



water & sanitation

Department:
Water and Sanitation
REPUBLIC OF SOUTH AFRICA

POWER PURCHASE AGREEMENT (PPA)

BETWEEN

DEPARTMENT OF WATER AND SANITATION

(as Buyer)

AND

IPP NAME

(as Seller)

Contracted Capacity: 28.85 MW (AC)

Installed Capacity 28.85 MW (AC)

Facility: VRESAP Pump Station Solar Photovoltaic Power Generating Plant

Location: Central Operation Cluster, Gauteng Province, Republic of South Africa

TABLE OF CONTENTS

PREAMBLE:	7
RECITALS	7
1. DEFINITIONS AND INTERPRETATION	8
1.1 Definitions	8
1.2 Interpretation	24
1.3 Abbreviations	25
1.4 Units of measurement	26
1.5 Rounding up.....	26
1.6 Status of agreement	26
2. TERM.....	26
3. CONDITIONS PRECEDENT	26
3.1 Effectiveness of rights and obligations.....	26
3.2 Conditions Precedent	27
3.3 Responsibilities concerning Conditions Precedent	28
3.4 Waiver and extension	28
3.5 Reports	28
3.6 Failure to fulfil.....	28
4. PROJECT SITE	29
4.1 Project Site.....	29
4.2 Risk and Liability.....	29
4.3 Buyer's inspection rights	29
4.4 No improvements	29
4.5 No use of electricity from an electrical supply system	30
4.6 General Construction obligations	30
4.7 USE OF CONTRACTORS AND SUBCONTRACTORS.....	30
4.8 Commercial Operation Date (COD)	31
5. TESTING AND COMMISSIONING	31
5.1 Connection to the Distribution System	31

5.2	Independent Engineer	32
5.3	Facility Completion and Commissioning	33
5.4	Early Operating Period	33
5.5	Commercial Operation Date (COD)	33
5.6	Delays in achieving the Commercial Operation Date	35
5.7	Reduction in Contracted Capacity	36
5.8	Coordination with Buyer reconnection to the Distribution System	36
6.	SALE AND PURCHASE OF ENERGY	37
6.1	Sale of Energy	37
6.2	Title and Risk	37
6.3	Intangible and/or Tradeable Benefits of Renewable Energy (Emission Credits)	37
7.	MAINTENANCE INSPECTIONS	38
8.	GENERATION FORECASTS	38
8.1	Weekly Generation Forecast	38
8.2	Daily Generation Forecast	39
8.3	Other Relevant Data	39
9.	TARIFF AND OTHER CHARGES	39
9.1	Early Operating Energy Payments	39
9.2	Commercial Energy Payments	39
9.3	Deemed Energy Payments	40
9.4	Use of System Charges	40
9.5	Failure to make Payments	40
10.	INVOICING	40
10.1	Early Operating Period and Operating Period invoices	40
10.2	General Principles as Regards Invoicing	41
10.3	Billing Disputes	41
11.	OUTAGES	42
11.1	Scheduled Outages	42
11.2	Unscheduled Outages	42

12.	METERING	43
12.1	Metering Agents.....	43
12.2	Facility Metering Installation	43
12.3	System Metering Installation.....	43
12.4	Capabilities of Meters	43
12.5	Sealing.....	44
12.6	Testing and Inspection	44
12.7	Readings and Inaccuracy	45
12.8	Miscellaneous	46
13.	REPORTS, RECORDS, PLANS AND MONITORING	47
13.1	Reports	47
13.2	Data and Records.....	47
13.3	Recordkeeping.....	48
13.4	Ownership, Inspection, Copy and Use Rights	48
14.	UTILITIES AND CONSUMABLES	48
14.1	Responsibility for the Supply of Utilities	48
14.2	Responsibility for the Supply of Consumables	48
15.	CONSEQUENCES OF A SYSTEM EVENT	48
16.	FORCE MAJEURE	51
17.	UNFORESEEABLE CONDUCT	52
18.	TERMINATION	53
18.1	No Termination	53
18.2	Termination for Seller Default	53
18.2.3	Buyer's Costs.....	54
18.3	Termination for Buyer Default.....	54
19.	PROJECT INSURANCE	55
19.1	Insurances and Information	55
19.2	Application of Insurance Proceeds.....	55
20.	GENERAL SELLER UNDERTAKINGS.....	55

21.	INTELLECTUAL PROPERTY OF THE BUYER	56
22.	SET-OFF	57
23.	ASSIGNMENT	57
23.1	Prohibition on Assignment	57
24.	CONTRACTORS	58
25.	CHANGES IN CONTROL	58
26.	DISPUTE RESOLUTION	58
26.1	Referable Disputes	58
26.2	Internal Referral	58
26.3	Performance to Continue	59
26.4	Litigation	59
27.	REFERRAL TO AN INDEPENDENT EXPERT	59
28.	LIABILITY	61
28.1	Direct losses	61
28.2	Mitigation	61
29.	THIRD-PARTY INDEMNITY	61
30.	CONFIDENTIALITY	62
30.1	Confidential Information	62
30.2	Exclusions to Confidential Information	62
30.3	Permitted Disclosure of Confidential Information	62
30.4	Ownership and Treatment	63
31.	GOVERNING LAW AND JURISDICTION	63
32.	NOTICES.....	64
32.1	Methods of Delivery	64
32.2	Addresses	64
32.3	Domicilium citandi et executandi	65
32.4	Change in address	65
33.	WARRANTIES	65
33.1	Seller Warranties	65

33.2	Buyer Warranties	66
34.	REPRESENTATIVES.....	67
34.1	Buyer's Representative	67
34.2	Seller's Representative	67
35.	MISCELLANEOUS	67
35.1	No Partnership or Agency	67
35.2	No Amendment or Variation	68
35.3	Waiver	68
35.4	Third Parties.....	68
35.5	Counterparts	68
35.6	Entire Agreement.....	68
35.7	Further Assurances	68
35.8	Public Relations and Publicity	69
35.9	Language	69
35.10	Costs	69
35.11	Severability	69
35.12	Department of Water and Sanitation General Conditions of Contract and Special Conditions of Contract	70

PREAMBLE:

THIS **RENEWABLE ENERGY POWER PURCHASE AGREEMENT** (this "**Agreement**") is entered into by and between:

(1) _____, a limited liability company (Registration No. _____) incorporated under the laws of South Africa and having its principal place of business at _____ in the Republic of South Africa (the "**Seller**"); and

(2) THE DEPARTMENT OF WATER AND SANITATION, (the "**Buyer**"),

(together, the "**Parties**", and "**Party**" means either of them).

RECITALS

- A. The Seller has proposed to the Buyer that the Seller will design, engineer, construct, insure, Commission (as hereinafter defined), own, operate and maintain an approximately **Solar Photovoltaic Powered Electric Generation Facility (the "Facility") to be located at the Site (as hereinafter defined) at VRESAP and with a Contract Capacity (as hereinafter defined) 28.85 MW (AC)** on design, build, finance, own and operate basis;
- B. The Buyer has accepted the Seller's proposal to design, engineer, construct, insure, Commission, operate and maintain the Facility as well as for the sale of associated electric energy from the Facility;
- C. The Seller will, subject to the approval of NERSA, acquire a licence as required in terms of chapter 3 of the Electricity Regulation Act, 2006 for the generation and sale of the Net Energy Output to the Buyer in terms of this Agreement;
- D. The Seller wishes to sell the Net Energy Output from the Facility to the Buyer, and the Buyer wishes to purchase the Net Energy Output of the Facility from the Seller, on a take or pay basis, on the terms set out in this Agreement;
- E. The Seller has been issued with an Environmental Impact Assessment Record of Decision from the Department of Environmental Affairs and obtained Grid Connection approval from the Distributor;
- F. Subject to the fulfilment of the Conditions as well as those of any licence to be granted by NERSA, the Seller shall construct, commission, operate and maintain the Facility in order to supply the Net Energy Output to the Buyer;
- G. The Parties wish to record their agreement in respect of the terms and conditions governing the Construction, financing, insurance, Operation and Maintenance of the Facility, and the sale and purchase of Energy Output from the Facility.

NOW THEREFORE THE PARTIES AGREE as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement the following capitalised words and expressions shall have the following meanings (and cognate expressions shall have corresponding meanings):

"Achieved Capacity" means the Capacity of the Facility, as specified in the Facility Completion Form, which may not be greater than the Contracted Capacity;

"Affected Party" means a party to this agreement which is rendered unable to perform its contractual obligations due to the occurrence of a Force Majeure event;

"Agreed Form" means, in relation to any document not executed simultaneously with this Agreement, the terms and conditions of that document have been agreed by the Parties and initialled by each of them for identification purposes on or before the Signature Date;

"Agreed Interest Rate" means the prime rate of interest (expressed as a percentage rate per annum) at which any major commercial bank in South Africa lends on the overdraft, as published by that commercial bank from time to time, provided that, in respect of any day for which no such rate is published, the applicable rate shall be that prevailing in respect of the last day for which such rate was published;

"Allowed Grid Unavailability Period" means where the Facility is not connected to the Distribution System, a maximum of 5% in every Contract Year, i.e. the Distribution Grid will be available at least 95% of the time over any given period, per individual point of connection

"Assign" shall have the meaning given to it in clause 23.1 (*Prohibition on Assignment*) and the term **"Assignment"** shall be construed accordingly; **"Billing Period"** means each period of one (1) Month which falls within the Term, provided that:

- (a) the first Billing Period shall commence on the day on which the Seller becomes entitled to a Deemed Energy Payment contemplated in clause 15.4.1, on the first day of the Early Operating Period, or otherwise on the Commercial Operation Date (as appropriate), and shall end on the last day of the Month in which the first Billing Period commenced; and

- (b) the final Billing Period shall commence on the first day of the Month in which the Termination Date occurs and end on the Termination Date;

"Business Day" means a day, other than a Saturday or a Sunday or an official public holiday in South Africa;

"Capacity" means, in respect of the Facility, at any time and from time to time, the capability (expressed in MW) of such Facility, as the case may be, to generate and provide Energy to the Delivery Point. For the avoidance of doubt, Capacity shall be net of auto-consumption and the electrical losses up to the Delivery Point;

"Capital Expenditure" means any expenditure treated as capital expenditure under GAAP;

"Change in Control" means any change whatsoever in Control, whether effected directly or indirectly, excluding any change of Control in respect of a company listed on a stock exchange;

"Claims" means any and all suits, sanctions, legal proceedings, claims, assessments, judgments, damages, penalties, fines, liabilities, demands and/or losses by, on behalf of or in favour of any third party;

"Codes" means, as applicable, any code in respect of electricity generation, distribution or transmission as published by NERSA from time to time;

"Commence and Continue Construction" means that:

- (a) the Seller has authorised a Contractor to commence works under the terms of a binding written contract that is directly related to the construction of the Facility and such Contractor has begun significant ground works, such as excavations for laying foundations or cables or other substantial action that would involve significant cost for and effort from such Contractor to undertake; or
- (b) the Seller has procured Key Equipment items that involve material expenditure in relation to the construction of the Facility, and has provided proof to the Buyer's reasonable satisfaction that such procurement has taken place and expenditure has been incurred, provided that to Commence and Continue Construction does not include:
- (A) preparing unpaved access roads to and around the Project Site;

- (B) investigation of the Project Site, including geotechnical investigations to determine foundation conditions and other preconstruction monitoring or testing to establish background information related to the ground conditions of the Project Site;
- (C) clearing land or erecting fences on and surrounding the Project Site; and
- (D) dismantling pre-existing buildings or machinery on the Project Site in order to Construct the Facility, and that Construction works are on-going and have not been suspended or abandoned, and the phrase "**Commenced and Continued Construction**" shall have a corresponding meaning;

"**Commercial Energy**" means the Energy Output delivered by the Seller to the Buyer during the Operating Period;

"**Commercial Energy Payment**" means, in relation to each Billing Period, an amount (excluding VAT) that is due and payable by the Buyer to the Seller for the Commercial Energy delivered in that Billing Period, which payment shall be calculated with reference to the Commercial Energy Rate;

"**Commercial Energy Rate**" means the rate per kWh applicable to Commercial Energy, as specified in Schedule 1 Part 3 (*Energy Rates*);

"**Commercial Operation Date**" means the date specified in the Notice of Commencement of Facility as being the Commercial Operation Date of the Facility in terms of clause 5.6 (*Commercial Operation Date*);

"**Conditions Precedent**" means the conditions set out in Clause 3 of this Agreement, fulfilment of which is a prerequisite for this Agreement to become of full force and effect;

"**Connection Works**" means the Facility Connection Works or the Distribution Connection Works, as applicable;

"**Consents**" means all consents, permits, clearances, authorisations, approvals, rulings, exemptions, registrations, filings, decisions, and licences, required to be issued by or made with any Responsible Authority in connection with the performance of any of the Construction, Operation and Maintenance of the Facility by the Seller;

"**Construct**" means to investigate, survey, design, engineer, procure, construct, install, test, commission and do any and all other related things in accordance with the standards of a Reasonable and Prudent Operator, and the term "**Construction**" shall have a corresponding meaning;

"Consumer Price Index" means the weighted average consumer price index as published by Statistics South Africa (or its equivalent successor entity), which is referred to as "Headline CPI-All urban areas" in Statistical Release P0141 from time to time (or equivalent successor index);

"Contract Year" means each twelve (12) Month period, commencing at 00:00 hours on 1 April and ending at 24:00 hours on 31 March of the following year, provided that:

- (a) the first Contract Year shall commence at 00:00 hours on the first day of the Early Operating Period, or otherwise at 00:00 hours on the Commercial Operation Date, and shall end at 24:00 hours on 31 March of the following year; and
- (b) the final Contract Year shall end at 24:00 hours on the Termination Date;

"Contracted Capacity" means the Capacity of the Facility, at the Delivery Point, net of auto-consumption and the electrical losses up to the Delivery Point, as stated in Schedule 1 (*Details of Project and Facility*);

"Contractor" means any contractor directly engaged by the Seller to the whole or any part of the Construction, Operation and/or Maintenance of the Facility;

"Control" means the power, directly or indirectly, to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities or any interest carrying voting rights, or to appoint or remove or cause the appointment or removal of any directors (or equivalent officials) or those of its directors (or equivalent officials) holding the majority of the voting rights on its board of directors (or equivalent body), whether by contract or otherwise, and **"Controlled"** shall be construed accordingly;

"Curtailement" means any instruction from the System Operator to limit or reduce the Energy Output of the Facility;

"Daily Forecast Generation Profile" has the meaning ascribed to it in the clause below dealing with daily generation forecasts;

"Deemed Energy" means that Energy Output that would otherwise be available to the Buyer, but for a System Event, as determined in accordance with Schedule 6 (*Deemed Energy Payment*);

"Deemed Energy Payment" means an amount (excluding VAT) that shall be due and payable by the Buyer to the Seller for the Deemed Energy during a specified period

pursuant to the provisions of clause 15 (*Consequences of a System Event*), which payment shall be calculated in accordance with Schedule 6 (*Deemed Energy Payment*) with reference to the Commercial Energy Rate, and dependent on the period in respect of which such payment is due and payable;

Delivery Point" means the physical point, situated on the higher voltage side of the generator transformer of the Facility, where the Facility connects to the System (whether or not such point is situated on or off the Project Site), and where the Energy Output is to be delivered by the Seller to the Buyer as described in Schedule 1 (*Details of Project and Facility*);

"Direct Loss" means, in respect of either Party, any losses, liabilities, expenses, damages, costs and claims (including Claims) arising directly as a result of the other Party's failure to perform its obligations under this Agreement, and for the avoidance of doubt, includes, in respect of the Seller, any loss of payment which would have been due to it but for the Buyer's breach of this Agreement;

"Distribution Agreement" means the agreement entered into between the Seller (as Customer) and a Distributor which sets out the terms and conditions on which the Facility will be connected to and use the System;

"Distribution Connection Works" means the Municipal or Eskom Connection Works, as appropriate, and as defined in the Embedded Generation Grid Connection Contract;

"Distribution System" means the distribution network owned and operated by the Distributor which operates at a nominal voltage of one hundred and thirty-two (132) kV or less, as described in the Codes, as that system may be refurbished, modified, extended or developed from time to time during the Term (but not including any private network used by the Facility or customers of the Distributor);

"Distribution Licence" means the distribution licence granted to the Distributor by NERSA in terms of Section 7(1) of the Electricity Regulation Act No 4 of 2006 (as amended) to (i) own and operate the Distribution System and (ii) operate a distribution facility in the areas listed in the said licence.

"Distributor" means the Seller, which has been licensed to act as a distributor pursuant to the Distribution Licence.

"Due Date" has the meaning given to it in clause 10.2 (*General principles as regards invoicing*);

"Early Operating Energy" means the Energy Output delivered by the Seller to the Buyer, measured during the Early Operating Period;

"Early Operating Energy Payment" means, in relation to each Billing Period during the Early Operating Period, the amount (excluding VAT) that shall be due and payable by the Buyer to the Seller for Early Operating Energy delivered during that Billing Period, which shall be the product of the Early Operating Energy delivered during that Billing Period and the Early Operating Energy Rate;

"Early Operating Energy Rate" means the rate applicable to the supply of Early Operating Energy, being sixty per cent (60%) of the Commercial Energy Rate, as specified in Schedule 1 Part 3 (*Energy Rates*);

"Early Operating Period" means the period commencing at 00:00 on the Commencement Date of the first Energy generation, and ending on the later of the Scheduled COD and the Commercial Operation Date;

"Effective Date" means the Signature Date;

"Embedded Generation Grid Connection Contract" means the agreement entered into between the Seller (as Customer) and the Distributor which sets out the terms and conditions on which the Facility will be connected to and use the Distribution System;

"Energy" means electrical energy, and is measured in kWh;

"Energy Output" means the Energy (expressed in kWh) delivered to the Delivery Point;

"Equity" has the meaning given to it in the Implementation Agreement;

"Expiry Date" means the date falling 40 (forty) years after the Scheduled COD, as may be extended or amended in accordance with the terms of this Agreement;

"Facility" means the generation facility located at the Project Site and comprising all plant, machinery and equipment, all associated buildings, structures, roads on the Project Site that are not national, provincial or municipal roads, and other appurtenances, as further described in Schedule 1 (*Details of Project and Facility*), together with all required interfaces to be Constructed for the safe, efficient and timely Operation of that facility, including all Facility Connection Works and, for the avoidance of doubt, excluding the Distribution Connection Works, as the case may be;

"Facility Completion" means the mechanical and electrical completion of the Facility, and the issue of the relevant Facility Completion Form;

"Facility Completion Form" means the notice in the form of Schedule 2, Part 2 (*Facility Completion Form*), which is to be completed by the Independent Engineer and delivered to the Buyer in respect of the mechanical and electrical completion of the Facility, in accordance with the clause below relating to facility completion and commissioning, confirming that the Facility has been duly completed;

"Facility Connection Works" has the meaning given to it in the Embedded Generation Grid Connection Contract as applicable;

"Facility Metering Installation" means metering equipment (including an electronic main meter) conforming with the requirements of and standards set out in the Codes and installed by the Seller in accordance with such codes;

"Force Majeure" means any act, event, or circumstance, or any combination of acts, events or circumstances which:

- (a) is beyond the reasonable control of the Affected Party;
- (b) is without fault or negligence on the part of the Affected Party and is not the direct or indirect result of a breach by the Affected Party of any of its obligations under any Project Document;
- (c) could not have been (including by reasonable anticipation) avoided or overcome by the Affected Party, acting in accordance with the standards of a Reasonable and Prudent Operator; and
- (d) prevents, hinders or delays the Affected Party in its performance of all (or part) of its obligations under this Agreement

(a **"Force Majeure Event"**).

