and continuing only until sixty (60) months after the Full Commercial Operation Date;

b. **Section 8(c):** cause the AMERI ENERGY Equipment to be operated by qualified operators, starting from the Effective Date and continuing only until sixty (60) months after the Full Commercial Operation Date;

c. **Section 8(d):** be responsible for manufacturer-recommended scheduled overhauls of the AMERI ENERGY Equipment, starting from the Effective Date and continuing only until sixty (60) months after the Full Commercial Operation Date; and

d. **Section 8(e):** maintain appropriate records of the operation and maintenance of the AMERI ENERGY Equipment starting from the Effective Date and continuing only until sixty (60) months after the Full Commercial Operation Date; and provide such records to the GoG upon the GoG's request

e. **Section 8(f):** AMERI ENERGY shall grant the GoG access to the plant on a biannual basis for purposes of inspecting the site, the equipment, and the maintenance records starting from the Effective Date and continuing only until sixty (60) months after the Full Commercial Operation Date;

f. **Section 8(g):** In the event that the plant is to be shut down anytime during the period starting from the Effective Date and continuing only until sixty (60) months after the

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4. Section 12 - Performance Warranties

The Parties hereby agree to amend Sub-Sections c of the BOOT Agreement amended through Addendum No. 1 and Sub-Section e of the BOOT Agreement to read as follows:

- a. **Section 12(c):** AMERI ENERGY warrants to GoG ninety percent (90%) availability of the AMERI ENERGY Equipment based on net site performance over the period starting from the Effective Date and continuing only until sixty (60) months after the Full Commercial Operation Date as calculated in accordance with the Operating specifications. The Availability Guarantee shall be calculated on an annual basis and adjustments, if any, shall be made on annual basis. For the avoidance of doubt the monthly Required Payments would not be reduced during the duration of each annual calendar period.
- b. **Section 12 (e):** The aggregate liquidated damages payable by AMERI ENERGY during the period starting from the Effective Date and continuing only until sixty (60) months after the Full Commercial Operation Date, for a shortfall in availability or dispatch performance shall in no event exceed an amount equal to five percent (5%) of the Contract Price provided that such liquidated damages will be subject to the limitation set forth in Section 21. 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.

5. Section 15 – Health and Safety Matters

The Parties agree to amend the following Sub-Sections to read as follows:

- a. **Section 15(h)(i):** Prior to commencing work at the Site and during the period starting from the Effective Date and continuing only until sixty (60) months after the Full Commercial Operation Date, AMERI ENERGY shall procure and maintain, at AMERI ENERGY's own cost and expense the following insurance against claims for injuries to person or damages to property which may arise from or in connection with the performance of the work or provision of services under this Agreement by AMERI ENERGY or any AMERI ENERGY Parties. If requested, AMERI ENERGY shall furnish the GoG with certificates of insurance affecting coverage required by this Section 15(a). The certificates for each policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.
- b. **Section 15(h)(ii):** AMERI ENERGY shall effect and maintain or cause to be effected and maintained during the period of installing, operating and maintaining the AMERI ENERGY Equipment, operational all risk property insurance to be maintained at all times during which the AMERI ENERGY Equipment is in AMERI ENERGY's possession or control, covering any existing property and the AMERI ENERGY Equipment against all risks, loss or damage, including coverage during installation, commissioning, and testing of such AMERI ENERGY Equipment, and machinery breakdown, in such form and with

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such insurers as shall be satisfactory to the Parties, in an amount not less than the full replacement cost of all the AMERI ENERGY Equipment and existing property. The deductible for the property insurance shall not exceed US\$25,000.

- c. **Section 15(h)(iii):** AMERI ENERGY shall also affect and maintain or cause to be affected and maintained during the during the period starting from the Effective Date and continuing only until sixty (60) months after the Full Commercial Operation Date, such other insurances as may be necessary in accordance with Prudent Industry Practice.

6. **Section 26 – Assessment and Conditions Survey**

The Parties agree to amend Section 26 to read as follows;

5. Ninety (90) days prior to the expiry of the sixty (60) months after the Full Commercial Operation Date and before the AMERI ENERGY EQUIPMENT is handed over to GoG for the Operation & Maintenance (including all related works) of AMERI ENERGY EQUIPMENT, the Parties shall jointly appoint an independent engineer to conduct a condition survey of the AMERI ENERGY Equipment has been maintained in accordance with the Original Equipment Manufacturer (OEM) Standards. In addition, the independent engineer shall deliver its opinion as to whether or not the AMERI ENERGY Equipment or any part thereof is in good working condition consistent with the number of operating hours of the AMERI ENERGY Equipment has not been operated and maintained in accordance with the requirements under this Agreement (normal wear and tear excepted) no later than forty- five (45) days prior to expiry of the sixty (60) months after the Full Commercial Operation Date.
6. AMERI ENERGY shall, at its own cost, charge and expense, take all necessary steps to put the same to good working condition on or before expiry of the sixty (60) months after the Full Commercial Operation Date.
7. If AMERI ENERGY fails to restore the AMERI ENERGY Equipment to a good working condition within such period or replace such missing items, AMERI ENERGY shall pay to the GoG such costs as to put the AMERI ENERGY Equipment to good working condition.
8. The identity of and detailed terms of reference for the engineer shall be agreed between the Parties.
9. Any fees payable to the independent engineer shall be borne by the Parties equally.

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7. Section 27 – Inventory

The Parties agree to amend Section 27 to read as follows;

10. Sixty (60) days prior to expiry of the sixty (60) months after the Full Commercial Operation Date, a joint survey will be conducted on Site by equal number of representatives of the Parties to confirm the physical existence of list of items which have been agreed to be transferred to GoG under the Agreement, as more particularly described in Annex A of the BOOT Agreement.

8. Annex G - Pricing, Contract Price, Monthly Required payments & all other payments/formulations

The Parties agree to replace Annex G with Annex G1, which is attached herewith;

IN WITNESS THEREOF each of the Parties has executed the Agreement as of this date

**For and on behalf of
GOVERNMENT OF GHANA
MINISTRY OF FINANCE**

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(Signature)

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(Name)

Witness:
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(Signature)

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(Name)

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**For and on behalf of
GOVERNMENT OF GHANA
MINISTRY OF ENERGY**

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(Signature)

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(Name)

Witness:

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(Signature)

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(Name)

**For and on behalf of
AMERI ENERGY POWER EQUIPMENT TRADING LLC**

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(Signature)

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(Name)

Witness:

(Signature)
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(Name)



Kofi Mensah *KF*