

**SOLAR PHOTOVOLTAIC PROJECTS  
POWER PURCHASE AGREEMENT**

between

**THE SELLER**

as defined herein

**and**

**STELLENBOSCH LOCAL MUNICIPALITY**

as Buyer

pursuant to the

**STELLENBOSCH MUNICIPALITY INDEPENDENT POWER  
PRODUCER PROCUREMENT PROGRAMME**

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**PREAMBLE:**

THIS **POWER PURCHASE AGREEMENT** dated [●] (this "**Agreement**") is entered into by and between:

- (1) **[details of the Independent Power Producer to be included once determined]**, a ring-fenced 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) **STELLENBOSCH LOCAL MUNICIPALITY**, a local municipality established in accordance with the Local Government: Municipal Structures Act 117 of 1998 (the "**Buyer**"),
- (together, the "**Parties**", and "**Party**" shall mean either of them).

**INTRODUCTION**

- (A) The Seller is permitted in accordance with applicable Laws to operate, generate and sell energy from a [●] solar PV Facility located at *[insert general location of the Facility]*.
- (B) The Buyer is authorised to enter into this Agreement following the Seller's selection by the Buyer pursuant to the STMIPPPP.
- (C) The Seller wishes to sell the Energy Output generated from the Facility to the Buyer, and the Buyer wishes to purchase the Energy Output of the Facility from the Seller, on the terms and conditions of this Agreement.
- (D) 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.

**THE PARTIES AGREE** as follows:

**1. DEFINITIONS AND INTERPRETATION****1.1 Definitions**

In this Agreement, capitalised words and expressions which are used in the body of this Agreement but which are defined in a Schedule to this Agreement shall have the meaning ascribed to them in the relevant Schedule (and cognate expressions shall have corresponding meanings). In addition, 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;

**"Achieved IRR"** means the Rand-based nominal blended post tax internal rate of return to the Shareholders over the full Term, calculated at a particular point during the Term, when applicable, where the Agreement provides for its calculation;

**"Affected Party"** has the meaning ascribed to it in clause 17.8 (*Force Majeure*);

**"Affiliate"** means, in respect of a person, any person which Controls (directly or indirectly) that person and any other person Controlled (directly or indirectly) by such first-mentioned person, including, where a person is a company, the ultimate holding company of such person, any holding company of such person and any subsidiary (direct or indirect) of such holding company;

**"Agreed Interest Rate"** means the prime rate of interest (expressed as a percentage rate per annum) at which First National Bank, a division of First Rand Bank Limited (or should First National Bank or First Rand Bank Limited cease to exist, any other major commercial bank in South Africa) lends on overdraft, as published by that 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;

**"Anti-Bribery and Corruption Laws"** means the Prevention and Combating of Corrupt Activities Act, 12 of 2004, or any other anti-bribery and corruption laws, or any other national or international regulatory enactment of similar import, that may have a bearing on the activities of the Seller;

**"Assign"** shall have the meaning given to it in clause 26.1 (*Prohibition on Assignment*) and the term **"Assignment"** shall be construed accordingly;

**"Base Date"** means 1 July 2025;

**"Base IRR"** means the Rand-based nominal blended post tax internal rate of return which a holder of Equity in the Seller is, at the Effective Date, forecast in the Financial Model to achieve on its investment in Equity over the Term;

**"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, or on the first day of the Commercial Operation Date, 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 shall end on the Termination Date;

**"Black People"** refers to Africans, Coloureds and Indians, limited to those who are Citizens;

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

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

- (a) the Seller makes a claim under the Liquidity Support in accordance with clause 17.8 (*Liquidity Support*), arising from a Compensation Event which involves the failure of the Buyer to make due payment as detailed in clause 8 (*Tariff and other Charges*)

and subject to the provisions of clause 8.5 (*Failure to make payments*), and despite making such claim under the Liquidity Support, there is a balance outstanding which exceeds the Liquidity Support Amount actually received which balance is not settled by the Buyer within a further 20 (twenty) Business Days of the Buyer receiving a written notice from the Seller to do so;

- (b) the Liquidity Support lapses or becomes unenforceable, invalid or illegal and a replacement Liquidity Support from a substitute Liquidity Guarantor with equivalent or better credit standing as the original Liquidity Guarantor in substantially the same form as the Liquidity Support (and for the same amount), has not been provided to the Seller within 20 (twenty) Business Days after notice from the Seller to the Buyer stating that this breach has occurred; or
- (c) an order being made for the winding-up, liquidation, business rescue or dissolution of the Liquidity Guarantor (in any of these cases, where applicable, whether provisional or final and whether voluntary or compulsory) before the Buyer has procured a replacement Liquidity Support from a substitute Liquidity Guarantor with equivalent or better credit standing as the original Liquidity Guarantor in substantially the same form as the Liquidity Support (and for the same amount);

**"Buyer Default Amount"** means, on any date during the Term of this Agreement, an amount that is equal to the Revenue that would be generated by the Seller in relation to the average annual P50 Forecast Energy Output (as set out in Schedule 1 (*Details of the Project and Facility*)) in the Contract Year immediately preceding such date (or for the first Contract Year, if the date falls in that first Contract Year), for a nine (9) month period;

**"Capacity"** means, in respect of a Unit or the Facility, at any time and from time to time, the capability (expressed in MW) of such Unit, or the 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 capacity attributable to self-consumption and the electrical losses up to the Delivery Point;

**"Capital Expenditure"** means any expenditure treated as capital expenditure under IFRS;

**"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;

**"Change in Law"** means:

- (a) any enactment, promulgation, execution, ratification or issue of any new Law or any change, amendment, alteration, modification, repeal or commencement of any existing Law, or any change in the interpretation or application of any Law, by a competent court, tribunal or legislature in South Africa, other than any Law which, at the Effective Date, has been published in a bill or draft statutory instrument and is available for public scrutiny, to the extent such Law is enacted in the form so published; or

- (b) any change in any requirement in relation to any Consent as a result of any administrative action which is contrary to the interpretation thereof which existed and was generally accepted at the Effective Date,

in each case coming into effect after the Effective Date;

**"Citizen"** means a person who has obtained citizenship of South Africa by birth, descent or naturalisation in terms of the South African Citizenship Act 88 of 1995;

**"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, dispatch, scheduling, communications, distribution or transmission as published by NERSA from time to time;

**"Commence 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, and the Seller has provided proof to the Buyer's reasonable satisfaction of same; or
- (b) the Seller has procured Key Equipment that involves 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; and
- (c) in respect of both sub-clauses (a) and (b), the Independent Engineer has provided the Buyer with a properly completed Commencement of Construction Confirmation Form, substantially in the form of Schedule 2 (*Completion Milestones and Forms of Notices*) Part 6 (*Commencement of Construction Confirmation Form*),

provided that to Commence Construction does not include:

- (a) preparing unpaved access roads to and around the Project Site;
- (b) exploration of the Project Site, including borehole 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;
- (d) commencing an action set out in sub-clauses (a) to (c) above but thereafter failing to actively pursue the action other than for reasons of being prevented from continuing due to Force Majeure, a Compensation Event, Unforeseeable Conduct or a Change in Law; and
- (e) dismantling pre-existing buildings or machinery on the Project Site in order to Construct the Facility,

and the phrase "**Commenced Construction**" shall have a corresponding meaning;

"**Commencement of Construction Confirmation Form**" means the form attached to this Agreement as Schedule 2 (*Completion Milestones and Forms of Notices*) Part 6 (*Commencement of Construction Confirmation Form*), which is to be completed by the Independent Engineer and delivered to the Buyer, confirming that the Seller has duly Commenced Construction in compliance with clause 3.6 (*General Construction Obligations*);

"**Commercial Energy**" means the Energy Output delivered to the Buyer at the Delivery Point by the Seller in accordance with the terms of this Agreement, during the Operating Period, which shall not exceed the Contracted Capacity;

"**Commercial Energy Payment**" means, in relation to each Billing Period, the total amount (excluding VAT) that shall be due and payable by the Buyer to the Seller for the Commercial Energy delivered in that Billing Period, which shall be the product of the Commercial Energy delivered during that Billing Period and the Commercial Energy Rate, as calculated in terms of Schedule 1 (*Details of the Project and Facility*) Part 3 (*Energy Rates*);

"**Commercial Energy Rate**" means the rate applicable to Commercial Energy, as specified in Schedule 1 (*Details of the Project and Facility*) Part 3 (*Energy Rates*);

"**Commercial Operation Date**" or "**COD**" means the date specified in the Notice of Commencement of Facility as being the Commercial Operation Date of the Facility, in terms of clause 3,7 (*Commercial Operation Date*);

"**Commissioning Energy Output**" means any Energy generated by the Facility and delivered to the Delivery Point prior to the issuance of the Notice of Commencement of the Facility for purposes of Facility Completion;

"**Compensation Event**" means any material breach by the Buyer of any of its obligations under this Agreement, including any failure to make any payments due and payable to the Seller on the due date for payment, to the extent in each case that the breach is not caused or contributed to by the Seller or any Contractor or by Force Majeure, a System Event, Change in Law or Unforeseeable Conduct, provided that no 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 Consents issued in terms of any Environmental Laws shall be or deemed to be any form of breach by the Buyer of any of its obligations under this Agreement;

"**Connection Works**" means the Facility Connection Works and the Distribution Connection Works;

"**Consents**" means all consents, permits, clearances, authorisations, approvals, rulings, exemptions, registrations, filings, decisions, 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;

**"Construction Cost"** means the Capital Expenditure incurred by the Seller during the Construction Measurement Period, in respect of the Construction of the Facility;

**"Construction Measurement Period"** means the period commencing on the Effective Date, and ending on the Commercial Operation Date;

**"Consumer Price Index"** means the weighted average consumer price index (Dec 2021 = 100) 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);

**"Contracted Capacity"** means the anticipated Capacity of the Facility at the Delivery Point and expressed as AC power capacity, net of capacity attributable to self-consumption and the electrical losses up to the Delivery Point, as stated in Schedule 1 (*Details of the Project and Facility*);

**"Contractor"** means any contractor directly engaged by the Seller to undertake the whole or any part of the Construction, Operation and/or Maintenance of the Facility, and **"Contractors"** shall have a corresponding meaning;

**"Contract Semester"** means the periods 1 July to 31 December, and 1 January to 30 June, in each year during the Term, provided that the first Contract Semester shall commence on the Effective Date and shall continue for the remaining portion of the Contract Semester in which the Effective Date falls;

**"Contract Semester Construction Cost"** means the Construction Cost projected, in the Financial Model, to be incurred in any Contract Semester;

**"Contract Year"** means each twelve (12) Month period, commencing at 00:00 hours on 1 July and ending at 24:00 hours on 30 June of the following year, provided that:

- (a) the first Contract Year shall commence at 00:00 hours on the Commercial Operation Date, and shall end at 24:00 hours on 30 June of the following year; and
- (b) the final Contract Year shall end at 24:00 hours on the Termination Date;

**"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;

"**Corrupt Practice**" means the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another person. For the sake of clarity, the definition of corrupt practice should be understood as including the following:

- (a) any payment or anything else of value to any official of any government or public international organization (including any officer or employee of any government department, agency or instrumentality) to influence or reward his or its decision, or to gain any other advantages for either Party;
- (b) any payment or anything else of value to any representative of a private enterprise (whether for profit or otherwise) to improperly, dishonestly and outside the ordinary course of ethical business practice, influence or reward his or its decision, or to gain any other advantage; and/or
- (c) any act or omission that constitutes a contravention of any Anti-Bribery and Corruption Laws,

regardless of whether such Corrupt Practice occurs within or outside of South Africa;

"**Curtailment**" means any instruction from the Buyer or the System Operator to limit or reduce the Energy Output of the Facility, but excluding, for the avoidance of doubt, any such instruction given when there is a constraint in the System due to planned or unplanned maintenance, refurbishment, modification, extension or development being carried out on or to the System;

"**Daily Forecast Generation Profile**" has the meaning ascribed to it in clause 7.1 (*Daily forecast generation*);

"**Debt**" means, at any date, all amounts due and payable by the Seller that are outstanding under the Financing Agreements at that date, excluding Shareholder Loans or interest thereon and all default interest;

**"Decommissioning Costs"** means the costs of decommissioning the Facility upon the termination of this Agreement, whether prematurely or due to the effluxion of time, or at the end of the life of the Project, whichever shall be the latest, which costs are detailed, in respect of each Contract Year, in the Financial Model and which costs must, at a minimum, include the costs of undertaking the following, in respect of or related to the Facility:

- (a) the rehabilitation of the adverse environmental impacts of the listed or specified activities detailed in the Environmental Consents;
- (b) engagement with all necessary stakeholders including but not limited to the Buyer, NERSA, WCG, the System Operator, the DFFE, the Department of Employment and Labour, the South African National Roads Agency Limited and the Project Site neighbours;
- (c) rehabilitation of the impacts of the generation and dispatch of Energy Output and/or Capacity, including polluted or extraneous water;
- (d) the responsible disposal of equipment, including solar PV panels, inverters and/or electronic waste;
- (e) securing, making safe, decommissioning, isolation and closure of the Facility and supporting infrastructure;
- (f) remediation of latent or residual environmental impacts which are presently identified in the Environmental Consents;
- (g) demolition and removal of buildings, structures, plant, equipment and other objects including subsurface foundations and services;
- (h) rehabilitation of the Project Site, including capping and covering if necessary and landscaping;
- (i) consideration and management of the heritage requirements of the Facility;
- (j) compliance with all Laws applicable to the decommissioning, demolition or rehabilitation process;
- (k) obtaining all necessary permits or approvals for decommissioning, demolition, remediation and rehabilitation; and;
- (l) remediation of any other negative environmental impacts;

**"Decommissioning Financial Plan"** means the Seller's plan detailing the mechanism/s through which it provides for the Decommissioning Costs such that the full amount of the Decommissioning Costs is available to the Seller for purposes of decommissioning, as required during the Term and/or upon termination of the PPA whether prematurely or due to the effluxion of time, or at the end of the life of the Project, whichever shall be the latest, which Decommissioning Financial Plan is included as Part 1 of Schedule 12 (*Decommissioning Plans*);

**"Decommissioning Plan"** means the Seller's plan covering:

- (a) the scope of work and time-frames for the various decommissioning activities funded by the Decommissioning Costs as required during the Term and for the entire life of the Project; and
- (b) a detailed estimate of the Decommissioning Costs applicable to the various decommissioning activities funded by the Decommissioning Costs as required during the Term and for the entire life of the Project,

which Decommissioning Plan is included as Part 2 of Schedule 12 (*Decommissioning Plans*);

**"Deemed Energy"** means the Energy Output that would otherwise be available to the Buyer, but for a System Event or a Compensation 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 Deemed Energy during a specified period pursuant to the provisions of clause 14 (*Consequences of a System Event*) or clause 17 (*Consequences of a Compensation Event*), which payment shall be calculated in accordance with Schedule 6 (*Deemed Energy Payment*);

**"Delivery Point"** means the physical point/s, situated on the high voltage side of the generator transformer of the Facility, where a Unit or the Facility connects to the System (whether or not such point/s are 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 the Project and Facility*);

**"DFFE"** means the Department of Forestry, Fisheries and the Environment of the Government;

**"Direct Agreement"** means the direct agreement entered into (or to be entered into) between the Seller, the Buyer, and the Lenders (as defined in the Direct Agreement) (or their agent) in relation to this Agreement, substantially in the form set out in Schedule 8 (*Direct Agreement*), as it may be amended from time to time by agreement of the parties thereto;

**"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;

**"Distribution Agreement"** 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;

**"Distribution Connection Works"** means the Municipality Connection Works, as defined in the Distribution Agreement;

**"Distribution System"** means the distribution network of the Distributor which operates at a nominal voltage of 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, for the avoidance of doubt, not including any private network used by the Facility or the Project (as the case may be) or customers of the Distributor);

**"Distributor"** means the Stellenbosch Local Municipality in its capacity as such;

**"Due Date"** has the meaning given to it in clause 9.3 (*General principles as regards invoicing*);

**"Effective Date"** means the date of signature of this Agreement by the Party last signing it;

**"Employee"** means a natural person engaged on the Project Activities, whether seconded to or employed directly in relation to such Project Activities, and **"Employment"** shall have a corresponding meaning;

**"Energy"** means electrical energy generated by a Unit or the Facility, as the case may be, and measured in MWh;

**"Energy Output"** means the Energy (expressed in MWh) generated by the Facility and metered as delivered at and to the Delivery Point. For the avoidance of doubt, Commissioning Energy Output shall not constitute Energy Output;

**"Environmental Laws"** means any Laws designed to:

- (a) protect ecosystems and dependent animal and plant species;
- (b) regulate the harm caused to the environment and/or public health by pollution or degradation; and/or
- (c) regulate the generation, handling, storage, use, release, emission or spillage of any substance which, alone or in combination with any other, is capable of causing harm to the environment, including, without limitation, any waste;

**"Equipment Supplier"** means any entity or organisation that supplies Key Equipment or equipment in respect of the Project from time to time, in accordance with an equipment supply agreement, and any successors thereto;

**"Equity"** means the entire issued share capital of and Shareholder Loans to the Seller;

**"Expiry Date"** means the date falling twenty (20) years after the Scheduled COD, or as may be extended or amended in accordance with the terms of this Agreement;

**"Facility"** means the generation facility, which may comprise more than one Unit, located at the Project Site and comprising all plant, machinery and equipment, including the Key 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 the 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;

**"Facility Availability"** means the Facility's capability to export Energy Output to the Delivery Point, determined in accordance with the provisions of Schedule 6 (*Deemed Energy Payment*);

**"Facility Completion"** means the mechanical and electrical completion of the Facility, and the issue of the Facility Completion Form by the Independent Engineer;

**"Facility Completion Form"** means the form attached to this Agreement as Schedule 2 (*Completion Milestones and Forms of Notices*) Part 2 (*Facility Completion Form*), which is to be completed by the Independent Engineer and delivered to the Buyer in accordance with clause 4.3 (*Facility completion and commissioning*);

**"Facility Connection Works"** has the meaning given to it in the Distribution Agreement;

**"Facility Metering Installation"** means metering equipment (including an electronic main meter) conforming with the requirements of and standards set out in the Codes, installed by the Seller in accordance with clause 12.2 (*Facility Metering Installation*);

**["Financial Close"** means the date on which the Seller, as the borrower under the Financing Agreements, receives confirmation that all suspensive conditions to the Financing Agreements have either been met to the relevant Lenders' satisfaction or have been appropriately waived by the Lenders];<sup>1</sup>

**"Financial Model"** means the financial base case for the Project as reflected in the Excel-based financial model attached to this Agreement on an electronic storage device that can be used to store data, as provided for in Schedule 11 (*Financial Model*) of this Agreement, which model incorporates the forecast cash flow statements of the Seller including all expenditure, revenues, taxation and financing of the Construction, Operation and Maintenance of the Facility together with the income statements and balance sheets for the Seller over the Term, and details of all assumptions, calculations and methodology used in the compilation thereof;

**"Financing Agreements"** means the agreements relating to the Debt as at the Signature Date and excluding all amendments thereto not approved in advance by the Buyer; and any master agreement, confirmation, schedule or other agreement entered into or to be entered into to comply

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<sup>1</sup> If the concept of "Financial Close" is required, provision will be made in the PPA for a condition precedent to this effect. In the meantime, the definition of "Financial Close" is included as a placeholder for this possibility.

with the provisions of the agreements in relation to the hedging of exposure to interest rate changes and foreign currency exchange rate fluctuations only;

**"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 or contract concluded with a Contractor;
- (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.

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) to (d) above:

- (1) any action or failure to act by a Responsible Authority, including without limitation, any Consent or Supplier Consent (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;
- (2) lightning, fire, earthquake, tsunami, drought, unusual flood, violent storm, cyclone, typhoon, tornado, other natural calamity or act of God;
- (3) pandemic, epidemic or plague and any instruction, regulation, directive, legislation or the like issued by a Responsible Authority in response to such acts, events or circumstances;
- (4) strikes, lock-outs and other industrial action at the Project Site, save where the Force Majeure relief is in respect of such action as excluded by operation of the provisions of sub-clause (vii) below;
- (5) accidents or explosions;
- (6) acts of war whether declared or not, invasion, armed conflict, act of foreign enemy or blockade in each case occurring within or involving South Africa;
- (7) acts of a political nature including rebellion, riot, civil commotion, act or campaign of terrorism, or sabotage, in each case occurring within South Africa, save where the Force Majeure relief is in respect of such action excluded by operation of the provisions of sub-clause (vii) below;
- (8) boycott, sanction or embargo;

- (9) 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 the 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, pandemic, epidemic or plague);
- (10) any failure or delay by a Responsible Authority to issue any permits, licences or approvals which the Seller is required to provide under this Agreement and for which the Seller has duly and timeously applied for, and has diligently pursued in accordance with the standards of a Reasonable and Prudent Operator;
- (11) Curtailment on the instruction of the System Operator, whether issued directly, or indirectly through the Buyer or Distributor, and which endures for a continuous period of 12 months or more; or
- (12) a Compensation Event,

each such act, event or circumstance or combination thereof being a **Force Majeure Event**, provided always and notwithstanding any other provision of this Agreement that the following shall not constitute Force Majeure, notwithstanding the fact that it relates to any one or more of the events in paragraphs (1) to (12) above:

- (i) failure of either Party to make any payment of money that is undisputed, and due and payable or determined by dispute resolution or court process, to be due and payable in accordance with its obligations under this Agreement;
- (ii) late delivery of equipment, machinery, plant, spare parts or materials, caused by negligent conduct or willful misconduct on the part of the Affected Party or any of its Equipment Suppliers or contractors;
- (iii) late performance by either Party, caused by such Party or such Party's Equipment Suppliers', Contractors' or subcontractors', unless, and only to the extent that such late performance is as a result of an event which constitutes Force Majeure pursuant to and as defined in this Agreement, notwithstanding the meaning attributed thereto in any other agreement that a Party or its Equipment Suppliers, Contractors or subcontractors may have entered into from time to time;
- (iv) mechanical or electrical breakdown or failure of equipment, machinery or plant owned or operated by either Party due to the manner in which such equipment, machinery or plant has been operated or maintained;
- (v) delays resulting from reasonably foreseeable unfavourable weather or reasonably foreseeable unsuitable ground conditions or other similar reasonably foreseeable adverse conditions;

- (vi) any failure by the Affected Party to obtain and/or maintain or cause to be obtained and/or maintained any Consent, save in the event that such failure is as a result of any failure or delay by a Responsible Authority contemplated in sub-clause (10) above;
- (vii) strikes, lockouts and other industrial action, acts of rebellion, riot, civil commotion act or campaign of terrorism, or sabotage of a political nature including workforce grievances and other labour related interruptions that may result in riots, sabotage, acts of unrest or interruptions by the past and/or present employees of the Affected Party, any of its Affiliates or any Contractors, subcontractors or Equipment Suppliers 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;
- (viii) wear and tear or random flaws in materials and equipment or breakdown in or degradation of equipment or machinery of the Affected Party;
- (ix) 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 Consents issued in terms of any Environmental Laws;
- (x) unavailability of personnel employed by or contracted to the Seller, its Contractors and Equipment Suppliers;
- (xi) an act or omission of the Distributor or a person appointed by the Distributor to undertake any Distribution Connection Works; and
- (xii) a force majeure event in terms of the Distribution Agreement or the Self-Build Agreement concluded with the Distributor;

**"Forecast Generation Profiles"** has the meaning given to it in clause 7 (*Generation Forecasts*);

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

**"Group"** means the Seller and each Group Company;

**"Group Company"** means:

- (a) each Shareholder; and
- (b) any person which Controls (directly or indirectly) the Seller, and any other person Controlled (directly or indirectly) by such first-mentioned person, including, where a person is a company, the ultimate holding company of such person, and any holding company of such person,

and **"Group Companies"** means, as the context requires, all of them;

**"IDP"** means the Stellenbosch Municipality's Integrated Development Plan, 2022-2027, or the IDP in force at the relevant time;

**"IFRS"** means International Financial Reporting Standards as developed by the International Accounting Standards Board;

**"Independent Engineer"** means any independent consulting engineer from the list of firms in Schedule 5 (*List of firms - Independent Engineer*) that is appointed in accordance with the provisions of clause 4.2 (*Independent Engineer*), to act jointly on behalf of the Seller and the Buyer;

**"Independent Engineer Agreement"** means the agreement entered into between the Seller, the Buyer and the Independent Engineer, which is attached to this Agreement as Schedule 10 (*Independent Engineer Agreement*);

**"Independent Expert"** means an impartial and independent third party, who shall be:

- (a) an engineer of not less than 10 (ten) years professional experience relevant to energy generation projects, as agreed to between the Parties and failing agreement, nominated (at the request of either Party) by the President of the Engineering Council of South Africa, if the matter relates primarily to an engineering matter; or
- (b) a qualified accountant with no less than ten (10) years professional experience, preferably in power purchase arrangements or project finance, agreed to between the Parties and, failing agreement, nominated (at the request of either Party) by the President of the South African Institute of Chartered Accountants from the ranks of accountants suitably qualified as contemplated in this sub-clause (b), if the matter primarily relates to an accounting matter; or
- (c) a qualified advocate or attorney with no less than ten (10) years professional experience, preferably in power purchase arrangements or project finance, agreed to between the Parties and, failing agreement, nominated (at the request of either Party) by the Chairman of the Legal Practice Council from the ranks of attorneys or advocates suitably qualified as contemplated in this sub-clause (c), if the matter primarily relates to a legal matter;

**"Indexed"** or **"Indexation"** has the meaning ascribed to it in Schedule 1 (*Details of the Project and Facility*) Part 3 (*Energy Rates*);

**"Information Exchange Code"** means the South African Grid Code – Information Exchange Code Rev 10.0 – August 2019, including amendments thereto as published by NERSA from time to time;

**"Intellectual Property"** means all intellectual property whatsoever used from time to time in connection with the Construction, Operation and Maintenance of the Facility, whether capable of registration, registered or not;

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

**"Job Creation"** means those measures that a Measured Entity can account for as being employed or implemented to achieve Employment through the Project Activities;

**"Key Equipment"** means the equipment identified in more detail in Schedule 1 (*Details of the Project and Facility*), being one or a combination of the following as applicable:

- (a) Solar PV Panels;
- (b) Solar PV Inverters;
- (c) Mounting Structure;
- (d) Power plant controller/management system;
- (e) High voltage and medium voltage transformers;
- (f) High and medium voltage switchgear;
- (g) Cables and/or overhead lines; or
- (h) Grid connection equipment;

**"Last COD"** means the date which falls six (6) months after the Scheduled COD;

**"Law"** means:

- (a) any constitution, statute, ordinance, treaty, decree, proclamation or subordinated legislation or other legislative measure, including all national and provincial statutes and legislation and all municipal by-laws, 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;

**"Lender"** has the meaning given to it in the Direct Agreement;

**"Liquidity Guarantor"** means [.....] with registration number [....], a company duly incorporated in South Africa;

**"Liquidity Support"** means the guarantee provided by the Liquidity Guarantor in favour of the Seller in respect of the payment obligations of the Buyer pursuant to a Compensation Event and otherwise in accordance with clause 17.8 (*Liquidity Support*) of this Agreement, in the form attached hereto as Schedule 14 (*Form of Liquidity Support*);

**"Liquidity Support Amount"** means, on any date during the Term of this Agreement, an amount that is equal to the Revenue that would be generated by the Seller in relation to the average annual P50 Forecast Energy Output (as set out in Schedule 1 (*Details of the Project and Facility*))

in the Contract Year immediately preceding that date (or for the first Contract Year, if the date falls in that first Contract Year), for a three (3) month period;

**"Local Community"** means residents of the area of jurisdiction of the Buyer, or if the Project Site straddles the demarcated boundary of the Buyer and adjacent local municipalities, residents of all affected local municipalities;

**"Maintain"** means to maintain in good working order and condition and, as necessary, to inspect, refurbish, repair, 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 clause 22 (*General Seller Undertakings*), and the term **"Maintenance"** shall be construed accordingly;

**"Material Contractor"** means one or more Contractors engaged by the Seller to Construct or Operate and Maintain the Facility, as the case may be;