Without limiting the generality of the foregoing, a Force Majeure Event may include any of the following acts, events or circumstances, but only to the extent that it satisfies the requirements set out in sub-clauses (a) through (d) above:

- (i) any action or failure to act by a Responsible Authority, including without limitation, any Authorisation (a) ceasing to remain in full force and effect other than in

accordance with the terms and conditions upon which it was issued or by reason of the failure of the holder thereof to comply with any of its terms or conditions or (b) not being issued or renewed upon application having been properly made;

- (ii) lightning, fire, earthquake, tsunami, drought, unusual flood, violent storm, cyclone, typhoon, tornado or other natural calamity or act of God;
- (iii) pandemic, epidemic or plague (including for the avoidance of doubt any effects of the outbreak of COVID-19 (or any mutations or further strains thereof)); and any instruction, regulation, directive legislation or the like issued by a Responsible Authority in response to such acts, events or circumstances;
- (iv) strikes, lock-outs and other industrial action other than by employees of the Affected Party or of any Affiliate of the Affected Party or of any contractor or supplier of the Affected Party or of any Affiliate of the contractor or supplier;
- (v) accidents or explosions;
- (vi) acts of war whether declared or not, invasion, armed conflict, act of foreign enemy or blockade in each case occurring within or involving the Republic of South Africa;
- (vii) acts of rebellion, riot, civil commotion, act or campaign of terrorism, or sabotage of a political nature, in each case, occurring within the Republic of South Africa, except in respect of these acts forming part of or directly caused by strikes, lock outs and other industrial action by the employees of the Affected Party or of any Affiliate of the Affected Party or of any contractor or supplier of the Affected Party or of any Affiliate of the contractor or supplier;
- (viii) boycott, sanction or embargo;
- (ix) any restriction imposed by a Responsible Authority in respect of the supply of water to the Facility and or any limitation imposed by a Responsible Authority in respect of any water use right pursuant solely to any natural event, disaster or Act of God, (which includes but is not limited to cyclone, drought, fire, lightning, earthquake, explosion, tsunami, tempest, unusual flood, violent storm, typhoon, tornado, ionising radiation, pandemic, epidemic or plague);
- (x) any failure or delay by a Responsible Authority to issue any permits, licenses or approvals which a Party is required to provide under this Agreement and for which

such Party has duly and timeously applied for, and has diligently pursued in accordance with the standards of a Reasonable and Prudent Operator;

- (xi) a Force Majeure Event in respect of the Embedded Generation Grid Connection Contract; or Notwithstanding any other provision of this Agreement, the following shall not constitute Force Majeure:
 - (A) failure of any Party to make any payment of money in accordance with its obligations under this Agreement, provided always that the obligation of the Affected Party to make such payment of money is not excused in terms of this Agreement by reason of an event of Force Majeure;
 - (B) late delivery of fuel, equipment, machinery, plant, spare parts or materials caused by negligent conduct or wilful misconduct on the part of the Affected Party or any of its suppliers or contractors;
 - (C) late performance by any Party, caused by such Party or such Party's equipment suppliers, suppliers, contractors, or subcontractors, except where such cause is itself a Force Majeure Event;
 - (D) mechanical or electrical breakdown or failure of equipment, machinery or plant owned or operated by any Party due to the manner in which such equipment, machinery or plant has been operated or maintained;
 - (E) delays resulting from reasonably foreseeable unfavourable weather or reasonably foreseeable unsuitable ground conditions or other similar reasonably foreseeable adverse conditions;
 - (F) any failure by the Affected Party to obtain and/or maintain or cause to be obtained and/or maintained any Consent;
 - (G) strikes, lockouts and other industrial actions by the employees of the Affected Party, any of its Affiliates or any contractor of the Affected Party or of any Affiliate, unless such action is part of any wider industrial action involving a significant section of the construction industry or the electricity supply sector;
 - (H) wear and tear or random flaws in materials and equipment or breakdown in or degradation of equipment or machinery of the Affected Party;

- (I) an event, circumstance or situation that arises as a direct or indirect result of any appeal or review being lodged against any amendment to any of the Authorisations issued in terms of any environmental Laws;
- (J) an event, circumstance or situation that arises as a direct or indirect result of any Responsible Authority imposing additional conditions on the Affected Party in terms of any Consents issued in terms of any environmental Laws.
- (K) Loss of connection to the grid due to load curtailment by the National System Operator.

"Forecast Generation Profiles" has the meaning given to it in the clause below dealing with generation forecasts ;

"Government" means the government of the Republic of South Africa as contemplated in The Constitution of the Republic of South Africa, 1996;

"In-Plane Irradiance", in the context of solar photovoltaic facilities, has the meaning ascribed to it in Schedule 6 (*Deemed Energy Payment*);

"Independent Engineer" means the independent consulting engineer (appointed in accordance with the provisions of clause 5.2 below relating to the independent engineer), to act jointly on behalf of the Seller and the Buyer;

"Independent Expert" means:

- (a) a chartered accountant of not less than ten (10) years of professional experience, nominated at the request of any Party by the President for the time being of the South African Institute of Chartered Accountants, if the matter relates primarily to a financial or financial management matter; or
- (b) an attorney or advocate of not less than ten (10) years of professional experience agreed to between the Parties, and failing agreement nominated (at the request of either Party) by the Chairman for the time being of the Legal Practice Council, if the matter relates primarily to a legal matter; or
- (c) an electrical or power engineer of not less than ten (10) years of professional experience agreed to between the Parties and failing agreement nominated (at the request of either Party) by the President for the time being of the Engineering Council of South Africa, if the matter relates primarily to an engineering matter;

"Indexed" or **"Indexation"** shall have the meaning ascribed to it in Schedule 1 Part 3 (*Energy Rates*);

"Invoice" means a tax invoice meeting the requirements of the VAT Act, and denominated in Rand;

"Last COD" means the date which falls eighteen (18) months after the Scheduled COD;

"Law" means:

- (a) any statute, ordinance, treaty, decree, proclamation or subordinated legislation or other legislative measures, including all national and provincial statutes and legislation and all municipal bylaws, as well as the common law and customary law and any judgment, decision, order or rule of any court or tribunal with relevant jurisdiction, in each case, having the force of law in South Africa; and
- (b) any present or future directive, requirement, instruction, request, order, regulation, condition of or limitation in any necessary approval, permission, permit, approval, consent, licence, authorisation, registration, grant, acknowledgement, exemption or agreement to be obtained from any Responsible Authority, or direction or rule of a Responsible Authority which is legally binding or, if not legally binding, would customarily be complied with by a Reasonable and Prudent Operator, including the Codes;

"Maintain" means to maintain in good working order and condition and, as necessary, to inspect, refurbish, repair, secure, replace, modify, reinstate, overhaul and test so that the plant, machinery, equipment or facility concerned may be Operated at all material times as required by the clause below relating to general seller undertakings (*General Seller Undertakings*), and the term **"Maintenance"** shall be construed accordingly;

"Minimum Acceptance Capacity" means a Capacity of the Facility which is equal to fifty percent (50%) of the Contracted Capacity of the Facility;

"Month" means a period of one (1) calendar month according to the calendar, each such period beginning at 00:00 hours on the first day of such calendar month and ending at 24:00 hours on the last day of such calendar month;

"National System Operator" means Eskom Holdings SOC Limited.

"NERSA" means the National Energy Regulator of South Africa as established by section 3 of the National Energy Regulator Act, 4 of 2004;

"Notice of Commencement of Facility" means the notice in the form of Schedule 2 Part 4 (*Form of Notice of Commencement of Facility*) and that delivered by the Seller to the Buyer in terms of clause 4.7 (*Commercial Operation Date*);

"Operate" means to despatch the Facility, and otherwise operate as required by the clause below relating to general seller undertakings, and the term **"Operation"** shall be construed accordingly;

"Operating Period" means the period from the later of the Commercial Operation Date and the Scheduled COD to the Termination Date;

"Outage" means a Scheduled Outage or an Unscheduled Outage;

"Project Data" has the meaning ascribed to it in clause 13.2;

"Project Documents" means the contracts described in Schedule 7 relating to the project which is the subject of this agreement, to be executed by the parties simultaneously with this Agreement;

"Project Site" means the site upon which the Facility is to be Constructed and Operated as more fully described and defined in Schedule 1 (*Details of Project and Facility*);

"Rand", **"ZAR"** and **"Cent"** mean the lawful currency of South Africa and **"Cent"** is a one-hundredth (100th) part of one (1) Rand;

"Reactive Energy Output" means reactive energy (expressed in kilowatt-hours) as measured at the Delivery Point, being the product of voltage and current and the *sine* of the phase angle between them integrated over anytime period;

"Reasonable and Prudent Operator" means a person seeking in good faith to perform its contractual obligations and, in so doing and in the general conduct of its undertaking, exercising that degree of skill, diligence, prudence, responsibility and foresight which would reasonably and ordinarily be expected from a skilled and appropriately experienced developer, contractor, owner or operator internationally, who is complying with all applicable Laws, engaged in the same or a similar type of undertaking, in the same or similar circumstances and conditions, and any references herein to the **"standards of a Reasonable and Prudent**

Operator" shall be construed accordingly;

"Reference Pyranometer" has the meaning ascribed to it in Schedule 6 (*Deemed Energy Payment*);

"Reference Temperature Sensor" has the meaning ascribed to it in Schedule 6 (*Deemed Energy Payment*);

"Renewable Energy Grid Code" means the Grid Connection Code for Renewable Power Plants (RPPs) Connected to the Electricity Transmission System (TS) or the Distribution System (DS) in South Africa Version 3.0 (August 2019), as published by NERSA and as may be amended by NERSA from time to time;

"Responsible Authority" means any ministry or department, any minister, any organ of state, any official in the public administration or any other governmental or regulatory department, commission, institution, entity, service utility, board, agency, instrumentality or authority (in each case, whether national, provincial or municipal) or any court, each having jurisdiction over the matter in question but excluding for all purposes the Buyer;

"Scheduled COD" means the date which corresponds to the stated Scheduled COD in Schedule 2 Part 1 (*Completion Milestones*), as extended or amended in accordance with the terms of this Agreement; **"Scheduled Outage"** means any period in which the Facility is scheduled for planned Maintenance in accordance with Schedule 3 (*Scheduled and Unscheduled Outages*);

"Seller Default" means any of the following events or circumstances (in each case, other than where solely due to Force Majeure, a System Event, or Unforeseeable Conduct):

- (a) an order being made for the winding-up, liquidation, business rescue or dissolution of the Seller (in any of these cases, where applicable, whether provisional or final and whether voluntary or compulsory);
- (b) the Seller has not Commenced and Continued Construction of the Facility within one hundred and eighty (180) days of the Effective Date;
- (c) the Seller fails to achieve the Commercial Operation Date on or before the Last COD;
- (d) NERSA lawfully withdraws, revokes or cancels the Seller's generation licence due to the Seller's act or omission;
- (e) the Seller abandons the Construction or Operation and Maintenance of the Facility;

- (f) the Seller fails to comply with any provision of the clauses below relating to assignment and changes in control; and
- (g) any other breach of any material provision of this Agreement has occurred more than once and:
- (h) the Buyer has given an initial warning notice to the Seller describing that breach in reasonable detail and stating that if that breach persists or recurs then the Buyer may take further steps to terminate this Agreement; and
- (i) the Buyer has issued a second and final warning notice following the persistence or recurrence of that breach in the period of forty-five (45) days after the initial warning notice, stating that if that breach persists or recurs within the period of forty-five (45) days after the final warning notice then the Buyer may exercise its rights in terms of the clause below relating to Seller default;

"Signature Date" means the date this Agreement has been duly executed by the second signatory of the Parties;

"South Africa" or **"RSA"** means the Republic of South Africa;

"Special Loss" means, in relation to either Party, any loss or damage suffered or incurred by it which does not constitute a Direct Loss, including indirect losses, consequential or special losses and wasted or increased overheads;

"System Event" means:

- (a) any delay solely attributable to the Distributor in the connection of the Facility to the Distribution System; or
- (b) any constraint, unavailability, interruption, Curtailment, breakdown, inoperability or failure of or disconnection from, the whole or any part of the Distribution System, that is not caused by any Force Majeure or an act or omission of the Seller or a Contractor. It is specifically agreed that curtailment by the National System Operator ("load shedding") will constitute a System Event where a generator is connected to a main substation, but will not constitute a System Event where a generator is connected to a substation deeper within the network than at main substation level.

- (c) In the event that the Seller does not maintain premium equipment that ensures its firm supply, the Department will be entitled to in time decommission such equipment that may lead to a loss of the agreed firm supply to the generator site. In such circumstances, loss of supply due to curtailment or network outages will not constitute a system event, and deemed energy payment will not be applicable

System Metering Installation means backup metering equipment (including an electronic check meter) conforming with the requirements of, and standards set out in the Codes, installed by the Buyer at the Delivery Point

"System Operator" has the meaning given to it in the Codes;

"Term" has the meaning given to it in clause 2 (*Term*), as such period of time may be amended, reduced or extended in accordance with the terms of this Agreement;

"Termination Date" means the Expiry Date or the date of the earlier termination of this Agreement in accordance with clause 18 (*Termination*);

"Unforeseeable Conduct" shall occur if, after the Signature Date, the Buyer or the Distributor (as the case may be) or any Responsible Authority takes any action (including the introduction, application, or change of any Law, regulation, by-law or order having the force of Law) or fails to carry out its obligations as prescribed by Law, that:

- (a) has an impact on the Commercial Energy Rate or the Early Operating Energy Rate; or
- (b) results in one or more changes to the Codes that have a material financial impact on the Project; or
- (c) has an effect other than the effect detailed in sub-clause (a) or (b):
- (i) the principal effect of which is directly borne by:
- (1) the Project and not other similar projects;
- (2) the Seller and not other persons; or
- (3) parties undertaking projects similar to the Project and not other persons; and

- (ii) in respect of which the Seller is not entitled to any other relief pursuant to any other provisions of this Agreement; and
 - (iii) which was not foreseen by the Seller on or before the Signature Date or if it was foreseen, the impact on the Project was not foreseen; and
 - (iv) which could not reasonably have been foreseen by any person in the position of the Seller on or before the Signature Date or if it could reasonably have been foreseen, the impact on the Project could not reasonably have been foreseen; provided that, in respect of all situations falling within sub-clauses (a), (b) or (c):
- (aa) Unforeseeable Conduct shall be deemed not to have occurred under circumstances where any action or omission of the Buyer, the Distributor or the Responsible Authority is in direct response to any act or omission of the Seller which is illegal (other than an act or omission rendered illegal by virtue of such conduct of the Responsible Authority) or in violation of agreements to which the Seller is a party;
 - (bb) an increase in taxes of general application which does not discriminate against the Seller or against the Seller and other parties undertaking projects similar to the Project shall be deemed not to be Unforeseeable Conduct;
 - (cc) Unforeseeable Conduct shall be deemed not to have occurred if such conduct by the Buyer, the Distributor, or any Responsible Authority is required as a result of an event of Force Majeure and is reasonably proportionate thereto; and
 - (dd) Unforeseeable Conduct shall not include any Law that was enacted or made but not yet in force as at the Signature Date or any bill that was promulgated for comment at any time before the Signature Date if and to the extent that such bill is materially unchanged when enacted and brought in effect;

"Unscheduled Outage" means any outage of the Facility that is not a Scheduled Outage;

"Use of System Charges" means the Distribution Use-of-System Charges as defined in the Embedded Generation Grid Connection Contract;

"VAT" means the value-added tax levied in terms of the VAT Act;

"VAT Act" means the Value-Added Tax Act, 1991, as amended or replaced from time to time;

"**Week**" means a period of seven (7) days, beginning at 00:00 on a Monday and ending at 24:00 on the next succeeding Sunday;

"**Weekly Forecast Generation Profile**" has the meaning ascribed to it in clause 8.1 (*Weekly generation forecast*); and

1.2 Interpretation

In this Agreement, unless otherwise specified:

- 1.2.1 the index and headings of clauses of this Agreement are for ease of reference only and shall be ignored in the interpretation and application of this Agreement;
- 1.2.2 words importing the singular shall include the plural and vice versa and words importing one gender shall include the other genders;
- 1.2.3 references to any Recital, clause, paragraph, Schedule or Annex are to those contained in this Agreement, and references to a part of a Schedule are to the part of the Schedule in which the reference is relevant, and all Schedules and Annexes to this Agreement are an integral part of this Agreement. If there is any conflict between of the main body of this Agreement and the provisions of any of the Schedules or Annexes, the provisions of the main body shall prevail;
- 1.2.4 unless otherwise specified, all references to any time shall be to the time of day in Johannesburg, South Africa;
- 1.2.5 "**person**" includes a corporation, company, firm, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of any of the foregoing that is by Law as the subject of rights and duties and references to a "**person**" (or to a word incorporating a person) shall be construed so as to include that person's successors in title and assigns or transferees;
- 1.2.6 in the computation of periods of time from a specified day to a later specified day, "**from**" means from and including and "**until**" or "**to**" means to and;
- 1.2.7 "**include**", "**including**" and "**in particular**" shall not be construed as being by way of limitation, illustration or emphasis only and shall not be construed as, nor shall they take effect as, limiting the generality of any preceding words. The words "**other**" and "**otherwise**" shall not be construed so as to be limited or defined by any preceding words, where a wider construction is reasonably possible;
- 1.2.8 references to a "**Party**", the "**Seller**" or the "**Buyer**" shall include its successors and permitted assignees, provided that, in the case of the Seller, the relevant transfer or assignment has received the prior written approval of the Buyer;

- 1.2.9 references to this "**Agreement**" or any other document shall be construed as references to this Agreement or that other document as amended, varied, novated, supplemented, or replaced from time to time, provided that, in the case of any other document, such amendment, variation, novation, supplement or replacement has received the prior written approval of the Buyer;
- 1.2.10 references to any amount shall mean that amount exclusive of VAT, unless the amount expressly includes VAT;
- 1.2.11 references to legislation include any statute, by-law, regulation, rule, subordinate legislation or delegated legislation or order, and a reference to any legislation is to such legislation as amended, modified or consolidated from time to time, and to any legislation replacing it or made under it;
- 1.2.12 the terms "**hereof**", "**herein**", "**hereunder**" and similar words refer to this entire Agreement and not to any particular clause, paragraph, Part, Schedule or any other subdivision of this Agreement;
- 1.2.13 the rule of construction that, in the event of ambiguity, an agreement shall be interpreted against the Party responsible for the drafting thereof, shall not apply in the interpretation of this Agreement;
- 1.2.14 the expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that these provisions do not expressly state this; and
- 1.2.15 if any provision in clause 1.1 (*Definitions*) is a substantive provision conferring rights or imposing obligations on either Party then, notwithstanding that such provision is contained in such clause, effect shall be given thereto as if such provision were a substantive provision in the body of this Agreement.

1.3 Abbreviations

In this Agreement the following abbreviations shall have the following meanings:

°C - means Degrees Centigrade;

A - means Amperes;

h - means Hours

kWh – means kilowatt-hours

m - means Metres;

MWh – means Megawatt-hours

s - means Seconds;

V - means Volts;

W - means Watts.

1.4 Units of measurement

Unless a provision of this Agreement expressly requires otherwise, all technical data and information contained in this Agreement or in any document relating to or arising out of this Agreement shall be interpreted and expressed in a manner consistent with the International System of Units (*Systeme International d'Unites*) (8th edition, 2006).

1.5 Rounding up

Unless a provision of this Agreement expressly requires otherwise, in making calculations in accordance with this Agreement:

- 1.5.1 the calculation of any sums of money owing by either Party under this Agreement shall be performed to the nearest Cent; and
- 1.5.2 any other calculation shall be performed to an accuracy of three (3) decimal places, with a fourth digit, after the decimal point, having a value of five (5) or above rounded up.

1.6 Status of agreement

In the event of a conflict between the provisions of this Agreement and an agreement referred to in Schedule 7, this agreement will prevail.

2. TERM

This Agreement shall be effective from the Effective Date until the earlier of:

- 2.1 its termination in accordance with clause 18 (*Termination*); or
- 2.2 the Expiry Date, (such period being the "**Term**" of this Agreement).

3. CONDITIONS PRECEDENT

3.1 Effectiveness of rights and obligations

Save for clauses relating to definitions and interpretation, terms of the agreement, intellectual property, dispute resolution, limitation of liability, third-party indemnity, confidentiality, governing law and jurisdiction, notices and warranties, and the like, which come into effect on the signature of the agreement, none of the other provisions of this

Agreement shall be effective until the Conditions Precedent listed in Clause 3.2 have been fulfilled or duly waived in accordance with Clause 3.4.

3.2 Conditions Precedent

The Conditions Precedent referred to in Clause 3.1 (*Effectiveness of rights and obligations*) are the following, provided that the following does not necessarily constitute an exhaustive list of conditions which must be fulfilled in order for the Agreement to be of full force and effect, and any conditions not stated which render the agreement inoperable will also be deemed to be Conditions Precedent:

- 3.2.1 the Seller shall have obtained all or any of the authorisations required by any regulatory authority (including the Buyer, as applicable), statute, regulation or byLaw for the implementation of this Agreement, the installation, commissioning and operation of the Facility as well as the production and delivery of the Commercial Energy to the PUC and the Delivery Point, including such authorisations for compliance with all Environmental legislation, regulations and/or policies;
- 3.2.2 the Seller shall have secured such funding (whether as equity or debt funding or both) as it requires for the commencement, implementation and operation of the Project, including the sale and supply of the Reactive Energy Output, and all or any Conditions Precedent in respect of such transactions are met;
- 3.2.3 NERSA and the Buyer shall have consented in writing to the transactions contemplated in this Agreement, insofar as may be necessary;
- 3.2.4 the Seller shall have concluded upon terms and conditions acceptable to the Parties thereto and, if so required, NERSA, a Use of System or similar agreement between the Seller and the Buyer;
- 3.2.5 the Seller shall have provided to the Buyer a certificate signed by a duly authorised officer of the Seller stating that the Conditions Precedent set out in Clauses 3 to 3.2.5 above have been met;
- 3.2.6 the Buyer shall have secured the issuance and grant of all internal buyer approvals and the Buyer shall have provided to the Seller a certificate signed by a duly authorised officer of the Buyer stating that this condition has been met;
- 3.2.7 the Buyer shall have obtained authority in accordance with the applicable provisions of the Local Government: Municipal Finance Management Act 56 of 2003;
- 3.2.8 the board of the Seller shall have passed a resolution authorising the Seller to enter into this Agreement, and certified copies of such authority or resolution shall have been provided to the Buyer; and
- 3.2.9 all Schedules to this agreement have been completed in full and signed by the Parties and have been included in this Agreement.

3.3 Responsibilities concerning Conditions Precedent

- 3.3.1 The Parties shall each use all reasonable efforts to cause the Conditions Precedent listed in Clause 3.2 (*Conditions Precedent*) for which it is responsible to be satisfied within twelve (12) Months after the Signature Date. The Buyer shall provide the Seller with such reasonable cooperation as may be necessary to assist the Seller in satisfying the Conditions Precedent listed above.
- 3.3.2 Each Party shall be responsible at its own expense for satisfying and procuring the satisfaction of those Conditions Precedent for which it is responsible.

3.4 Waiver and extension

- 3.4.1 The Buyer may waive the requirement for the Seller to satisfy and procure the satisfaction of any of the Conditions Precedent listed in Clause 3.2 (*Conditions Precedent*) in writing. On receipt by the Seller of such waiver in writing, the relevant Condition(s) Precedent will be deemed to have been satisfied for the purposes of Clause 3.1 (*Effectiveness of rights and obligations*).
- 3.4.2 The Parties may, by agreement in writing, extend the date by which the Conditions Precedent listed in Clause 3.2 (*Conditions Precedent*) are to be fulfilled, provided such agreement is made prior to the expiry of the period stipulated in Clause 3.3.1.

3.5 Reports

Each Party shall notify the other in writing at least once a month on the progress made in satisfying the Conditions Precedent listed in Clause 3.2 (*Conditions Precedent*) for which it is responsible.

3.6 Failure to fulfil

If the Conditions Precedent have not been satisfied or waived by the end of the period referred to in Clause 3.3.1, either Party may immediately terminate this Agreement by serving a Termination Notice on the other Party, in which case either Party shall be discharged from any further obligations under this Agreement save for those liabilities which have accrued and any right or obligation expressed to arise upon or survive such termination.

4. PROJECT SITE

4.1 Project Site

The Seller shall obtain and maintain undisturbed use and possession of the Project Site and such associated rights as may be necessary for the purposes of undertaking and implementing the Project for the duration of the Term. The Seller shall acquire such other land and/or rights in respect of land as it requires in order to perform its obligations under this Agreement and all such land and rights shall be deemed to form part of the Project Site and shall be at the sole risk of the Seller, subject to applicable Laws. Details of the Project Site, including a scale map that identifies the location of the Project Site, are included in Schedule 1 (*Details of the Project and Facility*) and a diagram setting out the distribution lines and substation, interconnection facility, and significant ancillary facilities including the facilities at the Delivery Point, is included in Schedule 1 Part 2 (*Single Line Diagram*).

4.2 Risk and Liability

Subject to applicable Laws, the Seller shall be fully responsible to the Buyer for the suitability of the Project Site, for the conduct of the Project and for the condition of the Project Site, including but not limited to its climatic, hydrological, hydro-geological, ecological, environmental, geotechnical, geological, paleontological and archaeological conditions (including the discovery of any heritage resources as defined in the National Heritage Resources Act, 25 of 1999), the adequacy of the road and rail links to the Project Site, the availability of adequate supplies of utilities, and the security of the site.

4.3 Buyer's inspection rights

The Buyer shall have the right from time to time, on not less than forty-eight (48) hours written notice, to designate not more than four (4) of the Buyer's representatives who shall be entitled to have access to the Project Site at reasonable times for the purposes of viewing the Facility and verifying the Seller's compliance with its obligations under this Agreement; provided that the Buyer shall ensure that its representatives shall comply with all Project Site health and safety rules, precautions and standards, and any other reasonable requirements of the Seller and its Contractors, and shall not interfere with the Construction or Operation of the Facility.

4.4 No improvements

The Seller shall not be entitled to Construct or procure the Construction of any addition to or any expansion of the Facility that is intended to or may or will result in increasing

the installed capacity of the Facility beyond the Contracted Capacity and the Capacity actually installed as at the Commercial Operation Date, except with the express written consent of the Buyer.

4.5 No use of electricity from an electrical supply system

The Parties record and agree that this Agreement does not permit the supply of electrical energy to the Seller by the Buyer or from any other supplier of electrical energy. The Parties record and agree that the connection of the Facility to any electrical supply system for purposes of drawing electrical energy from any electrical supply system for any purpose shall be pursuant to a separate agreement entered into between the Seller and the Distributor.

4.6 General Construction obligations

- 4.6.1 The Seller shall Commence and Continue Construction of the Facility within one hundred and eighty (180) days of the Effective Date. Should the Seller fail to Commence and Continue Construction of the Facility within such period, the Buyer shall be entitled to terminate this Agreement in accordance with clause 18.2 (*Termination for Seller Default*) for a Seller Default, provided that should a dispute arise regarding whether the Seller has Commenced and Continued Construction, such dispute shall be referred to the Independent Engineer, whose determination shall be final and binding on the Parties.
- 4.6.2 The Seller shall procure the Construction of the Facility in accordance with:
 - 4.6.2.1 the Construction Programme;
 - 4.6.2.2 all applicable Laws, including the Consents; and
 - 4.6.2.3 any conditions stipulated in the Seller Approvals which relate to the construction of the Facility; and
 - 4.6.2.4 the standards of a Reasonable and Prudent Operator.
- 4.6.3 The Seller shall provide or procure all plant, equipment, machinery consumables, parts, materials and services whatsoever required for the Construction of the Facility in accordance with the standards set out in this clause 4.6.

4.7 USE OF CONTRACTORS AND SUBCONTRACTORS

- 4.7.1 Without limiting the Seller's liability or obligations under this Agreement, the Seller may engage Contractors and Subcontractors to perform any of its obligations under this Agreement. Any Contractors and Subcontractors engaged by the Seller to perform any portion of the Seller's obligations under this Agreement shall have all licences and registrations required to perform the services to be performed by such Subcontractor,

must maintain insurance as required pursuant to Clause 19 (Project Insurance) and shall perform any work in accordance with applicable industry standards.

- 4.7.2 In exercising its right under this Clause 4.7 to engage Contractors and Subcontractors, the Seller shall, in accordance with the relevant Local Municipality's economic development obligations undertake prior consultations with the Department

4.8 Commercial Operation Date (COD)

- 4.8.1 The Seller shall use its reasonable endeavours to achieve the Commercial Operation Date by the Scheduled COD.
- 4.8.2 If the Seller becomes aware that, for any reason, the Commercial Operation Date will not be achieved by the Scheduled COD, the Seller shall, without any unreasonable delay, notify the Buyer in writing of that fact and the measures that it will take to mitigate such delay and of the impact of such measures on its ability to achieve the Scheduled COD, upon implementing such measures.

5. TESTING AND COMMISSIONING

5.1 Connection to the Distribution System

- 5.1.1 The Seller shall give the Buyer at least sixty (60) days advance written notice of the date on which it anticipates it will require the Facility to be connected to the supply point of the Buyer.
- 5.1.2 The Seller shall Construct the Facility Connection Works to enable The Facility to connect to the Distribution System. The Seller's generation system as well as the buyer's point of supply simultaneously. In other words, the Seller shall design and construct a facility to allow the Distribution System to be synchronised to the Seller's generation system and thereby have a dual feed to the Buyer at the cost of the buyer. The Seller shall further ensure compliance with all local electricity supply policies and laws applicable to embedded generation and synchronisation to the Distribution system.

5.2 Independent Engineer

- 5.2.1 The Seller has, in Schedule 5 (List of firms - Independent Engineer), identified up to five (5) firms of independent consulting engineers, every one of which it recommends to be appointed as the Independent Engineer for the purpose of this Agreement, and every one of which the Seller warrants:
- 5.2.1.1 has at least seven (7) years of professional experience as an engineer in the renewable energy industry; and
- 5.2.1.2 as of the Signature Date, has not rendered services to the Seller, any of its shareholders (direct or indirect), Contractors or Lenders or any Affiliate of any of them in respect of the Project.
- 5.2.2 The Seller shall, as soon as practicably possible, but in any event within twenty (20) Business Days of the Signature Date, engage with any (or all) of such firms with a view to one (1) of them being appointed as the Independent Engineer.
- 5.2.3 The Seller shall formulate the terms and conditions upon which the Independent Engineer is to be appointed and shall obtain the approval of the Buyer thereof.
- 5.2.4 The Seller shall keep the Buyer regularly informed of the Seller's progress towards the appointment of the Independent Engineer, and shall be responsible for arranging for the signing of the agreement when it contains all the terms and conditions that have been agreed between the Seller, the Buyer and the Independent Engineer for the appointment; and the Seller and the Buyer undertake to sign such agreement at such time.
- 5.2.5 The Independent Engineer shall be appointed at the sole cost and expense of the Seller but shall act on behalf of, and owe a duty of care to both the Buyer and the Seller equally.
- 5.2.6 Neither Party shall, without the prior written consent of the other Party (such consent not to be unreasonably withheld) at any point during the Term:
- 5.2.6.1 terminate or seek to amend materially the contract with the Independent Engineer; or
- 5.2.6.2 appoint any other person to be the Independent Engineer. Any person appointed to replace the existing Independent Engineer, as Independent Engineer, shall be one of the other firms listed in Schedule 5 (List of firms - Independent Engineer) or as agreed between the Buyer and the Seller.
- 5.2.7 If, after the Signature Date, the Independent Engineer renders services to the Seller (other than in terms of the Independent Engineer Agreement), any of its shareholders (direct or indirect), Contractors or Lenders or any Affiliate of any of them in respect of the Project, the Seller shall be obliged to notify the Buyer of this occurrence promptly on becoming aware of same and, if the Buyer so elects, the Seller shall terminate the contract with the appointed Independent Engineer.

- 5.2.8 If the contract with the Independent Engineer is terminated at any point during the Term, a new Independent Engineer shall be appointed in accordance with this clause 5.2 (*Independent Engineer*) from one of the firms listed in Schedule 5 (*List of firms - Independent Engineer*) or as agreed between the Buyer and the Seller, both acting reasonably on terms substantially similar to the terms contained in the agreement set out in Schedule 5 Part 2 (*Independent Engineer Agreement*).

5.3 Facility Completion and Commissioning

- 5.3.1 The Seller shall use all reasonable endeavours to commission the Facility and to procure the issue of the Facility Completion Form by the Independent Engineer, at its own cost and in each case in accordance with this clause 5.3 (*Facility Completion and Commissioning*), Schedule 2 (*Completion Milestones and Forms of Notices*), the Codes, and the standards of a Reasonable and Prudent Operator, so as to cause the Commercial Operation Date to fall on or before the Scheduled COD.
- 5.3.2 The Seller shall be obliged to procure the issue of the Facility Completion Form in respect of the Facility (regardless of Capacity) in order, *inter alia*, to achieve the Commercial Operation Date in accordance with clause 4.7 (*Commercial Operation Date*).
- 5.3.3 The Seller shall provide the Buyer on a Weekly basis with relevant information regarding the commissioning and testing undertaken pursuant to clause 5.3.1.

5.4 Early Operating Period

- 5.4.1 The Seller may issue the Notice of Commencement of the Facility to the Buyer at least ten (10) Business Days before the Seller anticipates that the Facility will begin generation and delivery of Early Operating Energy to the Delivery Point, which notice shall be in the form of Schedule 2 Part 3 (Form of Notice of Commencement of Facility).
- 5.4.2 The Seller shall not be entitled to issue the first Notice of Commencement of Facility more than one hundred and eighty (180) days before the Scheduled COD.
- 5.4.3 Until 00:00 on the Facility Commencement Date, the Buyer shall not be obliged to purchase Early Operating Energy generated by the Facility to pay the Early Operating Energy Rate in respect of any Early Operating Energy generated by the Facility.

5.5 Commercial Operation Date (COD)

- 5.5.1 The Seller shall give the Buyer no less than sixty (60) days prior written notice of its intention to issue the Notice of Commencement of Facility.

- 5.5.2 The Seller may not issue the Notice of Commencement of Facility:
- 5.5.2.1 earlier than the day before the Scheduled COD;
- 5.5.2.2 until the Seller has demonstrated to the Independent Engineer that the Facility is compliant with the Codes;
- 5.5.2.3 until the Seller has obtained written confirmation from the Independent Engineer that the Facility complies with the Codes;
- 5.5.2.4 until NERSA, or any person nominated by NERSA for such purpose, has issued to the Seller a notification of the Facility's compliance with the Codes; and
- 5.5.2.5 until the Distributor has provided written confirmation to the Seller certifying that the Facility may be connected to the System for the purposes of delivering Commercial Energy.
- 5.5.3 Following compliance with clause 5.5.1 and upon the Independent Engineer ascertaining the Facility Completion and receipt of the relevant Facility Completion Form pursuant to clause 5.3 (*Facility Completion and commissioning*), the Seller shall issue the Notice of Commencement of Facility to the Buyer within two (2) Business Days of the delivery of the relevant Facility Completion Form, which notice shall be in the form of Schedule 2 Part 4 (*Form of Notice of Commencement of Facility*).
- 5.5.4 If the Facility has achieved Facility Completion in terms of clause 5.3 (*Facility Completion and commissioning*) and the Achieved Capacity is equal to or greater than the Contracted Capacity, then:
- 5.5.4.1 for the purposes of this Agreement, the power output of the Facility shall be limited to the Contracted Capacity, and only Energy Output that is generated from the Contracted Capacity shall be subject to this Agreement;
- 5.5.4.2 the Seller shall deliver to the Buyer a Notice of Commencement of Facility, following which the Commercial Operation Date will be the first day starting at 00:00 hours following the day upon which the Buyer receives from the Seller such Notice of Commencement of Facility; and
- 5.5.4.3 the Seller shall not be entitled to increase the installed capacity of the Facility beyond the Capacity installed at the Commercial Operation Date at any time in the future.
- 5.5.5 If the Facility has achieved Facility Completion in terms of clause 5.3 (*Facility Completion and commissioning*) and the Achieved Capacity is equal to or greater than the Minimum Acceptance Capacity but less than the Contracted Capacity, the Seller shall:
- 5.5.5.1 if necessary, at its own expense and in the shortest possible time, on giving notice to the Buyer, effect such repairs or replacements to the Facility, or any part thereof, as necessary for the Facility to achieve its Contracted Capacity, following which the Facility Completion shall be re-assessed in accordance with clause 5.3 (*Facility Completion and commissioning*), and:

- 5.5.5.1.1 if the Achieved Capacity, as re-assessed, is equal to or greater than the Contracted Capacity, then clause 5.5.4 shall then apply; and 5.5.5.1.2 if the Achieved Capacity, as re-assessed, remains equal to or greater than the Minimum Acceptance Capacity but less than the Contracted Capacity, then clause 0 shall then apply, provided in each case that such repairs or replacements must be completed and the Facility Completion Form must have been completed and submitted by the Seller to the Buyer by the Last COD.
- 5.5.5.2 if the Achieved Capacity, as re-assessed, remains equal to or greater than the Minimum Acceptance Capacity but less than the Contracted Capacity, the Seller may elect, without effecting any repairs or replacements (or further repairs or replacements, as the case may be) to the Facility, to deliver to the Buyer a Notice of Commencement of Facility, following which the Commercial Operation Date will be the first day starting at 00:00 hours following the day upon which the Buyer receives from the Seller such Notice of Commencement of Facility and clause 5.7 (*Reduction in Contracted Capacity*) shall apply.
- 5.5.6 If the Facility has achieved Facility Completion in terms of clause 4.4 (*Facility Completion and commissioning*) and the Achieved Capacity is less than the Minimum Acceptance Capacity, then the Seller shall, at its own expense and in the shortest possible time, effect such repairs or replacements to the Facility, or any part thereof, necessary for the Facility to achieve an Achieved Capacity greater than or equal to the Minimum Acceptance Capacity, provided that such repairs or replacements must have been completed, the Facility Completion must have been reassessed and the duly completed Facility Completion Form must have demonstrated an Achieved Capacity equal to or greater than the Minimum Acceptance Capacity by the Last COD and clause 5.7 (*Reduction in Contracted Capacity*) shall apply.

5.6 Delays in achieving the Commercial Operation Date

In the event of the Seller failing to achieve the Commercial Operation Date after the Scheduled COD (unless such delay is caused by a System Event), there shall be no payment for energy due by the Buyer to the Seller in respect of the overdue period.

- 5.6.1 The Seller shall be entitled to declare the Commercial Operation Date for the Facility at any time up to 17:00 on the Last COD in respect of that Achieved Capacity for which the Independent Engineer has completed the Facility Completion Form by no later than 17:00 on the Last COD and, if the Seller does so and the Achieved Capacity is greater than the Minimum Acceptance Capacity, the Buyer shall not be entitled to call a Seller Default in terms of sub-clause (c) of the definition of "Seller Default".

- 5.6.2 If the Commercial Operation Date is not achieved by the Last COD, then the Buyer shall be entitled to terminate this Agreement in accordance with clause 18.2 (*Termination for Seller Default*) for a Seller Default.

5.7 Reduction in Contracted Capacity

If the Achieved Capacity on the Commercial Operation Date is less than the Contracted Capacity, then, on and from the Commercial Operation Date, the Contracted Capacity shall be reduced to the Achieved Capacity of the Facility as at the Commercial Operation Date, and Schedule 1 (*Details of the Project and Facility*) shall be amended accordingly, and the parties shall discuss and reach agreement as to whether the capacity of the Facility shall be limited to the amended Contracted Capacity, and only Energy Output that is generated from the amended Contracted Capacity shall be subject to this Agreement. The Seller shall not be entitled to increase the installed capacity of the Facility beyond the Capacity installed at the Commercial Operation Date, at any time in the future.

5.8 Coordination with Buyer reconnection to the Distribution System

- 5.8.1 In addition to complying with the other requirements of this Clause 5 (Testing and Commissioning), the Seller shall:
- 5.8.1.1 provide the Buyer (as Distributor) with such information as may be necessary under Law or the Codes, or usual in terms of the practices of a Reasonable and Prudent Operator in respect thereof; and
- 5.8.1.2 discuss and coordinate with any relevant Competent Authority or the Distributor, the actions contemplated in this Clause 5 (Testing and Commissioning) and shall additionally comply with such reasonable requests and instructions that are in accordance with the Codes and the practices of a Reasonable and Prudent Operator, as may be received from the Buyer from time to time.
- 5.8.2 To the extent that the Facility is connected with or shall be connected with such part of the System as is owned, operated or administered by Eskom, in addition to complying with the other requirements of this Clause 5 (Testing and Commissioning), the Parties shall:
- 5.8.2.1 provide Eskom with such information as may be necessary under Law or the Codes, or usual in terms of the practices of a Reasonable and Prudent Operator in respect thereof; and
- 5.8.2.2 collectively discuss and coordinate with any relevant Competent Authority or Eskom (as the case may be), the actions contemplated in this Clause 5 (Testing and Commissioning) and shall additionally comply with such reasonable requests and

instructions that are in accordance with the Codes and the practices of a Reasonable and Prudent Operator, as may be received from Eskom from time to time.