**"Measured Entity"** means an entity relied upon by the Seller to evidence any one or more of the Socio-Economic Development Obligations;

**"Metering Certifier"** means a reputable, experienced and qualified company agreed by the Parties to perform electricity meter certification functions under clause 12 (*Metering*) (or if the Parties fail to agree upon such a company within ten (10) days of a request by one Party to the other in respect of the same, then such independent metering expert as shall be selected by the Chairman of the Engineering Council of South Africa at the request of either Party, shall be the Metering Certifier), and who, for the purposes of this Agreement, shall be deemed to be an Independent Expert;

**"Minimum Acceptance Capacity"** means a Capacity of the Facility which is equal to ninety per cent (90%) of the Contracted Capacity of the Facility;

**"Month"** means a period of one (1) calendar month according to the Gregorian 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;

**"NERSA"** means the National Energy Regulator of South Africa as established by section 3 of the National Energy Regulator Act, 40 of 2004;

**"Notice of Commencement of Facility"** means a notice in the form of Part 3 (*Form of Notice of Commencement of Facility*) of Schedule 2 (*Completion Milestones and Forms of Notices*), delivered by the Seller to the Buyer in terms of clause 4.4 (*Commercial Operation Date*);

**"Operate"** means to dispatch a Unit or Units or the Facility, and otherwise operate as required by clause 22 (*General Seller Undertakings*), and the term **"Operation"** shall be construed accordingly;

**"Operating Expenditure"** means any expenditure treated as operating expenditure under IFRS;

**"Operating Measurement Period"** means the period commencing on the Commercial Operation Date and ending on the Termination Date;

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

**"Personal Information"** has the meaning set out in the POPI Act;

**"Person Month"** means a total of one hundred and sixty (160) hours worked by an Employee;

**"Planning Obligations"** means the planning obligations of the Seller to the Buyer, in terms of clause 15.2.1;

**"POPI Act"** means the Protection of Personal Information Act, 4 of 2013, as amended;

**"Processing"** or **"Process"** has the meaning set out in the POPI Act;

**"Project"** means the ownership or lease of the Project Site and the ownership, Construction, Operation and Maintenance of the Facility;

**"Project Activities"** means the ownership or lease of the Project Site and the design, ownership, finance, Construction, Operation and Maintenance of the Facility and all associated Connection Works which are the responsibility of the Seller, and for purposes of Job Creation shall include the Employment of people to manage, within the Project, activities required to comply with the Socio-Economic Development Obligations;

**"Project Data"** has the meaning ascribed to it in clause 11.2 (*Data and records*);

**"Project Documents"** means the contracts described in Schedule 7 (*Project Documents*) relating to the Project, of which true copies of the contracts listed in Part A (*PPA Related Project Documents*) must be delivered by the Seller to the Buyer within twenty (20) Business Days of the Effective Date;

**"Project Schedule"** means the Project schedule contained in Part 1 (*Completion Milestones*) of Schedule 2 (*Completion Milestones and Forms of Notice*);

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

**"Public Good"** means a commodity or service that is provided without profit to all members of a society, in support of their well-being;

**"Qualifying Financial Institution"** means a bank as defined in section 1 of the Banks Act, 94 of 1990, any pension fund or provident fund registered in terms of the Pension Funds Act, 24 of 1956, any unit trust scheme as defined in section 1 of the Unit Trusts Control Act, 54 of 1981, any long-term insurer as defined in section 1 of the Long-term Insurance Act, 5 of 1998, or any short-term insurer being a person registered or deemed (in terms of the Short-Term Insurance Act, 52 of 1998) to be registered as a short-term insurer in that statute, or any other entity that the Buyer agrees in writing is a Qualifying Financial Institution;

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

**"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/or 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;

**"Reporting Obligations"** means the reporting obligations of the Seller to the Buyer in terms of clause 15.2.2;

**"Responsible Authority"** means 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) within South Africa, including specifically any authority or board of such authority that is responsible for the allocation of any Water Use Rights, or any court, each having jurisdiction over the matter in question within South Africa, but excluding for all purposes the Buyer, the Distributor and any state-owned company undertaking commercial activities;

**"Revenue"** means, in relation to any reporting period, all amounts paid to and received by the Seller in terms of this Agreement, excluding Use of System Charges;

**"RSA-based"** means based within the borders of the Republic of South Africa;

**"SCADA"** shall have the meaning ascribed to it in clause 12.4.3 (*Capabilities of Meters*);

**"Scheduled COD"** means the date stated to be the Scheduled COD in Part 1 (*Completion Milestones*) of Schedule 2 (*Completion Milestones and Forms of Notices*), as that date may be extended or amended in accordance with the terms of this Agreement;

**"Scheduled Outage"** means the planned removal of the Facility from service in order to perform Maintenance work, that is scheduled in accordance with Schedule 3 (*Scheduled and Unscheduled Outages*);

**"SED Contract Year"** means each twelve (12) Month period, commencing at 00:00 hours on 1 July and ending at 24:00 hours on 30 June of the following year, provided that:

- (a) the first SED Contract Year shall commence at 00:00 hours on the Signature Date, and shall end at 24:00 hours on the next 30 June occurrence; and
- (b) the final SED Contract Year shall end at 24:00 hours on the Termination Date;

**"Self-Build Agreement"** means an agreement entered into between the Seller (as Customer) and the Distributor which sets out the terms and conditions on which the Connection Works will be constructed by the Seller and connected to the System;

**"Seller Default"** means any of the following events or circumstances (in each case, other than where solely due to Force Majeure, a Compensation Event, a System Event, Expropriation Event, Change in Law 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 Construction of the Facility within sixty (60) 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 any electricity generation licence or registration required to be held by the Seller in terms of applicable Laws, 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 clause 26 (*Assignment*) or clause 28 (*Changes in Control*); and
- (g) any other breach of any material provision of this Agreement has occurred more than once and:
  - (i) 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
  - (ii) 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 clause 20.3.3 on ten (10) days' notice to the Seller;
- (h) the Seller fails to comply with any of its obligations under clause 14 (*Provision for Decommissioning Costs*);
- (i) the Seller fails to comply with any of its Socio-Economic Development Obligations under clause 15.1 (*Socio-Economic Development Obligations*) in respect of any SED Contract Year, and during the immediately following SED Contract Year fails to rectify its non-compliance by delivering the variance between the Socio-Economic Development Performance in the prior SED Contract Year and the Socio-Economic Development Obligation for that prior SED Contract Year, in addition to delivering full compliance with the Socio-Economic Development Obligations for the SED Contract Year in which the rectification is due;

- (j) the Seller, having Commenced Construction, thereafter materially reduces, suspends or ceases to carry on, for a period of forty five (45) consecutive days, the Construction, or any material part thereof, of the Facility;
- (k) any Consent is suspended or revoked, and not discharged, due to a material breach by the Seller;
- (l) the Seller fails to maintain compliance with the requirements of the Codes;
- (m) the Seller fails to settle (whether by way of set-off or payment) any amount in excess of two hundred thousand Rand per MW (R200 000/MW) Indexed of the Contracted Capacity that is due and payable by it to the Buyer pursuant to this Agreement and not disputed in good faith and the same remains unpaid, for a period of sixty (60) Business Days after written demand by the Buyer; or
- (n) any of the warranties in clause 36.1 (*Seller warranties*) fails, at any time during the existence of this Agreement, to be true and correct in all material respects and the Seller fails to remedy, cure or correct that untruth and incorrectness within a period of one hundred and twenty (120) days of such warranty failing to be true and correct in all material respects;

**"Semesterly Achievement"** means the actual achievements of the Seller in respect of its Socio-Economic Development Obligations, measured per Contract Semester in accordance with clause 15.3.1;

**"Semesterly Obligations"** means the Socio-Economic Development Obligations for each Contract Semester, denoted in Annexure B (*Semesterly Obligations*) of Schedule 13 (*Socio-Economic Development Forms*);

**"Shareholder Loans"** means at any date, in relation to any financing (other than the share capital and share premium and the financing under a Financing Agreement) made available for the Project by the Shareholders, all principal unpaid at that date (including any interest which has been capitalised);

**"Shareholders"** means the holders of Equity;

**"Skills Development"** means Skills Development Contributions made by a Measured Entity to assist Black People who are Verified Residents to attain any one or more of the following:

- (a) a national diploma or occupational qualification registered on the National Qualification Framework;
- (b) a trade qualification leading to a listed trade, as indicated in Government Gazette No. 35625 published on 31 August 2012;
- (c) registration in a professional category by a recognised professional body or statutory council;

- (d) occupations as identified by the most current version of the "National List of Occupations in High Demand" or "National Scarce Skills List: Top 100 Occupations in Demand" published by the Department of Higher Education and Training; and
- (e) work integrated learning for a period exceeding six (6) months;

**"Skills Development Contributions"** means the monetary contributions made by a Measured Entity for Skills Development, evidenced by an invoice, provided that the following principles are complied with:

- (a) monetary contributions referred to in this definition exclude the skills development levy payable by the Measured Entity under the Skills Development Levies Act;
- (b) monetary contributions include scholarships, bursaries, course fees and cost of training materials provided such contributions are not recovered from the Employees or beneficiaries or are conditional, however such monetary contributions will be recognised by the Buyer if the conditions imposed on the learners are related to:
  1. the learners completing the relevant studies within the prescribed time; or
  2. an obligation of continued employment for a period after the successful completion of the studies not exceeding the period of the studies;
- (c) monetary contributions on work integrated learning limited to fifteen percent (15%) of the Rand value of the Skills Development obligation;
- (d) monetary contributions on salaries and wages to Employees who are participating as part of learnerships, internships and apprenticeships limited to one hundred percent (100%) of such salaries and wages; and
- (e) training outside of South Africa will be recognised provided such training is recognised by the South African Qualifications Authority and complies with sub-clauses (a) to (d) of this definition;

**"Skills Development Levies Act"** means the Skills Development Levies Act 9 of 1999;

**"Social Infrastructure"** means physical assets such as land, buildings and equipment that support the provision of a Public Good, such as healthcare, transport, water and sanitation, education, access to information and recreational opportunities;

**"Social Spending"** means monetary spend by a Measured Entity on Social Well-Being Programmes and Social Infrastructure, evidenced by an invoice, provided that the following principles are complied with:

- (a) spending on Social Well-Being Programmes must be for the benefit of the Local Community;
- (b) spending on Social Infrastructure may only be made in respect of Social Infrastructure located within the area of jurisdiction of the Buyer. Furthermore, such spending must

be allocated towards projects that appear in the approved capital budget of the IDP. In the event that no Social Infrastructure projects are listed in the approved capital budget of the IDP, the Seller reserves the right to direct its spending to Social Infrastructure projects of its choosing;

- (c) the Seller and the Buyer agree to any diversion of Social Spending towards IDP-mandated Social Infrastructure; and
- (d) the value of Social Infrastructure spending shall be capped at a maximum of fifty percent (50%) of the total value of Social Spending;

**"Social Well-Being Programme"** means a set of measures or activities of an operational or consumable nature that supports the provision of a Public Good;

**"Socio-Economic Development Independent Monitor"** means a person appointed as such in terms of clause 15.6.5;

**"Socio-Economic Development Obligations"** means the Seller's obligations in relation to Job Creation, Skills Development and Social Spending, as stated in more detail in Annexure A (*Socio-Economic Development Obligations*) and Annexure B (*Semesterly Obligations*) of Schedule 13 (*Socio-Economic Development Forms*);

**"Socio-Economic Development Performance"** has the meaning attributed to it in clause 15.3.1;

**"Socio-Economic Development Plan"** means the plan to be submitted by the Seller in terms of clause 15.2.1 and in the form contained in Annexure C (*Form of Socio-Economic Development Plan*) of Schedule 13 (*Socio-Economic Development Forms*);

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

**"South African Standards"** means the South African National Standards ("**SANS**") and/or any other body or institute that presides over and/or prescribes technical standards to be used in South Africa from time to time;

**"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;

**"Supplier Consents"** means all consents, permissions, permits, clearances, authorisations, approvals, rulings, exemptions, registrations, filings, decisions, licences, required to be issued by or made with any Responsible Authority, in connection with the performance by an Equipment Supplier of its obligations under the supply agreement to which it is party, including, but not limited to, the Buyer, the Department of Employment and Labour, the DFFE, Department of Mineral and Petroleum Resources, the Department of Agriculture, the Department of Rural Development and Land Reform, NERSA and the National Ports Authority;

**"System"** means the Distribution System;

**"System Event"** means:

- (a) any delay in the connection of the Facility to the System, beyond the date with reference to the Project, which falls [●]<sup>2</sup> ([●]) months after the Effective Date; or
- (b) subject to sub-paragraph (11) of the definition of Force Majeure, any constraint, unavailability, interruption, Curtailment, breakdown, inoperability or failure of or disconnection from, the whole or any part of the System,

provided that the delay referred to in sub-clause (a) or the event referred to in sub-clause (b) is not caused by:

- (a) an act or omission of the Seller or a Contractor or Equipment Supplier;
- (b) a failure by the Seller to comply with its obligations relating to the Connection Works, including the Seller's obligations under the Self-Build Agreement;
- (c) the termination of the Distribution Agreement by the Distributor due to breach of such agreement by the Seller;

**"System Metering Installation"** means back-up metering equipment (including an electronic check meter) conforming with the requirements of, and standards set out in, the Codes, installed by the Distributor on the instructions of the Seller in accordance with clause 12.3 (*System Metering Installation*);

**"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 20 (*Termination*);

**"Unforeseeable Conduct"** shall occur if, after the Effective Date, the Buyer or any Responsible Authority takes any action in terms of applicable Law (including the introduction or application of a Law, or Change in Law) or fails to carry out its obligations in terms of an applicable Law, that:

- (a) has the effect of amending the Commercial Energy Rate other than as provided for in this Agreement; 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 an effect detailed in sub-clauses (a) or (b):
  - (i) the principal effect of which is directly borne by:

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<sup>2</sup> The timelines to be determined within the timelines set out in the Budget Quotes. The dates will be different for each of the Projects.

- (A) the Project and no other similar projects;
- (B) the Seller and no other persons; or
- (C) parties undertaking projects similar to the Project and no 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;
- (iii) which was not foreseen by the Seller on or before the Effective 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 Effective Date or if it could have reasonably 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):

- (a) Unforeseeable Conduct shall be deemed not to have occurred under circumstances where any action or omission of the Buyer 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 Buyer or the Responsible Authority) or in violation of agreements to which the Seller is a party;
- (b) 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;
- (c) Unforeseeable Conduct shall be deemed not to have occurred if such conduct by the Buyer or any Responsible Authority is required as a result of an event of Force Majeure and is reasonably proportionate thereto;
- (d) Unforeseeable Conduct shall not include any Law that was enacted or made but not yet in force as at the Effective Date, or any proposed or draft Law that was promulgated or issued for comment at any time before the Effective Date if and to the extent that such Law when enacted and brought into effect is materially unchanged;
- (e) Unforeseeable Conduct shall be deemed not to have occurred if the conduct in question was the conduct of the Distributor or a person appointed by the Distributor to undertake Distribution Connection Works;

provided further that no event, circumstance or situation that:

- (i) arises as a direct or indirect result of any appeal or review being lodged against any amendment to any of the Consents issued in terms of any Environmental Laws;

(ii) arises as a direct or indirect result of any Responsible Authority imposing additional conditions on the Seller in terms of any Consents issued in terms of any Environmental Laws;

shall be or shall be deemed to be Unforeseeable Conduct;

**"Unit"** means a separate electricity generating unit or section (comprising multiple units) forming part of the Facility, which is or are capable of generating and delivering Energy to the Buyer at a Delivery Point, and **"Units"** means all or any combination of them;<sup>3</sup>

**"Unscheduled Outage"** means an outage that is not a Scheduled Outage;

**"Unskilled"** means not having or requiring special skill or training; **"Use of System Charges"**<sup>4</sup> means the Distribution Use-of-System Charge as defined in the Distribution Agreement, which may not exceed the NERSA approved schedule of standard pricing as applicable to the Distributor;

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

**"VAT Act"** means the Value-Added Tax Act, 89 of 1991, as amended or replaced from time to time;

**"Verified Resident"** means a person who has provided to the Seller, or its nominee, acceptable proof of residence in the Local Community, where such proof must include the name and physical address of the person, and furthermore such proof is restricted to a municipal utility bill or rates and taxes invoice that is dated within three months of its presentation, or a statement of account that has been subject to a Financial Intelligence Centre Act (FICA) verification of residence, a sworn affidavit commissioned at a South African Police Service station located within the Local Community, or a signed letter from the Buyer that confirms Local Community residency;

**"Water"** has the meaning given to it in the Water Use Right;

**"Water Use Right"** means either a water use agreement or a water use licence in terms of the National Water Act, 36 of 1998 or a combination of a water use agreement with a third party for the provision of Water to the Seller, and such water use licence;

**"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 and the phrase **"Weekly"** shall have a corresponding meaning; and

**"Weekly Forecast Generation Profile"** has the meaning ascribed to it in clause 7.2 (*Weekly forecast generation*).

## 1.2 Interpretation

<sup>3</sup> For a Facility which supplies Energy Output to only one Delivery Point, the term Unit will not apply and the PPA will be amended accordingly.

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 the provisions 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 Stellenbosch, 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 recognised 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 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 including;
- 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:

|                    |   |                                     |
|--------------------|---|-------------------------------------|
| A                  | - | means Amperes                       |
| °C                 | - | means Degrees Centigrade            |
| CT                 | - | means Current Transformer           |
| kV                 | - | means Kilovolts                     |
| M                  | - | means Metres                        |
| MW                 | - | means Megawatt                      |
| MWh                | - | means Megawatt-hours                |
| MVA <sub>r</sub>   | - | means Megavolt ampere reactive      |
| MVA <sub>r</sub> h | - | means Megavolt ampere reactive hour |
| PT                 | - | means Potential Transformer         |
| PV                 | - | means Photovoltaic                  |
| 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 (*Système International d'Unités*) (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 being rounded up.

## 2. TERM

- 2.1 This Agreement shall be effective from the Effective Date until the earlier of:
  - 2.2 its termination in accordance with clause 20 (*Termination*); or
  - 2.3 the Expiry Date,
- (such period being the "**Term**" of this Agreement).

## 3. PROJECT SITE AND CONSTRUCTION

### 3.1 Project Site

- 3.1.1 The Seller shall obtain and maintain the peaceful 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, as between the Buyer and the Seller, be deemed to form part of the Project Site and shall be at the sole risk of the Seller. 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*) Part 1 (*Facility*) and a diagram setting out the transmission lines and substation, Connection Works, and significant ancillary facilities including the facilities at the Delivery Point, is included in Schedule 1 (*Details of the Project and Facility*) Part 2 (*Single Line and Network Diagram*).
- 3.1.2 The Seller agrees and undertakes that, as between it and the Buyer:
  - 3.1.2.1 it shall be solely responsible for, shall bear full responsibility for and shall discharge all obligations in relation to any contamination of the Project Site pursuant to and in accordance with the applicable Consents and Laws, whether such contamination was existing at the time that the Seller obtained its rights in respect of the Project Site or arises during the term of this Agreement;

- 3.1.2.2 it shall be solely responsible for, shall bear full responsibility for and shall discharge all obligations pursuant to any remediation order issued by any Responsible Authority pursuant to and in accordance with the applicable Consents and Environmental Laws in respect of any contamination of the Project Site, whether such contamination was existing at the time that the Seller obtained its rights in respect of the Project Site or arises during the term of this Agreement;
- 3.1.2.3 it shall be solely responsible for, shall bear full responsibility for any disturbance to the Project and the Project Activities resulting from events including rebellion, riot, civil commotion, act or campaign of terrorism, or sabotage, protest, blockade or intimidation of the workforce by the surrounding communities, resulting solely from its failure to diligently investigate and engage with the surrounding community in respect of the Project in accordance with the standards of a Reasonable and Prudent Operator;
- 3.1.2.4 if the Seller fails to comply with any of its obligations under clause 3.1.2, it alone shall be liable for and bear the full responsibility of and consequences for such failure, and the Buyer shall not bear any liability, responsibility or consequence for or of such failure;
- 3.1.2.5 the Buyer has no obligations of any nature to monitor compliance with or to enforce the terms and conditions of any remediation order issued by any Responsible Authority in respect of any contamination of the Project Site; and
- 3.1.2.6 it indemnifies and shall hold harmless, upon demand, the Buyer against any claims, damages, losses, expenses and any other consequences of or arising out of the Seller's failure to comply with clause 3.1.2.
- 3.1.3 The provisions of this clause 3.1 (*Project Site*) shall remain in full force and effect after the Termination Date.

## 3.2 **Risk and liability**

- 3.2.1 Subject to applicable Laws, the Seller shall be fully responsible for the suitability of the Project Site, for the development of the Project and the conduct of the Project Activities 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, and routing of power lines existing at the Effective Date on, the Project Site, and the availability of adequate supplies of utilities.
- 3.2.2 The Seller agrees and undertakes that, as between it and the Buyer:

- 3.2.2.1 it shall be solely responsible for, shall bear full responsibility for and shall discharge all environmental obligations in relation to the Facility and the Project Site pursuant to and in accordance with the applicable Consents and Laws;
- 3.2.2.2 if applicable, it shall be solely responsible for, shall bear full responsibility for, shall discharge all obligations and shall bear all consequences (including the possibility that any of the following could lead, directly or indirectly, to a Seller Default) that arise as a direct or indirect result of any appeal or review being lodged against any amendment to any of the Consents issued in terms of any Environmental Laws;
- 3.2.2.3 it shall be solely responsible for, shall bear full responsibility for and shall discharge all obligations pursuant to any obligations or requirements to decommission the Facility at the end of its life, pursuant to and in accordance with the applicable Consents and Environmental Laws. The Seller shall comply with all of its obligations in clause 22 (*General Seller Undertakings*) and shall provide the Buyer with copies of all documents and notices referred to in said clause 22 (*General Seller Undertakings*);
- 3.2.2.4 if the Seller fails to comply with any of its obligations under this clause 3.2 (*Risk and Liability*), it alone shall be liable for and bear the full responsibility of and consequences for such failure, and the Buyer shall not bear any liability, responsibility or consequence for or of such failure;
- 3.2.2.5 if any consequence arises pursuant to any circumstance, event or situation detailed in this clause 3.2 (*Risk and Liability*), it alone shall be liable for and bear the full responsibility of and consequences for such circumstance, event or situation, and the Buyer shall not bear any liability, responsibility or consequence for or of such circumstance, event or situation, including any consequential Seller Default;
- 3.2.2.6 the Buyer has no obligations of any nature to monitor compliance with or to enforce the terms and conditions of any of the Consents; and
- 3.2.2.7 it indemnifies and shall hold harmless, upon demand, the Buyer against any claims, costs (including Claims for indirect losses), damages, losses, expenses and any other consequences of or arising out of the Seller's failure to comply with this clause 3.2 (*Risk and Liability*) and arising out of any circumstance, event or situation detailed in this clause 3.2 (*Risk and Liability*).
- 3.2.3 The provisions of this clause 3.2 (*Risk and liability*) shall remain in full force and effect after the Termination Date.
- 3.3 **Independent Engineer's and Buyer's inspection rights**
- 3.3.1 The Independent Engineer and the Buyer shall have the right from time to time, on not less than two (2) Business Days' written notice, to designate not more than four (4) of the Independent Engineer's or Buyer's representatives (as the case may be) 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 Independent Engineer or Buyer (as the case may be) 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.

- 3.3.2 In addition to the access rights provided for in clause 3.3.1, the Seller shall enable the Buyer to have reasonable rights of access to Project Documents, and meeting minutes of the Seller and the Contractor.

#### 3.4 **No improvements**

- 3.4.1 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 that specified in Part 1 of Schedule 1 (*Details of Project and Facility*).
- 3.4.2 The Seller may, after providing the Buyer with written notice of its intention to do so, replace or modify the equipment of the Facility in order to Operate the Facility in accordance with the standards of a Reasonable and Prudent Operator, but only to the extent that such modifications or replacements of equipment shall not have an adverse effect on the performance of the Facility or change the Contracted Capacity of the Facility. The Seller shall be required to provide the Buyer with written evidence that it has obtained any required amendments or revisions to its Consents pursuant to making such modifications or undertaking such replacements.

#### 3.5 **No use of electricity from the System**

- 3.5.1 The Parties record and agree that this Agreement does not permit the supply of electrical energy to the Seller by the Buyer or from the System. The Parties record and agree that the connection of a Unit or the Facility, as the case may be, to the System for purposes of drawing electrical energy from the System for any purpose shall be pursuant to a separate agreement entered into between the Seller and the Distributor, as the case may be.
- 3.5.2 Regardless of such separate agreement between the Seller and the Distributor, the Seller shall not supply Energy Output to the Buyer whilst importing energy from the System unless such imported energy is used for safety systems, lighting or other loads not directly related to Energy generation, and the Buyer shall not be obliged to accept or purchase any Energy Output supplied by the Seller in breach of this provision.
- 3.5.3 The Seller shall:
- 3.5.3.1 prior to the Commercial Operation Date, procure, and furnish to the Buyer, confirmation from the Independent Engineer of the Seller's compliance with clause 3.5.2; and

3.5.3.2 annually within the first month of a Contract Year, provide the Buyer with such information and/or documentation that the Buyer may reasonably require in order to demonstrate the Seller's compliance with its obligations in clause 3.5.2.

3.5.4 The Buyer shall not be obliged to accept or purchase any Energy Output supplied by the Seller until such time as the Seller has provided the Buyer with the confirmation referred to in clause 3.5.3.1, and with the information and/or documentation referred to in clause 3.5.3.2.

3.5.5 If the Seller is unable to comply with its obligations in terms of clause 3.5.2, it shall inform the Buyer in writing immediately.

### 3.6 **General Construction Obligations**

3.6.1 The Seller shall Commence Construction of the Project and procure the issue of the Commencement of Construction Confirmation Form all within sixty (60)<sup>5</sup> days of the Effective Date. Should the Seller fail to Commence Construction of the Project within such period or thereafter materially reduce, suspend or cease to carry on, for a period of forty five (45) consecutive days, the Construction, or any material part thereof, the Buyer shall be entitled to terminate this Agreement in accordance with clause 20.3 (*Termination for Seller Default*) for a Seller Default.

3.6.2 The Seller shall procure the Construction of the Facility and undertake the Project Activities in accordance with:

3.6.2.1 all applicable Laws, including the Consents; and

3.6.2.2 the standards of a Reasonable and Prudent Operator.

3.6.3 The Seller shall provide or procure all plant, equipment (including all Key Equipment), machinery consumables, parts, materials and services whatsoever required for the Construction and safe, reliable and economic Operation of the Facility in accordance with the standards set out in this clause 3.6 (*General Construction Obligations*).

3.6.4 Any dispute arising from or relating to the Commencement of Construction as confirmed by the Independent Engineer shall be referred to and determined by an Independent Expert in accordance with the provisions of clause 30 (*Fast Track Dispute Resolution*).

### 3.7 **Commercial Operation Date**

3.7.1 The Seller shall use its reasonable endeavours to achieve the Commercial Operation Date by the Scheduled COD.

3.7.2 If the Seller becomes aware that, for any reason, the Commercial Operation Date will not be achieved by the Scheduled COD, the Seller shall:

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<sup>5</sup> The timelines to be determined within the timelines within the Budget Quotes.

- 3.7.2.1 promptly upon becoming aware of the actual or potential delay in the achievement of the Commercial Operation Date by the Scheduled COD, 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; and
- 3.7.2.2 provide to the Buyer, any reports and such further information and documents as may be required by the Buyer in relation to the delay or potential delay within five (5) Business Days of receiving a written request from the Buyer.

### 3.8 Monthly Construction Progress Reports

- 3.8.1 The Seller shall provide the Buyer with monthly progress reports, in the form of updated versions of the Project Schedule Gantt Chart provided in Schedule 2 (*Completion Milestones and Forms of Notices: Completion Milestones*) Part 1 (*Completion Milestones*), in respect of Construction of the Facility from the time of the commencement of the Construction up to, and including, Commercial Operation Date or Last COD, as the case may be, as detailed in Schedule 9 (*Reporting*) Part 1 (*Monthly Construction Reports*).
- 3.8.2 The Seller shall ensure that these monthly progress reports:
- 3.8.2.1 are prepared in such manner as to clearly indicate the extent of progress towards the completion of the relevant construction milestones in terms of this Agreement;
- 3.8.2.2 include a level three (3) project schedule Gantt chart updated against the baseline Project Schedule, in pdf and native format in respect of the Facility; and
- 3.8.2.3 are supplemented by such further information that the Buyer may request from time to time.