6. SALE AND PURCHASE OF ENERGY

6.1 Sale of Energy

Subject to and in accordance with the terms and conditions set out in this Agreement, during the Early Operating Period and the Operating Period:

- 6.1.1 the Seller shall sell all the Early Operating Energy and Commercial Energy generated by the Facility, and delivered to the Buyer at the Delivery Point on a self-despatch basis, and subject only to the Codes and the standards of a Reasonable and Prudent Operator;
- 6.1.2 the Buyer shall pay the Early Operating Energy Payment for the Early Operating Energy, or the Commercial Energy Payment for the Commercial Energy, delivered by the Seller to the Delivery Point;
- 6.1.3 subject to clause 15 (*Consequences of a System Event*), the Buyer shall pay the Deemed Energy Payment that is payable in respect of the Deemed Energy in accordance with Schedule 6 (*Deemed Energy Payment*).

6.2 Title and Risk

Title in, and risk of loss of, all Energy sold to the Buyer in accordance with clause 6.1 (*Sale of Energy*), shall pass to the Buyer at the Delivery Point.

6.3 Intangible and/or Tradeable Benefits of Renewable Energy (Emission Credits)

- 6.3.1 The Parties acknowledge that the Facility has the potential to produce substantial Carbon and other Emissions Credits and related emissions reduction credits or benefits (economic or otherwise) in relation to the generation of energy after the Commercial Operations Date for the first Unit in time that is commissioned.
- 6.3.2 The Parties agree that the Seller shall own and be entitled to claim any and all such renewable energy intangible and/or tradeable benefits to the extent that such credits or benefits may be available in relation to the Facility or Units comprised in it during the Term of this Agreement and shall have the right to market them for the exclusive benefit of the Seller.
- 6.3.3 The Parties agree that the Buyer shall have no rights or obligations in respect of any Emission Credits relating to this Agreement or the benefits and title to any Emissions Credits received by the Seller.

- 6.3.4 Subject to Clause 6.3.3 above, the Buyer shall use reasonable endeavours to issue or execute any documents (at the Seller's cost) which may be necessary in order for the Seller to exercise its rights and obligations in connection with Emission Credits obtained by the Facility.

7. MAINTENANCE INSPECTIONS

- 7.1 If the Buyer, on reasonable grounds and based on the number of Unscheduled Outages and Scheduled Outages in any rolling six (6) Month period and the Energy Output of the Facility, at any time is of the opinion that the Facility is not being Maintained to the standard of a Reasonable and Prudent Operator, it may require that the Independent Engineer conduct an inspection (and, based on the outcome of the inspection, such tests of the Facility's condition as may be necessary) to ascertain whether the Facility is being Maintained to the standard of a Reasonable and Prudent Operator.
- 7.2 If the inspection and, if applicable, tests detailed in clause 5.1 show that the Facility is being Maintained to the standard of a Reasonable and Prudent Operator, the Buyer shall bear all costs of conducting such inspection and tests, including the Seller's reasonable costs and losses. If the inspection and, if applicable, tests show that the Facility is not being Maintained to the standard of a Reasonable and Prudent Operator, the Buyer may require the Seller to undertake such works as may be performed by a Reasonable and Prudent Operator to ensure that the Facility is Maintained to such standard, and the Seller shall bear all costs of conducting such inspection and tests and performing such works, including the Buyer's reasonable costs.
- 7.3 Any dispute arising from or relating to the performance of the inspection or tests by the Independent Engineer or the results thereof shall be referred to and determined by an Independent Expert in accordance with the provisions of clause 26 (*Fast Track Dispute Resolution*).

8. GENERATION FORECASTS

8.1 Weekly Generation Forecast

- 8.1.1 The Seller shall provide the Buyer in writing for each Week in the Early Operating Period and the Operating Period, by no later than 09:00 hours on the preceding Wednesday, the Seller's estimate made in good faith of the forecast level of Energy expected to be generated by the Facility for each day in the Week, which shall generally be in the form of Schedule 4 (*Forecasting Information*) ("**Weekly Forecast Generation Profile**").
- 8.1.2 If the Seller fails to provide any Weekly Forecast Generation Profile, then the Buyer shall be entitled to do or procure that another person provides it with that forecast, and it shall be entitled to recover the costs it incurs in respect of such forecast from the Seller. The

Buyer shall provide the Seller with details of such costs and such evidence as is available in respect of such costs. The Buyer shall be entitled to set the amount of costs off against the next payment due to the Seller

8.2 Daily Generation Forecast

8.2.1 The Seller shall provide the Buyer in writing for each day in the Early Operating Period and the Operating Period, by no later than 10:00 hours on a preceding day, the Seller's estimate made in good faith of the forecast level of Energy expected to be generated each hour (the first such hour starting at 00:00 and ending at 00:60 minutes) in the day (starting at 00:00 hours and ending at 24:00 hours), which shall generally be in the form of Schedule 4 (*Forecasting Information*) ("**Daily Forecast Generation Profile**").

8.2.2 If the Seller fails to provide the Daily Forecast Generation Profile for any day, then the Buyer shall be entitled to do or procure that another person provides it with that forecast, and it shall be entitled to recover the costs it incurs in respect of such forecast from the Seller. The Buyer shall provide the Seller with details of such costs and such evidence as is available in respect of such costs. The Buyer shall be entitled to set the amount of such costs off against the next payment due to the Seller.

8.3 Other Relevant Data

By 20:00 hours on the day preceding the day in respect of which the Seller has issued a Daily Forecast Generation Profile, the Seller shall submit to the Buyer, in written form, details of any special factors which, in good faith and reasonable opinion of the Seller, will have a material effect on the ability of the Facility to produce Energy or provide the Energy Output on the following day.

9. TARIFF AND OTHER CHARGES

9.1 Early Operating Energy Payments

The Buyer shall pay to the Seller the Early Operating Energy Payment for all Early Operating Energy sold by the Seller and purchased by the Buyer during each Billing Period during the Early Operating Period at the Early Operating Energy Rate.

9.2 Commercial Energy Payments

The Buyer shall pay to the Seller the Commercial Energy Payment for all Commercial Energy sold by the Seller and purchased by the Buyer during each Billing Period at the Commercial Energy Rate.

9.3 Deemed Energy Payments

The Buyer shall pay to the Seller the Deemed Energy Payment for all Deemed Energy accruing in each Billing Period calculated in terms of the clause below relating to consequences of a System Event, and Schedule 6 (*Deemed Energy Payment*).

9.4 Use of System Charges

- 9.4.1 The Buyer shall reimburse to the Seller the Use of System Charges, if any, which the Seller is obliged to pay and has paid in terms of the Distribution Agreement or the Transmission Agreement, as the case may be in each Billing Period. If any Use of System Charges are repaid to the Seller as a result of any dispute in terms of either the Distribution Agreement or the Transmission Agreement, then the Seller shall be obliged to repay the Buyer to the extent such amounts have already been reimbursed to the Seller in terms of this Clause 8.4 (Use of System Charges), and the Buyer shall be entitled to deduct such amounts in the next Invoice issued to the Seller.

9.5 Failure to make Payments

- 9.5.1 If any payment that is due and payable is not paid by the Due Date, interest shall accrue on the full amount due and payable, at the Agreed Interest Rate, from the Due Date to, but excluding, the date of payment.
- 9.5.2 If the Buyer fails to pay any amount or amounts that are due and payable by the Buyer under this Agreement, within ten (10) Business Days of the Due Date for payment, the Seller may serve notice on the Buyer of such failure and specify details thereof. If such failure has not been remedied or rectified within forty (40) Business Days of such notice, the Seller may proceed to terminate this Agreement in accordance with the provisions of clause 18.3 (*Termination for Buyer Default*).

10. INVOICING

10.1 Early Operating Period and Operating Period invoices

- 10.1.1 The Seller shall, within two (2) Business Days of the end of a Billing Period, submit to the Buyer for that Billing Period an Invoice specifying:
- 10.1.1.1 the Early Operating Energy Payment and/or Commercial Energy Payment (as the case may be) due to the Seller for such Billing Period setting out the calculations upon which such Early Operating Energy Payment or Commercial Energy Payment is based;
- 10.1.1.2 the Deemed Energy Payments (if any) due to the Seller for such Billing Period, including:
- 10.1.1.2.1 the periods for which the Deemed Energy Payments are payable;
- 10.1.1.2.2 the calculations upon which such Deemed Energy Payments are based;

- 10.1.1.2.3 the circumstances which entitle the Seller to such Deemed Energy Payments; and
- 10.1.1.2.4 written confirmation of the Independent Engineer where required in terms of Schedule 6 (*Deemed Energy Payment*); and
- 10.1.1.3 any amounts owed by the Seller to the Buyer (or vice versa).
- 10.1.2 the Seller shall prepare the Invoice for the Billing Period based on the billing data obtained by it from the Facility Metering Installation for that Billing Period.

10.2 General Principles as Regards Invoicing

The following provisions shall apply in respect of all Invoices prepared and issued pursuant to this Agreement.

- 10.2.1 Save as provided in the VAT Act, every payment due and payable by either Party to the other pursuant to this Agreement shall be subject to VAT.
- 10.2.2 Subject to clause 9.5.1, the Party who received the Invoice shall pay to the other Party (who issued the Invoice) the amount of each Invoice within thirty (30) Business Days of receipt of such Invoice (the "**Due Date**").
- 10.2.3 All payments due by either Party to the other under this Agreement shall be made:
 - 10.2.3.1 in Rand in immediately available funds to such bank account in South Africa as the recipient Party shall from time to time nominate; and
 - 10.2.3.2 subject to clause 21 (*Set-Off*), without deduction or withholding, whether by way of set-off or otherwise, other than as required by any Law or as expressly provided in this Agreement.

10.3 Billing Disputes

The following provisions shall apply in respect of all Invoices prepared and issued pursuant to this Agreement:

- 10.3.1 A Party shall notify the other Party in writing if it disputes (in good faith) an Invoice (including the data or records on which the dispute is based) before the Due Date for payment thereof, which notice shall specify the amount in dispute, and provide appropriate details of the basis of the dispute. The disputing Party shall pay the undisputed portion of the Invoice on the Due Date.
- 10.3.2 The Parties will use their reasonable endeavours to resolve the dispute as soon as practicable, and in any event within thirty (30) days of the notice of the dispute served pursuant to clause 10.3 (*Billing disputes*). Without limiting the generality of the foregoing, where the dispute is in respect of the billing data obtained by the Seller from the Facility Metering Installation, the Buyer shall be entitled to request a test of the Facility Metering Installation in accordance with clause 5. (*Testing and inspection*).

- 10.3.3 If it is agreed or determined that all or part of a disputed amount which was paid should not have been paid, then the amount of such overpayment shall be refunded within five (5) Business Days of such agreement or determination, together with interest at the Agreed Interest Rate from the date of such overpayment to, but excluding, the date of repayment.
- 10.3.4 If the Parties fail to resolve a dispute regarding an Invoice within thirty (30) days of the date upon which the notice in this clause 10.3 (*Billing disputes*) was served, either Party shall be entitled to refer the dispute to an Expert for determination in accordance with clause 27 (*Fast Track Dispute Resolution*), provided that the Expert shall take into account the data and records of the most recent test of the Facility Metering Installation, held in accordance with clause 12 (*Metering*).

11. OUTAGES

11.1 Scheduled Outages

- 11.1.1 The Seller shall comply with the requirements of Schedule 3 (*Scheduled and Unscheduled Outages*) in relation to Scheduled Outages.
- 11.1.2 Subject to clause 11.1, the Seller shall be entitled to remove the Facility from service during the period of the Scheduled Outage to carry out its planned Maintenance.
- 11.1.3 The Seller shall be responsible for all costs incurred by it in connection with or arising from any Maintenance carried out by it or on its behalf on the Facility during any Scheduled Outage.

11.2 Unscheduled Outages

- 11.2.1 In case of an Unscheduled Outage due to failure of any part of the equipment forming part of the Facility, the Seller shall inform the Buyer within four (4) hours from the commencement of the Unscheduled Outage of the time period that the Facility is expected to be unavailable if that time period extends or is expected to extend for the period from 00:00 to 24:00 of any given Day. Unscheduled Outages that are expected to extend for less than the twenty-four (24) hour period from 00:00 to 24:00 of any given Day do not need to be reported to the Buyer in terms of this section.
- 11.2.2 The Seller shall be responsible for all costs incurred by it in connection with or arising from any Maintenance carried out by it or on its behalf on the Facility during any Unscheduled Outage.

12. METERING

12.1 Metering Agents

- 12.1.1 The Buyer may, by written notification to the Seller and subject to the Seller's approval (not to be unreasonably withheld or delayed), appoint a third party to act as a metering agent and to perform and fulfil the Buyer's rights and obligations pursuant to this Clause 11 (Metering), provided that should the Buyer appoint such a metering agent, the Buyer shall nonetheless remain liable to the Seller under this Agreement for any breach or failure to perform by the metering agent.

12.2 Facility Metering Installation

- 12.2.1 The Seller shall, acting as a Reasonable and Prudent Operator, procure, install, test, commission, Operate and Maintain the Facility Metering Installation at the Delivery Point, at its sole cost.
- 12.2.2 The Facility Metering Installation shall be used for invoicing purposes as provided herein.

12.3 System Metering Installation

- 12.3.1 The Buyer shall procure, install, test, commission, Operate and Maintain a System Metering Installation adjacent to the Facility Metering Installation at the Delivery Point at its sole cost, in accordance with the Connection Agreements.
- 12.3.2 The purpose of the System Metering Installation shall be to provide data for comparison purposes as against the data to be provided by the Facility Metering Installation.

12.4 Capabilities of Meters

- 12.4.1 The Facility Metering Installation and the System Metering Installation shall be capable of measuring and recording the following parameters for various time and frequency blocks in accordance with applicable Laws and Codes:
- a) active Energy Output and Reactive Energy Output;
 - b) instantaneous voltage, current and power factor;
 - c) frequency;
 - d) the maximum demand in MVA/MW for each demand period and for the total period since the last reset;
 - e) MWh/MVARh since last reading;
 - f) real-time and time-of-day metering; and
 - g) number of resets.

12.4.2 The Facility Unit Metering Installation and the System Metering Installation shall also have the capability to download and transmit such real-time data to a Supervisory Control and Data Acquisition ("SCADA") system, in a form and format suitable for SCADA.

12.4.3 The Buyer shall be entitled to, and the Facility Metering Installation shall enable the Buyer to, access the Facility Metering Installation and its data remotely at any time and without any notice.

12.5 Sealing

12.5.1 The Facility Metering Installation and System Metering Installation shall each be sealed in accordance with their respective sealing policies in the presence of duly authorised representatives of both Parties immediately after the commissioning of the relevant meter.

12.5.2 Seals shall only be broken for the purposes of inspection, testing, Maintenance or adjustment of the relevant meter, and shall be immediately resealed after that purpose is completed, all in the presence of duly authorised representatives of both Parties.

12.6 Testing and Inspection

12.6.1 Subject to Clauses 12.6.2 and 12.6.5, the Buyer may request a test of the Facility Unit Metering Installation and the Seller may request a test of the System Metering Installation, by notice in writing to the other Party.

12.6.2 The Facility Metering Installation and the System Metering Installation shall be tested by a Metering Certifier as often as the Party responsible for such meter deems necessary but in any event within thirty (30) days of receipt of written request for such test pursuant to Clause 12.6.1.

12.6.3 Save on reasonable grounds, including a suspected inaccuracy determined pursuant to Clause 12.6.4, the Buyer shall not be entitled to call for more than one (1) test of the Facility Metering Installation in any period of twelve (12) Months, and the Seller shall not be entitled to call for more than one (1) test of the System Metering Installation in any period of twelve (12) months.

12.6.4 Without limiting Clause 12.6.1, if readings taken from the Facility Metering Installation and the System Metering Installation are significantly different from one another and/or demonstrate a level of inaccuracy falling outside the particular standard and specification used for the relevant meter, or are beyond a tolerance level of \pm zero point five per cent (0.5%), whichever is the lesser, then the Facility Metering Installation and the System Metering Installation shall both be tested.

- 12.6.5 The Parties shall provide each other with not less than seven (7) days prior written notice of any test to be held pursuant to this Clause 11.6 (Testing and Inspection), which shall be held between 09:00 and 16:00 hours on any Business Day. Both Parties shall have the right to be represented at the conduct of any such test by representatives of each Party.
- 12.6.6 The Parties shall promptly provide each other with copies of test and calibration reports, including all supporting metering data and records, if so requested in writing by the other Party. The Parties shall answer any questions as regards the test report promptly and in full.
- 12.6.7 The Facility Metering Installation and the System Metering Installation shall be treated as working satisfactorily so long as the errors are within the limits prescribed for meters of the particular standard and specification used, or are within a tolerance level of \pm zero point five per cent (0.5%), whichever is the lesser. If, as a result of a test conducted pursuant to this Clause 12.6 (Testing and Inspection), the measure of error is found to be outside this maximum tolerance, then the Facility Metering Installation and/or the System Metering Installation, as the case may be, shall be recalibrated as soon as practicable and in any event within two (2) days of the relevant meter owner being notified of such event, at the expense of the Party responsible for the non-compliant meter, and the provisions of Clause 12.7 shall apply in respect of any data retrieved from such non-compliant meter and used for billing purposes prior to the relevant meter test.
- 12.6.8 If any related monitoring equipment or associated circuits are found not to comply with the requirements of the relevant standards as set out in applicable Laws and Codes, they shall be repaired or replaced at the expense of the Party which owns them as soon as practicably possible.

12.7 Readings and Inaccuracy

- 12.7.1 The meters shall be read by the Parties jointly for the purposes of billing on the last business day of each Billing Period at 24:00 or such other time on that day as may be agreed between them in writing, and the reading suitably recorded in writing.
- 12.7.2 Should the Facility Metering Installation fail to register or, upon testing pursuant to Clause 12.6 (Testing and inspection), be found to have a level of inaccuracy falling outside the maximum tolerance level specified in Clause 12.6.7, then the Facility Metering Installation shall be recalibrated in accordance with Clause 12.6.7 and the Energy Output from the Facility shall, for the period referred to in Clause 12.7.4, be measured on the basis of the readings registered by the System Metering Installation.

- 12.7.3 Should both the System Metering Installation and the Facility Metering Installation fail to register or, upon testing, be found to have a level of inaccuracy falling outside the maximum tolerance level specified in Clause 12.6.7, then each of the System Metering Installation and the Facility Metering Installation shall be recalibrated in accordance with Clause 12.6.7 and the Energy Output from the Facility shall for the period referred to in Clause 12.7.4, be calculated on the basis of such correction procedure as the Parties may agree (using such data as permitted by the relevant Code, including estimated data prepared in accordance with the relevant Code, and in the absence of agreement shall be referred for determination in accordance with Clause 27.1 (Referral to an Expert).
- 12.7.4 The period referred to in Clauses 12.7.2 and 12.7.3 shall be:
- a) the actual period during which inaccurate measurements were made if such period can be determined from the logged readings;
 - b) if not determinable from the logged readings, the period immediately preceding the test of the Facility Metering Installation equal to one-half of the time from the date of the last previous test of the Facility Metering Installation; or
 - c) in the case of Clause 12.7.3, from the date of the last previous test of the System Metering Installation or Facility Metering Installation, whichever was most recently tested (with the remaining period being calculated on the basis of the measurements as actually recorded by the System Metering Installation or the Facility Metering Installation).

12.8 Miscellaneous

- 12.8.1 Each Party shall not, and shall ensure that its contractors (including the Contractors, in the case of the Seller) do not, interfere in any manner whatsoever with the proper functioning of the other Party's metering equipment, save in the course of an inspection, testing, Maintenance or agreed adjustment in the presence of duly authorised representatives of both Parties.
- 12.8.2 The Facility Metering Installation and the System Metering Installation shall not be relocated without the prior written agreement of both Parties.
- 12.8.3 The Seller shall be entitled to access the System Metering Installation remotely to download data for the purposes of performing its obligations and exercising its rights under this Agreement, without prior notice to the Buyer.
- 12.8.4 All metering procedures must comply with Eskom's Standard for the Interconnection of Embedded Generation
- 12.8.5 All metering procedures must comply with SANS 474/NRS 057 and SANS 473/NRS 071

- 12.8.6 The South African Distribution Code: Network Code (SADCNC) section 8.2 (3), requires the installation of the bidirectional metering equipment between the distributor and the Embedded Generator's generation facility.