## 4. TESTING AND COMMISSIONING

### 4.1 Connection to the System

- 4.1.1 The Seller warrants that it has entered into a [Self-Build Agreement]<sup>6</sup>, Distribution Agreement with the Distributor, on or before the Effective Date.
- 4.1.2 The Seller shall give the Buyer at least sixty (60) days' advance written notice of the date on which it anticipates it shall require, in terms of the Self-Build Agreement, or the Distribution Agreement, as the case may be, a Unit or Units (if the Facility is being commissioned in phases) and, in any event, the Facility, to be connected to the System.
- 4.1.3 The Parties record that it is intended, in the Distribution Agreement, that:
- 4.1.3.1 the Seller shall Construct or procure the Construction of the Distribution Connection Works at its sole risk and cost; and

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<sup>6</sup> To be retained to the extent applicable in respect of each Project.

4.1.3.2 the Seller shall Construct the Facility Connection Works to connect the Unit or Units (if the Facility is being commissioned in phases) and, in any event, the Facility with or to the System.

4.1.4 The Seller shall provide the Buyer with such information and data, regarding any matter relating to the arrangements between the Seller and the Distributor (as the case may be), as may be reasonably required by the Buyer to enable the Buyer to comply with its obligations and exercise its rights in terms of this Agreement.

## 4.2 **Independent Engineer**

4.2.1 It is recorded that an Independent Engineer as approved by the Buyer has been appointed by the Seller, at its sole cost and risk and on terms substantially similar to the terms contained in the agreement set out in Schedule 10 (*Independent Engineer Agreement*) of this Agreement.

4.2.2 The Independent Engineer so appointed shall act on behalf of, and owe a duty of care to, both the Buyer and the Seller equally and shall be required to have an independent opinion of the advancement of the Facility, which opinion shall be informed by visits to the Project Site and other relevant information and verifications obtained by the Independent Engineer, and shall not be limited to the Independent Engineer's reliance on monthly reports received from the Seller, the Contractors, and/or any of the Lender's advisers and/or engineer.

4.2.3 Neither Party shall, without the prior written consent of the other Party (such consent not to be unreasonably withheld):

4.2.3.1 terminate or seek to amend materially the contract with the Independent Engineer; or

4.2.3.2 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.

4.2.4 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 4.2 (*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 10 (*Independent Engineer Agreement*).

## 4.3 **Facility completion and commissioning**

4.3.1 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 4.3 (*Facility completion and commissioning*),

Schedule 2 (*Completion Milestones and Forms of Notices*), the Codes, the Distribution Agreement 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.

4.3.2 The Seller may, but shall not be obliged to, procure the issue of the Facility Completion Form where the resulting Achieved Capacity would be expected to be less than the Contracted Capacity. However, the Seller shall be obliged to procure the issue of the Facility Completion Form in respect of the Facility (regardless of the Achieved Capacity) in order, *inter alia*, to achieve the Commercial Operation Date in accordance with clause 4.4 (*Commercial Operation Date*).

4.3.3 The Seller shall provide the Buyer on a Weekly basis with relevant information regarding the commissioning and testing undertaken pursuant to clause 4.3.1.

#### 4.4 **Commercial Operation Date**

4.4.1 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.

4.4.2 The Seller may not issue the Notice of Commencement of Facility:

4.4.2.1 earlier than the day before the Scheduled COD;

4.4.2.2 until the Seller has demonstrated to the Independent Engineer that the Facility is compliant with the Codes;

4.4.2.3 until the Seller has obtained written confirmation from the Independent Engineer that the Independent Engineer is satisfied that the Seller has successfully demonstrated to NERSA, or any person nominated by NERSA for that purpose, that the Facility complies with the Codes, together with the relevant sign off from NERSA or such person nominated by NERSA;

4.4.2.4 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;

4.4.2.5 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; and

4.4.2.6 until the Buyer has issued, to the Seller, written notice (such notice not to be unreasonably withheld) of its receipt and acceptance of the notices provided by the Independent Engineer and the Seller to the Buyer.

4.4.3 Following compliance with clause 4.4.1 and clause 4.4.2 and upon the Independent Engineer ascertaining the Facility Completion and receipt of the relevant Facility Completion Form pursuant to clause 4.3 (*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 Part 3 (*Form of*

*Notice of Commencement of Facility*) of Schedule 2 (*Completion Milestones and Forms of Notices*).

4.4.4 If the Facility has achieved Facility Completion in terms of clause 4.3 (*Facility completion and commissioning*) and the Achieved Capacity is equal to or greater than the Contracted Capacity, then:

4.4.4.1 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;

4.4.4.2 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

4.4.4.3 the Seller shall not be entitled to increase the installed Capacity of the Facility beyond that specified in Part 1 of Schedule 1 (*Details of Project and Facility*) at any time in the future.

4.4.5 If the Facility has achieved Facility Completion in terms of clause 4.3 (*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:

4.4.5.1 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 4.3 (*Facility completion and commissioning*), and:

4.4.5.1.1 if the Achieved Capacity, as re-assessed, is equal to or greater than the Contracted Capacity, then clause 4.4.4 shall then apply; and

4.4.5.1.2 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 4.4.5.2 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; or

4.4.5.2 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 4.6 (*Reduction in Contracted Capacity*) shall apply.

- 4.4.6 If the Facility has achieved Facility Completion in terms of clause 4.3 (*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 re-assessed 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 4.6 (*Reduction in Contracted Capacity*) shall apply.

#### 4.5 **Last COD**

- 4.5.1 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".
- 4.5.2 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 20.3 (*Termination for Seller Default*) for a Seller Default.

#### 4.6 **Reduction in Contracted Capacity**

If the Achieved Capacity on the Commercial Operation Date is less than the Contracted Capacity but greater than the Minimum Acceptance 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, Schedule 1 (*Details of the Project and Facility*) shall be amended accordingly, and for the purposes of this Agreement, the power output 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 that specified in Part 1 of Schedule 1 (*Details of Project and Facility*), at any time in the future, without the Buyer's written consent.

#### 4.7 **Coordination with Distributor**

- 4.7.1 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 the Distributor, in addition to complying with the other requirements of clause 4 (*Testing and Commissioning*), the Seller shall:
- 4.7.1.1 provide the Distributor with such information as may be necessary under Law or the Codes, or which is customary in accordance with the practices of a Reasonable and Prudent Operator in respect thereof;

- 4.7.1.2 discuss and coordinate with any relevant Responsible Authority, and the Distributor, the actions contemplated in this clause 4 (*Testing and Commissioning*); and
- 4.7.1.3 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 Distributor from time to time.

## **5. SALE OF ENERGY**

### **5.1 Sale of Energy**

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

- 5.1.1 the Capacity of the Facility shall be limited to the Contracted Capacity, and only Energy Output that is generated from that Contracted Capacity may be sold to the Buyer pursuant to this Agreement; and for the avoidance of doubt, any payments made by the Buyer for Energy Output will be made with reference to the metered values at the Delivery Point;
- 5.1.2 the Seller shall sell all the Commercial Energy generated by a Facility (as the case may be) to the Buyer at the Delivery Point, on a self-dispatch basis, and subject only to the Codes and the standards of a Reasonable and Prudent Operator;
- 5.1.3 the Buyer shall pay the Commercial Energy Payment for the Commercial Energy, delivered by the Seller to the Delivery Point; and
- 5.1.4 subject to clause 14 (*Consequences of a System Event*) and clause 17 (*Consequences of a Compensation 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*).

### **5.2 Title and Risk**

Title in, and risk of loss of, all Energy sold to the Buyer in accordance with clause 5.1 (*Sale of Energy*), shall pass to the Buyer at the Delivery Point.

### **5.3 No Third Party Sales**

The Seller shall not sell or deliver Energy to any third party without the Buyer's prior written consent.

## **6. MAINTENANCE INSPECTIONS**

- 6.1 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.

- 6.2 If the inspection and, if applicable, tests detailed in clause 6.1 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.
- 6.3 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 30 (*Fast Track Dispute Resolution*).

## 7. GENERATION FORECASTS

### 7.1 Daily forecast generation

- 7.1.1 The Seller shall, in compliance with the Codes including the Information Exchange Code and Scheduling and Dispatch Rules, provide to the Buyer in writing for each day in the Operating Period, by no later than 10:00 hours on the 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**").
- 7.1.2 The Seller may, in accordance with clause 7.1.1, provide a revised Daily Forecast Generation Profile. The revised forecast must be provided at least twelve (12) hours ahead of the revised hour(s). For example, if the Seller anticipates that the actual generation output at 14:00 hours will be materially different from that forecasted the previous day, the Seller may provide a revised Daily Forecast Generation Profile by no later than 02:00 hours on the day. Only the revised hour(s) shall be provided and generally be in the form of Schedule 4 (*Forecasting Information*), and the form should be clearly marked as revised. If provided timeously and in accordance with clause 7.1.1, the revised forecast shall become the Daily Forecast Generation Profile.

### 7.2 Weekly forecast generation

- 7.2.1 The Seller shall, in compliance with the Codes including the Information Exchange Code, provide to the Buyer in writing for each Week in the Operating Period, together with the Daily Forecast Generation Profile, by no later than 10:00 hours on the preceding day, the Seller's estimate made in good faith of the forecast level of Energy expected to be generated by the Facility for each hour (the first such hour starting at 00:00 and ending at 00:60 minutes) of the day in the Week (starting at 00:00 hours on day two (2) and ending at 24:00 hours on day seven (7), which shall generally be in the form of Schedule 4 (*Forecasting Information*)).

("Weekly Forecast Generation Profile").

- 7.2.2 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 such costs off against the next payment due to the Seller.

## **8. TARIFF AND OTHER CHARGES**

### **8.1 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, subject to clause 5.1 of Schedule 3 (*Scheduled and Unscheduled Outages*).

### **8.2 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 clause 14 (*Consequences of a System Event*), clause 17 (*Consequences of a Compensation Event*) and Schedule 6 (*Deemed Energy Payment*), subject to clause 5.2 of Schedule 3 (*Scheduled and Unscheduled Outages*).

### **8.3 Use of System Charges**

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 in each Billing Period. If any Use of System Charges are repaid to the Seller as a result of a dispute in terms of the Distribution 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 8.3 (*Use of System Charges*), and the Buyer shall be entitled to deduct such amounts in the next Invoice issued to the Seller.

### **8.4 No Payment for Commissioning Energy Output**

For the avoidance of doubt, the Buyer shall not make any payments to the Seller for Commissioning Energy Output.

### **8.5 Failure to make Payments**

- 8.5.1 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.
- 8.5.2 If the Buyer fails to pay any amount or amounts that are due and payable by the Buyer under this Agreement, within five (5) Business Days of the Due Date for payment, the Seller may serve notice on the Buyer of such failure and specifying details thereof.
- 8.5.3 If such failure has not been remedied or rectified within twenty (20) Business Days of such notice, the provisions of clause 17 (*Consequences of a Compensation Event*) shall apply.

## 9. INVOICING

### 9.1 Operating Period invoices

9.1.1 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:

9.1.1.1 the Commercial Energy Payment (as the case may be) due to the Seller for such Billing Period setting out the calculations upon which such Commercial Energy Payment is based;

9.1.1.2 the Deemed Energy Payments (if any) due to the Seller for such Billing Period, including:

9.1.1.2.1 the applicable Curtailment Period, in relation to the relevant Contract Year;

9.1.1.2.2 the periods for which the Deemed Energy Payments are payable;

9.1.1.2.3 the calculations upon which such Deemed Energy Payments are based;

9.1.1.2.4 the circumstances which entitle the Seller to such Deemed Energy Payments;

9.1.1.2.5 written confirmation of the Independent Engineer where required in terms of Schedule 6 (*Deemed Energy Payment*);

9.1.1.3 the Use of System Charges (if any) due to the Seller in terms of clause 8.3 (*Use of System Charges*) for such Billing Period;

9.1.1.4 any amounts owed by the Seller to the Buyer, which shall be deducted from the total due to the Seller; and

any amounts owed by the Buyer to the Seller which shall be added to the total due to the Seller.

9.1.2 Subject to clause 12.8 (*Readings and Inaccuracy*), the Seller shall prepare the Invoice for the Billing Period based on the billing data report issued by the Buyer to the Seller (which report shall reflect metering data remotely accessed and retrieved by the Buyer, obtained by it from the Facility Metering Installation for that Billing Period).

### 9.2 Vendor Registration Requirements

9.2.1 The Seller must initiate the process of complying with the Buyer's vendor registration requirements timeously in order to meet the requirements of clause 9.2.2.

9.2.2 The Seller shall register and be fully compliant with the Buyer's vendor registration requirements (as well as any other requirements in Law as required by the Buyer), at least three (3) Months prior to the issue of the first Invoice, and shall remain compliant with the Buyer's vendor registration requirements (as well as any other requirements in Law as required by the Buyer) for the Term.

### 9.3 General principles as regards invoicing

9.3.1 The following provisions shall apply in respect of all Invoices prepared and issued pursuant

to this Agreement.

- 9.3.2 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.
- 9.3.3 Every Invoice issued by the Seller shall contain the Buyer vendor registration number allocated to the Seller upon compliance by the Seller with the Buyer's vendor registration requirements.
- 9.3.4 Subject to clause 8.5.1, 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 the later of (a) the date of receipt of such Invoice; and (b) the date on which the Seller becomes compliant with the Buyer's vendor registration requirements and the invoicing requirements provided for in this Agreement (in the case that the Seller is not compliant with such requirements at the date of invoicing) (the "**Due Date**").
- 9.3.5 All payments due by either Party to the other under this Agreement shall be made:
  - 9.3.5.1 in Rand in immediately available funds to such bank account in South Africa as the recipient Party shall from time to time nominate; and
  - 9.3.5.2 subject to clause 25 (*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.

#### 9.4 **Billing disputes**

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

- 9.4.1 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.
- 9.4.2 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 9.4.1. 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 12.7 (*Testing and inspection*).
- 9.4.3 If it is agreed or determined (including as a result of a test of the Facility Metering Installation pursuant to clause 12.7 (*Testing and inspection*)) 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.

- 9.4.4 If the Parties fail to resolve a dispute regarding an Invoice within thirty (30) days of the date upon which the notice in clause 9.4.1 was served, the matter shall be dealt with in accordance with clause 30 (*Fast Track Dispute Resolution*).

## 10. OUTAGES

### 10.1 Scheduled Outages

- 10.1.1 The Seller shall comply with the requirements of Schedule 3 (*Scheduled and Unscheduled Outages*) in relation to Scheduled Outages.
- 10.1.2 Subject to clause 10.1.1, the Seller shall be entitled to remove the Facility from service during the period of the Scheduled Outage to carry out its planned Maintenance.
- 10.1.3 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.

### 10.2 Unscheduled Outages

- 10.2.1 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 beyond twenty four (24) hours. Unscheduled Outages that are expected to extend for less than the twenty four (24) hours do not need to be reported to the Buyer in terms of this section.
- 10.2.2 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.

## 11. REPORTS, RECORDS, PLANS AND MONITORING

### 11.1 Reports

- 11.1.1 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 or such number of Units comprising at least ten per cent (10%) of the Contracted Capacity, as the case may be, is incapable of generating Energy 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 7 (*Generation Forecasts*)):
- 11.1.1.1 for reasons of any Outages; or
- 11.1.1.2 where to do so would not be in accordance with the standards of a Reasonable and Prudent Operator; or

- 11.1.1.3 in circumstances relating to safety (of either personnel or of the Facility or apparatus); or
- 11.1.1.4 in circumstances where to do so would be unlawful; or
- 11.1.1.5 for reasons of Force Majeure, a System Event, or a Compensation Event, and shall, within five (5) Business Days, deliver to the Buyer a written report detailing the reasons (in reasonable detail) for such incapacity.
- 11.1.2 The Seller shall provide the Buyer with the Construction and Connection Works-related reports detailed in Schedule 9 (*Reporting*), in accordance with Schedule 9 (*Reporting*).

## 11.2 **Data and records**

- 11.2.1 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:
  - 11.2.1.1 for each ten (10) minute period in each day, the Energy Output;
  - 11.2.1.2 changes in Operating status during the day;
  - 11.2.1.3 the number of Outages in the day, the duration of each Outage and the reason for each Outage;
  - 11.2.1.4 all solar and other climatic data recorded at the Project Site;
  - 11.2.1.5 all estimates and other data required in terms of clause 7 (*Generation Forecasts*) read with Schedule 4 (*Forecasting Information*);
  - 11.2.1.6 all data required in terms of Schedule 6 (*Deemed Energy Payment*);
  - 11.2.1.7 any information required to be recorded and/or reported in terms of the Consents; and
  - 11.2.1.8 any unusual conditions found during Maintenance inspections.

## 11.3 **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.

## 11.4 **Ownership, inspection, copy and use rights**

- 11.4.1 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).
- 11.4.2 The Seller shall ensure that any agreements entered into with the manufacturers of equipment (including Key Equipment) or with Equipment Suppliers in respect of the Facility

include provisions which entitle the Buyer to use the Project Data as the Buyer deems appropriate.

- 11.4.3 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 use of the Project Data by the Buyer.
- 11.4.4 In order for the Buyer to monitor the performance of the Project and/or evaluate any claims for relief by the Seller in terms of this Agreement, the Buyer may request written evidence from the Seller, in addition to that provided for in any provision of this Agreement, acting reasonably.
- 11.4.5 The provision of information to the Buyer in accordance with this Agreement in no way detracts from the Seller's responsibilities under this Agreement, and the Buyer incurs no obligation nor is any notice or consent tacitly provided by the Buyer nor is the Buyer estopped from exercising any right it may have under this Agreement as a result of receipt of this information from the Seller.
- 11.5 **Buyer's Request for Information**
- 11.5.1 At the Buyer's request, the Seller shall provide the Buyer with copies of the relevant contracts (including amendments) concluded by the Seller with the Contractor.
- 11.5.2 The Buyer is also entitled to request the Seller to provide a copy of the Construction Schedule the Contractor submits to the Seller under the respective contract with the Seller that identifies the sequencing and progress in relation to the Construction works (the "**Construction Schedule**").

## **12. METERING<sup>7</sup>**

### **12.1 Metering agents**

The Buyer may, by written notification to the Seller, 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 12 (*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.

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<sup>7</sup> **Note to Bidders:** certain provisions in this clause 12 will have to be amended prior to Commercial Close for Projects connecting to a Municipal Distribution System, in recognition of the fact that the System Metering Installation in such a Project will be owned and maintained by the municipal Distributor and that the Buyer will not have access to the System Metering Installation or the data which emanates therefrom, or have the authority to grant the Seller access thereto.

- 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 Seller shall, at its sole cost, cause the Distributor to procure, install, test, commission, Operate and Maintain a System Metering Installation adjacent to the Facility Metering Installation at the Delivery Point, in accordance with the Distribution Agreement.
- 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, the Codes and any other standards, policies and/or regulations made available by the Buyer and/or NERSA from time to time:
- 12.4.1.1 Energy Output in terms of four (4) quadrant metering;
- 12.4.1.2 instantaneous voltage, current and power factor;
- 12.4.1.3 frequency;
- 12.4.1.4 maximum demand in MVA/MW for each demand period and for the total period since the last reset;
- 12.4.1.5 MWh/MVA<sub>rh</sub> since last reading;
- 12.4.1.6 real time and time of day metering; and
- 12.4.1.7 number of resets.
- 12.4.2 The Seller shall ensure that the meters within the Facility Metering Installation utilise separate CT cores and separate PT circuits to the meters within the System Metering Installation.
- 12.4.3 The Facility 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.
- 12.4.4 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 the System Metering Installation shall each be sealed in the presence of duly authorised representatives of both Parties immediately after the commissioning of the relevant meter and/or installation in accordance with clause 12.6 (*Final testing, calibration and sealing prior to Commercial Operation Date*).

- 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 re-sealed after that purpose is completed, all in the presence of duly authorised representatives of both Parties. If a Party was informed within a reasonable time but fails to ensure that its representatives are present, then such sealing shall be deemed as valid and the Party whose meter and/or installation has been sealed shall inform the other.
- 12.6 **Final testing, calibration and sealing prior to Commercial Operation Date**
- 12.6.1 Authorised representatives of the Buyer, Seller and Independent Engineer shall, in respect of the Facility Metering Installation and the System Metering Installation, be entitled to:
- 12.6.1.1 witness the final testing, calibration and sealing thereof as contemplated in this clause 12.6 (*Final testing, calibration and sealing prior to Commercial Operation Date*); and
- 12.6.1.2 if reasonably satisfied with the final testing, calibration and sealing, sign the certificate of release to service in terms of clause 12.6.3 (such signature not to be unreasonably withheld), failing which there shall be deemed to be a dispute in relation thereto and such dispute shall be referred to an Independent Expert for determination in accordance with clause 30 (*Fast Track Dispute Resolution*).
- 12.6.2 If a Party was informed within a reasonable time but fails to ensure that its representatives are present, then:
- 12.6.2.1 the absent Party shall be deemed to have witnessed the final testing, calibration and sealing in clause 12.6.1.1;
- 12.6.2.2 the absent Party shall be deemed to have been reasonably satisfied with the final testing, calibration and sealing and shall be deemed to have signed the certificate of release to service in clause 12.6.1.2; and
- 12.6.2.3 the Party whose meter and/or installation has been sealed shall inform the absent Party.
- 12.6.3 After the installation of each metering installation and prior to Commercial Operation Date, the Seller shall ensure:
- 12.6.3.1 that the performance of each metering installation is within specified accuracy limits;
- 12.6.3.2 the final calibration of the metering installation;
- 12.6.3.3 that an identifiable calibration seal on each billing meter device had been installed;
- 12.6.3.4 that an identifiable seal on the metering installation had been installed.
- 12.6.4 If the Seller has ensured that the provisions of this clause 12.6 (*Final testing, calibration and sealing prior to Commercial Operation Date*) have been complied with in respect of a metering installation, then that metering installation shall be released to service.

## 12.7 Testing and inspection

- 12.7.1 Subject to clauses 12.7.2 and 12.7.5, the Buyer may request a test of the Facility Metering Installation and/or the Seller may request a test of the System Metering Installation, by notice in writing to the other Party.
- 12.7.2 The Facility Metering Installation and the System Metering Installation shall be tested by the Party responsible for such meter or may be tested by a Metering Certifier as often as it deems necessary, but in any event within thirty (30) days of receipt of written request for such test pursuant to clause 12.7.1.
- 12.7.3 Save on reasonable grounds, including a suspected inaccuracy determined pursuant to clause 12.7.4, 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.
- 12.7.4 Without limiting clause 12.7.1, 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 Metering Installation, or are beyond a tolerance level of zero point five percent ( $\pm 0.5\%$ ) on active energy (MWh) readings accumulated over the Billing Period, whichever is the lesser, then each Metering Installation shall be tested.
- 12.7.5 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 12.7 (*Testing and inspection*), which shall be held between 09:00 and 17:00 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.
- 12.7.6 The Parties shall promptly provide each other with copies of test 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.
- 12.7.7 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 zero point five percent ( $\pm 0.5\%$ ), whichever is the lesser. If, as a result of a test conducted pursuant to this clause 12.7 (*Testing and inspection*), the measure of error is found to be outside this maximum tolerance, then the cause for the error in respect of the Metering Installations, as the case may be, shall be recalibrated as soon as practicable and in any event within two (2) days of the relevant Metering Installation owner being notified of such event, at the expense of the Party responsible for the non-compliant Metering Installation, and the provisions of clause 12.8 (*Readings and inaccuracy*) shall apply in respect of any data retrieved from such non-compliant Metering Installation and used for billing purposes prior to the relevant Metering Installation test.

- 12.7.8 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 Law and the Codes, they shall be repaired or replaced at the expense of the Party which owns them as soon as practicably possible.

## 12.8 Readings and inaccuracy

- 12.8.1 The Seller shall be responsible for retrieving and analysing data from the Facility Metering Installation for billing purposes on the last Business Day of each Month during each Billing Period, as the case may be, at a time mutually agreed between the Parties.
- 12.8.2 Should the Facility Metering Installation fail to register or, upon testing pursuant to clause 12.7 (*Testing and inspection*), be found to have a level of inaccuracy falling outside the maximum tolerance level specified in clause 12.7.4, then the Facility Metering Installation shall be recalibrated in accordance with clause 12.7.7 and the Energy Output from the Unit or the Facility, as the case may be, shall, for the period referred to in clause 12.8.4, be measured on the basis of the readings registered by the System Metering Installation.
- 12.8.3 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 12.7.7, then each of the System Metering Installation and the Facility Metering Installation shall be recalibrated in accordance with clause 12.7.7, and the Energy Output from the Unit or the Facility, as the case may be, shall, for the period referred to in clause 12.8.4, 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 to an Independent Expert for determination in accordance with 30 (*Fast Track Dispute Resolution*).
- 12.8.4 The period referred to in clauses 12.8.1 and 12.8.2 shall be:
- 12.8.4.1 the actual period during which inaccurate measurements were made, if such period can be determined from the logged readings; or
- 12.8.4.2 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
- 12.8.4.3 in the case of clause 12.8.2, 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, as the case may be).

- 12.8.5 Both the Facility Metering Installation and the System Metering Installation shall be synchronised to South African Standard Time ("**SAST**") and maintain time offsets not exceeding two (2) minutes from SAST.

12.9 **Miscellaneous**

- 12.9.1 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.
- 12.9.2 The Facility Metering Installation and the System Metering Installation shall not be relocated without the prior written agreement of both Parties.
- 12.9.3 The Seller shall be entitled, upon written request to the Buyer, to access the metering data from the System Metering Installation for the purposes of performing its obligations and exercising its rights under this Agreement.

12.10 **Compliance with the Buyer's metering telecommunications protocols**

- 12.10.1 The Seller shall ensure that each Metering Installation provides for the capability to interface with the Buyer's communication protocols by liaising with the Buyer prior to procurement.
- 12.10.2 The Seller shall, at its sole cost and risk, ensure that the telecommunication systems and associated infrastructure required to fulfil its metering obligations in terms of this Agreement are:
- 12.10.2.1 installed, Operated and Maintained in compliance; and
- 12.10.2.2 able to interface,
- with the Buyer's metering communication protocols and/or standards as those protocols and/or standards may be changed and/or updated from time to time.

**13. UTILITIES AND CONSUMABLES**

13.1 **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.

13.2 **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 for the duration of the Term.