13. REPORTS, RECORDS, PLANS AND MONITORING

13.1 Reports

Subject to the terms and conditions of this Agreement, the Seller shall as soon as reasonably possible, and in any event within two (2) hours, notify the Buyer if the Facility is incapable of generating more than 90% of the Contracted Capacity for any of the following reasons (and provided that its unavailability has not already been notified as part of a Scheduled Outage or pursuant to clause 8.1 (*Generation Forecasts*)):

- 13.1.1 for reasons of any Outages; or
- 13.1.2 where to do so would not be in accordance with the standards of a Reasonable and Prudent Operator; or
- 13.1.3 in circumstances relating to safety (of either personnel or of the Facility or apparatus); or
- 13.1.4 in circumstances where to do so would be unlawful; or 13.1.5 for reasons of Force Majeure or a System Event, and shall, within five (5) Business Days, deliver to the Buyer a written report detailing the reasons (in reasonable detail) for such incapacity.

13.2 Data and Records

The Seller shall maintain complete and accurate data and records required to facilitate the proper administration of this Agreement and the Project. Such data and records ("**Project Data**") shall include an accurate and up-to-date log of Operations, updated daily, in a format reasonably acceptable to the Buyer. The Project Data should include, but not be limited to, the following information, with records of:

- 13.2.1 for each ten (10) minute period in each day, the Energy Output and the Reactive Energy Output;
- 13.2.2 changes in Operating status during the day;
- 13.2.3 the number of Outages in the day, the duration of each Outage and the reason for each Outage;
- 13.2.4 all In-Plane Irradiance, temperature and other climatic data recorded at the Project Site;
- 13.2.5 all data required in terms of Schedule 6 (*Deemed Energy Payment*);
- 13.2.6 any information required to be recorded and/or reported in terms of the Consent; and
- 13.2.7 any unusual conditions found during Maintenance inspections.

13.3 Recordkeeping

All Project Data shall be maintained for the duration of the Term and for any additional length of time as may be required by any applicable Laws or otherwise by any Responsible Authority.

13.4 Ownership, Inspection, Copy and Use Rights

- 13.4.1 The Buyer shall have the right, upon giving a minimum of two (2) Business Days prior written notice to the Seller, to examine and take copies of any Project Data at any time during normal business hours (at the Buyer's own cost).
- 13.4.2 Subject to any confidentiality undertakings between the Seller and manufacturers or suppliers of Facility equipment, the Buyer shall be entitled to put the Project Data in the public domain and to use the Project Data as the Buyer deems appropriate.
- 13.4.3 The Buyer and the Seller shall have joint ownership of the Project Data, but the Seller shall not, by virtue of its ownership rights, have any rights to prevent the disclosure and use of the Project Data by the Buyer.

14. UTILITIES AND CONSUMABLES

14.1 Responsibility for the Supply of Utilities

At all times during the Term, the Seller shall be responsible for securing all supplies of electricity, water, sanitation, telecommunications, waste disposal services and all other utilities required for the Construction, Maintenance and Operation of the Project.

14.2 Responsibility for the Supply of Consumables

The Seller shall be solely responsible for obtaining, stockpiling (if applicable) and transporting all supplies of consumables necessary to comply with its obligations under this Agreement.

15. CONSEQUENCES OF A SYSTEM EVENT

- 15.1 The Seller shall not be entitled to bring any claims under this clause 15 (Consequences of a System Event) for Deemed Energy Payments
 - 15.1.1 in respect of the period prior to the Scheduled COD
 - 15.1.2 if any time for which the System Event or combination of System Events has or have endured:
 - 15.1.2.1 in the period that the Commercial Operation Date is delayed beyond the Scheduled COD
 - 15.1.2.2 after the Commercial Operation Date in any Contract Year,

- 15.1.2.3 if the grid is unavailable for less than the Allowed Grid Unavailability Period for such period or Contract Year unless such System Event or combination of System Events occurred as a result of Curtailment. The Allowed Grid Unavailability Period shall not be applicable to any System Event or combination of System Events that are caused by Curtailment.
- 15.2 If and to the extent that before the Commercial Operation Date, a System Event that is contemplated in paragraph (a) of the definition of System Event occurs that causes a delay in the achievement of the Commercial Operation Date beyond the Scheduled COD; and/ or after the Commercial Operation Date, a System Event materially adversely affects the ability of the Seller to perform any of its obligations or exercise any of its rights under this Agreement, then the Seller shall be entitled to apply for relief from any rights of the Buyer arising under the clause below relating to termination for seller default and to payment of the Deemed Energy Payment.
- 15.3 Subject to clause 15.1, to obtain relief and/or payment of the Deemed Energy Payment, the Seller must:
 - 15.3.1 as soon as practicable, and in any event within one (1) day after it became aware that the System Event has occurred and
 - 15.3.1.1 has caused or is likely to cause delay and/or materially adversely affect the ability of the Seller to perform its obligations or exercise its rights; or
 - 15.3.1.2 entitles the Seller to claim a Deemed Energy Payment, give to the Buyer a notice of its claim for relief from its obligations under this Agreement and for the Deemed Energy Payment, including full details of the nature of the System Event, the date of occurrence and its likely duration (if known);
 - 15.3.2 within four (4) days of the Seller giving the notice referred to in clause 15.3.1, give full details of the System Event and of the Deemed Energy Payment and/or relief claimed; and demonstrate to the reasonable satisfaction of the Buyer that:
 - 15.3.2.1 the Seller could not have avoided such occurrence or consequences by steps which it might reasonably be expected to have taken, without incurring material expenditure;
 - 15.3.2.2 the System Event directly caused the delay beyond the Scheduled COD, or there is a need for relief from other obligations under this Agreement;
 - 15.3.2.3 the Facility would otherwise have been available and able to generate and deliver Energy Output but for the System Event;
 - 15.3.2.4 the Deemed Energy Payment and/or relief from the obligations under this Agreement claimed could not reasonably be expected to be mitigated or recovered by the affected Party acting in accordance with the standards of a Reasonable and Prudent Operator, without incurring material expenditure; and
 - 15.3.2.5 the Seller is using reasonable endeavours to perform its obligations under this Agreement.

- 15.4 If the Seller has complied with its obligations under clause 15.3 above, then:
- 15.4.1 if the System Event occurs in the circumstances contemplated above, then
- 15.4.1.1 the Scheduled COD shall remain unchanged, the Expiry Date shall continue to occur twenty years after the Scheduled COD and the Operating Period shall continue to commence on the later of the unchanged Scheduled COD and the Commercial Operation Date, but the Last COD shall be postponed by one (1) day for every day by which the Commercial Operation Date is delayed by the Grid Event;
- 15.4.1.2 subject to clause 15.1, the Seller shall be entitled to receive the Deemed Energy Payment for the period by which the Commercial Operation Date has been delayed by the Grid Event, as agreed between the Parties or decided pursuant to clause 27 (*Fast Track Dispute Resolution*), subject to any adjustments that may be effected in terms of paragraph 5 (*Adjustment of Deemed Energy Payments*) of Schedule 6 (*Deemed Energy Payment*); and/or
- 15.4.1.3 the Buyer shall not be entitled to exercise its rights to terminate this Agreement under clause 18.2 (*Termination for Seller Default*) for the failure of the Seller to achieve the Commercial Operation Date by the original Last COD as a result of such Grid Event; or
- 15.4.2 if the System Event occurs after the Commercial Operation Date, then:
- 15.4.2.1 subject to clause 15.1, the Seller shall be entitled to receive the Deemed Energy Payment for the period that the System Event continues, as agreed between the Parties or decided pursuant to clause 27 (*Fast Track Dispute Resolution*), subject to any adjustments that may be effected in terms of paragraph 5 (*Adjustment of Deemed Energy Payments*) of Schedule 6 (*Deemed Energy Payment*); and/or
- 15.4.2.2 the Buyer shall not be entitled to exercise its rights to terminate this Agreement under clause 18.2 (*Termination for Seller Default*) for the failure of the Seller to comply with any provision of this Agreement as a result of such System Event.
- 15.5 If the information required by clause 15.3 above is provided after the dates referred to in that clause, then the Seller shall not be entitled to any relief or the Deemed Energy Payment during the period for which the information is delayed.
- 15.6 The Seller shall notify the Buyer if, at any time, it receives or becomes aware of any further information relating to the System Event, giving details of that information to the extent that such information is new or renders information previously submitted materially inaccurate or misleading.
- 15.7 If the Parties cannot agree on the extent of the relief required, or the Buyer disagrees that a System Event has occurred or that the Seller is entitled to any extension of the Last COD and/or to any Deemed Energy Payment, and/or relief from other obligations under this Agreement, the Parties shall resolve the matter in accordance with clause 27 (*Fast Track Dispute Resolution*).

16. FORCE MAJEURE

- 16.1 Subject to clause 16.2.2, the Party claiming relief shall be relieved from liability under this Agreement to the extent that, by reason of the Force Majeure event, it is not able to perform all or a material part of its obligations under this Agreement.
- 16.2 Where a Party is (or claims to be) affected by an event of Force Majeure:
- 16.2.1 it shall take all reasonable steps to mitigate the consequences of such an event upon the performance of its obligations under this Agreement and to resume the performance of its obligations affected by the event of Force Majeure as soon as practicable, and shall use all reasonable endeavours to remedy its failure to perform; and
- 16.2.2 it shall not be relieved from liability under this Agreement to the extent that it is not able to perform, or has not in fact performed, its obligations under this Agreement due to its failure to comply with its obligations under sub-clause 16.2.1.
- 16.3 The Party claiming relief shall serve written notice on the other Party within five (5) Business Days of it becoming aware of the relevant event of Force Majeure. Such initial notice shall give sufficient details to identify the particular event claimed to be an event of Force Majeure.
- 16.4 A subsequent written notice shall be served by the Party claiming relief on the other Party within a further fifteen (15) Business Days which shall contain such relevant information relating to the failure to perform (or delay in performing) as is available, including (without limitation) the effect of the event of Force Majeure on the ability of the Party to perform, the action being taken in accordance with clause 16.2.1, the date of the occurrence of the event of Force Majeure and an estimate of the period of time required to overcome it (and/or its effects).
- 16.5 If the Force Majeure event occurs prior to the Scheduled COD, the Scheduled COD shall be postponed by such time as shall be reasonable for such a Force Majeure event, taking into account the likely effect of the delay. If the Force Majeure event occurs after the Scheduled COD but prior to the Commercial Operation Date, provided the Last COD has not yet occurred, the Last COD shall be postponed by such time as shall be reasonable for such a Force Majeure event, taking into account the likely effect of the delay.
- 16.6 The Party claiming relief shall notify the other as soon as the consequences of the event of Force Majeure have ceased and when the performance of its affected obligations can be resumed.
- 16.7 If, following the issue of any notice referred to in clause 16.4, the Party claiming relief receives or becomes aware of any further information relating to the event of Force Majeure (and/or any failure to perform), it shall submit such further information to the other Party as soon as reasonably possible.

- 16.8 The Seller's sole right to relief in relation to the occurrence of an event of Force Majeure shall be as provided in this clause 16.
- 16.9 The Seller shall not be entitled to enforce this clause 16.9 pursuant to any Force Majeure event in respect of which it is entitled to bring a claim under any insurance policy or would have been so entitled had it been in compliance with the clause below relating to insurances and information (*Insurances and Information*). If, during any twelve (12) month period commencing on 1 April, the cumulative duration of Force Majeure events or their consequences, each of which event lasts twenty-four (24) hours or longer, exceeds sixty (60) or more days, the Seller shall be entitled to an extension of the Term and/or other relief from the Buyer as shall place the Seller in the same overall economic position as it would have been in but for such Force Majeure event, provided that any compensation shall not take a monetary form and the total extension of the Term shall not exceed ten (10) years.

17. UNFORESEEABLE CONDUCT

- 17.1 Should any Unforeseeable Conduct occur which adversely affects the general economic position of the Seller, the Seller shall be entitled to such compensation and/or relief from the Buyer as shall place the Seller in the same overall economic position as the Seller would have been in but for such Unforeseeable Conduct.
- 17.2 Should any Unforeseeable Conduct occur that beneficially affects the general economic position of the Seller, the Seller shall pay the value of such benefit to the Buyer so that the Seller remains in the same overall economic position it would have been in had the materially beneficial Unforeseeable Conduct not occurred.
- 17.3 Neither Party shall be entitled to any relief or compensation under this clause 17 unless the economic consequences of the Unforeseeable Conduct exceed zero point five per cent (0.5%) of the sum of all Early Operating Energy Payments (if any), Deemed Energy Payments (if any) and Commercial Energy Payments made to the Seller during the preceding twelve (12) month period.
- 17.4 The Party claiming the occurrence of the Unforeseeable Conduct ("**Claiming Party**") shall give written notice to the other Party ("**Receiving Party**") containing reasonable particulars of such conduct and its likely economic consequences to the Seller, whether adverse or beneficial.
- 17.5 Subject to clause 17.6, the Receiving Party shall have sixty (60) days from the date of receipt of such notice to effect a remedy for the Unforeseeable Conduct which restores the general economic position of the Seller to that which it would have been in if such Unforeseeable Conduct had not occurred. If the Receiving Party does not affect such a remedy within such period, the Parties shall consult within ten (10) Business Days after the expiration of such period with a view to reaching a mutually satisfactory resolution of

the situation. If a mutually satisfactory resolution has not been reached within such a ten (10) Business Day consultation period, the matter shall be dealt with in accordance with clause 26 (*Dispute Resolution*).

- 17.6 If the Seller is the Claiming Party, and the remedy contemplated by the Buyer under clause 17.5 is monetary compensation, the Buyer shall have the option to compensate the Seller as a result of the Unforeseeable Conduct either:
- 17.6.1 in one lump-sum payment, payable within sixty (60) Business Days of its receipt of the notice contemplated in clause 17.5 from the Seller; or
- 17.6.2 in equal monthly instalments for the remainder of the Term, commencing within sixty (60) Business Days of its receipt of the notice contemplated in clause 17.5 from the Seller provided that interest shall accrue on the full amount due and payable, at the Agreed Interest Rate, from the Due Date to, but excluding, the date of final payment.
- 17.7 In so far as the Seller is the Claiming Party, it shall use all reasonable endeavours to minimise and mitigate the effects of all Unforeseeable Conduct.

18. TERMINATION

18.1 No Termination

Neither Party shall have any right nor shall it exercise or purport to exercise, any right to terminate this Agreement except as expressly set out in this Agreement.

18.2 Termination for Seller Default

- 18.2.1 The Buyer shall notify the Seller of the occurrence, and details, of any Seller Default promptly on the Seller becoming aware of its occurrence.
- 18.2.2 On the occurrence of a Seller Default, or within a reasonable time after the Buyer becomes aware of the same, the Buyer may:
- 18.2.2.1 where the Seller Default is the default detailed in sub-clause (c) of the definition of "**Seller Default**" (namely failure to achieve the Commercial Operation Date on or before the Last COD);, serve a notice on the Seller terminating this Agreement (save for the clauses below relating to general seller undertakings to miscellaneous matters) with immediate effect;
- 18.2.2.2 where the Seller Default is the default detailed in sub-clause (b) of the definition of "**Seller Default**" (namely failure to Commence and Continue Construction of the Facility within one hundred and eighty (180) days of the Effective Date), if the same is continuing, serve notice of default on the Seller requiring the Seller to remedy the Seller Default referred to in such notice of default (if the same is continuing) within ninety (90) days of such notice of default being delivered. If the Seller Default is not remedied within such period, the Buyer may serve a further notice on the Seller terminating this Agreement (save for

the clauses below relating to general seller undertakings to miscellaneous matters) with immediate effect; or

- 18.2.2.3 for any other Seller Default, while the same is subsisting, serve notice of default on the Seller requiring the Seller to remedy the Seller Default referred to in such notice of default (if the same is continuing) within one hundred and eighty (180) days of such notice of default being delivered. If the Seller Default is not remedied within such period, the Buyer may serve a further notice on the Seller terminating this Agreement (save for the clauses below relating to general seller undertakings to miscellaneous matters) with immediate effect.

18.2.3 Buyer's Costs

- 18.2.3.1 The Seller shall reimburse the Buyer with all costs incurred by the Buyer in exercising any of its rights in terms of clause 18.2 (*Termination for Seller Default*). The Buyer shall take reasonable steps to mitigate such costs.
- 18.2.3.2 The rights of the Buyer (to terminate or otherwise) under this clause 18.2 (*Termination for Seller Default*) are in addition (and without prejudice) to any other right which the Buyer may have in law to claim the amount of any Direct Loss or damages suffered by the Buyer on account of the acts or omissions of the Seller (or to take any action other than termination of this Agreement).

18.3 Termination for Buyer Default

Should the Buyer be in default as provided for under clause 9.4 (*Failure to make Payments*), the Seller serves notice of default on the Buyer requiring the Buyer to remedy the Buyer Default referred to in such notice of default (if the same is continuing) within one hundred and eighty (180) days of such notice of default being delivered. If the Buyer's Default is not remedied within such period, the Seller may serve further notice on the Buyer terminating this Agreement.

In the event of termination of this Agreement by the Seller in terms of this clause 18.3, the Buyer shall be obliged to compensate the Seller in an amount as calculated through standard formulae; shared and agreed upon between the Buyer and the Seller. Upon so doing the Buyer shall have the right to take over ownership and control of the Facility and the Seller shall assign any tenancy rights it may have in respect of the land upon which the Facility is situated to the Buyer.

19. PROJECT INSURANCE

19.1 Insurances and Information

- 19.1.1 The Seller shall, in accordance with this clause 19 (*Project Insurance*), obtain and maintain in effect, at its own cost and insurance coverage of the Facility as is required by:
- 19.1.1.1 any Laws; and
- 19.1.1.2 the standards of a Reasonable and Prudent Operator.
- 19.1.2 The Seller shall take reasonable steps to ensure that its Contractors obtain and maintain in effect at all times such insurance cover as is appropriate for a Reasonable and Prudent Operator.
- 19.1.3 The Seller undertakes to provide the Buyer with any information the Buyer may require in order to determine the Seller's compliance or not with this clause 18.

19.2 Application of Insurance Proceeds

Unless the Buyer (acting reasonably) otherwise agrees in writing, the Seller shall apply all proceeds of any insurance claim made due to loss or damage to the Project or any part of the Facility (other than claims under any loss of revenue policies) towards reinstatement or renewal of such loss or damage in the first instance.

20. GENERAL SELLER UNDERTAKINGS

- 20.1 As between the Parties and save as otherwise expressly provided for in this Agreement, at all times during the Term, the Seller shall exercise its rights and perform all of its obligations as provided for in this Agreement, including the Construction, Operation and Maintenance of the Facility, at its sole cost and risk and in compliance with the requirements of:
- 20.1.1 applicable Laws;
- 20.1.2 the Codes;
- 20.1.3 the Consents;
- 20.1.4 the terms and conditions of this Agreement;
- 20.1.5 the standards of a Reasonable and Prudent Operator; and
- 20.1.6 relevant manufacturers' guidelines and instructions.
- 20.2 The Seller shall at all times ensure that sufficient suitable and appropriately qualified and experienced personnel will be employed (whether by the Seller or its Contractors) to undertake the Construction, Operation and Maintenance of the Facility and that such personnel shall be located in the Republic of South Africa. Without limiting the generality

of the foregoing, the Seller shall ensure that all key personnel positions are always filled as soon as reasonably possible.

- 20.3 The Buyer may require the Seller to remove any employee or other personnel of the Seller or any Contractor from the Project Site and the Seller shall do so (provided such removal is permitted under applicable Law) if in the reasonable opinion of the Buyer such employee or personnel engages in any conduct which might reasonably result in a breach of any provision of this Agreement or threaten public health, safety or security, and the Seller shall as soon as reasonably possible replace such employee or personnel with suitable appropriately qualified and experienced replacements (provided such replacement is permitted under applicable Law).