#### **14. PROVISION FOR DECOMMISSIONING COSTS**

- 14.1 The Seller shall in accordance with the provisions of this Agreement make financial provision for the Decommissioning Costs as those Decommissioning Costs are reflected in the Decommissioning Financial Plan.
- 14.2 The Seller undertakes to implement the Decommissioning Plan in accordance with its obligations under applicable Laws and on the basis set out in such Decommissioning Plan.
- 14.3 The Seller may only amend the Decommissioning Plan and Decommissioning Financial Plan in writing and with approval of the Buyer, which approval may not be unreasonably withheld.
- 14.4 The Seller shall, for the duration of the Term and/or for the entire life of the Project (whichever shall be the latest):
- 14.4.1 establish the mechanism/s detailed in the Decommissioning Financial Plan, to provide for the Decommissioning Costs;
  - 14.4.2 open an interest bearing bank account with a financial institution that is approved by the Buyer to hold that portion of the total Decommissioning Costs which accrues in each Contract Year, which approval shall not be unreasonably withheld;
  - 14.4.3 ensure that the amounts detailed in the Decommissioning Financial Plan will cover the total Decommissioning Costs for the Project for the duration of the Term and/or for the entire life of the Project (whichever shall be the latest);
  - 14.4.4 ensure that the Decommissioning Financial Plan is consistent with the Seller's Financial Model;
  - 14.4.5 deposit the amounts detailed in the Decommissioning Financial Plan and the Seller's Financial Model, into the account referred to in clause 14.4.2 in accordance with the time-lines provided for therein;
  - 14.4.6 ensure that the amounts accrued in respect of the Decommissioning Costs will be used for the purposes of decommissioning of the Facility and the Project; and
  - 14.4.7 undertake the various decommissioning activities funded by the Decommissioning Costs in accordance with the Decommissioning Plan for the duration of the Term and/or for the entire life of the Project (whichever shall be the latest).
- 14.5 The Seller shall on an annual basis, within twenty (20) Business Days from the end of a Contract Year, provide, to the satisfaction of the Buyer:

- 14.5.1 confirmation that the mechanism/s established in terms of clause 14.4.1 remain valid and in compliance with all applicable legislation;
- 14.5.2 confirmation of the amount deposited into the account referred to in clause 14.4.5 during that Contract Year, as well as a reconciliation statement thereof; and
- 14.5.3 a progress report in respect of the scope of work and timelines in the Decommissioning Plan.
- 14.6 If the Seller fails to comply with its obligations in clause 14.4 and:
  - 14.6.1 either (a) fails to submit a remedial plan to the Buyer within fifteen (15) Business Days of receipt of a written notice from the Buyer notifying the Seller that it is in breach of its obligations in terms of clause 14.4; or (b) having submitted such a remedial plan timeously, the Seller fails, in that plan, to propose remedial actions and/or a reasonable time within which such remedial action shall be successfully completed (a reasonable time must be reasonable in the circumstances but may not be more than sixty (60) days); or
  - 14.6.2 submits a remedial plan, in which plan the Seller proposes remedial actions and a time within which such remedial action shall be successfully completed (which time is reasonable in the circumstances and is not more than sixty (60) days), but the Seller then fails to remedy completely and successfully the breach of its obligations in terms of clause 14.4 within the time period specified in the remedial plan,

the Buyer may, in its sole discretion:

  - 14.6.3 exercise its right to terminate this Agreement in accordance with clause 20.3 (*Termination for Seller Default*); and/or
  - 14.6.4 determine the appropriate remedy for the breach in order to secure the Decommissioning Costs, which may include, but is not limited to:
    - 14.6.4.1 the Seller changing the mechanism/s used in the Decommissioning Financial Plan, with approval of the Buyer, which approval may not be unreasonably withheld; and/or
    - 14.6.4.2 the recoupment of the arrear Decommissioning Costs from the payments due to the Seller by the Buyer under this Agreement for a specified period of time as is required to recoup the arrear Decommissioning Costs.

- 14.7 The Seller agrees that it indemnifies and shall hold harmless, upon demand, the Buyer against any claims, damages, losses, expenses and any other consequences of or arising out of the Seller's failure to comply with and/or the Buyer exercising its rights in terms of this clause 14.

## **15. SOCIO-ECONOMIC DEVELOPMENT**

### **15.1 Socio-Economic Development Obligations**

- 15.1.1 The Seller undertakes to comply with the Socio-Economic Development Obligations and attain or exceed the Semesterly Obligations, in each SED Contract Year during the Term.
- 15.1.2 The Seller undertakes to comply with the Planning Obligations and the Reporting Obligations, in order to facilitate compliance with and monitoring of its achievements in respect of the Socio-Economic Development Obligations.

### **15.2 Planning and Reporting Obligations**

- 15.2.1 The Seller's Planning Obligations are the following:
- 15.2.1.1 to, within three (3) calendar months from the Signature Date, and thereafter by 1 March of each year, deliver a proposed Socio-Economic Development Plan detailing the measures that the Seller will implement in the two (2) subsequent SED Contract Years to achieve the Socio-Economic Development Obligations. Where such Socio-Economic Development Plan is not the first such Plan, it must include an assessment of achievements of the prior two (2) completed SED Contract Years against the goals of the previous Socio-Economic Development Plan, with an articulation of improvement areas and associated execution approach, where relevant, for the next two (2) SED Contract Year period;
- 15.2.1.2 to ensure that the Socio-Economic Development Plan shall, as a minimum, include all of the information required in and fully comply with Annexure C (*Form of Socio-Economic Development Plan*) of Schedule 13 (*Socio-Economic Development Forms*). The Buyer shall be entitled, by no later than 30 June of the year following submission of the proposed Socio-Economic Development Plan, to suggest that the Seller considers alternative plans to those that the Seller proposes to implement to meet the Socio-Economic Development Obligations, taking into consideration, among others, the annual objectives of the Buyer, or if for any other reason the Buyer considers the Seller's plans to be inappropriate or ineffectual; and
- 15.2.1.3 to consider and take into account the Buyer's suggestions raised in relation to its proposed Socio-Economic Development Plan, and any general guidelines issued by the Buyer in relation to Socio-Economic Development planning, and shall within twenty-one (21) calendar days of receipt of any such suggestions submit a revised Socio-Economic Development Plan indicating how it has considered and taken into account the Buyer's comments or guidelines.

- 15.2.2 The Seller's Reporting Obligations are the following:
- 15.2.2.1 to, within twenty-one (21) calendar days after the end of each Contract Semester, deliver details of the Semesterly Achievements to the Buyer, along with such supporting information and documentation as may be reasonably required by the Buyer;
- 15.2.2.2 to keep a record in an auditable format of all activities undertaken in the Project in respect of Socio-Economic Development (including, without limitation, information relating to the achievement of the Socio-Economic Development Obligations by the Seller and the Contractors to the extent relied upon by the Seller) and make such a record(s) available to the Buyer, its representatives and/or the Socio-Economic Development Independent Monitor and allow them access to such information and records on request.
- 15.2.3 The Seller undertakes to submit the reports referred to in clause 15.2.2 to the Buyer in such form as may reasonably be required or determined by the Buyer, the initial reporting template for which is at Annexure D (*Socio-Economic Development Obligations Reporting Template*) of Schedule 13 (*Socio-Economic Development Forms*).
- 15.2.4 If, in respect of any Socio-Economic Development Obligation, in any Contract Semester the Seller is found by the Buyer or the Socio-Economic Development Independent Monitor to have submitted incorrect and or misleading reporting information or documentation, which the Seller relies on for purposes of the measurement of its performance against its Semesterly Obligations, the Seller shall be deemed not to have complied with the relevant Socio-Economic Development Obligation and shall be subject to the consequences for such non-compliance in terms of clause 15.9.1.
- 15.2.5 If, in respect of any Socio-Economic Development Obligation, in any Contract Semester the Seller does not comply with the requirements of clauses 15.2.1 or 15.2.2, or fails to submit the information requested in these clauses, the Seller may be deemed not to have complied with the relevant Socio-Economic Development Obligation and shall be subject to the consequences for such non-compliance in terms of clause 15.9.1.
- 15.3 **Socio-Economic Development Performance Measurement**
- 15.3.1 Semesterly Achievement of the Socio-Economic Development Obligations shall be calculated as follows:
- 15.3.1.1 Job Creation Semesterly Achievement for the relevant Contract Semester = total RSA-based Employee Person Months by Verified Residents divided by total RSA-based Employee Person Months, expressed as a percentage;

- 15.3.1.2 Unskilled Job Creation Semesterly Achievement for the relevant Contract Semester = total Unskilled RSA-based Employee Person Months by Verified Residents divided by total Unskilled RSA-based Employee Person Months, expressed as a percentage;
- 15.3.1.3 Skills Development Semesterly Achievement for the relevant Contract Semester = total Skills Development Contributions divided by Revenue, expressed as a percentage; and
- 15.3.1.4 Social Spending Semesterly Achievement for the relevant Contract Semester = total Social Spending divided by total Revenue, expressed as a percentage; with sub-elements calculated as follows:
- 15.3.1.4.1 Social Well-Being Programmes' spending Semesterly Achievement for the relevant Contract Semester = total spend on Social Well-Being Programmes divided by total Revenue, expressed as a percentage; and;
- 15.3.1.4.2 Social Infrastructure spending Semesterly Achievement for the relevant Contract Semester = total spend on Social Infrastructure divided by total Revenue, expressed as a percentage.
- 15.3.2 The Seller's Socio-Economic Development Performance shall be measured semesterly, calculated as Semesterly Achievement divided by Semesterly Obligation, expressed as a percentage; and will be reconciled:
- 15.3.2.1 in the Construction Measurement Period, as at the end of every SED Contract Year, within a reasonable period after the applicable reports have been submitted by the Seller; and
- 15.3.2.2 in the Operating Period, as at the end of every SED Contract Year, within a reasonable period after the applicable reports have been submitted by the Seller.
- 15.3.3 Should the Socio-Economic Development Performance reconciliation reveal a failure to achieve any one or more of the Socio-Economic Development Obligations in a given SED Contract Year, the Seller shall be subject to the consequences for non-compliance in terms of clause 15.9.2.
- 15.4 **Funding Contributions for Social Infrastructure**
- 15.4.1 The Buyer may, from time to time during the Operating Period, direct the Seller to utilise up to fifty percent (50%) of the amount of its Social Spending in respect of one or more SED

Contract Years for purposes of contributing to the funding required to implement IDP-mandated Social Infrastructure projects, provided that:

- 15.4.1.1 making financial contributions to any such Social Infrastructure projects would be lawful on the part of the Seller, and would not cause the Seller to breach a pre-existing binding contractual obligation in respect of Social Spending;
- 15.4.1.2 before directing a Seller to make any such contribution for Social Infrastructure, the Buyer shall issue a provisional directive to the Seller in writing, which provisional directive must contain sufficient detail about the nature, purpose, beneficiaries, administrators or project managers, relevant stakeholders, governance arrangements and the funding needs of the proposed Social Infrastructure project, for the Seller to be able to do such due diligence on the Social Infrastructure project as is required to properly assess (a) the lawfulness thereof; (b) whether the making of such financial contributions will adversely affect the Seller's financial position; and (c) the impact of making such financial contributions on any pre-existing obligations or commitments of the Seller, in respect of Social Spending;
- 15.4.1.3 any such provisional directive by the Buyer must be issued within a reasonable period, having regard to all relevant factors including the process of finalisation of a directive, prior to the first day of an SED Contract Year in which any such directed Social Infrastructure spending is expected to be made by the Seller;
- 15.4.1.4 the Seller will be entitled, at any time within ten (10) Business Days (or such longer period as the Parties may agree) of the date of receipt of a provisional directive as contemplated in clause 15.4.1.2, to raise in writing any concerns or objections regarding the contents of the provisional directive, in response to the Buyer, and the Buyer must consider and take into account any such representations, before deciding whether and on what terms to issue a final directive in regard to the Social Infrastructure project in question;
- 15.4.1.5 a final directive, reflecting the terms and conditions agreed with the Seller, must be issued by the Buyer within a reasonable period prior to the first day of a Contract Semester in which any such directed Social Infrastructure spending must be made by the Seller; and
- 15.4.1.6 all Social Infrastructure spending made pursuant to a directive issued in accordance with this clause 15.4.1 shall be considered, for purposes of monitoring and enforcement of this Agreement, to be Social Spending.
- 15.4.2 In the event of a dispute arising in connection with a directive issued by the Buyer in terms of clause 15.4.1, either Party may refer the matter to dispute resolution in terms of clause 30 (*Fast Track Dispute Resolution*).

## 15.5 Recognition of Administration Costs on Skills Development and Social Spending

- 15.5.1 The Buyer acknowledges and accepts that the Seller will incur certain administration costs for purposes of performing its Socio-Economic Development Obligations in respect of Skills Development and Social Spending.
- 15.5.2 The administration costs detailed in clauses 15.5.3.1 and 15.5.3.2 below may be claimed by the Seller as contributions towards its Skills Development spend and Social Spending.
- 15.5.3 Administration costs which may be claimed by the Seller in accordance with clause 15.5.2 are limited to the costs incurred by the Seller:
- 15.5.3.1 in respect of the maintenance of Skills Development initiatives and Social Spending initiatives, limited to that portion of salaries and wages attributable to Employee time spent in, and other expenses directly related to, the promotion and implementation of such initiatives; and/or
- 15.5.3.2 to pay suitably qualified and experienced third parties who undertake Skills Development initiatives and Social Spending initiatives on the Seller's behalf.
- 15.5.4 The Buyer will not recognise any administration costs referred to in clause 15.5.2, to the extent that they exceed fifteen percent (15%) of the total value of the obligations owed by the Seller in respect of Skills Development and Social Well-Being Programmes, in any SED Contract Year.

## 15.6 Socio-Economic Development Verification

- 15.6.1 The Seller shall, and undertakes to ensure that its Material Contractors shall:
- 15.6.1.1 monitor, audit, and record in an auditable manner, implementation of and compliance with this clause 15 (*Socio-Economic Development*) by or on behalf of the Seller; and
- 15.6.1.2 report to the Buyer immediately upon the occurrence of, or as soon as practically possible thereafter, any event or circumstance that may adversely affect the ability of the Seller to adhere to its Socio-Economic Development Obligations under this clause 15 (*Socio-Economic Development*), and provide to the Buyer a detailed report of steps taken to mitigate such inability to achieve the relevant Socio-Economic Development Obligations.
- 15.6.2 The Seller shall at its own cost appoint an independent auditor to, on an annual basis in respect of each SED Contract Year:
- 15.6.2.1 review the Seller's and its Material Contractors' records including any records relating to any Socio-Economic Development monitoring or audits conducted by the

Seller and its Material Contractors, for purposes of verification of all claims made by the Seller as to compliance with its Socio-Economic Development Obligations; and

15.6.2.2 prepare a report on the basis of its review, detailing its findings on the extent to which the Seller has met its obligations as set out in this clause 15 (*Socio-Economic Development*) and in particular the extent to which the Seller's achievements in respect of its Socio-Economic Development Obligations, as detailed in its Semesterly Socio-Economic Development reports, accurately reflect or exceed its actual achievements, based on the Seller's and Material Contractors' records pertaining thereto and provided by the Seller and Material Contractors to such independent auditor; and

15.6.2.3 submit such report to the Buyer within 6 (six) months after the end of the applicable SED Contract Year.

15.6.3 The information detailed in the annual audit report must be set out in a manner that facilitates the assessment by the Buyer of the Seller's Socio-Economic Development Performance as contemplated in clause 15.3.1; and to this end must include confirmation by the auditor, in a form satisfactory to the Buyer, of the Seller's achievements in respect of each Socio-Economic Development Obligation in the applicable measurement period.

15.6.4 The services to be provided by the independent auditor must be performed in accordance with appropriate professional standards, to be notified to the Seller by the Buyer from time to time.

15.6.5 Notwithstanding the provisions of clauses 15.6.2 and 15.6.3 above, the Buyer shall have the entitlement from time to time, in its sole discretion, to appoint a person or persons as Socio-Economic Development Independent Monitor(s) to carry out a separate audit of the Seller's performance in respect of its Socio-Economic Development Obligations, for purposes of compliance monitoring or in the event that the Buyer disputes the findings of the independent auditor appointed by the Seller. The costs of such appointment shall be borne by the Buyer.

15.6.6 The appointment of the Socio-Economic Development Independent Monitor is in the sole discretion of the Buyer, and the person or persons may be appointed at any time during the Term.

15.6.7 The Socio-Economic Development Independent Monitor may, subject to the terms of appointment, *inter alia*:

15.6.7.1 review the Seller's and its Material Contractors' records including any monitoring or audits conducted by the Seller and its Material Contractors, to verify compliance with the requirements of this clause 15 (*Socio-Economic Development*); and

15.6.7.2 prepare reports in relation to any of the review or monitoring carried out by it in terms of this clause 15 (*Socio-Economic Development*).

- 15.6.8 Upon receipt by the Buyer of the applicable annual audit reports as contemplated in clauses 15.6.2 and 15.6.3, or receipt of any report compiled by the Socio-Economic Development Independent Monitor, the Buyer shall notify the Seller of any identified non-compliance with its Socio-Economic Development Obligations and whether the Seller shall be subject to the consequences for non-compliance in terms of clause 15.9.2.

## 15.7 **Access to Information**

- 15.7.1 The Seller will, and undertakes to ensure that its Material Contractors (where applicable) will:

- 15.7.1.1 provide the Socio-Economic Development Independent Monitor with such information and documentation as the Socio-Economic Development Independent Monitor reasonably requests concerning the implementation by the Seller and its Material Contractors of this clause 15 (*Socio-Economic Development*); and

- 15.7.1.2 allow the Buyer and the Socio-Economic Development Independent Monitor access to all the information and documentation on which the Semesterly Achievement of the Seller and the Material Contractors were based, provided that the Socio-Economic Development Independent Monitor shall be subject to the same confidentiality obligations as apply to the Buyer in terms of this Agreement.

- 15.7.2 In the event of any failure or refusal by the Seller or any Material Contractor (or their sub-contractors) to allow the Buyer, or the Seller's appointed independent auditor, or the Socio-Economic Development Independent Monitor, access to all the information, records and documentation on which the Semesterly Achievements of the Seller are based, the Buyer shall be entitled to treat the affected Socio-Economic Development Obligations as not having been met, for the purposes of determining whether the Seller is in breach of this Agreement.

- 15.7.3 In the event of a failure or refusal by the Seller or any Material Contractor (or their sub-contractors) to allow the Socio-Economic Development Independent Monitor access to all the information, records and documentation on which the Semesterly Achievements of the Seller are based, the Seller shall in addition to any other consequences of such non-compliance in terms of this Agreement be liable to the Buyer in an amount equal to 50% (fifty per cent) of the total amount payable by the Buyer to the Socio-Economic Development Independent Monitor to perform its functions in relation to the Project. Any such amount must be paid by the Seller to the Buyer within twenty (20) Business Days of the date of a written demand from the Buyer.

## 15.8 **Issuance of Socio-Economic Development Monitoring Notes**

- 15.8.1 The Buyer may, from time to time, issue monitoring notes ("**SED Monitoring Notes**"), which are intended to provide the Buyer's views on the interpretation of aspects of the Socio-

Economic Development Obligations and/or to provide guidance on issues related to the Socio-Economic Development Obligations.

- 15.8.2 All SED Monitoring Notes issued by the Buyer shall be binding on the Seller in the implementation of its Socio-Economic Development Obligations, provided that nothing in the SED Monitoring Notes is inconsistent with a provision of this Agreement.

## 15.9 Consequences of Non-Compliance

- 15.9.1 If the Seller fails to comply with any of its Planning Obligations or its Reporting Obligations per clause 15.2 (*Planning and Reporting Obligations*), in any SED Contract Year, the Seller will be liable for a financial penalty, payable to the Buyer within 30 days of being notified of such by the Buyer, equivalent to zero-point five percent (0.5%) of the Construction Cost or Revenue, as the case may be, for that SED Contract Year.
- 15.9.2 If the Seller submits incorrect and/or misleading reporting information or documentation per clause 15.2 (*Planning and Reporting Obligations*), in any SED Contract Year, the Seller will be liable for a financial penalty, payable to the Buyer within 30 days of being notified of such by the Buyer, equivalent to zero-point five percent (0.5%) of the Construction Cost or Revenue, as the case may be, for that SED Contract Year.
- 15.9.3 A further financial penalty may be levied on the Seller for non-compliance with one or more Socio-Economic Development Obligations, on the conclusion of a given SED Contract Year, which penalty is payable to the Buyer within 30 calendar days of being notified as such. The amount of such further financial penalty is based on the following Socio-Economic Development Performance and penalty factor calculation, for the relevant Contract Semester:

| Socio-Economic Development Performance | Penalty Factor (percentage of Contract Semester Construction Cost) | Penalty Factor (percentage of Contract Semester Revenue) |
|----------------------------------------|--------------------------------------------------------------------|----------------------------------------------------------|
| <=25%                                  | 2.75%                                                              | 1.25%                                                    |
| 25%<=50%                               | 2.25%                                                              | 1.00%                                                    |
| 50%<=75%                               | 1.50%                                                              | 0.75%                                                    |
| 75%<100%                               | 1.25%                                                              | 0.50%                                                    |

## 16. CONSEQUENCES OF A SYSTEM EVENT

- 16.1 The Seller shall not be entitled to bring any claims under this clause 16 (*Consequences of a System Event*) in respect of the period prior to the Scheduled COD.

- 16.2 Subject to clauses 16.1, if and to the extent that a System Event occurs:
- 16.2.1 that causes a delay in the achievement of the Commercial Operation Date beyond the Scheduled COD; and/or
- 16.2.2 after the Commercial Operation Date, that 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, subject to the remaining provisions of this clause 16, be entitled to the relief and/or extensions of time and/or Deemed Energy Payments provided for in terms of clauses 16.3.2, 16.3.4, 16.4.2 or 16.4.4 (as applicable).
- 16.3 **System Events referred to in clause 16.2.1**
- 16.3.1 In order to obtain relief and/or payment of the Deemed Energy Payment pursuant to a System Event referred to in clause 16.2.1, the Seller must:
- 16.3.1.1 as soon as practicable, and in any event within five (5) days after it becomes aware, or ought reasonably to have become aware, that the System Event is likely to occur, or has occurred, give to the Buyer a notice thereof which includes details of whether and to what extent the System Event has caused or is likely to cause delay in the achievement of the Commercial Operation Date beyond the Scheduled COD; and
- 16.3.1.2 within ten (10) days of the notice referred to in sub-clause 16.3.1.1, provide the Buyer with the full details of such System Event and any relief claimed, stating:
- 16.3.1.2.1 the anticipated revised date for the connection of the Facility to the System; and
- 16.3.1.2.2 whether the Seller anticipates a delay in the achievement of the Commercial Operation Date beyond Scheduled COD, and if so the extent of such delay;
- 16.3.1.3 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;
- 16.3.1.4 where applicable, provide the Buyer with all Project information (including schedules, milestones, communications and other data) and amendments agreed with the Distributor under the Distribution Agreement;
- 16.3.1.5 demonstrate to the reasonable satisfaction of the Buyer that:
- 16.3.1.5.1 the System Event directly caused the delay in the achievement of the Commercial Operation Date beyond Scheduled COD by impacting critical activities, as evidenced by clear substantiating records and documents submitted by the Seller to the Buyer;

- 16.3.1.5.2 the Seller would, but for the inability to commission and test the Facility due to the System Event, have been able to achieve the Commercial Operation Date and generate and deliver Energy Output;
- 16.3.1.5.3 the Facility would, but for the System Event, have been able to generate and deliver Energy Output;
- 16.3.1.5.4 the System Event, 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;
- 16.3.1.5.5 the Seller is using reasonable endeavours to perform its obligations under this Agreement; and
- 16.3.1.6 in the case of the Seller, identify all delays, including delays arising from the Seller, Contractors and the Contractors' subcontractors as at the date on which the System Event occurred, which do not result from the System Event (the "**Non-System Event Delays**").
- 16.3.2 If the Seller has complied with its obligations under clause 16.3.1 above, then subject to the provisions of clause 16.3.4 below:
- 16.3.2.1 the Scheduled COD shall remain unchanged, the Expiry Date shall continue to occur twenty (20) years after Scheduled COD, and the Operating Period shall continue to commence on the later of the unchanged Scheduled COD and the Commercial Operation Date;
- 16.3.2.2 the Last COD shall be postponed by one (1) day for every day by which the Commercial Operation Date is delayed by the System Event. The postponement to the Last COD shall not include postponement on account of delays arising from Non-System Event Delays;
- 16.3.2.3 the Buyer shall only be entitled to exercise its rights to terminate this Agreement under clause 20.3 (*Termination for Seller Default*) if the Seller fails to achieve the Commercial Operation Date by such postponed Last COD; and
- 16.3.2.4 the Seller shall be entitled to receive payments in the amount of the Deemed Energy Payment for the period by which the System Event caused the Commercial Operation Date to be delayed beyond the original Scheduled COD, calculated in accordance with clause 3 (*Deemed Energy Payment for System Events and Compensation Events occurring after the Commercial Operation Date*) of Schedule 6 (*Deemed Energy Payment*) and subject to any adjustments that may be effected in terms of clause 4 (*Adjustment of Deemed Energy Payments*) of Schedule 6 (*Deemed Energy Payment*).

- 16.3.3 If the Seller provides any of the information required in terms of clause 16.3.1 above after the dates for submission of information referred to in that clause, then the Seller shall not be entitled to any relief or to payment of the Deemed Energy Payment, for the same number of days as the number of days during which the Seller failed to provide such information.
- 16.3.4 If and to the extent that a System Event for which relief or compensation is claimed by the Seller in accordance with clause 16.3.1 is caused by one or more *force majeure* events under the Distribution Agreement which affect the performance by the Buyer (including in its capacity as Distributor) of all or part of its obligations under the Distribution Agreement, then, subject to compliance by the Seller with clause 16.3.1.5 and by the Buyer with clause 16.3.5 below:
- 16.3.4.1 the Scheduled COD shall be deferred for a period equal to the period by which the System Event directly caused the delay in the achievement of the Commercial Operation Date, beyond the original Scheduled COD (and the Expiry Date shall be calculated from the revised Scheduled COD). The deferral of the Scheduled COD shall not include deferral on account of delays to the achievement of the Scheduled COD caused by the Non-System Event Delays;
- 16.3.4.2 the Seller shall not be entitled to receive, and the Buyer shall not be required to pay, any Deemed Energy Payments contemplated in clause 16.3.2; and
- 16.3.4.3 the Buyer shall not be entitled to exercise its rights in terms of clause 20.3 (*Termination for Seller Default*) of this Agreement; and
- 16.3.4.4 the Expiry Date shall be extended in terms of clause 16.3.8, 16.3.9 and 16.3.10 to such date as to place the Seller in the same overall economic position it would have been in but for such System Event resulting from one or more of the *force majeure* events under the Distribution Agreement; provided that the Expiry Date may not be extended by more than five (5) years pursuant to this clause.
- 16.3.5 In order for the provisions of clause 16.3.4 to apply, the Buyer must:
- 16.3.5.1 as soon as practicable, and in any event within ten (10) days after it became aware or ought to have reasonably become aware that a *force majeure* event under the Distribution Agreement has caused a System Event which hinders or prevents the achievement of the Commercial Operation Date beyond Scheduled COD, give to the Seller a notice providing details of the *force majeure* event which caused the System Event, the date of occurrence and its likely duration (if known);
- 16.3.5.2 within fifteen (15) days of the Buyer giving the notice referred to in clause 16.3.5.1, give such additional details of the *force majeure* event under the Distribution Agreement which caused the System Event and the consequences of such System Event including its likely impact on the Project, including the anticipated revised date for the connection of the Facility to the System;

- 16.3.5.3 demonstrate to the reasonable satisfaction of the Seller that:
- 16.3.5.3.1 the System Event is a direct result of such *force majeure* event and that the *force majeure* event impacted on critical activities, as evidenced by clear substantiating records and documents;
  - 16.3.5.3.2 the Buyer could not have avoided the occurrence or consequences of the System Event by steps which it might reasonably be expected to have taken, without incurring material expenditure;
  - 16.3.5.3.3 there is a need for relief from other obligations of the Buyer under this Agreement as a direct result of the System Event in question;
  - 16.3.5.3.4 any such relief from the Buyer's obligations under this Agreement could not reasonably be expected to be mitigated or recovered by the Buyer acting in accordance with the standards of a Reasonable and Prudent Operator, without incurring material expenditure; and
  - 16.3.5.3.5 the Buyer is using reasonable endeavours to perform its obligations under this Agreement.
- 16.3.6 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.
- 16.3.7 If the Parties cannot agree on the extent of the relief required, or the Seller disagrees that the System Event was caused by *force majeure* under the Distribution Agreement, or the Buyer disagrees that a System Event has occurred or that the Seller is entitled to any extension of the Scheduled COD or the Last COD or the Expiry Date and/or to any Deemed Energy Payment (all as applicable), the matter shall be dealt with in accordance with clause 29 (*Dispute Resolution*).
- 16.3.8 For the purposes of clause 16.3.4.4, the "same overall economic position" shall, subject to the provisions of clauses 16.3.9 and 16.3.10, be calculated by agreement between the Buyer and the Seller and, in the absence of such agreement, by an Independent Expert at the request of either Party pursuant to clause 30 (*Fast Track Dispute Resolution*), in the following manner:
- 16.3.8.1 quantify the loss suffered by the Seller, which could include additional costs incurred by the Seller resulting directly from the occurrence of the System Event caused by one or more of the *force majeure* events under the Distribution Agreement referred to in clause 16.3.4, less the amount of any variable costs that the Seller saved during the period that the System Event continued;
  - 16.3.8.2 in calculating the period of extension of the Expiry Date required to compensate for the quantified loss:

- 16.3.8.2.1 use the Financial Model;
- 16.3.8.2.2 update the Financial Model with the quantified loss for the period referred to and determined in terms of clause 16.3.4.1 as being the period by which the System Event caused the Commercial Operation Date to be delayed beyond the original Scheduled COD, in order to:
  - 16.3.8.2.2.1 calculate the resulting reduction in the Base IRR; and
  - 16.3.8.2.2.2 solve for the period of extension of the Expiry Date required to restore the Base IRR for the impact of the System Event by extending the projected monthly cashflows, using input parameters contained in the Financial Model, and calculating the Achieved IRR up to the date on which the Base IRR is achieved ("**maximum extension of the Expiry Date**").
- 16.3.9 At a date not less than six (6) months and not more than twelve (12) months before the Expiry Date, the Seller shall calculate its Achieved IRR by taking all amounts (by way of dividends, other distributions, interest, and principal on Shareholder Loans) already paid by the Seller in respect of Equity up to the date of the calculation, taking into account the actual timing of all such payments as well as projected payments to Shareholders in the Seller up to the Expiry Date.
- 16.3.10 If the calculation referred to in clause 16.3.9 shows that the Seller:
  - 16.3.10.1 will achieve the Base IRR by the original Expiry Date, the Expiry Date will not be extended for reason of the System Event in question;
  - 16.3.10.2 will not achieve the Base IRR by the original Expiry Date, the period of extension of the Expiry Date will be calculated as follows:
    - 16.3.10.2.1 the Seller will provide an analysis for the reasons why the Base IRR has not been achieved, separating the factors that are directly attributable to the System Event from those that are not attributable to the System Event, including the Non-System Event Delays; and
    - 16.3.10.2.2 the Seller will prepare projected monthly cashflows for the "maximum extension of the Expiry Date", using the input parameters contained in the Financial Model unless either Party objects to any such parameter as not properly reflecting the most likely outcome for the issue which is the subject of the input parameter concerned, in which case the Buyer and the Seller shall agree to amend the input parameter concerned to reflect the most likely outcome or, in the absence of agreement between the Parties, refer the matter for determination by an Independent Expert in accordance with clause 30 (*Fast Track Dispute Resolution*); and

- 16.3.10.2.3 the Seller will carry out a calculation of the new Rand-based nominal blended post tax internal rate of return to Shareholders pursuant to clause 16.3.10.2.2, excluding the impact of the System Event (the "**Recalculated Base IRR excluding System Event**"). The resultant Recalculated Base IRR excluding System Event can never exceed the Base IRR as reflected in the Financial Model.
- 16.3.11 If the calculation referred to in clause 16.3.9 shows that the Seller:
- 16.3.11.1 will achieve the Recalculated Base IRR excluding the System Event by the original Expiry Date, the Expiry Date will not be extended for reason of the System Event in question;
- 16.3.11.2 will not achieve the Recalculated Base IRR excluding the System Event by the original Expiry Date, the period of extension of the Expiry Date will be calculated as follows:
- 16.3.11.2.1 the Seller will calculate the resulting actual period required to achieve the Recalculated Base IRR excluding the System Event;
- 16.3.11.2.2 the period of extension of the Expiry Date shall be the lesser of (i) the "maximum extension of the Expiry Date" calculated under clause 16.3.8.2.2.2, (ii) the period calculated in terms of clause 16.3.11.2.1 and (iii) five (5) years (less the aggregate of all other extensions of the Expiry Date in terms of this clause 14 (*Consequences of a System Event*)).
- 16.4 **System Events referred to in clause 16.2.2**
- 16.4.1 In order to obtain relief and/or payment of the Deemed Energy Payment pursuant to a System Event referred to in clause 16.2.2, the Seller must:
- 16.4.1.1 as soon as practicable, and in any event within five (5) days after it becomes aware, or ought reasonably to have become aware, that the System Event is likely to occur, or has occurred, give to the Buyer a notice thereof which includes details of whether and to what extent the System Event materially adversely affects the ability of the Seller to perform its obligations or exercise its rights; and
- 16.4.1.2 within ten (10) days of the notice referred to in sub-clause 16.4.1.1, provide the Buyer with the full details of such System Event and any relief claimed, stating full details of the nature of the System Event, the first date of occurrence, its likely duration (if known) and the relief claimed;
- 16.4.1.3 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;
- 16.4.1.4 demonstrate to the reasonable satisfaction of the Buyer that:

- 16.4.1.4.1 the System Event materially adversely affected the ability of the Seller to perform any of its obligations or exercise any of its rights under this Agreement;
- 16.4.1.4.2 the Facility would, but for the System Event, have been able to generate and deliver Energy Output;
- 16.4.1.4.3 there is a need for relief from other obligations of the Seller under this Agreement, as a direct result of a System Event;
- 16.4.1.4.4 the System Event, 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
- 16.4.1.4.5 the Seller is using reasonable endeavours to perform its obligations under this Agreement; and
- 16.4.1.4.6 the Seller has identified all events that have materially adversely affected the ability of the Seller to perform any of its obligations or exercise any of its rights that are not System Events including operational underperformance ("**Non-System Events Impacts**").
- 16.4.2 If the Seller has complied with its obligations under clause 16.4.1 above, then subject to the provisions of clause 16.4.3 below:
  - 16.4.2.1 the Seller shall be entitled to receive the Deemed Energy Payment for the period that the System Event continues, calculated in accordance with clause 4 (*Adjustment of Deemed Energy Payments*) of Schedule 6 (*Deemed Energy Payment*); and/or
  - 16.4.2.2 the Buyer shall not be entitled to exercise its rights to terminate this Agreement under clause 20.3 (*Termination for Seller Default*) for reason of the failure of the Seller to comply with any provision of this Agreement as a result of such System Event.
- 16.4.3 If the Seller provides any of the information required in terms of clause 16.4.1 above after the dates for submission of information referred to in that clause, then the Seller shall not be entitled to any relief or to payment of the Deemed Energy Payment, for the same number of days as the number of days during which the Seller failed to provide such information.
- 16.4.4 If and to the extent that a System Event for which relief or compensation is claimed by the Seller in accordance with clause 16.4.2 is caused by one or more of the *force majeure* events under the Distribution Agreement which are listed in clause 16.4.5, then, subject to compliance by the Buyer with clause 16.4.6 below:
  - 16.4.4.1 the Seller shall not be entitled to receive, and the Buyer shall not be required to pay, any Deemed Energy Payments contemplated in clause 16.4.2;

- 16.4.4.2 the Buyer shall not be entitled to exercise its rights in terms of clause 20.3 (*Termination for Seller Default*) of this Agreement; and
- 16.4.4.3 the Expiry Date shall be extended in terms of clause 16.4.10 to such date as to place in the Seller in the same overall economic position it would have been in but for such System Event resulting from one or more of the *force majeure* events listed in clause 16.4.5 below; provided that the Expiry Date may not be extended by more than five (5) years pursuant to this clause.
- 16.4.5 The force majeure events under the Distribution Agreement, to which the provisions of clause 16.4.4 apply, are the following:
- 16.4.5.1 catastrophic earthquake, tsunami, cyclone, typhoon or tornado;
- 16.4.5.2 epidemic or plague;
- 16.4.5.3 acts of war whether declared or not, invasion, armed conflict, act of foreign enemy or blockade in each case occurring with or involving South Africa;
- 16.4.5.4 acts of rebellion, act or campaign of terrorism, or sabotage of a political nature, in each case occurring within South Africa; and
- 16.4.5.5 boycott, sanction or embargo.
- 16.4.6 In order for the provisions of clause 16.4.4 to apply, the Buyer must:
- 16.4.6.1 as soon as practicable, and in any event within ten (10) days after it became aware or ought to have reasonably become aware that an event referred to in clause 16.4.5 has caused a System Event which materially adversely affects the ability of the Seller to perform its obligations or exercise its rights, give to the Seller a notice providing details of the event referred to in clause 16.4.5 which caused the System Event, the date of occurrence and its likely duration (if known);
- 16.4.6.2 within fifteen (15) days of the Buyer giving the notice referred to in clause 16.4.6.1, give such additional details of the event referred to in clause 16.4.5 which caused the System Event and the consequences of such System Event including its likely impact on the Project;
- 16.4.6.3 demonstrate to the reasonable satisfaction of the Seller that:
- 16.4.6.3.1 the Buyer could not have avoided the occurrence or consequences of the System Event by steps which it might reasonably be expected to have taken, without incurring material expenditure;
- 16.4.6.3.2 there is a need for relief from other obligations of the Buyer under this Agreement as a direct result of a System Event in question;
- 16.4.6.3.3 any such relief from the Buyer's obligations under this Agreement could not reasonably be expected to be mitigated or recovered by the Buyer acting in

accordance with the standards of a Reasonable and Prudent Operator, without incurring material expenditure; and

16.4.6.3.4 the Buyer is using reasonable endeavours to perform its obligations under this Agreement.

16.4.7 Upon receipt of the information set out in clause 16.4.6 from the Buyer, the Seller shall as soon as reasonably possible provide proof that the Seller is using reasonable endeavours to perform its obligations under this Agreement.

16.4.8 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.

16.4.9 If the Parties cannot agree on the extent of the relief required, or the Seller disagrees that the System Event was caused by *force majeure* under the Distribution Agreement, or the Buyer disagrees that a System Event has occurred or that the Seller is entitled to any Deemed Energy Payment or any extension to the Expiry Date, and/or relief from other obligations under this Agreement (all as applicable), the matter shall be dealt with in accordance with clause 29 (*Dispute Resolution*).

16.4.10 For the purposes of clause 16.4.4.3, the "same overall economic position" shall, subject to the provisions of clauses 16.4.11 and 16.4.12, be calculated by agreement between the Buyer and the Seller and, in the absence of such agreement, by an Independent Expert at the request of either Party pursuant to clause 30 (*Fast Track Dispute Resolution*), in the following manner:

16.4.10.1 quantify the loss suffered by the Seller, which could include additional costs incurred by the Seller resulting directly from the occurrence of the System Event caused by one or more of the *force majeure* events under the Distribution Agreement referred to in clause 16.4.5, less the amount of any variable costs that the Seller saved during the period that the System Event continued;

16.4.10.2 in calculating the period of extension of the Expiry Date required to compensate for the quantified loss:

16.4.10.2.1 use the Financial Model;

16.4.10.2.2 update the Financial Model with the quantified loss for the period in which the System Event occurred, and not taking into account any other event of delays not caused by the System Event, in order to:

16.4.10.2.2.1 calculate the resulting reduction in the Base IRR; and

16.4.10.2.2.2 solve for the period of extension of the Expiry Date required to restore the Base IRR reflected in the Financial Model for the impact of the System Event by extending the projected monthly cashflows, using

input parameters contained in the Financial Model, and calculating the Achieved IRR up to the date on which the Base IRR is achieved "**post COD maximum extension of the Expiry Date**".

- 16.4.11 At a date not less than six (6) months and not more than twelve (12) months before the Expiry Date, the Seller shall calculate its Achieved IRR by taking all amounts (by way of dividends, other distributions, interest, and principal on Shareholder Loans) already paid by the Seller in respect of Equity up to the date of the calculation, taking into account the actual timing of all such payments as well as projected payments to Shareholders in the Seller up to the Expiry Date.
- 16.4.12 If the calculation referred to in clause 16.4.11 shows that the Seller:
- 16.4.12.1 will achieve the Base IRR by the original Expiry Date, the Expiry Date will not be extended for reason of the System Event in question;
- 16.4.12.2 will not achieve the Base IRR by the original Expiry Date, the period of extension of the Expiry Date will be calculated as follows:
- 16.4.12.2.1 the Seller will provide an analysis for the reasons why the Base IRR has not been achieved, separating the factors that are directly attributable to the System Event from those that are as a result of the Non-System Event Impacts;
- 16.4.12.2.2 the Seller will prepare projected monthly cashflows for the "post COD maximum extension of the Expiry Date", using the input parameters contained in the Financial Model unless either Party objects to any such parameter as not properly reflecting the most likely outcome for the matter which is the subject of the input parameter concerned, in which case the Buyer and the Seller shall agree to amend the input parameter concerned to reflect the most likely outcome or, in the absence of agreement between the Parties, refer the matter for determination by an Independent Expert in accordance with clause 30 (*Fast Track Dispute Resolution*); and
- 16.4.12.2.3 the Seller will carry out a calculation of the Achieved IRR, pursuant to clause 16.4.13.2.1 excluding the impact of the System Event (the "**Recalculated Base IRR excluding System Event**"). The resultant Recalculated Base IRR excluding System Event can never exceed the Base IRR reflected in the Financial Model.
- 16.4.13 If the calculation referred to in clause 16.4.11 shows that the Seller:
- 16.4.13.1 will achieve the Recalculated Base IRR excluding the System Event by the original Expiry Date, the Expiry Date will not be extended for reason of the System Event in question;

- 16.4.13.2 will not achieve the Recalculated Base IRR excluding the System Event by the original Expiry Date, the period of extension of the Expiry Date will be calculated as follows:
- 16.4.13.2.1 the Seller will calculate the actual period required to achieve the Recalculated Base IRR excluding the System Event; and
- 16.4.13.2.2 the period of extension of the Expiry Date shall be the lesser of (i) the "post COD maximum extension of the Expiry Date", (ii) the period calculated in terms of clause 16.4.13.2.1 and (iii) five (5) years (less the aggregate of all other extensions of the Expiry Date in terms of this clause 0 (*Consequences of a System Event*)).
- 16.5 The Seller shall not be entitled an extension to the Expiry Date on account of Non-System Event Delays.
- 16.6 No claim for any relief in terms of this clause 0 (*Consequences of a System Event*) may be made after the date which falls six (6) months after the date that the Party claiming such relief became aware of, or should have reasonably become aware of, the relevant System Event.

## **17. CONSEQUENCES OF A COMPENSATION EVENT**

- 17.1 If, as a direct result of the occurrence of a Compensation Event:
- 17.1.1 the Seller is unable to achieve the Commercial Operation Date by the Scheduled COD;
- 17.1.2 the Seller is unable to comply with its obligations under this Agreement; and/or
- 17.1.3 the Seller incurs costs or loses revenue,
- then the Seller is entitled to apply for relief from its obligations under this Agreement, and from any rights of the Buyer arising under clause 20.3 (*Termination for Seller Default*), to claim compensation under this Agreement and/or, if the Compensation Event is the failure of the Buyer to make due payment as detailed in clause 8 (*Tariff and other Charges*) and subject to the provisions of clause 8.5 (*Failure to make payments*), to make a claim under the Liquidity Support.
- 17.2 To obtain relief and/or claim compensation and prior to making a claim under the Liquidity Support, the Seller must:
- 17.2.1 as soon as practicable, and in any event within five (5) days after it became aware or ought reasonable to have become aware that the Compensation Event has caused or is likely to cause delay, breach of an obligation under this Agreement, the Seller to incur costs or lose revenue, give to the Buyer a notice of its claim for postponement of the Last COD, payment of compensation and/or relief from its obligations under this Agreement;
- 17.2.2 within ten (10) days of receipt by the Buyer of the notice referred to in clause 17.2.1 above, give the Buyer full details of the Compensation Event and the extension of time and/or any estimated change in project costs claimed and/or the loss of revenue claimed; and
- 17.2.3 demonstrate to the reasonable satisfaction of the Buyer that:

- 17.2.3.1 the Compensation Event was the direct cause of the estimated change in project costs, the loss of revenue claimed and/or any delay in the achievement of the Commercial Operation Date by the Scheduled COD; and
- 17.2.3.2 the estimated change in project costs, the loss of revenue claimed, time lost, and/or relief from the obligations under the Agreement claimed, could not reasonably be expected to be mitigated or recovered by the Seller acting in accordance with the standards of a Reasonable and Prudent Operator; and
- 17.2.4 in the case of the Seller, identify all delays, including delays arising from the Seller, Contractors and the Contractors' subcontractors as at the date on which the Compensation Event occurred, which do not result from the Compensation Event (the "**Non-Compensation Event Delays**").
- 17.3 If the Seller has complied with its obligations under clause 17.2, then:
  - 17.3.1 prior to the Commercial Operation Date, the Scheduled COD shall remain unchanged, the Expiry Date shall continue to occur twenty (20) years after 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 such time as shall be reasonable for such a Compensation Event, taking into account the likely effect of the delay. The postponement to the Last COD shall not include delays on account of Non-Compensation Event Delays;
  - 17.3.2 in the case of any additional costs being incurred by the Seller:
    - 17.3.2.1 on or before the Commercial Operation Date; or
    - 17.3.2.2 as a result of Capital Expenditure being incurred by the Seller at any time,
 

the Buyer shall, after agreement between the Parties on the relevant amount, have the option to compensate the Seller for the actual estimated change in project costs as adjusted to reflect the actual costs reasonably incurred either:

      - 17.3.2.2.1 in one lump-sum payment, payable within ninety (90) Business Days of reaching agreement contemplated under clause 17.3.2; or
      - 17.3.2.2.2 in equal monthly instalments for the remainder of the Term, commencing within ninety (90) Business Days of reaching the agreement contemplated under clause 17.3.2, 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;
  - 17.3.3 in the case of:
    - 17.3.3.1 a change in project costs that does not result in Capital Expenditure being incurred by the Seller but which reflects a change in the costs incurred by the Seller after the Commercial Operation Date; and/or

- 17.3.3.2 revenue lost by the Seller,
- the Buyer shall compensate the Seller in accordance with clause 17.6;
- 17.3.4 the Buyer shall give the Seller such relief from its obligations under this Agreement, as is reasonable for such a Compensation Event; and/or
- 17.3.5 if the Compensation Event arises out of the failure of the Buyer to make a due payment as detailed in clause 8 (*Tariff and other charges*), the Seller shall be entitled to enforce the Liquidity Support in accordance with the provisions of clause 17.8 (*Liquidity Support*).
- 17.4 If information is provided after the dates referred to in clause 17.2, then the Seller shall not be entitled to any extension of time, compensation, or relief from its obligations under this Agreement, nor make a claim under the Liquidity Support, in respect of the period for which the information is delayed.
- 17.5 If the Parties cannot agree on the extent of any compensation, delay incurred, or relief from the Seller's obligations under this Agreement, or the Buyer disagrees that a Compensation Event has occurred (or as to its consequences), or that the Seller is entitled to any relief under this clause 17 (*Consequences of a Compensation Event*), the Parties shall resolve the matter in accordance with clause 29 (*Dispute Resolution*).
- 17.6 The amount of any compensation for loss of revenue referred to in clause 17.3.3 shall be calculated in accordance with:
- 17.6.1 clause 2 (*Deemed Energy Payment for System Events and Compensation Events occurring before the Commercial Operation Date*) of Schedule 6 (*Deemed Energy Payment*) if the Compensation Event occurs before the Commercial Operation Date; or
- 17.6.2 clause 3 (*Deemed Energy Payment for System Events and Compensation Events occurring after the Commercial Operation Date*) of Schedule 6 (*Deemed Energy Payment*) if the Compensation Event occurs after the Commercial Operation Date,
- and shall be in addition to any other applicable compensation payable under clause 17.3, and reflected as separate line items in the Invoice.
- 17.7 No claim for any relief in terms of this clause 17 (*Consequences of a Compensation Event*) may be made after the date which falls six (6) months after the date that the Party claiming such relief became aware of, or should have reasonably become aware of, the relevant Compensation Event.
- 17.8 **Liquidity Support**
- 17.8.1 As security for the performance of its payment obligations under this Agreement, the Buyer shall procure the issue of Liquidity Support for an amount that is not less than the Liquidity

Support Amount, which shall remain valid from the Scheduled COD until the Termination Date.

- 17.8.2 If, pursuant to any claim made by the Seller under the Liquidity Support, in full or in part, the amount that may be claimed under the Liquidity Support is less than the Liquidity Support Amount, the Buyer shall procure the issue, within thirty (30) days of such claim being made by the Seller under the Liquidity Support, of additional or substitute Liquidity Support in such amount as may be required to ensure compliance with its obligations under clause 17.8.1.
- 17.8.3 The Seller shall be entitled to make a claim under the Liquidity Support from time to time if and to the extent that:
- 17.8.3.1 an amount is due and payable by the Buyer pursuant to this Agreement and has not been paid in full by the Buyer on the due date for payment as set out in this Agreement, nor within the requisite notice period provided for in clause 8.5 (*Failure to make Payments*);
- 17.8.3.2 any dispute regarding the amount due by the Buyer has been resolved or determined in accordance with the provisions of clause 9.4 (*Billing disputes*);
- 17.8.3.3 the Seller has complied with the requirements of clause 17.2.
- 17.8.4 A claim against the Liquidity Support shall be limited to the extent provided for in clauses 17.4, 17.5 and 17.7.

## 18. FORCE MAJEURE

- 18.1 If a Party (the "**Affected Party**") is unable to perform all or part of its obligations under this Agreement by reason of Force Majeure, the Affected Party shall serve written notice on the other Party within five (5) Business Days of it becoming aware and acting as a Reasonable and Prudent Operator, or should have reasonably become aware, of the event or circumstances giving rise to the of the Force Majeure Event, and shall give sufficient details to identify the particular event claimed to be the Force Majeure Event.
- 18.2 The Affected Party shall,
- 18.2.1 within a further fifteen (15) Business Days, serve a subsequent notice (such notice being a "**Force Majeure Notice**") setting out:
- 18.2.1.1 full particulars of the Force Majeure Event;
- 18.2.1.2 the impact of the Force Majeure Event on the Affected Party's obligations under this Agreement and relief claimed;
- 18.2.1.3 the Affected Party's reasonable estimate of the length of time by which its performance has been and will be affected by such Force Majeure Event;

- 18.2.1.4 the steps which it is taking or intends to take or will take to remove and mitigate the adverse consequences of the Force Majeure Event on its performance hereunder; and
- 18.2.1.5 an estimate the period of time required to overcome it (and/or its effects),
- which notice shall contain such relevant information (and which shall be supported by documentation reasonably required by the other Party for the purposes of assessing the relief that is being claimed) relating to its claim and the failure to perform as is available, including (without limitation), attaching all records to substantiate the claim (including Contractor and/or subcontractors' claims, all updates to the Financial Model, meeting minutes, correspondence, baseline programmes and updates to the baseline programme applicable to the Force Majeure event, the relief being claimed under this clause 17.8 (*Force Majeure*), and/or showing action being taken in accordance with clause 18.2.1.4, including contemporaneous records). Contemporaneous records in this clause means records that are prepared or generated at the same time, or immediately after, the event or circumstance giving rise to the claim for a Force Majeure.
- 18.3 The Affected Party shall:
- 18.3.1 have the burden of proving both the existence of any Force Majeure Event and the effect (both as to nature and extent) which any such Force Majeure Event has on its performance of its obligations;
- 18.3.2 in the case of the Seller, consult with the Buyer to place the Buyer in a position to assess the claim for relief and shall provide the Buyer with all the Buyer's reasonable requests for information to assess the claim for relief under this clause 17.8 (*Force Majeure*); and
- 18.3.3 in the case of the Seller, identify all delays, including delays arising from the acts or omissions by the Seller, Contractors or the Contractors' subcontractors as at the date on which the Force Majeure Event occurred, which do not result from the Force Majeure Event (the "**Non-Force Majeure Event Delays**").
- 18.4 If information is provided after the dates referred to in this clause 17.8 (*Force Majeure*), then the Seller shall not be entitled to any extension of time or relief from its obligations under this Agreement in respect of the period for which the information is delayed.
- 18.5 If it is agreed or determined that a Force Majeure Event has occurred, the Affected Party shall, provided that it has complied with the requirements of this clause 17.8 (*Force Majeure*), not be liable for any failure to perform an obligation under this Agreement as a consequence of such Force Majeure Event to the extent only that:
- 18.5.1 such performance is prevented, hindered or delayed by Force Majeure; and
- 18.5.2 such failure could not have been mitigated by the Affected Party (acting as a Reasonable and Prudent Operator).

- 18.6 Provided that the Seller has complied with the requirements of this clause 17.8 (*Force Majeure*), if the Seller's performance of all (or part) of its obligations under this Agreement is prevented, hindered or delayed by a Force Majeure Event:
- 18.6.1 occurring prior to the Scheduled COD, then the Scheduled COD shall be extended by a period equal to the period by which its performance is prevented, hindered or delayed by the Force Majeure Event. The extension to the Scheduled COD shall not include delays arising from Non-Force Majeure Event Delays. The Seller shall not be compensated or awarded an extension to the Scheduled COD, where the Scheduled COD is impacted or caused by Non-Force Majeure Event Delays;
- 18.6.2 occurring after Scheduled COD but prior to the Commercial Operation Date, provided that the Last COD has not yet occurred, then Last COD shall be extended by a period equal to the period by which its performance is prevented, hindered or delayed by the Force Majeure Event. The extension to the Last COD shall not include postponement on account of delays arising from Non-Force Majeure Event Delays; or
- 18.6.3 during any twelve (12) month period commencing on 1 July, where the period by which the Seller's performance of all (or part) of its obligations under this Agreement has been prevented, hindered or delayed by one or more Force Majeure Events (each of which events lasts twenty four (24) hours or longer) for a period in excess of sixty (60) days in such twelve (12) month period, the Expiry Date shall be extended, in terms of clause 18.9, to such date as shall place the Seller in the same overall economic position (after taking into account the Non-Force Majeure Event Delays and any other relief and compensation to which the Seller may be entitled to pursuant to any other provisions of this Agreement for the acts, events or circumstances constituting Force Majeure) as the Seller would have been in, but for the Force Majeure Events which have prevented, hindered or delayed the Seller's performance, provided further that the aggregate extensions to the Expiry Date under this clause 18.6.3 shall not result in the Expiry Date falling more than thirty (30) years after Scheduled COD. The Seller shall:
- 18.6.3.1 not be entitled to enforce this clause 18.6.3 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 clause 21.1 (*Insurances and Information*); and
- 18.6.3.2 not be entitled to an extension to the Expiry Date on account of the Non-Force Majeure Event Delays.
- 18.7 The Affected Party shall use all reasonable efforts to (i) mitigate, rectify and overcome the effects of such Force Majeure Event; (ii) minimise the effect on the Project; and (iii) resume performance of its obligations affected by the event of Force Majeure as soon as practicable. For on-going Force Majeure events which have a continuing effect and which last longer than 15 (fifteen) Business Days from the date the event occurred, the Affected Party must issue to the other Party:

- 18.7.1 regular monthly reports on the progress of the mitigation measures required to be implemented in terms of this clause 18.7;
- 18.7.2 monthly interim claims which meet the requirements of clause 18.2.1;
- 18.7.3 all the information or particulars reasonably requested by the other Party to assess the claim for relief under this clause 17.8 (*Force Majeure*); and
- 18.7.4 notice within 15 (fifteen) Business Days on the cessation of the Force Majeure Event, which notice must contain a final claim for relief which meets the requirements of clause 18.2.1, and its sub-clauses.
- 18.8 Subject to the Seller complying with its obligations under the provisions of this clause 17.8 (*Force Majeure*), the Seller shall be entitled to receive and the Buyer shall make any Payments to the Seller that are due to the Seller to the extent that the Seller, notwithstanding the existence of the Force Majeure Event, sells to the Buyer the Commercial Energy.
- 18.9 For the purposes of clause 18.6.3, the "same overall economic position" shall, subject to the provisions of this clause 18.9, be calculated by agreement between the Buyer and the Seller and, in the absence of such agreement, by an Independent Expert at the request of either Party pursuant to clause 30 (*Fast Track Dispute Resolution*), in the following manner:
  - 18.9.1 quantify the loss suffered by the Seller, which could include loss of revenue and any additional costs incurred by the Seller resulting directly from the occurrence of the Force Majeure Event, less the amount of any variable costs that the Seller saved during the period that the Force Majeure Event continued;
  - 18.9.2 in calculating the period of extension of the Expiry Date required to compensate for the quantified loss:
    - 18.9.2.1 use the Financial Model;
    - 18.9.2.2 update the Financial Model with the quantified loss for the period referred to and determined in terms of clause 18.6.3 as being the period by which the Force Majeure Event affected the Seller's performance of all (or part) of its obligations under this Agreement in accordance with clause 18.6.3, in order to:
      - 18.9.2.2.1 calculate the resulting reduction in the Base IRR; and
      - 18.9.2.2.2 solve for the period of extension of the Expiry Date required to restore the Base IRR reflected in the Financial Model for the impact of the Force Majeure Event by extending the projected monthly cashflows, using input parameters contained in the Financial Model, and calculating the Achieved IRR up to the date on which the Base IRR is achieved "**maximum extension of the Expiry Date**".
- 18.10 At a date not less than six (6) months and not more than twelve (12) months before the Expiry Date, the Seller shall calculate its Achieved IRR by taking all amounts (by way of dividends, other

distributions, interest, and principal on Shareholder Loans) already paid by the Seller in respect of Equity up to the date of the calculation, taking into account the actual timing of all such payments as well as projected payments to Shareholders in the Seller up to the Expiry Date.