21. INTELLECTUAL PROPERTY OF THE BUYER

- 21.1 All intellectual property rights whatsoever, whether capable of registration or not, regarding the Buyer's name, trademarks, logos, image and all other intellectual property matters relating to the Buyer, including its name, trademarks, logos and/or image shall remain the sole property of the Buyer.
- 21.2 Subject to existing rights and obligations and clause 21.3, the Buyer may, on prior written application by the Seller, grant a non-exclusive revocable right and licence to the Seller to use the Buyer's trademarks and logos for a period not to exceed the remainder of the Term.
- 21.3 In order to establish and maintain standards of quality and propriety acceptable to the Buyer, in the event that the Seller desires to use the Buyer's trademarks or logos in any way, the Seller shall first submit the concept or a sample of the proposed use to the Buyer for approval, which shall be in its sole and absolute discretion. The Buyer shall use reasonable endeavours to advise the Seller of its approval or disapproval of the concept or sample within twenty (20) Business Days of its receipt of the concept or sample. If the Buyer approves the concept or sample, the Seller shall not depart therefrom in any respect without the Buyer's further prior written approval.
- 21.4 If at any time the Buyer revokes its approval for the specified use of any trademark or logo, the Seller shall forthwith discontinue all use of such trademark or logo and shall remove from public sale or distribution any previously approved product in respect of which the Buyer has revoked its approval. The costs incurred by the Seller as a result of such revocation shall be borne by the Seller if the grounds for the revocation include any ground described in clause 21.5.
- 21.5 The Buyer may revoke its approval immediately upon ten (10) Business Days written notice to the Seller if the Seller, any Contractor or any of its or its Contractors' officers, directors or employees commits any crime or otherwise engages in conduct which violates any Law, or engages in any conduct that offends against public morals and

decency and, in the Buyer's reasonable opinion, materially prejudices the reputation and public goodwill of the Buyer.

- 21.6 The Seller acknowledges that the name or names of the Buyer (the "**Protected Names**") are associated with and peculiar to the Buyer and are the intellectual property of the Buyer. Consequently, the Seller agrees that the sole and exclusive ownership of the Protected Names shall vest in the Buyer.
- 21.7 In circumstances where the Seller utilises any of the Protected Names, either on its own or in combination or association with any other name, it does so only in terms of this Agreement and with the prior approval of the Buyer. On termination or expiry of this Agreement, the Seller shall not be entitled to operate or conduct any business using any of the Protected Names either on its own or in combination or association with any other name.
- 21.8 Within twenty (20) Business Days after the end of the Term and where the Seller has operated a company utilising any of the Protected Names with the permission of the Buyer, the Seller shall either:
- 21.8.1 de-register the company bearing any of the Protected Names; or
- 21.8.2 change the name to a name not substantially similar to any of the Protected Names.
- 21.9 The naming of the Seller's business operation shall be undertaken in consultation with the Buyer and subject to the Buyer's approval. In circumstances where the name chosen by the Seller and approved by the Buyer is not part of the Buyer's intellectual property, then the rights of the Buyer contemplated in clause 21.8 shall not be applicable and the intellectual property shall be the sole property of the Seller.

22. SET-OFF

Whenever any sum of money is agreed or determined to be due and payable by the Seller to the Buyer, such sum may at the Buyer's discretion be deducted from or applied to reduce the amount then due, or which at any time afterwards may become due from the Buyer to the Seller; provided that the Buyer gives five (5) Business Days' notice to the Seller of its intention to apply such deduction.

23. ASSIGNMENT

23.1 Prohibition on Assignment

Neither Party may sell, cede, delegate, assign, transfer or otherwise dispose of (collectively, "**Assign**") all or any part of its rights and/or obligations hereunder to a third party without the prior written approval of the other Party.

24. CONTRACTORS

The Seller shall not be relieved of any obligation, responsibility or liability under this Agreement by virtue of the appointment of any Contractor to carry out any part of the Construction, Operation and/or Maintenance of the Facility, and the Seller shall be responsible under this Agreement for the payment, performance, acts, defaults, omissions, breaches and negligence of all Contractors.

25. CHANGES IN CONTROL

From the Signature Date, the Seller shall procure that there is no Change in Control in the Seller (or in any company of which the Seller is a subsidiary), unless such Change in Control has been approved in writing by the Buyer, which approval shall not be withheld unreasonably.

26. DISPUTE RESOLUTION

26.1 Referable Disputes

The provisions of this clause 26 shall save where expressly provided otherwise, apply to any dispute arising in relation to or in connection with any aspect of this Agreement between the Parties.

26.2 Internal Referral

26.2.1 If a dispute arises in relation to any aspect of this Agreement, the Parties shall attempt in good faith to come to an agreement in relation to the disputed matter, in accordance with the following informal process:

26.2.1.1 all disputes shall first be referred to a meeting of the liaison officers or other designated executives from each Party who are actively involved in the Project, and have sufficient authority to be able (if necessary with consultation back to their respective organisations) to resolve it; and

26.2.1.2 if the Parties have been unable to resolve the dispute within fifteen (15) days of referral to the persons specified in clause 26.2.1.1, either Party may refer the dispute for a decision by the accounting officer or accounting authority of the Buyer and the chief executive officer or equivalent officer of the Seller.

26.2.2 In attempting to resolve the dispute in accordance with the provisions of this clause 26.2, the Parties shall (and shall procure that their employees and representatives shall) use reasonable endeavours to resolve such dispute without delay by negotiations or any other informal procedure which the relevant representatives may adopt. Those attempts

shall be conducted in good faith in an effort to resolve the dispute without the necessity for formal proceedings.

- 26.2.3 Any dispute which has not been resolved by the representatives contemplated in clause 26.2.1.2 within fifteen (15) days of the dispute being referred to them (or any longer period agreed between the Parties) shall be treated as a dispute in respect of which informal resolution has failed.

26.3 Performance to Continue

No reference of any dispute to any resolution process in terms of this clause 26 shall relieve either Party from any liability for the due and punctual performance of its obligations under this Agreement.

26.4 Litigation

- 26.4.1 Save where any dispute has been expressly referred for determination in terms of clause 27 (*Fast Track Dispute Resolution*) if an informal resolution of any dispute has failed, then the dispute may be referred to litigation in the High Courts by either Party.
- 26.4.2 Neither Party is limited in any proceedings before the High Court to the information, evidence or arguments used in the informal attempts to resolve the dispute.

27. REFERRAL TO AN INDEPENDENT EXPERT

- 27.1 Disputes expressly referred for determination pursuant to this clause 26 shall be determined by the relevant Independent Expert.
- 27.2 Within five (5) Business Days after a dispute has been referred by either Party to the appropriate Independent Expert, the Independent Expert shall require the Parties to submit in writing their respective arguments. The Independent Expert shall, in his absolute discretion, consider whether a hearing is necessary in order to resolve the dispute.
- 27.3 It shall be entirely within the power and competence of the Independent Expert to decide upon any matters related to the proper preparation of the dispute for hearing and in that regard, the Independent Expert shall direct the Parties accordingly.
- 27.4 The Independent Expert shall set the date for the hearing, choose the venue (which must be a venue in South Africa) for the hearing and determine all matters regarding any aspect of the hearing. Moreover, the Independent Expert can decide whether at the hearing the Parties are to give oral evidence or confine themselves to presenting their cases in writing or by some other appropriate procedure. In this regard, the Independent Expert must be guided by considerations of fairness, the cost-effective resolution of the dispute, and the need to resolve the dispute quickly.

- 27.5 The Independent Expert shall provide both Parties with his written decision on the dispute, within twenty (20) Business Days of the referral (or such other period as the Parties may agree after the referral). The Independent Expert shall give his reasons for the award if so requested by either Party.
- 27.6 The Independent Expert's costs of any referral shall be borne as the Independent Expert shall specify or, if not specified, equally by the Parties. Each Party shall bear its own costs arising out of the referral, including its legal costs and the costs and expenses of any witnesses.
- 27.7 The Independent Expert shall act impartially and may take the initiative in ascertaining the facts and the Law.
- 27.8 Should the need arise for either Party to seek interim or temporary relief before the adjudication is finalised, that Party may apply to the Independent Expert to grant such interlocutory order or give the required temporary relief and the Independent Expert shall have the same power to do so as if the matter were one heard by a Judge in the High Court of South Africa, save that if by Law such power or order cannot be exercised or given by an Independent Expert then, and then only, should the Parties refer such matter to such High Court.
- 27.9 The proceedings shall be confidential and all information, data or documentation disclosed or delivered by either Party to the Independent Expert in consequence of or in connection with his appointment as Independent Expert shall be treated as confidential. Neither the Parties nor the Independent Expert shall, save as permitted by clause 30 (*Confidentiality*) of this Agreement, disclose to any person any such information, data or documentation unless the Parties otherwise agree in writing, and all such information, data or documentation shall remain the property of the Party is closing or delivering the same and all copies shall be returned to such Party on completion of the Independent Expert's work.
- 27.10 The Independent Expert is not liable for anything done or omitted in the discharge or purported discharge of his functions as Independent Expert unless the act or omission is grossly negligent or in bad faith. Any employee or agent of the Independent Expert is similarly protected from liability.
- 27.11 Should any Party fail to cooperate with the Independent Expert with the result that in the view of the Independent Expert such default or omission prejudices the adjudication process, then the Independent Expert can either:
- 27.11.1 give that Party written notice that unless it remedies the default or omission within a given time, it will forfeit the right to continue to participate in the adjudication; or
- 27.11.2 warn the Party in writing that its default or omission may make it liable to a punitive order of costs irrespective of whether it succeeds in the adjudication or not and such punitive

award of costs may include an order of attorney and client costs or attorney and own client costs as those expressions are understood in the Uniform Rules of Court.

- 27.12 The Independent Expert shall be deemed not to be an arbitrator but shall render his decision as an expert and the provisions of the Arbitration Act, 1965 and any other law relating to arbitration shall not apply to the Independent Expert or his determination or the procedure by which he reaches his determination. The Independent Expert's decision shall be final and binding on the Parties.

28. LIABILITY

28.1 Direct losses

- 28.1.1 The Parties' liability to each other in respect of any claim that arises pursuant to this Agreement, whether under delict or contract, shall be as detailed in this Agreement, and no Party shall have any additional liability to the other Party in respect of such claim.
- 28.1.2 Notwithstanding anything contained to the contrary in this Agreement, neither Party shall be liable to the other Party for any Special Loss suffered by such other Party as a result of any act or omission by the First Party.
- 28.1.3 Save as expressly provided elsewhere in this Agreement, neither Party shall be liable to the other Party for any losses, liabilities, expenses, damages, costs and claims (including Claims) suffered or claimed which arise out of, under or in connection with any alleged breach of any statutory duty or delictual act or omission or otherwise.

28.2 Mitigation

The Parties shall comply with their common law duties to mitigate any losses, liabilities, expenses, damages, costs and claims (including Claims) they may have pursuant to this Agreement.

29. THIRD-PARTY INDEMNITY

Each Party (the "**Indemnifying Party**") indemnifies and holds harmless the other Party, its Affiliates, and their respective officers, employees, consultants, agents and representatives (the "**Indemnified Parties**") against any and all Claims which may be asserted against or suffered by any of the Indemnified Parties, which relate to any death, injury or loss or damage to property suffered by the relevant third party, to the extent resulting from any negligent act or omission of the Indemnifying Party and its respective officers, employees, consultants, agents and representatives, provided that the death, injury, loss or damage suffered by the relevant third party is not attributable to any act or omission of any one or more of the Indemnified Parties or to the failure of one or more

of the Indemnified Parties to take reasonable steps to mitigate or avoid the death, injury, loss or damage in question.

30. CONFIDENTIALITY

30.1 Confidential Information

Each Party shall treat any and all information and data disclosed to it by the other Party in connection with this Agreement in any form whatsoever, and this Agreement itself (the "**Confidential Information**") as confidential and proprietary, shall preserve the secrecy of the Confidential Information and shall not use the Confidential Information for any purpose other than solely in connection with the Project. Project Data shall not constitute Confidential Information.

30.2 Exclusions to Confidential Information

For the purposes of this clause 30 (*Confidentiality*), the term "**Confidential Information**" shall not include information which:

- 30.2.1 at the time of disclosure or at any time thereafter is in, or becomes part of, the public domain other than through a breach of this clause 30;
- 30.2.2 the Party receiving the information can prove was already known to it, or was independently acquired or developed by it without being in breach of its obligations under this clause 30 ;
- 30.2.3 became available to the Party receiving the information from another source in a non-confidential manner otherwise than in breach of an obligation of confidentiality; or 30.2.4 is published by, or the publication of which is required by, a Responsible Authority or any court.

30.3 Permitted Disclosure of Confidential Information

Notwithstanding the provisions of clause 30.1 (*Confidential Information*), the Confidential Information may be disclosed:

- 30.3.1 by either Party to any Responsible Authority (where for the purposes of this clause 30.3 such definitions shall be limited to South Africa) or to any of the shareholders (direct or indirect), agents, consultants, contractors, advisers, financiers, potential financiers, investors, potential purchasers of the interests of shareholders (direct or indirect), insurers or lenders of such Party or its affiliates, in any such case for the purpose of enabling the disclosing Party to comply with its obligations under this Agreement, provided that:

- 30.3.1.1 such Party notifies the recipient at or about the time of such disclosure that the information is confidential and should not be disclosed by the recipient to third parties; and
- 30.3.1.2 such Party shall be responsible for ensuring that the recipient keeps the Confidential Information confidential and shall accordingly be responsible for any failure of the recipient to do so;
- 30.3.2 by either Party, as may be required by the regulations of any recognised securities exchange upon which the share capital of the Party (or any shareholder (direct or indirect) in the Party) is or is proposed to be from time to time listed or dealt in, and the Party making the disclosure shall, if reasonably practicable prior to making the disclosure, and in any event as soon as reasonably practicable thereafter, supply the other Party with a copy of such disclosure or statement and details of the persons to whom the Confidential Information is to be, or has been, disclosed;
- 30.3.3 by either Party as may be necessary to comply with any obligation under any applicable Law;
- 30.3.4 by either Party if required by any court, any arbitrator or administrative tribunal or an expert in the course of proceedings before it to which the disclosing Party is a party; or
- 30.3.5 by either Party, if so agreed in writing by the Parties prior to the disclosure.

30.4 Ownership and Treatment

- 30.4.1 Save for all Project Data, all information supplied by or on behalf of a Party shall remain the property of such Party, and this Agreement shall not operate to transfer ownership interest therein.
- 30.4.2 The Parties shall, in so far as is reasonably practicable, ensure that any copies of the Confidential Information, whether in hard copy or computerised form, shall clearly identify the Confidential Information as confidential.

31. GOVERNING LAW AND JURISDICTION

- 31.1 The validity, construction and performance of this Agreement shall be governed by the laws of South Africa.
- 31.2 Subject to the provisions of clause 27 (*Fast Track Dispute Resolution*), each Party agrees that the High Court of South Africa shall have exclusive jurisdiction to hear and decide any application, action, suit, proceeding or dispute in connection with this Agreement, and irrevocably submits to the jurisdiction of the High Court of South Africa.

32. NOTICES

32.1 Methods of Delivery

Unless otherwise provided in this Agreement, all notices, requests, statements and other communications required or permitted between the Parties by this Agreement shall be in writing and either hand-delivered or sent by pre-paid registered post, email or facsimile to the address or number within South Africa of the Party concerned set out in clause 32.2 (*Addresses*) or such other address or number as contemplated in clause 32.4 (*Change in address*). No communication shall be effective until received by the addressee and a communication shall be deemed to have been received:

- 32.1.1 if delivered by hand during ordinary business hours, to its physical address in clause 32.2 (*Addresses*), when so delivered;
- 32.1.2 if delivered by pre-paid registered post, to its postal address in clause 32.2 (*Addresses*), seven (7) Business Days after posting, subject to proof of posting;
- 32.1.3 if delivered by email, upon receipt by the sender of a return email from the recipient in which the sender's communication is acknowledged (it is the responsibility of the sender to obtain such acknowledgement); and
- 32.1.4 if delivered by facsimile, upon sending, subject to confirmation of uninterrupted transmission on a transmission report and provided that a hard copy is promptly dispatched to the recipient in the manner provided in clauses 32.1.1 or 32.1.2 above.

32.2 Addresses

The Parties choose the postal and physical addresses and contact details set out below:

32.2.1 The Seller:

Postal Address:

Physical Address:

Email Address:

Fax No.:

Tel No.:

Attention: ; and

32.2.2 The Buyer:

Postal Address:

Physical Address:

Email Address:

Fax No.:

Tel No.:

Attention: ;

32.3 Domicilium citandi et executandi

The Parties choose the physical address set out opposite their names in clause 32.2 (*Addresses*) as their *domicilium citandi et executandi* for all purposes of and in connection with this Agreement. Notwithstanding anything to the contrary herein, a written legal notice or process actually received by a Party shall be an adequate written notice or process, notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

32.4 Change in address

Either Party may change its nominated physical or postal address to another physical or postal address, as the case may be, in South Africa (and not in any other country) or its contact details by giving at least fifteen (15) days prior written notice to the other Party.

33. WARRANTIES

33.1 Seller Warranties

The Seller represents and warrants to the Buyer as on the Signature Date and on each day thereafter during the Term, that:

- 33.1.1 it is a limited liability company, duly incorporated and validly existing under the Laws and has taken all necessary actions to authorise its execution of and to fulfil its obligations under this Agreement;
- 33.1.2 it has the sole purpose, object and business of undertaking the Project and selling Energy in terms of this Agreement;
- 33.1.3 its obligations under this Agreement are legal, valid and binding and enforceable against it, in accordance with the terms of this Agreement;

- 33.1.4 the execution and performance of this Agreement do not and will not contravene any provision of the memorandum or articles of association or memorandum of incorporation of the Seller as at the Effective Date, or any order or other decision of any Responsible Authority or arbitrator that is binding on the Seller as at the Effective Date;
- 33.1.5 all Consents required for the conduct of the Project are in full force and effect as at the Signature Date, save for any Consents which are not required under the Laws to be obtained by the Signature Date, provided that the Seller warrants that it knows of no reason (having made all reasonable enquiries in this regard) why any such Consent will not be granted on reasonable terms by the time it is required to obtain such Consent;
- 33.1.6 no litigation, arbitration, investigation or administrative proceeding is in progress as at the Signature Date or, to the best of the knowledge of the Seller as at the Signature Date (having made all reasonable enquiries), threatened against it or any of the Contractors, which is likely to have a material adverse effect on the ability of the Seller to conduct the Project;
- 33.1.7 the Seller is not subject to any obligation or non-compliance which is likely to have a material adverse effect on its ability to conduct the Project;
- 33.1.8 no proceedings or any other steps have been taken or, to the best of the knowledge of the Seller (having made all reasonable enquiries), threatened for the winding-up or liquidation (whether voluntary or involuntary, provisional or final), judicial management (whether provisional or final), business rescue or deregistration of the Seller or for the appointment of a liquidator, judicial manager or similar officer over it or over any of its assets;
- 33.1.9 it has not carried out any trading or business activities since its incorporation or incurred any liabilities other than in connection with the operations of the Project (including the entering into this Agreement);
- 33.1.10 all information disclosed by or on behalf of the Seller to the Buyer at any time up to the Signature Date and, in particular, during the bid process preceding the award of this Agreement to the Seller, is true, complete and accurate in all material respects and the Seller is not aware of any material facts or circumstances not disclosed to the Buyer which would if disclosed, be likely to have an adverse effect on the Buyer's decision (acting reasonably) to enter into this Agreement with the Seller; and

33.2 Buyer Warranties

The Buyer represents and warrants to the Seller as on the Signature Date and on each day thereafter during the Term, as follows:

- 33.2.1 it is duly established under the laws of South Africa and has the right, power and authority to enter into this Agreement and to perform its obligations hereunder; and

- 33.2.2 the execution and performance of this Agreement by it have been duly authorised by all necessary internal processes, and its obligations hereunder constitute valid, binding and enforceable obligations.

34. REPRESENTATIVES

34.1 Buyer's Representative

- 34.1.1 The Buyer shall appoint from the Signature Date until the Expiry Date an individual (the "**Buyer's Representative**") whose identity shall be notified to the Seller to act as the Buyer's duly authorised representative for all purposes connected with this Agreement. The Buyer shall notify the Seller in writing forthwith upon the replacement at any time of the Buyer's Representative and such replacement shall not be effective until notice has been given.
- 34.1.2 The Buyer's Representative may delegate any of his functions from time to time to a person or persons the identity of whom shall be notified to the Seller and references in this Agreement to the Buyer's Representative shall be construed to include such persons.
- 34.1.3 Any notice, instruction or information required to be given by or made to the Buyer shall only be valid if given by or delivered to the Buyer's Representative.