- 18.11 If the calculation referred to in clause 18.10 shows that the Seller:
- 18.11.1 will achieve the Base IRR by the original Expiry Date, the Expiry Date will not be extended for reason of the Force Majeure Event in question;
  - 18.11.2 will not achieve the Base IRR by the original Expiry Date, the period of extension of the Expiry Date will be calculated as follows:
    - 18.11.2.1 the Seller will provide an analysis for the reasons why the Base IRR has not been achieved, separating the factors that are directly attributable to the Force Majeure from those that are as a result of other operational underperformance, including the Non-Force Majeure Event Delays; and
    - 18.11.2.2 the Seller will prepare projected monthly cashflows for the "maximum extension of the Expiry Date", using the input parameters contained in the Financial Model unless either Party objects to any such parameter as not properly reflecting the most likely outcome for the matter which is the subject of the input parameter concerned, in which case the Buyer and the Seller shall agree to amend the input parameter concerned to reflect the most likely outcome or, in the absence of agreement between the Parties, refer the matter for determination by an Independent Expert in accordance with clause 30 (*Fast Track Dispute Resolution*); and
    - 18.11.2.3 the Seller will carry out a calculation of the new Rand-based nominal blended post tax internal rate of return to Shareholders pursuant to clause 18.11.2.2, excluding the impact of the Force Majeure Event (the "Recalculated Base IRR excluding Force Majeure Event"). The resultant Recalculated Base IRR excluding Force Majeure Event can never exceed the Base IRR as reflected in the Financial Model.
- 18.12 If the calculation referred to in clause 18.11 shows that the Seller:
- 18.12.1 will achieve the Recalculated Base IRR excluding Force Majeure Event by the original Expiry Date, the Expiry Date will not be extended for reason of the Force Majeure Event in question;
  - 18.12.2 will not achieve the Recalculated Base IRR excluding Force Majeure Event by the original Expiry Date, the period of extension of the Expiry Date will be calculated as follows:
    - 18.12.2.1 the Seller will calculate the actual period to achieve the Recalculated Base IRR excluding Force Majeure Event;
    - 18.12.2.2 the period of extension of the Expiry Date shall be the lesser of (i) the "maximum extension of the Expiry Date" calculated in terms of clause 18.9.2.2.2, (ii) the period calculated in terms of 18.12.2.1, and (iii) ten (10) years (less the aggregate of all other extensions to the Expiry Date in terms of this clause 17.8 (*Force Majeure*)).

- 18.13 No claim for any relief in terms of this clause 17.8 (*Force Majeure*) may be made after the date which falls six (6) months after the date that the Affected Party claiming such relief became aware of the relevant event of Force Majeure, or should have reasonably become aware of the event or circumstance giving rise to the Force Majeure Event.
- 18.14 The Seller, where it is an Affected Party, must comply strictly with all terms, requirements and time-periods stated in this clause 17.8 (*Force Majeure*), a failure to do so, in any respect, will result in the Seller not being entitled to any relief whatsoever under this clause 17.8 (*Force Majeure*), and the Buyer shall be discharged from all liability whatsoever in connection with the relief sought under this clause 17.8 (*Force Majeure*).
- 18.15 Where the Parties are unable to agree that a Force Majeure Event has occurred, or disagree with the relief determined under this clause 17.8 (*Force Majeure*), either Party is entitled to refer the matter to dispute resolution in accordance with clause 29 (*Dispute Resolution*).

## 19. UNFORESEEABLE CONDUCT AND CHANGE IN LAW

### 19.1 Unforeseeable Conduct

- 19.1.1 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.
- 19.1.2 Should any Unforeseeable Conduct occur which 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.
- 19.1.3 Neither Party shall be entitled to any relief or compensation under this clause 19 (*Unforeseeable Conduct and Change in Law*) unless the economic consequences of the Unforeseeable Conduct exceed zero point five per cent (0.5%) of the sum of all Deemed Energy Payments (if any), and Commercial Energy Payments made to the Seller during the preceding twelve (12) month period.
- 19.1.4 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 within five (5) Business Days of it becoming aware of the Unforeseeable Conduct. The notice shall also contain such relevant information (and which shall be supported by documentation reasonably required by the Receiving Party for the purposes of assessing the relief that is being claimed) relating to its claim.
- 19.1.5 Subject to clause 19.1.6 and the Claiming Party complying with its obligations under clause 19.1.4, the Receiving Party shall have sixty (60) Business 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, subject to the provisions of clause 19.1.8. If the Receiving Party does not effect such a remedy within such period, the Parties shall consult within thirty (30) 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 thirty (30) Business Day consultation period, the matter shall be dealt with in accordance with clause 29 (*Dispute Resolution*).

- 19.1.6 If the Seller is the Claiming Party, and the remedy contemplated by the Buyer under clause 19.1.5 is monetary compensation, the Buyer shall, after agreement between the Parties on the relevant amount, have the option to compensate the Seller as a result of the Unforeseeable Conduct either:
- 19.1.6.1 in one lump-sum payment, payable within ninety (90) Business Days of reaching agreement under clause 19.1.5; or
  - 19.1.6.2 in equal monthly instalments for the remainder of the Term, commencing within ninety (90) Business Days of reaching agreement under clause 19.1.5, 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.
- 19.1.7 In so far as the Seller is the Claiming Party, it shall:
- 19.1.7.1 use all reasonable endeavours to minimise and mitigate the effects of any Unforeseeable Conduct, including, if the conduct relates to a change in the Codes, making application in accordance with NERSA's procedures to NERSA to be exempted from such change;
  - 19.1.7.2 consult with the Buyer, to place the Buyer in a position to assess the claim for relief, and shall provide the Buyer with all of the Buyer's reasonable requests for information to assess the claim for relief under this clause 19.1 (*Unforeseeable Conduct*); and
  - 19.1.7.3 identify all delays, including delays arising from the Seller, Contractors and the Contractors' subcontractors as at the date on which the Unforeseeable Conduct occurred, which do not result from the Unforeseeable Conduct (the "**Non-Unforeseeable Conduct Delays**").
- 19.1.8 The Claiming Party shall not be entitled to compensation on account of Non-Unforeseeable Conduct Delays.
- 19.1.9 For the purposes of clauses 19.1.1 and 19.1.2, the "same overall economic position" shall be calculated by agreement between the Buyer and the Seller and, in the absence of such agreement, by an Independent Expert at the request of either Party pursuant to clause 30 (*Fast Track Dispute Resolution*), in the following manner:
- 19.1.9.1 quantify the:

19.1.9.1.1 loss suffered (in the case of clause 19.1.1) by the Seller, which could include loss of revenue and any additional costs incurred by the Seller resulting directly from the occurrence of the Unforeseeable Conduct, less the amount of any variable costs that the Seller saved as a result of the Unforeseeable Conduct; or

19.1.9.1.2 benefit gained (in the case of clause 19.1.2) by the Seller, which could include additional revenue and any cost savings by the Seller resulting directly from the occurrence of the Unforeseeable Conduct, less the amount of any additional costs incurred by the Seller as a result of the Unforeseeable Conduct,

which quantified loss will be compensated to the Seller in accordance with clause 19.1.6 and, in the event of a benefit, which benefit shall be paid to the Buyer in accordance with clause 19.1.2.

## 19.2 **Change in Law**

19.2.1 If any Change in Law occurs after the Effective Date, which requires the Seller to incur any additional Capital Expenditure or Operating Expenditure, then the Seller shall be entitled to such extension of the Expiry Date as shall place the Seller in the same overall economic position as it would have been in but for such Change in Law, provided that the total extension of the Expiry Date shall not exceed ten (10) years, and the Seller shall be entitled to relief from such other obligations to the extent that it is unable to perform or fulfil such obligations as a result of the Change in Law.

19.2.2 The provisions of this clause 19.2 (*Change in Law*) shall not apply in respect of any Change in Law which:

19.2.2.1 was foreseen by the Seller or could reasonably have been foreseen by the Seller on or before the Effective Date as being reasonably likely to occur and to impact the Project; and

19.2.2.2 could reasonably have been foreseen by any person in the position of the Seller on or before the Effective Date as being reasonably likely to occur and to impact the Project; or

19.2.2.3 relates to any changes in the rates, effect, application, implementation, enforcement or interpretation of any tax of any nature (including income, capital gains and value added taxes), custom duties, dues, levies, stamp duty, excise fees or charges; or

19.2.2.4 arises as a direct or indirect result of any appeal or review being lodged against any amendment to any of the Consents issued in terms of any Environmental Laws.

19.2.3 The Seller shall:

19.2.3.1 use all reasonable endeavours to minimise and mitigate the effects of any Change in Law on the Seller;

- 19.2.3.2 consult with the Buyer, to place the Buyer in a position to assess the claim for relief, and shall provide the Buyer with all of the Buyer's reasonable requests for information to assess the claim for relief under this clause 19.2 (*Change in Law*); and
- 19.2.3.3 in the case of the Seller, identify all delays, including delays arising from the acts or omissions by the Seller, Contractors or the Contractors' subcontractors as at the date on which the Change in Law occurred, which do not result from the Change in Law (the "**Non-Change in Law Delays**").
- 19.2.4 The Seller shall not be entitled to an extension of the Expiry Date on account of Non-Change in Law Delays.
- 19.2.5 For the purposes of clause 19.2.1, the "same overall economic position" shall be calculated by agreement between the Buyer and the Seller and, in the absence of such agreement, by an Independent Expert at the request of either Party pursuant to clause 30 (*Fast Track Dispute Resolution*), in the following manner:
- 19.2.5.1 quantify the loss suffered by the Seller, which could include loss of revenue and any additional costs incurred by the Seller resulting directly from the occurrence of the Change in Law, less the amount of any variable costs that the Seller saved as a result of the Change in Law;
- 19.2.5.2 in calculating the period of extension of the Expiry Date required to compensate for the quantified loss:
- 19.2.5.2.1 use the Financial Model;
- 19.2.5.2.2 update the Financial Model with the quantified loss for the period in which the Change in Law occurred and not taking into account any other event of delays not caused by the Change in Law, in order to:
- 19.2.5.2.2.1 calculate the resulting reduction in the Base IRR; and
- 19.2.5.2.2.2 solve for the period of extension of the Expiry Date required to restore the Base IRR reflected in the Financial Model for the impact of the Change in Law Event by extending the projected monthly cashflows, using input parameters contained in the Financial Model, and calculating the Achieved IRR up to the date on which the Base IRR is achieved "**maximum extension of the Expiry Date**".
- 19.2.6 At a date not less than six (6) months and not more than twelve (12) months before the Expiry Date, the Seller shall calculate its Achieved IRR by taking all amounts (by way of dividends, other distributions, interest, and principal on Shareholder Loans) already paid by the Seller in respect of Equity up to the date of the calculation, taking into account the actual timing of all such payments as well as projected payments to Shareholders in the Seller up to the Expiry Date.
- 19.2.7 If the calculation referred to in clause 19.2.6 shows that the Seller:

- 19.2.7.1 will achieve the Base IRR by the original Expiry Date, the Expiry Date will not be extended for reason of the Change in Law in question;
- 19.2.7.2 will not achieve the Base IRR by the original Expiry Date, the period of extension of the Expiry Date will be calculated as follows:
- 19.2.7.2.1 the Seller will provide an analysis for the reasons why the Base IRR has not been achieved, separating the factors that are directly attributable to the Change in Law from those that are as a result of other operational underperformance, including the Non-Change in Law Delays;
- 19.2.7.2.2 the Seller will prepare projected monthly cashflows for the "maximum extension of the Expiry Date", using the input parameters contained in the Financial Model unless either Party objects to any such parameter as not properly reflecting the most likely outcome for the matter which is the subject of the input parameter concerned, in which case the Buyer and the Seller shall agree to amend the input parameter concerned to reflect the most likely outcome or, in the absence of agreement between the Parties, refer the matter for determination by an Independent Expert in accordance with clause 30 (*Fast Track Dispute Resolution*); and
- 19.2.7.2.3 the Seller will carry out a recalculation of the new Rand-based nominal blended post tax internal rate of return to Shareholders pursuant to clause 19.2.7.2.2, excluding the impact of the Change in Law Event (the "**Recalculated Base IRR excluding Change in Law**"). The resultant Recalculated Base IRR excluding Change in Law Event can never exceed the Base IRR reflected in the Financial Model.
- 19.2.8 If the calculation referred to in clause 19.2.6 shows that the Seller:
- 19.2.8.1 will achieve the Recalculated Base IRR excluding Change in Law by the original Expiry Date, the Expiry Date will not be extended for reason of the Change in Law in question;
- 19.2.8.2 will not achieve the Recalculated Base IRR excluding Change in Law by the original Expiry Date, the period of extension of the Expiry Date will be calculated as follows:
- 19.2.8.2.1 the Seller will calculate the actual period required to achieve the Recalculated Base IRR excluding Change in Law;
- 19.2.8.2.2 the period of extension of the Expiry Date shall be the lesser of (i) the "maximum extension of the Expiry Date" calculated in terms of clause 19.2.5.2.2.2; (ii) the period calculated in terms of clause 19.2.8.2.1; and (iii) ten (10) years (less the aggregate of all other extensions to the Expiry Date in terms of this clause 19.2 (*Change in Law*)).

- 19.2.9 The Seller shall not be entitled to claim both Unforeseeable Conduct and Change in Law or a combination of Unforeseeable Conduct and Change in Law in respect of the same event or circumstance or the same series of events or circumstances.
- 19.2.10 Any Change in Law which constitutes Unforeseeable Conduct shall be dealt with in terms of clause 19.1 (*Unforeseeable Conduct*).
- 19.3 No claim for any relief in terms of this clause 19 (*Unforeseeable Conduct and Change in Law*) may be made after the date which falls six (6) months after the date that the Party claiming such relief became aware of the relevant Unforeseeable Conduct or Change in Law event, or should have reasonably become aware of the event or circumstance giving rise to the Unforeseeable Conduct or Change in Law.

## 20. TERMINATION

### 20.1 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.

### 20.2 Termination for Buyer Default

- 20.2.1 The Buyer shall notify the Seller of the occurrence, and details, of any Buyer Default promptly on the Buyer becoming aware of its occurrence.
- 20.2.2 On the occurrence of a Buyer Default, or within a reasonable time after the Seller becomes aware of the same, the Seller may serve 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 twenty (120) days of such notice of default being delivered.
- 20.2.3 If the Buyer Default is not remedied within the period referred to in clause 20.2.2, the Seller may serve a further notice on the Buyer terminating this Agreement ((save for clauses 23 (*Intellectual Property of the Buyer*) to 27 (*Contractors*) and clauses 29 (*Dispute Resolution*) to 35 (*Notices*) and clauses 37 (*Representatives*) to 38 (*Miscellaneous*) with immediate effect.
- 20.2.4 On termination of this Agreement for Buyer Default:
- 20.2.4.1 the Buyer shall reimburse the Seller with all costs incurred by the Seller in exercising any of its rights in terms of this clause 20.2 (*Termination for Buyer Default*). The Seller shall take reasonable steps to mitigate such costs;
- 20.2.4.2 the Seller shall be entitled to payment by the Buyer all amounts which became due and payable to the Seller in terms of this Agreement, up to the date of termination of this Agreement; and

20.2.4.3 in lieu of any other termination compensation, the Seller shall be entitled to claim the full Buyer Default Amount from the Buyer, as liquidated damages for the Buyer Default.

20.2.5 The Buyer and the Seller agree that payment of the Buyer Default Amount is reasonable and proportionate to protect the legitimate interest of the Seller pursuant to the occurrence of (and constitutes an adequate remedy for), a Buyer Default.

### 20.3 **Termination for Seller Default**

20.3.1 The Seller shall notify the Buyer of the occurrence, and details, of any Seller Default promptly on the Seller becoming aware of its occurrence.

20.3.2 None of the terms of any of the Project Documents (including the Water Use Rights) may be used by the Seller as a defence against the Buyer (in the event of the counterparty to the relevant Project Document being unable to perform its obligations or, in the case of the Water Use Rights, the Water supply being inadequate or no longer existing) to prevent the Buyer from exercising its rights in terms of this clause 20.3 (*Termination for Seller Default*).

20.3.3 On the occurrence of a Seller Default, or within a reasonable time after the Buyer becomes aware of the same, the Buyer may:

20.3.3.1 where the Seller Default is the default detailed in sub-clauses (a) (namely, 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); or (c) (namely, the Seller fails to achieve the Commercial Operation Date on or before the Last COD) of the definition of "Seller Default", serve a notice on the Seller terminating this Agreement (save for clause 3.1 (*Project Site*), clause 3.2 (*Risk and liability*), clauses 23 (*Intellectual Property of the Buyer*) to 27 (*Contractors*), clauses 29 (*Dispute Resolution*) to 35 (*Notices*), and clauses 37 (*Representatives*) to 38 (*Miscellaneous*) with immediate effect;

20.3.3.2 where the Seller Default is the default detailed in sub-clauses (b) (namely, the Seller has not Commenced Construction of the Facility within sixty (60)<sup>8</sup> days of the Effective Date); (e) (namely, the Seller abandons the Construction or Operation and Maintenance, or any material part thereof of the Facility); (h) (namely, the Seller has failed to make provision for Decommissioning Costs); (i) (namely, the Seller has failed to comply with its Socio-Economic Development Obligations); (j) (namely, the Seller, having Commenced Construction, thereafter materially reduces, suspends or ceases to carry on, for a period of forty five (45) consecutive days, the Construction, or any material part thereof, of the Facility); (n) (namely, any Consent is suspended or revoked, and not discharged due to a material breach by the Seller); or (l) (namely,

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<sup>8</sup> The timelines to be determined based on the connection agreement timelines pursuant to the Budget Quotes. The dates might be different for the Projects, depending on the terms of the Budget Quotes.

the Seller fails to maintain compliance with the requirements of any Consents and the Codes) of the definition of "Seller Default", 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 sixty (60) 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 clause 3.1 (*Project Site*), clause 3.2 (*Risk and liability*), clauses 23 (*Intellectual Property of the Buyer*) to 27 (*Contractors*), clauses 29 (*Dispute Resolution*) to 35 (*Notices*), and clauses 37 (*Representatives*) to 38 (*Miscellaneous*)) with immediate effect; and

20.3.3.3 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 twenty (120) 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 clause 3.1 (*Project Site*), clause 3.2 (*Risk and liability*), clauses 23 (*Intellectual Property of the Buyer*) to 27 (*Contractors*), clauses 29 (*Dispute Resolution*) to 35 (*Notices*), and clauses 37 (*Representatives*) to 38 (*Miscellaneous*)) with immediate effect.

#### 20.3.4 **Buyer's Costs**

20.3.4.1 The Seller shall reimburse the Buyer with all costs incurred by the Buyer in exercising any of its rights in terms of this clause 20.3 (*Termination for Seller Default*). The Buyer shall take reasonable steps to mitigate such costs.

20.3.4.2 The rights of the Buyer (to terminate or otherwise) under this clause 20.3 (*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 in respect of any indemnities provided by the Seller under this Agreement and 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).

#### 20.4 **Termination for Corrupt Practices**

##### 20.4.1 Warranties in regard to Corrupt Practices

The Seller hereby warrants to the Buyer that, as at the Effective Date, in relation to the Project, Project Activities, this Agreement, or Project Documents, as applicable:

20.4.1.1 to the best of its knowledge and belief after having made due and careful enquiries acting as a Reasonable and Prudent Operator, no member of the Group, a Contractor, or any of their respective directors or employees;

20.4.1.1.1 has at any time during the five (5) years preceding the Effective Date violated, or is violating, either directly or indirectly, any Anti-Bribery and Corruption Laws; or

20.4.1.1.2 is party to or has at any time during the five (5) years preceding the Effective Date participated in any Corrupt Practice; and

20.4.1.2 each member of the Group, and each Contractor to the best of its knowledge and belief after having made due and careful enquiries acting as a Reasonable and Prudent Operator, maintains appropriate policies and procedures designed to promote compliance with applicable Anti-Bribery and Corruption Laws.

#### 20.4.2 Undertakings in regard to Corrupt Practices and Anti-Bribery and Corruption Laws

The Seller hereby undertakes to the Buyer that, as at Effective Date, in relation to the Project, Project Activities, this Agreement, or Project Documents, as applicable, it:

20.4.2.1 shall not (and shall procure that no member of the Group and each Contractor) at any time participate in a Corrupt Practice in any manner or contravene any Anti-Bribery and Corruption Laws;

20.4.2.2 shall take all reasonable steps to ensure that appropriate controls and safeguards are in place, designed to prevent the Seller (and any member of the Group or a Contractor) from being or becoming involved in a Corrupt Practice, or from contravening any Anti-Bribery and Corruption Laws; and

20.4.2.3 shall (and shall take reasonable steps to procure that the Group or each Contractor shall) maintain in effect and enforce policies and procedures designed to promote compliance, in all material respects, by the Seller, each Group Company and the Contractors and their respective directors, officers, employees and agents with applicable Anti-Bribery and Corruption Laws.

#### 20.4.3 Indemnity

The Seller hereby indemnifies the Buyer against any loss, damage or harm suffered by the Buyer as a direct or indirect consequence of a breach of any of the warranties or undertakings contained in clauses 20.4.1 (*Warranties in regard to Corrupt Practices*) and 20.4.2 (*Undertaking in regard to Corrupt Practices and Anti-Bribery and Corruption Laws*) above.

#### 20.4.4 Reporting Obligations

20.4.4.1 The Seller hereby undertakes to notify the Buyer in writing immediately:

20.4.4.1.1 upon becoming aware of any breach of any of the provisions in clauses 20.4.1 (*Warranties in regard to Corrupt Practices*) to 20.4.3 (*Indemnity*) above; and

20.4.4.1.2 should it become aware that any of its directors, officers, employees, contractors, or any of the directors, officers, employees or contractors of any

Group Company, Lender or any Contractor, have participated in any Corrupt Practice, and/or contravened any applicable Anti-Bribery and Corruption Laws.

20.4.5 Where the Seller becomes aware of the conduct listed in clauses 20.4.4.1.1 or 20.4.4.1.2 the Seller shall report to the Buyer of steps taken to mitigate (i) the breach referred to in clause 20.4.4.1.1 and (ii) the impact of the contravention referred to in clause 20.4.4.1.2 from causing any loss, damage or harm to the Project, the Buyer.

20.4.6 Breach and termination for Corrupt Practices

20.4.6.1 Subject to clause 20.4.6.2, any failure on the part of the Seller to comply with the obligations contemplated in clauses 20.4.1 (*Warranties in regard to Corrupt Practices*) to 20.4.4 (*Reporting Obligations*) (inclusive) shall constitute a material breach of the Agreement by the Seller, and shall entitle the Buyer to terminate this Agreement by issuing the Seller with written notice of such termination, provided that if the breach involves conduct by a Contractor or any of the Contractor's contractors or any of its directors or officers or employees or contractors committed without the prior knowledge of the Seller, the Buyer must, prior to termination of the Agreement, give written notice to the Seller of its intention to terminate this Agreement unless within sixty (60) Business Days of its receipt of such notice, the Seller terminates the relevant contract with the Contractor, or the Contractor terminates the relevant contract with the sub-contractor in question, or that employees, director's or officer's or contractor's involvement in the Project, the Seller and the Seller's Group, is terminated, as applicable and provides the Buyer with proof to the reasonable satisfaction of the Buyer that it has procured the performance of the relevant part of the Construction, Operation or Maintenance of the Facility by another person.

20.4.6.2 If a Lender or any of its employees, directors or officers has committed any Corrupt Practice or has contravened any Anti-Bribery and Corruption Laws in connection with the Project, this shall constitute a material breach of this Agreement by the Seller, and shall entitle the Buyer to terminate this Agreement by issuing the Seller with written notice of such termination, provided that the Buyer must, prior to termination of the Agreement, give written notice to the Seller of its intention to terminate this Agreement unless within sixty (60) Business Days of its receipt of such notice the Seller:

20.4.6.2.1 procures the termination of such Lender(s) (in any capacity whatsoever including, without limitation, as Lender under the Financing Agreements) ; or

20.4.6.2.2 procures that the employee's, or director's or officer's involvement with the Project and the Lender, is terminated; and

20.4.6.2.3 in the case of clause 20.4.6.2.1 provides the Buyer with satisfactory proof that such Lender's entire participations in the Debt and in any undrawn financial

commitments under the Financing Agreements have been assumed by any Qualifying Financial Institution (including any one or more of the remaining Lenders) or any of the Shareholders, whether by means of Equity contributions or otherwise, or in the case of clause 20.4.6.2.2, that the employee's, director's or officer's, involvement in the Project and the Lender has been terminated, as applicable.

- 20.4.6.3 The Buyer will not be entitled to terminate this Agreement for a Corrupt Practice or contravention of any Anti-Bribery and Corruption Laws, unless the material breach in question has been confirmed by an admission, a determination by court order or a determination by a competent authority.
- 20.4.7 Without prejudice to its other rights and remedies under this clause 20.4 (*Termination for Corrupt Practices*), the Buyer shall be entitled to recover from the Seller, the greater of:
- 20.4.7.1 the amount or value of the item which is the subject of the Corrupt Practice; and
- 20.4.7.2 any direct losses sustained by the Buyer in consequence of any breach of this clause 20.4 (*Termination for Corrupt Practices*), including any costs which are incurred by the Buyer in investigating and pursuing any claim against the Seller or a Contractor or Lender in respect of clauses 20.4.1 to 20.4.5 above.

## 21. PROJECT INSURANCE

### 21.1 Insurances and information

- 21.1.1 The Seller shall, in accordance with this clause 21 (*Project Insurance*), obtain and maintain in effect, at its own cost and expense, such insurance coverage as is required by:
- 21.1.1.1 any Laws; and
- 21.1.1.2 the standards of a Reasonable and Prudent Operator.
- 21.1.2 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 contractor.
- 21.1.3 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 21 (*Project Insurance*).
- 21.1.4 The Seller shall solely bear the cost and risk of any under-insurance or failure to comply with this clause 21 (*Project Insurance*).

### 21.2 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, reconstruction, replacement, repair or renewal of such loss or damage in the first instance.

## 22. GENERAL SELLER UNDERTAKINGS

22.1 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:

22.1.1 applicable Laws;

22.1.2 the Codes;

22.1.3 the Consents;

22.1.4 the terms and conditions of this Agreement;

22.1.5 the terms and conditions of the Distribution Agreement, or the Self-Build Agreement, as applicable;

22.1.6 the standards of a Reasonable and Prudent Operator; and

22.1.7 relevant manufacturers' guidelines and instructions.

22.2 The Seller shall deliver a copy of each Project Document listed in Part A (*PPA Related Project Documents*) of Schedule 7 (*Project Documents*) to the Buyer within twenty (20) Business Days of the Effective Date of this Agreement.

22.3 If the Seller requires any change to a Project Document listed in Part A (*PPA Related Project Documents*) of Schedule 7 (*Project Documents*) as a result of any replacement of such Project Document or a counterparty to such Project Document, it shall, before effecting such replacement, promptly notify the Buyer of the need for the replacement.