34.2 Seller's Representative

- 34.2.1 The Seller shall appoint from the Signature Date until the Expiry Date, an individual (the "**Seller's Representative**") whose identity shall be notified to the Buyer to act as the Seller's duly authorized representative for all purposes connected with this Agreement. The Seller shall notify the Buyer in writing forthwith upon the replacement at any time of the Seller's Representative and such replacement shall not be effective until such notice has been given.
- 34.2.2 Any notice, instruction or information required to be given by or made to the Seller shall only be valid if given by or delivered to the Seller's Representative.

35. MISCELLANEOUS

35.1 No Partnership or Agency

This Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in this Agreement. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.

35.2 No Amendment or Variation

This Agreement may not be released, discharged, supplemented, interpreted, amended, varied or modified in any manner except by an instrument in writing signed by a duly authorised officer or representative of each of the Parties to this Agreement.

35.3 Waiver

35.3.1 The failure of any Party to exercise any contractual right or remedy shall not constitute a waiver thereof.

35.3.2 No waiver shall be effective unless it is communicated in writing to the other Party.

35.3.3 No waiver of any right or remedy arising from a breach of contract shall constitute a waiver of any right or remedy arising from any other breach of this Agreement.

35.4 Third Parties

The Parties intend that the terms and conditions of this Agreement shall be solely for the benefit of the Parties and their respective successors, and shall not confer any rights upon any third parties.

35.5 Counterparts

This Agreement may be executed in any number of counterparts or duplicates, each of which shall be an original, and such counterparts or duplicates shall together constitute one and the same agreement.

35.6 Entire Agreement

35.6.1 This Agreement contains the whole agreement between the Parties in respect of the subject matter hereof and supersedes any prior written or oral agreement between them.

35.6.2 Each Party acknowledges and agrees that it is not entering into this Agreement in reliance on, and shall have no right of action against the other Party in respect of, any assurance, promise, undertaking, representation or warranty made by the other Party at any time prior to the Signature Date unless it is expressly set out in this Agreement.

35.7 Further Assurances

Each Party agrees to execute, acknowledge and deliver such further instruments, and do all further similar acts as may be necessary or appropriate to carry out the purposes and intent of this Agreement.

35.8 Public Relations and Publicity

- 35.8.1 The Seller acknowledges that certain information pertaining to the Project and the Project Data is required to be disclosed in accordance with the statutory reporting obligation of the Buyer to publish information about the performance of the Seller and/or any other information as it may be required to publish from time to time in response to enquiries from:
- 35.8.1.1 Parliament and its members and officers in accordance with the provisions of the Public Finance Management Act, 1999 or the Local Government: Municipal Finance Management Act, 2003;
- 35.8.1.2 the Auditor-General under the Public Audit Act, 2004; and
- 35.8.1.3 persons acting in the public interest in accordance with the provisions of the Promotion of Access to Information Act, 2000.
- 35.8.2 Subject to clause 35.8.3, neither Party shall communicate with representatives of the press, television, radio or other communications media on any matter concerning this Agreement without the prior approval of the other Party, such consent not to be unreasonably withheld.
- 35.8.3 To the extent that the Buyer is obliged to disclose or publish information pursuant to clause 35.8.1, it undertakes to the Seller, if time permits, to consult with the Seller prior to any communication contemplated by this clause 35.8.3, and if time does not so permit, such consultation shall be dispensed with by the Parties.
- 35.8.4 No facilities to photograph or film in or upon the Project Sites shall be given to or permitted by the Seller unless the Buyer has given prior written approval.

35.9 Language

This Agreement is made only in the English language. Each document referred to in this Agreement or to be delivered under it shall be in the English language.

35.10 Costs

Each Party shall bear its own costs in relation to the negotiation and preparation of this Agreement.

35.11 Severability

If any provision of this Agreement is held by a court or other Responsible Authority to be unlawful, void or unenforceable, it shall be deemed to be deleted from this Agreement and shall be of no force and effect and this Agreement shall remain in full force and effect as if such provision had not been contained in this Agreement. In the event of any such

deletion, the Parties shall negotiate in good faith in order to agree on the terms of a mutually acceptable and satisfactory alternative provision in place of the provision so deleted.

35.12 Department of Water and Sanitation General Conditions of Contract and Special Conditions of Contract

The Parties expressly stipulate and agree that:

- 35.12.1 the procurement represented by this Agreement is governed by the Department of Water and Sanitation General Conditions of Contract and Special Conditions of Contract set out in Volume III of Bid N0.: ***DWS17-0923WTE [THE SELECTION OF INDEPENDENT POWER PRODUCERS (BIDDERS) FOR ENERGY AUGMENTATION AT SELECTED GOVERNMENT WATERWORKS INFRASTRUCTURE FOR A 40-YEARS OPERATIONAL PERIOD IN DESIGN-BUILD-FINANCE-OWN-OPERATE (DBFOO) MODE]*** apply to this Agreement; but
- 35.12.2 notwithstanding the provisions of clause 35.12.1, where the provisions of such General Conditions of Contract and/or Special Conditions of Contract contradict, are in conflict with, or do not align with, the provisions of this Agreement, the provisions of this Agreement shall prevail.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorised representatives.

..... SIGNATURE OF "BUYER"
NAME:.....
TITLE:
DATE:.....

..... SIGNATURE OF "SELLER"
NAME:.....
TITLE:
DATE:.....

SCHEDULE 1

DETAILS OF THE PROJECT AND FACILITY

Part 1

Facility

DESCRIPTION OF FACILITY

[Seller to provide a one-paragraph description of the Facility and its components.]

SCALE DRAWING

[Seller to provide a scale drawing of the Facility, in high resolution, with the following clearly labelled:

- ❖ the Reference Pyranometer (if applicable);
- ❖ the Reference Temperature Sensor (if applicable);
- ❖ the Facility substation and the Distribution or Transmission substation (as the case may be);
- ❖ cables up to the Delivery Point;
- ❖ the location of the Facility Metering Installation;
- ❖ the location of the System Metering Installation;
- ❖ access roads;
- ❖ the legal description of the property or properties covered by the Project Site, including (in respect of each property where the Project Site covers multiple properties) erf number or farm name and number, registration division, magisterial district and farm subdivision name where applicable; and
- ❖ a clear depiction of the Project Site boundary as well as the coordinates of each corner point along the boundary (including the coordinate system used). The polygon formed by the Project Site boundary should close, so the last coordinate must be the same as the first coordinate.

If all of the above information cannot be incorporated onto a single, easily legible, drawing or map, then more than one drawing or map may be used.]

FACILITY DETAILS

[Seller to complete the following table as applicable.]

Project Name:	
Contracted Capacity: [MW]	
Maximum Export Capacity (as defined in the Distribution Agreement or the Transmission Agreement, as the case may be): [MW]	
PV Module Type (if applicable): [e.g. Polycrystalline, Monocrystalline, Thin Film]	
Number of PV Modules (if applicable):	
Number of module strings (where a string constitutes a number of modules connected to a common inverter)(if applicable):	
Mounting Type (fixed, single axis tracking or double axis tracking)(if applicable):	
PV or other inverter (manufacturer and model)(if applicable):	
Wind Turbine Generator ("WTG") Type and nameplate capacity: [e.g. 3-Bladed, horizontal Axis, 2 MW]	
WTG Model: [e.g. Vestas V90 2.0MW]	
Hub Height: [m]	

WTG Rotor Diameter: [m]	
Number of WTGs:	
Maximum instantaneous AC rated capacity of inverter: [MW]	
Maximum continuous AC rated capacity of inverter: [MW]	
Number of inverters:	
Transformer ratings:	
Number of transformers:	
Planned voltage connection level:	
Planned connection point (i.e. the name of the substation or distribution line onto which the Project is intended to connect):	

P50 FORECAST ENERGY OUTPUT

[Seller to provide the average annual forecasted Energy Output [MWh] for the first 40 years of operation or for the duration of this Agreement (whichever is the shortest). Forecasts shall be based upon P50 estimates.]

Contract Year	Forecast Annual Energy Output (MWh)	Contract Year	Forecast Annual Energy Output (MWh)
1		21	
2		22	
3		23	
4		24	
5		25	
6		26	
7		27	
8		28	
9		29	
10		30	
11		31	
12		32	
13		33	
14		34	
15		35	
16		36	
17		37	
18		38	
19		39	
20		40	

Part 2

Single Line Diagram

[Seller to provide a single-line diagram of the Facility, in high resolution, with the following clearly labelled (if necessary for clearer presentation, the diagram may be broken down and presented on several pages):

- ❖ Ownership boundaries;
- ❖ Operational boundaries;
- ❖ Delivery Point;
- ❖ Substation;
- ❖ Layout of the Facility Metering Installation; and
- ❖ Layout of the System Metering Installation.

Part 3

Energy Rates

1. The Commercial Energy Rate shall be ZAR/kWh, as Indexed annually.
2. The Early Operating Energy Rate shall be ZAR/MWh, which is equal to 60% of the Commercial Energy Rate, and which shall adjust when the Commercial Energy Rate adjusts so that it is equal to 60% of the Commercial Energy Rate.

INDEXATION

The Commercial Energy Rate shall be adjusted on 1 April in each Calendar Year starting 12 months following the base date of 1 April 2024 using the following formula:

$$P_n = P_b * (I_n/I_b)$$

where:

P_n = Fully Indexed Commercial Energy Rate in Year n;

P_b = ZAR [*/MWh (being the Fully Indexed Commercial Energy Rate at the Base Date);

I_n = Consumer Price Index as published in Contract Year n for the immediately preceding year commencing 1 January and ending 31 December; and

I_b = CPI Index at Base Date, being the published Consumer Price Index (Dec 2023 = 100) in respect of the month of December 2023, as rebased by Statistics South Africa (or its equivalent successor entity) from time to time

SCHEDULE 2

COMPLETION MILESTONES AND FORMS OF NOTICES

Part 1

Completion Milestones

[The Seller must include in this schedule, for information purposes only, a level 1 project schedule Gantt chart at a monthly resolution to show the key activities, events, dependencies and milestones from early Project development through to Scheduled COD. In particular, the project schedule Gantt chart shall show the following:

- ❖ the anticipated timescale for completion of the distribution connection works; and
- ❖ timeframes for activities such as equipment delivery lead times, securing permits and construction timescales.

Other than for the Scheduled COD or as specifically provided for elsewhere in this Agreement, failure to achieve the milestones set forth in the project schedule Gantt chart shall not be a breach of this Agreement.]

Part 2

Facility Completion Form

[on the letterhead of the Independent Engineer]

[Date]

Department of Water and Sanitation

via email to

Attention:

Facility Completion Form

Dear Sirs,

We refer to the Power Purchase Agreement entered into between _____ and the Department of Water and Sanitation on **[insert date]** (the "**PPA**").

All capitalised terms in this notice ("**Notice**") shall, unless separately defined herein, bear the meaning ascribed to them in the PPA.

This Notice is the Facility Completion Notice as defined in and required to be issued in terms of the PPA.

We hereby represent and warrant the following:

- ❖ The Facility is compliant with the Codes.
- ❖ The Facility has passed the relevant acceptance tests and has been successfully commissioned in accordance with the relevant construction contract, the Codes and the Consents.
- ❖ The Achieved Capacity of the Facility, being the net Capacity of the Facility estimated at the Delivery Point and expressed as AC power capacity, net of auto-consumption and electrical losses up to the Delivery Point, as determined pursuant to the acceptance tests described above, is ____MW.
- ❖ The Facility has a mechanism installed to limit the Capacity exported from the Facility to the lower of the Achieved Capacity and the Contracted Capacity.

- ❖ The Reference Pyranometer and the Reference Temperature Sensor have been installed at the locations agreed in the PPA, have been successfully commissioned and are capable of performing their functions as set out in the PPA.

The Facility is ready to commence commercial operation and to deliver Energy Output to the Buyer.

Yours faithfully,

[NAME OF INDEPENDENT ENGINEER]

Representative of the Seller

Part 3

Form of Notice of Commencement of Facility

[on the letterhead of the Seller]

[Date]

Department of Water and Sanitation

via email to

Attention:

Notice of Commencement of Facility

Dear Sirs

We refer to the power purchase agreement dated _____ (the "**PPA**") between the Department of Water and Sanitation (the "**Buyer**") and ourselves, _____ (the "**Seller**").

This notice ("**Notice**") is the Notice of Commencement of Facility referred to in clause 4.5 (Commercial Operation Date) of the PPA. Unless otherwise defined herein, capitalised terms used in this Notice shall have the meanings assigned to them in the PPA.

We hereby represent and warrant the following:

1. The Facility has achieved Facility Completion and the Facility Completion Form has been issued in respect of it.
2. The Achieved Capacity of the Facility is ____ MW.
3. NERSA [or ____, being the person nominated by NERSA for such purpose] has issued to the Seller a notification of the Facility's compliance with the Codes, and such notification is attached hereto.
4. NTC and or the Distributor has provided written confirmation to the Seller certifying that the Facility may be connected to the System for purposes of delivering Commercial Energy, and such confirmation is attached hereto.
5. The Independent Engineer has confirmed that the Facility is in compliance with the Codes, and such notification is attached hereto.

6. The Facility is ready to commence commercial operation and to deliver Energy Output to the Buyer, and the Commercial Operation Date shall be **[insert date]**.
7. We have obtained all of the Consents required for the Operation and Maintenance of the Facility, all of which remain in full force and effect, and we know of no reason why any such Consent may be withdrawn or terminated.
8. All agreements required for the Construction, Operation and Maintenance of the Facility and the performance by the Seller of its obligations under the PPA, including the Transmission Agreement or the Distribution Agreement (as the case may be), have been entered into, are in full force and effect and remain valid and binding.
9. The Facility Metering Installation has been procured, installed, tested and successfully commissioned in accordance with the PPA.
10. None of the events entitling the Buyer to terminate the PPA in accordance with clause 18 (*Termination*) have occurred and are continuing.
11. All of the Project insurances required pursuant to clause 19 (*Project Insurance*) of the PPA are in place and in full force and effect.

Yours faithfully,

[NAME OF SELLER]

Representative of the Seller

SCHEDULE 3

SCHEDULED AND UNSCHEDULED OUTAGES

The following conditions shall apply to ensure good coordination between Seller and Buyer in respect of the Operation of the Facility during scheduled and Unscheduled Outages.

1. Three (3) years ahead Planned Maintenance Schedule

- 1.1 Not later than six (6) Months prior to the commencement of each Contract Year, (save for the first year of Operation of the Facility, for which the corresponding period shall be forty (40) Business Days prior to the Commercial Operation Date), the Seller shall provide indicative capacity plans, including maintenance schedules, for the three (3) year period.
- 1.2 The Buyer shall determine the Operating reserve and the Weekly unplanned allowance requirements resulting in the capacity in respect of which Maintenance can be undertaken for the three (3) year ahead period.
- 1.3 Not later than sixty (60) Business Days prior to the commencement of each Contract Year, the Buyer shall publish the provisional Maintenance schedule indicating which Maintenance has to be rescheduled to meet the requirements for System stability ("**Maintenance Schedule**"). The Buyer and the Seller, both acting reasonably, shall consult and agree regarding alterations to the indicative capacity plans or Maintenance Schedules.

2. Annual Planned Maintenance Schedule

- 2.1 Not later than six (6) Months prior to the commencement of each Contract Year (save for the first year of Operation of the Facility, for which the corresponding period shall be forty (40) Business Days prior to the Commercial Operation Date), the Seller shall submit its Scheduled Outages for that year following consultation with the Buyer regarding the Buyer's anticipated major Maintenance Outages in that calendar year.
- 2.2 The Buyer may on not less than forty (40) Business Days' prior written notice to the Seller, request the Seller to reschedule a Scheduled Outage to an alternative Month and the Seller shall use all reasonable endeavours to accommodate such rescheduling if it is consistent with the standards of a Reasonable and Prudent Operator.

- 2.3 The Seller may on no less than twenty (20) Business Days' prior written notice to the Buyer reschedule a Scheduled Outage to an alternative Month; provided that such rescheduling is consented to in writing by the Buyer, which consent may not be unreasonably withheld.

3. Monthly and Weekly planned maintenance schedule

- 3.1 Following consultation with the Buyer regarding the Buyer's anticipated major maintenance outages in the Contract Month, not later than five (5) Business Days prior to the commencement of each calendar month (the "Contract Month"), the Seller shall submit its Scheduled Outages for that Contract Month.
- 3.2 The Buyer may on no less than five (5) Business Days' prior written notice to the Seller, request the Seller to reschedule a Scheduled Outage to an agreed time period and the Seller shall use all reasonable endeavours to accommodate such rescheduling if it is consistent with the standards of a Reasonable and Prudent Operator.
- 3.3 The Seller may on no less than five (5) Business Days prior written notice to the Buyer reschedule a Scheduled Outage to an agreed time period provided that such rescheduling is consented to in writing by the Buyer, which consent may not be unreasonably withheld.
- 3.4 The Seller shall publish the final Maintenance Schedule for the Facility by the Thursday preceding the first week of that schedule.
- 3.5 The Seller may not conduct scheduled maintenance other than in accordance with the Maintenance Schedule unless it has received the approval of the Distributor.

4. Reactions to unplanned outages and curtailment

In case of a System Event that lasts more than twenty four (24) hours, the Buyer may on notice given no more than forty eight (48) hours after the commencement of the System Event, request the Seller to reschedule a Scheduled Outage to be commenced during the time period of System Event and the Seller shall use all reasonable endeavours to accommodate such rescheduling if it is consistent with the standards of a Reasonable and Prudent Operator.

SCHEDULE 4

FORECASTING INFORMATION

1. Weekly Forecast Generation Profile

The Seller shall provide to the Buyer, and its System Operator on a Weekly basis, before 09:00 on the preceding Wednesday, the Week ahead generation forecast, calculated at the Delivery Point.

Day	MWh	Available MW
1		
2		
3		
4		
5		
6		
7		

2. Daily Forecast Generation Profile

The Seller shall provide to the Buyer, and its System Operator on a daily basis, fourteen (14) hours before the commencement of each day, the day ahead generation forecast, calculated at the Delivery Point.

Time	Hours	MWh	Available MW
00:00	01:00		
01:00	02:00		
02:00	03:00		
03:00	04:00		
04:00	05:00		
05:00	06:00		
06:00	07:00		
07:00	08:00		
08:00	09:00		
09:00	10:00		
10:00	11:00		
11:00	12:00		
12:00	13:00		
13:00	14:00		
14:00	15:00		
15:00	16:00		
16:00	17:00		
17:00	18:00		
18:00	19:00		
19:00	20:00		
20:00	21:00		
21:00	22:00		
22:00	23:00		
23:00	24:00		

SCHEDULE 5

LIST OF FIRMS - INDEPENDENT ENGINEER

[PREFERRED BIDDERS WILL BE REQUIRED TO PROVIDE DETAILS OF AT LEAST FIVE INDEPENDENT ENGINEERS, TO BE REDUCED TO FIVE OR FEWER IN THE FINAL AGREEMENT]

Firm Name	Physical Address	Telephone Number	Contact person and email address

SCHEDULE 6

DEEMED ENERGY PAYMENT

The Deemed Energy Payment for the purposes of this Agreement shall be determined in terms of this Schedule 6 (*Deemed Energy Payment*) and shall be invoiced in terms of clause 9 (*Invoicing*).

1. Facility Availability

Facility Availability is a measure of what proportion of the Facility is typically in a functional and operable state to export Energy Output to the Delivery Point. The Facility availability shall be calculated as an average value over the Operating Period by using the following formula:

$$FA = \frac{\sum_{j=1}^k [WA]_j}{k}$$

where:

- 1.1 FA is the Facility Availability calculated after " k " ten (10) minute periods have elapsed in the Operating Period;
- 1.2 j is a counter indicating the relevant ten (10) minute period;
- 1.3 k is the number of complete ten (10) minute periods that have elapsed since the commencement of the Operating Period;
- 1.4 WA is a weighted average of the availability of the Facility (considering that Units may be of different capacities and contribute proportionately to the overall Facility Availability). WA shall be calculated every ten (10) minutes within the Operating Period by using the following formula:

$$WA = \frac{\sum_{i=1}^n (UA_i \times UC_i)}{AC}$$

where:

- 1.4.1 UA_i is the availability of the i th Unit, which shall be equivalent to the proportion of the total Capacity of that Unit that is in a functional and operable state to generate Energy Output. Unit Availability shall be determined within each ten (10) minute period by recording and analysing the AC power output at the inverter terminals;

1.4.2 AC is the Achieved Capacity of the Facility (MW);

1.4.3 UC_i is the nominal Capacity of the i th Unit (MW);

1.4.4 n is the number of Units in the Facility; and

1.4.5 i is a counter indicating the relevant Unit.