22.4 The Seller shall at all times ensure, at its own risk and cost, that sufficient suitable and appropriately qualified and experienced personnel will be employed (whether by the Seller or its Contractors) and available to undertake the Construction, Operation and Maintenance of the Facility. Without limiting the generality of the foregoing, the Seller shall ensure that all key personnel positions are always filled as soon as reasonably possible.

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).

**23. REFINANCING**

- 23.1 The Seller is not entitled to undertake any refinancing or re-arrangement of its Debt or Equity at any time during the Term, unless it has obtained the prior written approval of the Buyer in respect of such refinancing or re-arrangement.
- 23.2 The Buyer may refuse or grant approval of any refinancing or re-arrangement of its Debt or Equity in its discretion, and if it grants approval may make such approval subject to any conditions.
- 23.3 The Seller acknowledges and accepts that any approval by the Buyer of a refinancing or re-arrangement of its Debt or Equity will be subject to the condition that the financial gains which result from the refinancing or re-arrangement of its Debt or Equity will be shared between the Seller and the Buyer, in the proportion of 50:50 unless agreed otherwise by the Buyer.

**24. INTELLECTUAL PROPERTY OF THE BUYER**

- 24.1 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.
- 24.2 Subject to existing rights and obligations and clause 24.3, the Buyer shall, 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.
- 24.3 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.
- 24.4 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 24.5.
- 24.5 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.

- 24.6 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.
- 24.7 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.
- 24.8 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:
- 24.8.1 de-register the company bearing any of the Protected Names; or
- 24.8.2 change the name to a name not substantially similar to any of the Protected Names.
- 24.9 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 24.8 shall not be applicable and the intellectual property shall be the sole property of the Seller.

## 25. 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.

## 26. ASSIGNMENT

### 26.1 Prohibition on Assignment

Save as provided in clause 26.2 (*Restrictions 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.

### 26.2 Restrictions on Assignment

Notwithstanding clause 26.1 (*Prohibition on Assignment*):

- 26.2.1 the Buyer may Assign all (and not less than all) of its rights and obligations under this Agreement to a creditworthy Affiliate of the Buyer:

- 26.2.1.1 provided that, prior to such Assignment, it obtains the prior written approval of the Seller, which approval shall not be unreasonably withheld, conditioned or delayed; and
- 26.2.1.2 provided further that the Buyer shall assign all (and not less than all) of its rights and obligations under the Direct Agreement to its assignee simultaneously with its Assignment of this Agreement; or
- 26.2.2 the Buyer shall Assign all or some of its rights and obligations under this Agreement to a third party as part of and pursuant to:
  - 26.2.2.1 the dissolution, restructuring, amalgamation or reorganisation of the Buyer or its businesses, or the occurrence of an analogous event; or
  - 26.2.2.2 the transfer of all or a material part of the Buyer's business, property, assets and/or undertaking to one or more third parties and/or successor entities;
 provided that, in each case:
  - 26.2.2.2.1 such dissolution, restructuring, amalgamation, reorganisation, analogous event or transfer is at the instruction of the Government and/or NERSA and/or any other Responsible Authority, or is required to give effect to any mandatory requirement of Law; and
  - 26.2.2.2.2 the Buyer assigns its corresponding rights and obligations under the Direct Agreement to its assignee simultaneously with its Assignment of this Agreement.

## **27. 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.

## **28. CHANGES IN CONTROL**

From the Effective 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:

- 28.1 the Buyer has been provided with copies of any Consents which are required by the Seller to authorise such Change in Control; and
- 28.2 such Change in Control or Equity has been approved by the Buyer.

## **29. DISPUTE RESOLUTION**

- 29.1 **Referable Disputes**

The provisions of this clause 29 (*Dispute Resolution*) 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.

## 29.2 **Internal Referral**

29.2.1 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:

29.2.1.1 all disputes shall first be referred to a meeting of the liaison officers or other senior management from the applicable business area 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

29.2.1.2 if the Parties have been unable to resolve the dispute within fifteen (15) Business Days of referral to the persons specified in clause 29.2.1.1 (or any longer period agreed between the Parties), either Party may refer the dispute for a decision by the group divisional executive of the Buyer and the chief executive officer or equivalent officer of the Seller.

29.2.2 In attempting to resolve the dispute in accordance with the provisions of this clause 29.2 (*Internal Referral*), 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 necessity for formal proceedings.

29.2.3 Any dispute which has not been resolved by the representatives contemplated in clause 29.2.1.2 within forty (40) Business 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.

## 29.3 **Performance to Continue**

No reference of any dispute to any resolution process in terms of this clause 29 (*Dispute Resolution*) shall relieve either Party from any liability for the due and punctual performance of its obligations under this Agreement.

## 29.4 **Litigation**

29.4.1 Save where any dispute has been expressly referred for determination in terms of clause 30 (*Fast Track Dispute Resolution*), if informal resolution of any dispute has failed, then the dispute may be referred to litigation in the High Courts by either Party.

29.4.2 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.

### 30. FAST TRACK DISPUTE RESOLUTION

- 30.1 Disputes expressly referred for determination pursuant to this clause 30 (*Fast Track Dispute Resolution*) shall be determined by the relevant Independent Expert.
- 30.2 Within five (5) Business Days after a dispute has been referred by either Party to the appropriate Independent Expert, the Independent Expert shall convene a meeting with the Parties to determine the date by which the Parties shall 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.
- 30.3 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.
- 30.4 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.
- 30.5 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.
- 30.6 Subject to obtaining the prior written consent of the Parties, the Independent Expert may appoint a separate third party expert to assist the Independent Expert in making his decision as contemplated in clause 30.4.
- 30.7 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.
- 30.8 The Independent Expert shall act impartially and may take the initiative in ascertaining the facts and the Law.
- 30.9 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.
- 30.10 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 33 (*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 disclosing or delivering the same and all copies shall be returned to such Party on completion of the Independent Expert's work.

- 30.11 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.
- 30.12 Should any Party fail to co-operate 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:
  - 30.12.1 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
  - 30.12.2 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.
  - 30.12.3 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, 42 of 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, save in the event of manifest procedural irregularities in which case the Independent Expert's decision may be submitted to the High Court for review.

## **31. LIABILITY**

### **31.1 Direct losses**

- 31.1.1 The Parties' liability to each other in respect of any claim that arises pursuant to this Agreement, whether under delict or contract, shall be solely as expressly detailed in this Agreement, and no Party shall have any additional liability to the other Party in respect of such claim.
- 31.1.2 No Party shall have a claim against the other Party for damages pursuant to this Agreement, unless this Agreement expressly grants such a claim to that Party and, if this Agreement grants a Party a right to terminate this Agreement, that Party shall not be entitled to claim damages or compensation in lieu of terminating this Agreement.

31.1.3 Notwithstanding anything 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 (save in respect of any losses, liabilities, expenses, damages, costs and claims (including Claims) raised by the Buyer in respect of the obligations and indemnities provided under clause 3.2 (*Risk and liability*), clause 32 (*Third Party Indemnity*) and clause 36.1 (*Seller warranties*), and the reimbursement of the Buyer's costs in terms of clause 20.3.4 (*Buyer's Costs*).

31.1.4 Save for the indemnities provided under clause 3.2 (*Risk and liability*), clause 32 (*Third Party Indemnity*) and clause 36.1 (*Seller warranties*), the reimbursement of the Buyer's costs in terms of clause 20.3.4 (*Buyer's Costs*), and 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.

## 31.2 Mitigation

31.2.1 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 or any other agreement in terms of which a failure by any party thereto would give rise, whether directly or indirectly, to a claim against the Buyer under this Agreement.

31.2.2 The Seller's obligation to minimise and mitigate the effects of a Force Majeure Event, Compensation Event, Unforeseeable Conduct and/or a Change in Law will include diligently pursuing, consistent with the standards of a Reasonable and Prudent Operator, any relief or recourse available to it under any Applicable Law or agreement, save that this shall not include commencing or pursuing litigation or any equivalent process that is contrary to the Seller's commercial interests, acting reasonably.

## 32. THIRD PARTY INDEMNITY

32.1 Each Party (the "**Indemnifying Party**") shall indemnify and hold 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.

## 33. CONFIDENTIALITY AND PROTECTION OF PERSONAL INFORMATION

### 33.1 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.

### 33.2 **Exclusions to Confidential Information**

For the purposes of this clause 33 (*Confidentiality*), the term "**Confidential Information**" shall not include information which:

- 33.2.1 constitutes Project Data;
- 33.2.2 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 33 (*Confidentiality*);
- 33.2.3 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 33 (*Confidentiality*);
- 33.2.4 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
- 33.2.5 is published by, or the publication of which is required by, a Responsible Authority or any court.

### 33.3 **Permitted disclosure of Confidential Information**

Notwithstanding the provisions of clause 33.1 (*Confidential Information*), the Confidential Information may be disclosed:

- 33.3.1 by either Party to any Responsible Authority (where for the purposes of this clause 33.3 (*Permitted disclosure of Confidential Information*) such definition 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 a shareholder (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:
  - 33.3.1.1 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
  - 33.3.1.2 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;
- 33.3.2 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; and

33.3.3 by either Party as may be necessary to comply with any obligation under any applicable Law.

#### 33.4 **Ownership and treatment**

33.4.1 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.

33.4.2 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.

#### 33.5 **Protection of Personal Information**

33.5.1 Each Party (each a "**Receiving Party**") cannot perform its obligations under this Agreement without Processing certain Personal Information, including the Personal Information provided by the other Party (each a "**Disclosing Party**").

33.5.2 Accordingly, the Disclosing Party hereby expressly consents to share the Personal Information referred to in clause 33.5.1 with the Receiving Party and further consents to the Receiving Party Processing the Personal Information disclosed to it by the Disclosing Party in accordance with this Agreement.

33.5.3 The Parties record that the Receiving Party will Process any Personal Information provided to it by the Disclosing Party in accordance with the provisions of this Agreement and the Disclosing Party's reasonable instructions. When Processing the Personal Information, the Receiving Party will take all reasonable and appropriate technical and/organisational precautions and measures necessary to prevent any (i) loss of, damage to, or unauthorised destruction of the Personal Information; or (ii) unauthorised or unlawful access to or Processing of the Personal Information. For this purpose, the Receiving Party will:

33.5.3.1 identify all reasonably foreseeable internal and external risks to the Personal Information in its possession or under its control; and

33.5.3.2 ensure that the safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards.

33.5.4 The Disclosing Party hereby warrants, represents and undertakes that in respect of all Personal Information provided by it to the Receiving Party, all the consents necessary to ensure compliance by the Disclosing Party and the Receiving Party with applicable laws,

including the POPI Act, have been obtained from the person or entity to whom such Personal Information relates, as well as any regulators or other third parties, in relation to:

- 33.5.4.1 the transmission by the Disclosing Party to the Receiving Party of any Personal Information provided to it by the Disclosing Party in accordance with this Agreement or otherwise permitted by law;
- 33.5.4.2 the transmission by the Disclosing Party or the Receiving Party of Personal Information to third parties in accordance with this Agreement or otherwise permitted by law; and
- 33.5.4.3 the Processing by the Receiving Party of any Personal Information provided to it by the Disclosing Party in any country in which the Personal Information is held or Processed by the Receiving Party.

#### **34. GOVERNING LAW AND JURISDICTION**

- 34.1 The validity, construction and performance of this Agreement shall be governed by the laws of South Africa.
- 34.2 Subject to the provisions of clause 30 (*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, Western Cape Division, Cape Town.

#### **35. NOTICES**

##### **35.1 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 35.2 (*Addresses*) or such other address or number as contemplated in clause 35.4 (*Change in address*). No communication shall be effective until received by the addressee and a communication shall be deemed to have been received:

- 35.1.1 if delivered by hand during ordinary business hours, to its physical address in clause 35.2 (*Addresses*), when so delivered;
- 35.1.2 if delivered by pre-paid registered post, to its postal address in clause 35.2 (*Addresses*), seven (7) Business Days after posting, subject to proof of posting; and
- 35.1.3 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 being the responsibility of the sender to obtain such acknowledgement and provided that a hard copy is promptly dispatched to the recipient in the manner provided in clauses 35.1.1 or 35.1.2 above.

## 35.2 **Addresses**

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

The Seller:

Postal Address: [•]

Physical Address: [•]

Tel No.: [•]

Email: [•]

and marked for the attention of [•]

The Buyer:

Postal Address: Stellenbosch Local Municipality

Physical Address: Stellenbosch Local Municipality

Email Address:

Tel No.: +27

Attention:

## 35.3 **Domicilium citandi et executandi**

The Parties choose the physical address set out opposite their names in clause 35.2 (*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*.

## 35.4 **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.

## 35.5 **Notice of Claims**

Notwithstanding clause 35.1 (*Methods of delivery*) above, all documents, evidence and reports to be provided by the Seller to the Buyer under this Agreement pursuant to a dispute or the raising of a Claim by the Seller shall be submitted in hard copy (either through hand-delivered or by pre-paid registered post) and in soft copy (through electronic mail), and at the request of the Buyer the hard copy must be provided in duplicate.

## 36. WARRANTIES

### 36.1 Seller warranties

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

- 36.1.1 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 and the Project Documents to which it is a party;
- 36.1.2 it has the sole purpose, object and business of undertaking the Project and selling Energy Output as provided for in terms of this Agreement;
- 36.1.3 its obligations under this Agreement are legal, valid and binding and enforceable against it, in accordance with the terms of this Agreement;
- 36.1.4 all the Project Documents and the counterparties to them are as detailed and identified in Schedule 7 (*Project Documents*) and have been duly executed on proper authority and will be in full force and effect as at the Effective Date, save for those Project Documents that will be executed after the Effective Date on proper authority;
- 36.1.5 the execution and performance of any Project Documents to which it is a party do not and will not contravene or invalidate any provision of this Agreement, the 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;
- 36.1.6 all Consents (whether provisional or final) required for the conduct of the Project are in full force and effect as at the Effective Date, save for any Consents which are not required under the Laws to be obtained by the Effective Date, provided that:
  - 36.1.6.1 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; and
  - 36.1.6.2 the Seller knows of no reason why any provisional Consents issued to it in terms of the Environmental Laws will not be converted into final Consents in order for it to be permitted to commence Operations and Maintenance;
- 36.1.7 no litigation, arbitration, investigation or administrative proceeding is in progress as at the Effective Date or, to the best of the knowledge of the Seller as at the Effective 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;
- 36.1.8 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;
- 36.1.9 none of its directors or employees, or the directors or employees of the Contractors:

- 36.1.9.1 is an employee or official of, or special advisor in, any national or provincial government department or any municipality in South Africa;
- 36.1.9.2 has been listed on the National Treasury's Register for Tender Defaulters, or its List of Restricted Suppliers;
- 36.1.10 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;
- 36.1.11 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 of this Agreement and the other Project Documents);
- 36.1.12 all information disclosed by or on behalf of the Seller to the Buyer at any time up to the Effective 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;
- 36.1.13 following the execution from time to time of Project Documents listed in Part A (*PPA Related Project Documents*) of Schedule 7 (*Project Documents*), copies of the Project Documents listed in Part A (*PPA Related Project Documents*) of Schedule 7 (*Project Documents*) have been delivered to the Buyer in accordance with the terms of this Agreement, and those copies are true and complete copies of such Project Documents, and the Seller has delivered promptly copies of any other documents replacing or relating to any such Project Documents, which documents would materially affect the performance of these Project Documents and/or this Agreement, to the Buyer;
- 36.1.14 the Equipment Suppliers and Contractors have, at all times during the Term, all Supplier Consents required to enable them to fulfil their obligations in terms of their supply or other agreements, and have complied in all material or relevant respects, with such Supplier Consents and the Laws applicable to the Equipment Suppliers and Contractors;
- 36.1.15 it has appointed the Independent Engineer; and
- 36.1.16 in respect of Intellectual Property:
  - 36.1.16.1 where it is not the owner of the Intellectual Property in respect of any Key Equipment, it is the holder of a valid Intellectual Property licence from the Equipment Supplier of such Key Equipment;
  - 36.1.16.2 it has not and will not infringe any Intellectual Property rights belonging to a third party; and

- 36.1.16.3 it indemnifies the Buyer and shall keep the Buyer fully and effectively indemnified against all claims, demands, costs (including indirect costs), damages, expenses and liabilities of whatsoever nature which may arise from a claim of breach of Intellectual Property.

## 36.2 **Buyer warranties**

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

- 36.2.1 it is duly incorporated 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
- 36.2.2 the execution and performance of this Agreement by it has been duly authorised by all necessary corporate action, and its obligations hereunder constitute valid, binding and enforceable obligations.

## 37. **REPRESENTATIVES**

### 37.1 **Buyer's Representative**

- 37.1.1 The Buyer shall appoint from the Effective 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.
- 37.1.2 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.
- 37.1.3 Any notice, instruction or information required to be given by or made to the Buyer shall only be valid if given by the Buyer's Representative or delivered to the Buyer's Representative.

### 37.2 **Seller's Representative**

- 37.2.1 The Seller shall appoint from the Effective 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.
- 37.2.2 Any notice, instruction or information required to be given by or made to the Seller shall only be valid if given by the Seller's Representative or delivered to the Seller's Representative.

**38. MISCELLANEOUS****38.1 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.

**38.2 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.

**38.3 Waiver**

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

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

38.3.3 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.

**38.4 Third Parties**

The Parties intend that 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.

**38.5 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.

**38.6 Entire Agreement**

38.6.1 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.

38.6.2 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 Effective Date, unless it is expressly set out in this Agreement.

**38.7 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.

**38.8 Direct Agreement**

In the event that the Seller intends to finance the Project on a limited recourse or project finance basis, the Buyer agrees that it shall enter into a Direct Agreement with the Seller and the Lenders.

### 38.9 **Public Relations and Publicity**

38.9.1 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:

38.9.1.1 Parliament and its members and officers in accordance with the [Rules of the National Assembly];

38.9.1.2 the Auditor-General under the Public Audit Act, 25 of 2004; and

38.9.1.3 persons acting in the public interest in accordance with the provisions of the Promotion of Access to Information Act, 2 of 2000.

38.9.2 Subject to clause 38.9.3, 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.

38.9.3 To the extent that the Buyer is obliged to disclose or publish information pursuant to clause 38.9.1, it undertakes to the Seller, if time permits, to consult with the Seller prior to any communication contemplated by this clause 38.9.3, and if time does not so permit, such consultation shall be dispensed with by the Parties.

38.9.4 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.

### 38.10 **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.

### 38.11 **Costs**

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

### 38.12 **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 originally been contained in this Agreement. In the event of any such deletion the Parties shall negotiate in good faith in order to agree the terms of a mutually acceptable and satisfactory alternative provision in place of the provision so deleted.

### 38.13 **Formulation and notification of claims for relief, compensation or Deemed Energy Payments**

If the Seller claims relief, compensation or Deemed Energy Payments in terms of this Agreement, then any such claim shall be formulated and notified to the Buyer such that the claim is capable of being assessed as a single claim, separate from any other claim, unless the Buyer agrees otherwise.

**NEXT PAGE IS THE SIGNATURE PAGE**

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

**[NAME OF SELLER]**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**STELLENBOSCH LOCAL MUNICIPALITY**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**SCHEDULE 1**

**DETAILS OF THE PROJECT AND FACILITY**

**Part 1**

**Facility**

**Description of Facility (including, where applicable, each Unit within a Facility)**

**Scale Drawing**

**PLEASE SEE SCALE DRAWING AT THE END OF THIS SCHEDULE 1 PART 1**

## Facility Details

|                                                                                                                                |  |
|--------------------------------------------------------------------------------------------------------------------------------|--|
| <b>Project Name:</b>                                                                                                           |  |
| Contracted Capacity: [MW]                                                                                                      |  |
| Maximum Export Capacity (as defined in the Distribution Agreement: [MW]                                                        |  |
| Installed Capacity for the Project: [MW]<br>Inverters:<br>Modules:                                                             |  |
| PV Module Manufacturer and Type:<br>[e.g. Polycrystalline, Monocrystalline, Thin Film]                                         |  |
| Power rating of PV Modules [W]                                                                                                 |  |
| Number of PV Modules:                                                                                                          |  |
| Number of module strings (where a sting constitutes a number of modules connected to a common inverter):                       |  |
| Mounting Type (fixed, single axis tracking or double axis tracking):                                                           |  |
| PV inverter (manufacturer and model):                                                                                          |  |
| Maximum instantaneous AC rated capacity of inverter: [MW]                                                                      |  |
| Maximum continuous AC rated capacity of inverter: [MW]                                                                         |  |
| Number of inverters:                                                                                                           |  |
| 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): |  |

## Technical codes and standards

The equipment to be used in the Facility are designed, manufactured, installed, commissioned and tested in accordance with standards published by any of the following authorities (or any successors thereof):

- 1 IEC - International Electrotechnical Commission;
- 2 IEEE - Institute of Electrical and Electronics Engineers;
- 3 NERSA - National Energy Regulator of South Africa
- 4 NFPA - National Fire Protection Association;
- 5 SANS - South African National Standards;
- 6 UL - Underwriters Laboratories;
- 7 South African codes and standards required by legislation.

A consistent set of regulations, codes and standards shall be used for the design of all system, equipment, components and structures for the Project. In addition, the latest version of all applicable standards should be used. This includes Eskom standards.

PV modules shall be from a manufacturer who is included on the most recent issue of Bloomberg New Energy Finance's List of Tier 1 Solar Panel Manufacturers.

**P50 Forecast Energy Output:**

| <b>Contract<br/>Year</b> | <b>Forecast Annual Energy<br/>Output (MWh)</b> | <b>Contract<br/>Year</b> | <b>Forecast Annual Energy<br/>Output (MWh)</b> |
|--------------------------|------------------------------------------------|--------------------------|------------------------------------------------|
| 1                        |                                                | 11                       |                                                |
| 2                        |                                                | 12                       |                                                |
| 3                        |                                                | 13                       |                                                |
| 4                        |                                                | 14                       |                                                |
| 5                        |                                                | 15                       |                                                |
| 6                        |                                                | 16                       |                                                |
| 7                        |                                                | 17                       |                                                |
| 8                        |                                                | 18                       |                                                |
| 9                        |                                                | 19                       |                                                |
| 10                       |                                                | 20                       |                                                |

**Part 2**

**Single Line Diagram and Network Diagram**

**THIS PAGE HAS BEEN LEFT BLANK INTENTIONALLY. PLEASE SEE SINGLE LINE DIAGRAM AND  
NETWORK DIAGRAM ON THE NEXT PAGE.**

### Energy Rates

1. The Commercial Energy Rate shall be ZAR [\*]/kWh, as Indexed annually.

### Indexation

#### 2. Commercial Energy Rate

- 2.1 The Commercial Energy Rate shall be Indexed on 1 July in each Calendar Year starting 12 months following the Base Date using the following formula:

$$P_n = P_b \times (I_n/I_b)$$

where:

|       |   |                                                                                                                                                                                                                        |
|-------|---|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| $P_n$ | = | Commercial Energy Rate in Year n;                                                                                                                                                                                      |
| $P_b$ | = | ZAR [*] <sup>9</sup> /kWh (being the 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 July and ending 30 June; and                                                                                      |
| $I_b$ | = | CPI Index at Base Date, being the published Consumer Price Index (Dec 2021 = 100) in respect of the month of March 2025, as rebased by Statistics South Africa (or its equivalent successor entity) from time to time. |

- 2.2 The invoice for the total amount due to the Seller in each Billing Period, shall comply with and comprise the items listed in clause 9.1 (*Operating Period Invoices*).

---

<sup>9</sup> Insert fully indexed Commercial Energy Rate.

### 3. Energy Payment

The following formula determines the manner of calculation of the Commercial Energy Payment.

#### 3.1 Calculation of Energy Payment for the Billing Period

$$EP_m = \sum_{h=1}^H (AEO_h \times ER_n)$$

where:

|         |   |                                                                                        |
|---------|---|----------------------------------------------------------------------------------------|
| $EP_m$  | = | Energy Payment (in Rand) for Billing Period $m$ , being the Commercial Energy Payment; |
| $AEO_h$ | = | Actual Energy Output (in MWh) in hour $h$ ;                                            |
| $ER_n$  | = | Commercial Energy Rate (R/MWh) for contract year $n$ ,                                 |
| $H$     | = | Total hours for the Billing Period $m$ ;                                               |
| $H$     | = | one (1) hour                                                                           |

**SCHEDULE 2**

**COMPLETION MILESTONES AND FORMS OF NOTICES**

**Part 1**

**Completion Milestones**

Scheduled COD for the Facility: [\*]

**PLEASE SEE THE PROJECT SCHEDULE GANTT CHART ON THE NEXT PAGE**

## Part 2

## Facility Completion Form

[on the letterhead of the Independent Engineer]

[Date]

Stellenbosch Local Municipality

[Address]

Attention: [•] Dear Sirs,

## Facility Completion Form

We refer to the Power Purchase Agreement entered into between [•] and Stellenbosch Local Municipality 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 as at the date hereof 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 capacity attributable to self-consumption and electrical losses up to the Delivery Point, as determined pursuant to the acceptance tests described above, is [•]MW<sup>10</sup>.
- 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 location agreed in the PPA, has been successfully commissioned and is capable of performing its functions as set out in the PPA.
- The Facility Metering Installation has been procured, installed, tested and successfully commissioned in accordance with the PPA.

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<sup>10</sup> Amount to be included following completion of acceptance tests.

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

Yours faithfully,

**[NAME OF INDEPENDENT ENGINEER]**

## Part 3

**Form of Notice of Commencement of Facility**

[on the letterhead of the Seller]

[Date]

Stellenbosch Local Municipality

[Address]

Attention: [●]

Dear Sirs

**Notice of Commencement of Facility**

We refer to the power purchase agreement dated [●] (the "**PPA**") Stellenbosch Local Municipality (the "**Buyer**") and ourselves, [●] (the "**Seller**").

This notice ("**Notice**") is the Notice of Commencement of Facility referred to in clause 4.4 (*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. 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 Commercial Energy 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 Distribution Agreement, 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 20 (*Termination*) have occurred and are continuing.
11. All of the Project insurances required pursuant to clause 21 (*Project Insurance*) of the PPA are in place and in full force and effect.

Yours faithfully,

**[NAME OF SELLER]**

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**Representative of the Seller**

**Commencement of Construction Confirmation Form*****[on the letterhead of the Independent Engineer]***

[Date]

Stellenbosch Local Municipality

Town House Complex

Plein Street

Stellenbosch

Attention: [•]

Dear Sirs/ Madam

**Commencement of Construction Confirmation Form**

We refer to the Power Purchase Agreement entered into between [•] and Stellenbosch Local Municipality 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 Commencement of Construction Confirmation Form as defined in and as may be issued in terms of the PPA.

We hereby represent and warrant as at the date hereof that the Seller has Commenced Construction in that:

***[Independent Engineer to specify whether sub-clause (a) or sub-clause (b) of the definition of Commence Construction applies.***

***If sub-clause (a) applies, the Independent Engineer is required to confirm that it has reviewed the authorisation and has conducted a physical site inspection to satisfy itself that the requirements of sub-clause (a), as qualified by the provisos in the definition, have been met.***

***If sub-clause (b) applies, the Independent Engineer is required to confirm that it has reviewed the Seller's documentation in relation to the procurement of Key Equipment and is required to specify in reasonable detail the Key Equipment that has been procured by the Seller and the proof of payment for the Key Equipment.]***

Yours faithfully,

**[NAME OF INDEPENDENT ENGINEER]**

### SCHEDULE 3 - SCHEDULED AND UNSCHEDULED OUTAGES

The following conditions shall apply to ensure a good co-ordination between Seller and Buyer in relation to the Operation of the Facility during Scheduled Outages and Unscheduled Outages.

#### 1. **Three (3) year 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) Contract Year ahead 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) Contract 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 Schedule.

#### 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 Contract 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 Buyer.

### 4. **Reactions to System Events resulting from unplanned maintenance**

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 the 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.