2. Facility Power Curve ("FPC") (Floating and Ground-mounted Solar)

2.1 From the Commercial Operation Date and for the first Contract Year thereafter, the Seller shall measure and record the following information for the purpose of determining the FPC:

2.1.1 "In Plane Irradiance" (GKi) (kW/ m²), which is the solar radiation available on the plane of a solar PV module;

2.1.2 module temperature (°C); and

2.1.3 Energy Output of the Facility in (MWh), (the "FPC Data").

2.1.4 For technologies other than solar, the seller is to determine the most appropriate method of compiling the FPC data for the facility and agree on this with the Buyer

2.2 The following requirements shall apply to the measurement and recording of the FPC Data:

2.2.1 the FPC Data shall be recorded as average values taken over ten (10) minute intervals;

2.2.2 the FPC Data shall be logged by a data logger on the Project Site and date stamped;

2.2.3 the FPC Data shall be collected by the Facility SCADA system;

2.2.4 In-Plane Irradiance shall be measured using a Pyranometer mounted at a location at or near the Project Site (**the "Reference Pyranometer"**). The Reference Pyranometer shall be confirmed by an Independent Engineer. The location of the Reference Pyranometer may not be changed without the prior written agreement of both Parties;

2.2.5 the In-Plane Irradiance data shall be grouped in bins of 50W/m²;

2.2.6 the module temperature shall be measured using a temperature sensor mounted at an appropriate location within the Facility (**the "Reference Temperature Sensor"**). The Reference Temperature Sensor shall be confirmed by an Independent Engineer. The location of the Reference

Temperature Sensor may not be changed without the prior written agreement of both Parties;

2.2.7 the module temperature data shall be grouped in bins of five (5) °C; and

2.2.8 the Capacity of the Facility as recorded at the Delivery Point shall be divided by the Facility Availability during the same period to provide the power that the Facility could produce if it were fully (100%) available.

2.3 The FPC Data shall be stored and analysed by the Seller in order to produce a power curve that shall illustrate the relationship between the Capacity of the Facility and a GKi for each temperature group. This suite of power curves will together form the FPC.

2.4 The FPC Data shall be reported to the Buyer by the end of the first Contract Year following the Commercial Operation Date. The FPC Data shall be delivered in the following formats:

2.4.1 a hard copy of curves showing binned values only;

2.4.2 a hard copy scatter plot showing the individual average ten (10) minute values; and

2.4.3 all raw data obtained from the SCADA, Reference Pyranometer and Reference Temperature Sensor (where applicable), averaged, in electronic format, to enable the Buyer to compare the raw data to the binned data.

2.5 Within one (1) Month after the end of the first Contract Year following the Commercial Operation Date, the FPC shall be confirmed by the Independent Engineer, after which it shall become the "**Approved FPC**", unless the Buyer and Seller agree, at any time, to amend the FPC, in which case such amended FPC shall be the Approved FPC.

2.6 Subject to paragraph 2.8 of this Schedule 6 (*Deemed Energy Payment*), if an Approved FPC is not completed within one year of the Commercial Operation Date, Deemed Energy beyond that date and until an Approved FPC is completed, shall be determined by the Independent Engineer;

2.7 The Approved FPC shall be reviewed at the end of every five (5) Contract Years, starting after the end of the fifth (5th) Contract Year after the Commercial Operation Date, at the expense of the Seller to account for the degradation of the Facility. An interim revision may be requested by either Party at any time during the Term and the costs of such revision shall be borne by the Party requesting the revision.

2.8 If the insufficiency of data available to complete an Approved FPC is due to the breach, wilful misconduct or negligence of the Seller, then no Deemed Energy Payments shall be payable by the Buyer until such breach, wilful misconduct or negligence is remedied and an Approved FPC is completed.

3. Facility Power Curve (FPC) – Wind

- 3.1 From the Commercial Operation Date and for the first Contract Year thereafter, the Seller shall measure and record the following information for the purpose of determining the FPC:
- 3.1.1 wind speed (m/s);
 - 3.1.2 wind direction (degrees); and
 - 3.1.3 Energy Output of the Facility, (the "FPC Data").
- 3.2 The following requirement shall apply to the measurement and recording of the FPC Data:
- 3.2.1 all FPC Data (except Energy Output, which shall be measured using the Facility Metering Installation) shall be measured and recorded using self-supporting wind speed and direction measurement stations mounted upon a mast, turbine or other appropriate location and used to monitor the wind conditions experienced by the Project Site ("Reference Mast" and "Backup Reference Mast").
 - 3.2.2 The Reference Mast and Backup Reference Mast may be separate masts installed adjacent to each other and comprising separate power supplies, data logging equipment, and measuring instruments on the same height, or preferably a single mast comprising fully redundant power supplies, data logging equipment and measuring instruments on the same heights;
 - 3.2.3 The Reference Mast and Backup Reference Mast shall be located at or near to the Facility and must be confirmed by the Independent Engineer. The location of the Reference Mast and Backup Reference Mast may not be changed without the prior written agreement of both Parties;
 - 3.2.4 The installation and location of the Reference Mast and Backup Reference Mast shall be in compliance with the provisions of IEC 614001; 2
 - 3.2.5 The Seller may, with prior written agreement from the Buyer, utilise the wind conditions as measured by the Backup Reference Mast in the event of failure or interruption to the Reference Mast;
 - 3.2.6 the FPC Data shall be recorded as average values taken over ten (10) minute intervals;
 - 3.2.7 the FPC Data shall be logged by a data logger on the Project Site and date stamped;
 - 3.2.8 the FPC Data shall be collected by the Facility SCADA system;
 - 3.2.9 If the Energy Output of the Facility cannot be measured directly at the Delivery Point, then it may be calculated by summing the electricity measured at the

turbine meter at the base of each unit and multiplying by zero point nine seven five (0.975) to account for internal losses;

3.2.10 the wind speed data shall be binned into wind speed intervals of 0.5m/s; and

3.2.11 the wind direction data shall be binned into direction intervals of 15 degrees.

3.3 The FPC Data shall be stored and analysed by the Seller in order to produce, for each recorded wind speed direction, an FPC, which shall indicate the relationship between the Capacity of the Facility and the wind speed.

3.4 The FPC Data must be reported to the Buyer by the end of the first Contract Year following the Commercial Operation Date.

3.5 The FPC Data shall be prepared and submitted in accordance with the latest version of the Buyer's FPC data template, which the Seller shall source from the Buyer at the time of the FPC development. The FPC Data shall be delivered in the following formats:

3.5.1 a hard copy of curves showing binned values only;

3.5.2 a hard copy scatter plot showing the individual average ten (10) minute values; and

3.5.3 all raw data obtained from the SCADA, the Reference Mast, the Backup Reference Mast and the Facility Metering Installation, were averaged, in electronic format, to enable the Buyer to compare the raw data to the binned data.

3.6 Within one (1) Month after the end of the first Contract Year following the Commercial Operation Date, the FPC as at that time shall be confirmed by the Independent Engineer and shall become the "Approved FPC" for that Contract Year. Along with the Approved FPC for that Contract Year, the Independent Engineer shall confirm an annual degradation value, which value will be applied to automatically update the Approved FPC for each subsequent Contract Year, unless the Buyer and Seller agree, at any time, to amend the FPC otherwise than in accordance with the confirmed degradation value, in which case such amended FPC shall be the Approved FPC.

3.7 In case of a dispute between the Seller and the Buyer involving the Approved FPC, either Party may refer the dispute to an Independent Expert for determination in accordance with clause 27 (Fast Track Dispute Resolution).

3.8 The Approved FPC shall remain in place for the duration of the PPA unless an update is requested by the Buyer or Seller, in which case, the costs of the update will be incurred by the Party requesting the revision.

3.9 If there has been insufficient data recorded during the first Contract Year following the Commercial Operation Date to develop a full and complete suite of Approved FPCs then the development of the FPC shall be extended by a further six (6) months.

3.10 Subject to clause 2.11 of this Schedule 6 (Deemed Energy Payment), if an Approved FPC is not completed within eighteen (18) months of the Commercial Operation Date,

Deemed Energy for a period of sixty (60) days beyond that date shall be determined by the Independent Engineer, beyond which no Deemed Energy Payments shall be payable by the Buyer until an Approved FPC is completed (and there shall be no entitlement to retrospective claims for Deemed Energy after the Approved FPC is completed).

- 3.11 If the insufficiency of data available to complete an Approved FPC is due to the breach, wilful misconduct or negligence of the Seller, then no Deemed Energy Payments shall be payable by the Buyer until such breach, wilful misconduct or negligence is remedied and an Approved FPC is completed.

4. Deemed Energy Payment before the Commercial Operation Date

- 4.1 Where the Compensation Event or System Event entitling the Seller to the Deemed Energy Payment commences before the Commercial Operation Date and causes a delay of the Commercial Operation Date beyond the Scheduled COD, the Deemed Energy Payment for the period by which the Commercial Operation Date is delayed beyond the Scheduled COD, subject to the application of the Allowed Grid Unavailability Period ("**the Delay Period**") shall be determined as follows:

$$DEP = EO \times CER$$

Where:

- 4.1.1 *DEP* is the Deemed Energy Payment for the Delay Period (ZAR);
- 4.1.2 *EO* is the P50 average Energy Output forecast (being Energy Output that the Facility is judged to have a 50% probability of exceeding and a 50% probability of underachieving (kWh) which, for the avoidance of doubt, is net of all expected losses and expected downtime due to planned and unplanned maintenance), as confirmed in writing by the Independent Engineer ("**the P50 Forecast**") for the Delay Period; and
- 4.1.3 *CER* is the Commercial Energy Rate (ZAR/kWh).

5. Deemed Energy Payment after the Commercial Operation Date (Floating and Ground-mounted Solar)

- 5.1 The Seller shall measure and record the time period for which a System Event (excluding Curtailment) persists. If the Allowed Grid Unavailability Period is exceeded in any Contract Year, then Deemed Energy Payments shall become payable and shall be calculated for the duration of additional System Events in such Contract Year and invoiced in accordance with the principles set out in clause 9 (*Invoicing*).
- 5.2 If the Allowance for Grid Unavailability is exceeded in any Contract Year, then Deemed Energy Payments shall become payable, and shall be calculated based on the extent to which such System Events impact on the Energy Output of the Facility (in excess of the Allowance for Grid Unavailability) in such Contract Year, and invoiced in accordance with the principles set out in clause 9 (*Invoicing*).
- 5.3 Where any System Event commencing in one Contract Year carries over into the following Contract Year (the "**Second Contract Year**"), the period of time for which such System Event endures in the Second Contract Year shall be included in the calculation of the Allowed Grid Unavailability Period for all System Events commencing in and enduring in the Second Contract Year. Periods of Curtailment shall not be included in the Allowed Grid Unavailability Period.
- 5.4 Where the Compensation Event or System Event entitling the Seller to the Deemed Energy Payment commences after the Commercial Operation Date the Deemed Energy Payment for the period during which a Compensation Event or a System Event entitles the Seller to the Deemed Energy Payment (a "**Deemed Energy Period**") shall be calculated as follows:

$$DEP = \left(\left[\sum_{i=0}^x EO_i \right] - \left[\sum_{i=0}^x AE_i \right] \times CER \right)$$

Where:

- 5.4.1 *DEP* is the Deemed Energy Payment for that Deemed Energy Period (ZAR);
- 5.4.2 *x* is the total number of ten (10) minute periods within the Deemed Energy Period;
- 5.4.3 *i* is each individual ten (10) minute period of Deemed Energy;
- 5.4.4 *CER* is the Commercial Energy Rate (ZAR/kWh); and

- 5.4.5 AE is the Energy Output for each respective ten (10) minute period of Deemed Energy (kWh);
- 5.4.6 EO is the expected energy output for each ten (10) minute period of Deemed Energy, if the Deemed Energy Period commences:
- 5.4.6.1 within the first Contract Year following the Commercial Operation Date, the Facility's expected Energy Output based on the readings from the Reference Pyranometer and the average performance of the Facility during the last seven (7) days of continuous operation, as calculated in terms of the following formula:

$$EO = \frac{\left(\sum_{j=1}^7 \left(\frac{E}{E_s} \right)_j \right)}{7} \times GK_i \times \frac{1(hour)}{6} \times FA$$

where:

- 5.4.6.1.1 E is the daily Energy Output of the Facility (kWh), 'j' days prior to the commencement of the Deemed Energy Period;
- 5.4.6.1.2 E_s is the daily irradiation (kWh/m²) calculated from the In-Plane Irradiance measured by the Reference Pyranometer 'j' days prior to the Deemed Energy Period;
- 5.4.6.1.3 j is the number of days preceding each Deemed Energy Period, from one (1) to seven (7);
- 5.4.6.1.4 FA is the Facility Availability calculated for the ten (10) minute period preceding the commencement of the Deemed Energy Period; and
- 5.4.6.1.5 GK_i (kW/ m²) is In-Plane Irradiance for each ten (10) minute period; and
- 5.4.6.2 after the end of the first Contract Year following the Commercial Operation Date, the Facility's expected Energy Output will be based on the Approved FPC and shall be calculated using the following formula:

$$EO = \left(FA \times AP \times \frac{1(hour)}{6} \right)$$

Where:

- 5.4.6.2.1 FA is the Facility Availability calculated for the ten (10) minute period preceding the commencement of the Deemed Energy Period; and
- 5.4.6.2.2 AP is the estimated Capacity of the Facility during each ten (10) minute period, as determined by the Approved FPC, or as confirmed by the Independent Engineer in terms of paragraph 2.6 of this Schedule 6 (*Deemed Energy Payment*).

5.5 If the Deemed Energy Period commences during the first five (5) minutes of a ten (10) minute period, such a ten (10) minute period shall be taken into account in the calculation of the Deemed Energy Payment. If the Deemed Energy Period commences during the last five (5) minutes of a ten (10) minute period, such a ten (10) minute period shall not be taken into account in the calculation of the Deemed Energy Payment.

5.6 In the event of a failure or interruption to the Reference Pyranometer or Reference Temperature Sensor, the relevant Deemed Energy Payment shall be calculated by the Independent Engineer, provided that if the failure of or interruption to the Reference Pyranometer or Reference Temperature Sensor is due to the breach, wilful misconduct or negligence of the Seller, no Deemed Energy Payment shall be payable by the Buyer for as long as such failure of or interruption to the Reference Pyranometer or Reference Temperature Sensor persists.

6. Deemed Energy Payments after the Commercial Operation Date (Wind)

6.1 The Seller shall measure and record the time period for System Events which commence after the Commercial Operation Date persist.

6.2 If the Allowance for Grid Unavailability is exceeded in any Contract Year, then Deemed Energy Payments shall become payable, and shall be calculated based on the extent to which such System Events impact on the Energy Output of the Facility (in excess of the Allowance for Grid Unavailability) in such Contract Year, and invoiced in accordance with the principles set out in clause 9 (Invoicing).

- 6.3 Where any System Event commencing in any one Contract Year carries over into the following Contract Year, the System Event will be attributed to each Contract Year based on the period of time for which such System Event endures in the relevant Contract Year.
- 6.4 Where the Compensation Event or System Event entitling the Seller to the Deemed Energy Payment commences after the Commercial Operation Date, the Deemed Energy Payment for the period in respect of which a Compensation Event or a System Event entitles the Seller to the Deemed Energy Payment (a "Deemed Energy Period") shall be calculated as follows:

$$DEP = \left(\left[\sum_{i=0}^x EO_i \right] - \left[\sum_{i=0}^x AE_i \right] \times CER \right)$$

where:

- 6.4.1 *DEP* is the Deemed Energy Payment for that Deemed Energy Period (ZAR);
- 6.4.2 *x* is the total number of ten (10) minute periods of Deemed Energy in that Deemed Energy Period;
- 6.4.3 *i* is each individual ten (10) minute period of Deemed Energy;
- 6.4.4 *CER* is the Commercial Energy Rate (ZAR/MWh);
- 6.4.5 *AE* is the Energy Output (MWh) of the Facility, metered at the Delivery Point during each respective ten (10) minute period during the Deemed Energy Period;
- 6.4.6 *EO* is the expected Energy Output (MWh) during each ten (10) minute period during the Deemed Energy Period, if the Deemed Energy Period commences:
- 6.4.6.1 within the first Contract Year following the Commercial Operation Date or the extended period in which the Approved FPC has not yet been determined, *EO* will be calculated as if the Facility has achieved the P50 Forecast for the appropriate month;
- 6.4.6.2 after the end of the first Contract Year and following the completion of the Approved FPC, *EO* will be based on the Approved FPC and shall be calculated using the following formula:

$$EO = \left(FA \times AP \times \frac{1(hour)}{6} \right)$$

where:

6.4.6.2.1 EO is the expected Energy Output (MWh);

6.4.6.2.2 FA is the Facility Availability calculated for the ten (10) minute period preceding the commencement of the Deemed Energy Period (%); and

6.4.6.2.3 AP is the estimated Capacity of the Facility during each ten (10) minute period, as determined from the Approved FPC and the FPC Data (MW), or as confirmed by the Independent Engineer in terms of clause 2.10 of this Schedule 6 (Deemed Energy Payment).

6.5 If the Deemed Energy Period commences during the first five (5) minutes of a ten (10) minute period, such a ten (10) minute period shall be taken into account in the calculation of the Deemed Energy Payment. If the Deemed Energy Period commences during the last five (5) minutes of a ten (10) minute period, such a ten (10) minute period shall not be taken into account in the calculation of the Deemed Energy Payment.

6.6 In the event of a failure of or interruption to the Reference Mast, the Backup Reference Mast may be used. In the event of a failure of or interruption to the Reference Mast and Backup Reference Mast, the relevant expected Energy Output shall be calculated by the Independent Engineer, provided that if the failure of or interruption to the Reference Mast and Backup Reference Mast is due to the breach, wilful misconduct or negligence of the Seller, no Deemed Energy Payment shall be payable by the Buyer for as long as such failure of or interruption to the Reference Mast and Backup Reference Mast persists.

6.7 In the case that the Approved FPC has been delayed for six (6) months, the Deemed Energy Payment shall be calculated using the methodology presented in clause 3 (Deemed Energy Payment for System Events and Compensation Events occurring before the Commercial Operation Date) of this Schedule 6 (Deemed Energy Payment) until the Approved FPC is agreed.

7. Adjustment of Deemed Energy Payments

- 7.1 Where the Approved FPC has been determined, the Buyer or Seller may dispute the Deemed Energy Payment calculated in terms of paragraph 5.4, paragraph 6.4 and paragraph 4 (*Deemed Energy Payment before the Commercial Operation Date*) of this Schedule (*Deemed Energy Payment*) retrospectively if the Deemed Energy Payment calculated based on the Approved FPC proves to be different from the Deemed Energy Payment calculated in terms of paragraph 5.4, paragraph 6.4 and paragraph 4 (*Deemed Energy Payment before the Commercial Operation Date*) of this Schedule 6 (*Deemed Energy Payment*). Overpayments made by the Buyer may be set off against payment due by the Buyer, and underpayments may be included in the Invoice for the Billing Period after such underpayment was determined.
- 7.2 The amount of the overpayment or underpayment determined in terms of paragraph 5.4, paragraph 6.4 and paragraph 4 of this Schedule 6 (*Deemed Energy Payment*) shall bear interest at the Agreed Interest Rate from the date of such overpayment or underpayment to, but excluding, the date of repayment or set-off, as the case may be.

SCHEDULE 7

PROJECT DOCUMENTS

[THE EMBEDDED GENERATION GRID CONNECTION CONTRACT WILL BE INSERTED ONCE FINALISED)

Part A (PPA Related Project Documents, to be provided as applicable)

- ❖ *Independent Engineer Agreement*
- ❖ *Water Use Licence Agreement*
- ❖ *Land Lease Agreement*
- ❖ *NERSA generation licence*
- ❖ *Transmission Agreement (if applicable);*
- ❖ *Distribution Agreement (if applicable);*
- ❖ *Self-Build Agreement (if applicable);*
- ❖ *Budget Quote;*
- ❖ *Direct Agreement in respect of the [applicable connection agreement referred to above];*