### 5. **Consequences of non-compliance with a Curtailment instruction**

In the event that the Seller fails to comply in any respect with any Curtailment instruction issued by the Buyer:

- 5.1 the Seller shall not be entitled to invoice the Buyer, and the Buyer shall not be bound to make payment to the Seller, for Energy Output delivered to the Buyer in breach of such Curtailment instruction (i.e. for that portion of the Energy Output which should have been Curtailed pursuant to the instruction);
- 5.2 the Seller shall not be entitled to any Deemed Energy Payments which it may otherwise have become eligible for, for the period of the Curtailment instruction;
- 5.3 the Buyer shall be entitled to effect the Curtailment itself, using the SCADA system; and
- 5.4 the Buyer shall not be liable for any Losses suffered by the Seller as a result of any actions taken by the Buyer in accordance with clause 5.3 of this Schedule 3 (*Scheduled and Unscheduled Outages*).

**SCHEDULE 4 – FORECASTING INFORMATION****1. Weekly Forecast Generation Profile**

The Seller shall provide to the Buyer, and to the Distributor (as appropriate) on a daily basis, before 10:00 on the preceding day, the Weekly Forecast Generation Profile, calculated at the Delivery Point for each hour (the first such hour starting at 00:00 and ending at 00:60 minutes) in the Week (starting at 00:00 hours on day 2 and ending at 24:00 hours on day 7).

| Day             | Time  | Hours | MWh | Available MW |
|-----------------|-------|-------|-----|--------------|
| 2 <sup>nd</sup> | 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 |     |              |

| Day             | Time  | Hours | MWh | Available MW |
|-----------------|-------|-------|-----|--------------|
|                 | 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 |     |              |
| 3 <sup>rd</sup> | 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 |     |              |

| Day             | Time  | Hours | MWh | Available MW |
|-----------------|-------|-------|-----|--------------|
|                 | 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 |     |              |
| 4 <sup>th</sup> | 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 |     |              |

| Day             | Time  | Hours | MWh | Available MW |
|-----------------|-------|-------|-----|--------------|
|                 | 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 |     |              |
| 5 <sup>th</sup> | 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 |     |              |

| Day             | Time  | Hours | MWh | Available MW |
|-----------------|-------|-------|-----|--------------|
|                 | 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 |     |              |
| 6 <sup>th</sup> | 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 |     |              |

| Day             | Time  | Hours | MWh | Available MW |
|-----------------|-------|-------|-----|--------------|
|                 | 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 |     |              |
| 7 <sup>th</sup> | 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 |     |              |

| Day | Time  | Hours | MWh | Available MW |
|-----|-------|-------|-----|--------------|
|     | 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 |     |              |

## 2. Daily Forecast Generation Profile

The Seller shall provide to the Buyer, and to the Distributor on a daily basis, fourteen (14) hours before the commencement of each day, the Daily Forecast Generation Profile, calculated at the Delivery Point.

| Time  | Hours | MWh | Available MW |
|-------|-------|-----|--------------|
| 00:00 | 01:00 |     |              |

| Time  | Hours | MWh | Available MW |
|-------|-------|-----|--------------|
| 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 |     |              |

| Time  | Hours | MWh | Available MW |
|-------|-------|-----|--------------|
| 23:00 | 24:00 |     |              |

SCHEDULE 5 - LIST OF FIRMS - INDEPENDENT ENGINEER

| Firm Name | Physical Address | Telephone Number | Contact person and email address |
|-----------|------------------|------------------|----------------------------------|
|           |                  |                  |                                  |
|           |                  |                  |                                  |
|           |                  |                  |                                  |

## SCHEDULE 6 – DEEMED ENERGY PAYMENT

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

### 1. Facility Power Curve ("FPC")

1.1 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:

1.1.1 "In Plane Irradiance" (GKi) (kW/m<sup>2</sup>), which is the solar radiation available on the plane of a solar PV module; module temperature (°C); and

1.1.2 Energy Output of the Facility,

(the "FPC Data").

1.2 The following requirement shall apply to the measurement and recording of the FPC Data:

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

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

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

1.2.4 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 inverters and multiplying by zero point nine seven five (0.975) to account for internal losses;

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

1.2.6 The Seller may, with prior written agreement from the Buyer, utilise the In Plane Irradiance as measured by the Backup Reference Pyranometer in the event of a failure or interruption to the Reference Pyranometer; the In Plane Irradiance data shall be grouped in bins of 50W/m<sup>2</sup>;

1.2.7 the module temperature shall be measured using adjacent temperature sensors mounted at an appropriate location within the Facility (the "**Reference Temperature Sensor**" and "**Backup Reference Temperature Sensor**"). The Reference Temperature Sensor and Backup Reference Temperature Sensor shall be confirmed by an Independent Engineer. The location of the Reference Temperature Sensor and Backup Reference Temperature Sensor may not be changed without the prior written agreement of both Parties;

- 1.2.8 The Seller may, with prior written agreement from the Buyer, utilise the module temperature as measured by the Backup Reference Temperature Sensor in the event of a failure or interruption to the Reference Temperature Sensor; the module temperature data shall be grouped in bins of five (5) °C; and
- 1.2.9 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.
- 1.3 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 GK<sub>i</sub> for each temperature group. This suite of power curves will together form the FPC.
- 1.4 The FPC Data must be reported to the Buyer by the end of the first Contract Year following the Commercial Operation Date.
- 1.5 The FPC Data shall be prepared and submitted in accordance to 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:
  - 1.5.1 a hard copy of curves showing binned values only;
  - 1.5.2 a hard copy scatter plot showing the individual average ten (10) minute values; and
  - 1.5.3 all raw data obtained from the SCADA, the Reference Pyranometer, Backup Reference Pyranometer, Reference Temperature Sensor and Backup Reference Temperature Sensor, averaged, in electronic format, to enable the Buyer to compare the raw data to the binned data.
- 1.6 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.
- 1.7 In case of 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 30 (*Fast Track Dispute Resolution*).
- 1.8 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, costs of the update will be incurred by the Party requesting the revision.
- 1.9 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.

1.10 Subject to clause 1.11 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).

1.11 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.

**2. Deemed Energy Payment for System Events and Compensation Events occurring before the Commercial Operation Date**

2.1 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 ("**the Delay Period**"), shall be determined as follows:

$$DEP = EO \times CER$$

**where:**

2.1.1 DEP is the Deemed Energy Payment for the Delay Period (ZAR);

2.1.2 EO is the P50 average Energy Output forecast (being Energy Output that the Facility is judged to have a fifty percent (50%) probability of exceeding and a fifty percent (50%) probability of underachieving (MWh) 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 (MWh); and

2.1.3 CER is the Commercial Energy Rate (ZAR/MWh).

**3. Deemed Energy Payment for System Events and Compensation Events occurring after the Commercial Operation Date**

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

3.2 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 such Contract Year, and invoiced in accordance with the principles set out in clause 9 (*Invoicing*).

3.3 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.

3.4 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:

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

**where:**

3.4.1 *DEP* is the Deemed Energy Payment for that Deemed Energy Period (ZAR);

3.4.2 *x* is the total number of ten (10) minute periods of Deemed Energy in that Deemed Energy Period;

3.4.3 *i* is each individual ten (10) minute period of Deemed Energy;

3.4.4 *CER* is the Commercial Energy Rate (ZAR/MWh);

3.4.5 *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;

3.4.6 *EO* is the expected Energy Output (MWh) during each ten (10) minute period during the Deemed Energy Period, if the Deemed Energy Period commences:

3.4.6.1 within the first Contract Year following the Commercial Operation Date or the extended period in which the Approved FPC has not yet been determined, in which event *EO* will be calculated as if the Facility has achieved the P50 Forecast for the appropriate month;

3.4.6.2 after the end of the first Contract Year and following the completion of the Approved FPC, in which event *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:**

3.4.6.2.1 *EO* is the expected Energy Output (MWh);

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

3.4.6.2.3 *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 1.10 of this Schedule 6 (*Deemed Energy Payment*).

- 3.5 If the Deemed Energy Period commences during the first five (5) minutes of a ten (10) minute period, such 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 ten (10) minute period shall not be taken into account in the calculation of the Deemed Energy Payment.
- 3.6 In the event of a failure of or interruption to the Reference Pyranometer, the Backup Reference Pyranometer may be used. In the event of a failure of or interruption to the Reference Pyranometer and the Backup Reference Pyranometer, the relevant expected Energy Output shall be calculated by the Independent Engineer, provided that if the failure of or interruption to the Reference Pyranometer and Backup Reference Pyranometer 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 and Backup Reference Pyranometer persists.
- 3.7 In the event of a failure of or interruption to the Reference Temperature Sensor, the Backup Reference Temperature Sensor may be used. In the event of a failure or interruption for the Reference Temperature Sensor and the Backup Reference Temperature Sensor, the relevant expected Energy Output shall be calculated by the Independent Engineer, provided that if the failure of or interruption to the Reference Temperature Sensor and the Backup 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 Temperature Sensor and the Backup Reference Temperature Sensor persists.
- 3.8 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.

#### 4. **Adjustment of Deemed Energy Payments**

- 4.1 Where the Approved FPC has been determined, the Buyer or Seller may dispute the Deemed Energy Payment calculated in terms of clause 3.5.6.1 and clause 2 (*Deemed Energy Payment for System Events and Compensation Events occurring before the Commercial Operation Date*) of this Schedule 6 (*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 clause 3.4.6.1 and clause 2 (*Deemed Energy Payment for System Events and Compensation Events occurring 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.

- 4.2 The amount of the overpayment or underpayment determined in terms of clause 4.1 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**

***[THIS MUST INCLUDE THE DISTRIBUTION AGREEMENT, ANY DIRECT AGREEMENT CONCLUDED IN RESPECT OF THE CONNECTION ARRANGEMENTS, AND THE SELF-BUILD AGREEMENT, IF APPLICABLE.]***

**1. Part A (PPA Related Project Documents)**

- 1.1 Independent Engineer Agreement;
- 1.2 Water Use Licence (if applicable);
- 1.3 Distribution Agreement;
- 1.4 Self-Build Agreement (if applicable);
- 1.5 Direct Agreement in respect of the [*applicable connection agreement referred to above*];
- 1.6 Direct Agreement in respect of the PPA.

**SCHEDULE 8 - DIRECT AGREEMENT**

**THIS PAGE HAS BEEN LEFT BLANK INTENTIONALLY. PLEASE SEE THE FORM OF DIRECT AGREEMENT IN APPENDIX 17A TO THE RFP.**

**SCHEDULE 9 - REPORTING****Part 1****Monthly Construction Reports**

The monthly construction report shall be in the form of a level three (3) project schedule Gantt chart updated against the baseline Project Schedule, in pdf and native format in respect of the Facility and provided no later than ten (10) days after the end of each month during the period of Construction, i.e. from the Effective Date until the Commercial Operation Date.

***[Note to Bidders: the reporting format shall be extracted from the bid response of the Seller. At a minimum, the monthly construction reports provided in the bid response shall detail and comply with the following provisions in this Schedule 10 (Monthly Construction Reports).]***

**Table of Contents****1. Summary****1.1 Executive Summary**

*This section shall provide an overview of the status of all works, with key points from the detailed chapters. Major milestones looking forward shall be highlighted, problems identified and any mitigations made, proposed and/or identified.*

**1.2 Appendices**

*The Appendices shall include photos taken on-site to illustrate progress of the Project*

**2. Facility****2.1 Summary**

*This section shall include details of:*

- 2.1.1** *overall Project progress (including a construction "S-curve");*
- 2.1.2** *areas of concern/urgent pending items;*
- 2.1.3** *status of work for engineering, procurement, site delivery, commissioning and testing; and*
- 2.1.4** *a summary table shall be added showing the percentage of work actually performed versus the planned progress. An example table is provided in Table 1 (Facility example: percentage of work actually done versus the planned progress) below.*

## **2.2 Engineering and Design**

*This section shall include the status of engineering works, any problems encountered and their impact on the progress of the work.*

## **2.3 Procurement and Manufacturing**

*This section shall summarise the status of purchase orders, manufacturing of major components, problems encountered and their impact on the time schedule. Any necessary expediting measures shall be explained.*

## **2.4 Shipment and Delivery to Site**

*This section shall indicate the status of shipments and issues related to delays in transportation, damages, customs clearance, local transportation, etc. If there are any insurance claims resulting from delays these shall be noted.*

## **2.5 Erection**

*This section shall provide a description of the current status of erection / construction. Delays, damages, sources of major insurance claims and mitigation measures shall be included where applicable.*

## **2.6 Commissioning**

*As construction progresses, this section shall report on the status of preparation for commissioning and the progress of commissioning as it proceeds. Any issues affecting quality, programme and cost shall be identified along with their effects and the measures undertaken to mitigate those effects.*

## **2.7 Testing**

*This section shall report on the preparation for performance tests, any completed tests and their results and provide a look forward to tests due to be performed in the near future.*

## **2.8 Quality Report**

*A list of performed and planned tests and inspections for major items and systems is to be included. Any shortcomings shall be identified and mitigation actions provided.*

## **2.9 Staffing**

*This section shall outline the current staffing levels and numbers of both the Seller and Contractor workforce and include a forecast to completion.*

## **2.10 Health and Safety**

*This section shall outline the number of people at the Project Site and address any major health and safety problems encountered and their consequences.*

## 2.11 **Environmental issues**

*This section shall provide a status report on compliance with environmental requirements during construction, commissioning and testing of the Project. Mitigation measures, where required, shall be included. The results of the environmental monitoring shall also be provided.*

## 2.12 **Schedule**

*Current Project Schedule and Critical Path Analysis shall be provided in either Primavera or MS Project and in PDF. The Project Schedule shall be to Level 3 detail and include progress against the agreed baseline.*

## 2.13 **Distribution Connection Works**

- **Summary**
- **Engineering and Design**
- **Line Routing**

*This section shall include the status of determination of line routing, conduct of environmental impact assessments and acquisition of land or easements, including any problems encountered and any impact on the progress of the work*

- **Procurement and Manufacturing**
- **Shipment and Delivery to Site**
- **Erection**
- **Commissioning**
- **Testing**
- **Quality Report**
- **Health and Safety**
- **Environmental issues**
- **Schedule**

**Table 1 - Facility example: percentage of work actually done versus the planned progress**

| <b>Area of Work</b>                             | <b>% Actual vs Planned</b> |
|-------------------------------------------------|----------------------------|
| <b>Engineering &amp; Design</b>                 |                            |
| <b>Civil works</b>                              |                            |
| <b>Power Plant</b>                              |                            |
| <b>Electrical system (excluding switchyard)</b> |                            |
| <b>Switchyard</b>                               |                            |
| <b>Instrumentation and control system</b>       |                            |

| <b>Area of Work</b>                       | <b>% Actual vs Planned</b> |
|-------------------------------------------|----------------------------|
| <b>Water and waste water treatment</b>    |                            |
| <b>Other Balance of plant items</b>       |                            |
| <b>Area of Work</b>                       |                            |
| <b>Procurement and Manufacturing</b>      |                            |
| <b>As per above</b>                       |                            |
| <b>Shipment</b>                           |                            |
| <b>As per above</b>                       |                            |
| <b>Erection</b>                           |                            |
| <b>As per above</b>                       |                            |
| <b>Procurement and Manufacturing</b>      |                            |
| <b>As per above</b>                       |                            |
| <b>Shipment</b>                           |                            |
| <b>As per above</b>                       |                            |
| <b>Erection</b>                           |                            |
| <b>As per above</b>                       |                            |
| <b>Commissioning</b>                      |                            |
| <b>As per above</b>                       |                            |
| <b>Testing</b>                            |                            |
| <b>As per above</b>                       |                            |
| <b>Total percentage of work performed</b> |                            |

**Table 2 - Transmission line example: percentage of work actually done versus the planned progress**

| <b>Area of Work</b>             | <b>% Actual vs Planned</b> |
|---------------------------------|----------------------------|
| <b>Engineering &amp; Design</b> |                            |
| <b>Foundations</b>              |                            |
| <b>Towers</b>                   |                            |

| <b>Area of Work</b>                       | <b>% Actual vs Planned</b> |
|-------------------------------------------|----------------------------|
| <b>Line/ Cabling</b>                      |                            |
| <b>OPGW (Optical Ground Wire)</b>         |                            |
| <b>Line Routing</b>                       |                            |
| <b>Determination of routing</b>           |                            |
| <b>EIAs and other approvals</b>           |                            |
| <b>Acquisition of land or easements</b>   |                            |
| <b>Procurement and Manufacturing</b>      |                            |
| <b>As per above</b>                       |                            |
| <b>Shipment</b>                           |                            |
| <b>As per above</b>                       |                            |
| <b>Erection</b>                           |                            |
| <b>As per above</b>                       |                            |
| <b>Commissioning</b>                      |                            |
| <b>As per above</b>                       |                            |
| <b>Testing</b>                            |                            |
| <b>As per above</b>                       |                            |
| <b>Total percentage of work performed</b> |                            |

**SCHEDULE 10 - INDEPENDENT ENGINEER AGREEMENT**

**THIS PAGE HAS BEEN LEFT BLANK INTENTIONALLY. PLEASE SEE THE FORM OF INDEPENDENT ENGINEER AGREEMENT IN APPENDIX 20A TO THE RFP.**

**SCHEDULE 11 – FINANCIAL MODEL**

## **SCHEDULE 12 – DECOMMISSIONING PLANS**

### **Part 1 – Decommissioning Financial Plan**

### **Part 2 – Decommissioning Plan**

## SCHEDULE 13 – SOCIO-ECONOMIC DEVELOPMENT FORMS

### Annexure A – Socio-Economic Development Obligations

1. **Job Creation:** Forty percent (40%) of total RSA-based Employee Person Months by Verified Residents during the Construction Measurement Period, fifty percent (50%) of total RSA-based Employee Person Months by Verified Residents during the Operating Measurement Period, and one hundred percent (100%) of total Unskilled RSA-based Employee Person Months by Verified Residents during both the Construction Measurement Period and the Operating Measurement Period, where the absolute number of total RSA-based Employee Person Months is recorded as follows:
  - 1.1. Construction Measurement Period: [XX] Person Months; and
  - 1.2. Operating Measurement Period: [XX] Person Months.
2. **Skills Development:** Zero-point two percent (0.2%) of total Revenue, in each Contract Year during the Operating Measurement Period.
3. **Social Spending:** Zero-point eight percent (0.8%) of total Revenue, in each Contract Year during the Operating Measurement Period.
4. Establishment and maintenance of an administrative office by the Seller in Stellenbosch Municipality from the Commercial Operation Date until termination of the PPA.

**Annexure B –Semesterly Obligations**

**See MS Excel file “Schedule of SED Semesterly Obligations”**

## Annexure C      Form of Socio-Economic Development Plan

Note, the first Socio-Economic Development (“SED”) Plan should detail the proposed measures to achieve the Socio-Economic Development Obligations for the first 24-month (two SED Contract Years) period. Subsequent SED Plans should have the same format and content, but must also include an assessment of the Project Company’s SED achievements of the preceding two SED Contract Years. If, in that retrospective assessment, any improvement areas are identified, the SED Plan should include corresponding changes to the execution approach.

For each of the Socio-Economic Development Obligations, the SED Plan must cover the following 10 (ten) components:

5.      **Objective/Goals:** Clearly define what you aim to achieve. Objectives should be Specific, Measurable, Achievable, Relevant, and Time-bound (SMART).
6.      **Scope:** Describe the boundaries of the plan. What is included? What is excluded?
7.      **Situation Analysis:** Assess the current status or situation, including strengths, weaknesses, opportunities, and threats (SWOT analysis).
8.      **Assumptions:** List any assumptions that are being made in the planning process. These are conditions that are expected to be true for the plan's success.
9.      **Resources:** Identify the resources required to execute the plan. This includes people, technology, financial resources, and materials.
10.     **Stakeholders:** Identify individuals or groups who have an interest in the plan and its outcomes. Consider their needs and how they will be engaged.
11.     **Roles and Responsibilities:** Define who is responsible for each task or component of the plan. Clear accountability is critical.
12.     **Action Plan/Tasks:** Break down the plan into actionable steps or tasks. Include timelines, deadlines, and sequencing of activities.
13.     **Budget:** Provide a financial plan that outlines the estimated costs involved in executing the plan.
14.     **Risk Management Plan:** Identify potential risks and plan for how to mitigate or handle them should they arise.

**Annexure D – Socio-Economic Development Obligations Reporting Template**

**See MS Excel file “SED Obligations Reporting template”**

## SCHEDULE 14 – FORM OF LIQUIDITY SUPPORT

### LIQUIDITY SUPPORT PERFORMANCE SECURITY

[INSERT BANK DETAILS]

**THIS BOND** is made on [REDACTED]

- (1) [insert name of bank], whose registered office is situated at [REDACTED] (the **Bank**), is irrevocably and unconditionally bound to [REDACTED], whose registered office is situated at [REDACTED] (together with its successors, novatees and assigns of this bond, the **Beneficiary**), in respect of the Bond Amount, as set out below, for payment of which amount the Bank binds itself in accordance with the provisions of this bond.

#### RECITALS:

- (A) By a power purchase agreement dated [REDACTED] (as such agreement may be altered, amended or varied from time to time) (the **PPA**) entered into between the Beneficiary and the Stellenbosch Local Municipality, (together with its successors, novatees and assigns under the PPA, (the **Buyer**), pursuant to which the Buyer has agreed with the Beneficiary to purchase energy subject to the terms and conditions contained in the PPA.
- (B) The Buyer has agreed, under the PPA, to procure for the benefit of the Beneficiary a payment guarantee in the form of this bond.
- (C) The Bank has agreed, at the request of the Buyer, to enter into this bond for the benefit of the Beneficiary (the **Bond**).

1. In this Bond capitalised terms used but not defined below shall have the meaning ascribed thereto in the PPA and:

**Bond Amount** means ZAR [REDACTED] ([*amount in words*]), being the maximum amount of the claim that may be made by the Seller against the Buyer pursuant to the occurrence of any Compensation Event in accordance with Clause [17.8] of the PPA.

**Business Day** means a Day on which banks are open for business in South Africa excluding a Saturday, Sunday or public holiday.

**Expiry Date** has the meaning given thereto in paragraph 9.

**Third Party** has the meaning given thereto in paragraph 19.

2. The Bank hereby irrevocably and unconditionally undertakes to pay on demand within [five] Business Days of the date on which it receives a written demand from the Beneficiary in accordance with paragraph 4 below, an amount equal to the lesser of:
- (a) the amount specified in such demand; and
  - (b) the Bond Amount,
- to the Beneficiary, as if it were the principal debtor in relation to the obligations of the Buyer under the PPA pursuant to the occurrence of a Compensation Event and in accordance with Clause [17.8] of the PPA.
3. The Bank's obligation to make payments under this Bond in accordance with paragraph 2 above shall be subject to the receipt of a demand made by the Beneficiary in accordance with paragraphs 4, 5 and 6 below.
4. The Beneficiary may make one or more demands under this Bond provided that the amount demanded shall in aggregate be equivalent to but never exceed the Bond Amount. The demand shall state that:
- 4.1 an amount is due and payable by the Buyer pursuant to the PPA as a result of a Compensation Event;
  - 4.2 the amount referred to in paragraph [4.1] has not been paid by the Buyer on the due date for payment as set out in the PPA;
  - 4.3 the applicable payment amount is not in dispute (in good faith);
  - 4.4 the Beneficiary has delivered a demand for payment of the amount due to the Buyer in accordance with the provisions of the PPA, and despite such demand, such amount was not paid within 20 (twenty) Business Days of receipt of the aforementioned demand; and
  - 4.5 the Seller has complied with all of its obligations under clause [17.2] of the PPA.
5. The Bank shall not be required or permitted to make any other investigation or enquiry as to whether the Buyer has defaulted in its obligations under the PPA. The Bank shall be obliged to make payment under this Bond without any proof in relation to any alleged breach, default, or other circumstances under which this Bond is called and without reference to the Buyer.
6. Each demand shall be:
- (a) in writing and signed by a director or authorised signatory of the Beneficiary;
  - (b) confirm that the Buyer is in breach of its payment obligations under the PPA;
  - (c) state the amount for which demand is being made; and

- (d) delivered to the Bank on a Business Day and during normal banking hours at the Bank's offices at [REDACTED] (or such other office of the Bank in Stellenbosch as the Bank may from time to time notify the Beneficiary).
7. A demand delivered by hand shall be effective from the date when it is delivered to the Bank in accordance with paragraph 6.
8. The maximum aggregate liability of the Bank under this Bond shall not exceed the Bond Amount.
9. This Bond is irrevocable. It will take effect on the Effective Date (as defined in the PPA) and will expire on the Termination Date (as defined in the PPA) (the **Expiry Date**). The expiry of this Bond in accordance with this paragraph 9 shall not affect or discharge the liability of the Bank to make payment of any written demand from the Beneficiary made in accordance with paragraphs 3, 4, 5 and 6 above and delivered to the Bank on or before the Expiry Date.
10. All payments to be made by the Bank under this Bond shall be made to the account specified in the relevant demand.
11. The obligations of the Bank under this Bond are primary and not by way of surety only.
12. The Bank shall not in any way be released or discharged from any liability under this Bond by any invalidity, illegality or unenforceability of the PPA nor by the insolvency, bankruptcy, winding up or reorganisation of the Buyer or the Beneficiary.
13. The Bank shall not be entitled to assign, cede or delegate its rights and/or obligations under this Bond without the prior written consent of the Beneficiary.
14. The Beneficiary shall not be entitled to assign, cede or delegate its interest under this Bond or any rights or benefit under this Bond to any permitted assignee or novatee of the PPA, without the consent of the Bank, provided, however, that the Beneficiary shall be entitled to assign, cede, delegate, charge or otherwise encumber its interest under this Bond or any rights or benefit under this Bond in favour of a member of the Beneficiary's Group, without the consent of the Bank, provided that the Bank shall be notified of any such assignment, cession, delegation, charge or encumbrance.
15. Any notices or communications to be made by the Bank or the Beneficiary to the other under or in connection with this Bond (other than demands, which are to be made under paragraph 3, 4, 5 and 6 above) shall be in writing and made to the other at the following applicable address:
16. In the case of the Bank:

**Address:** [REDACTED]

**Email** [REDACTED]

**Marked for the attention of:** [REDACTED]

17. In the case of the Beneficiary:

**Address:** [REDACTED]

**Email** [REDACTED]

**Marked for the attention of:** [REDACTED]

18. All payments under this Bond shall be made in ZAR and shall be free of any set-off, withholding or deduction of any kind whatsoever.
19. Nothing in this Bond shall, or is intended to, create rights and or benefits in favour of any person who is not a party to this Bond (a **Third Party**) other than the Beneficiary (or any other entity to whom the rights of the Beneficiary are assigned, ceded or delegated in terms of paragraph 14 above), and no term or provision of this Bond shall be, or is intended by the Bank or the Beneficiary to be, enforceable by any Third Party, other than the Beneficiary (or any other entity to whom the rights of the Beneficiary are assigned, ceded or delegated in terms of paragraph 14 above). For the avoidance of any doubt, the Bank acknowledges and agrees that the Beneficiary has the benefit of, and is entitled to enforce, this Bond, even though the Beneficiary is not party to this Bond.
20. Any waiver by the Beneficiary of the terms of this Bond or any consent or approval given by the Beneficiary shall only be effective if given in writing and then only for the purpose and upon the terms and conditions, if any, on which it is given.
21. If at any time one or more provisions of this Bond is or becomes illegal, invalid or otherwise unenforceable in any respect, such provision or provisions will be ineffective to the extent only of such illegality, invalidity or unenforceability and such illegality, invalidity or unenforceability will not invalidate the other provisions of this Bond.
22. This Bond is binding on the successors of the Bank.
23. This Bond shall be governed by and construed in accordance with the laws of South Africa.
24. The Bank and the Beneficiary irrevocably agree that the High Court of South Africa, Western Cape Division, shall have the non-exclusive jurisdiction to hear and determine any suit, action or proceeding and to settle any dispute which may arise under or in connection with this Bond and for such purposes irrevocably submit to the non-exclusive jurisdiction of such courts.
25. For the avoidance of doubt, the Buyer shall be liable for the cost of procuring and maintaining this Bond, and for the costs of the Beneficiary in enforcing this Bond, and the Beneficiary shall have no liability to the Bank in respect of such costs.

-

**SIGNED** at [redacted] on [redacted]

For: [redacted] [●]

\_\_\_\_\_  
Signatory:

Capacity:

Authority: