

BATTERY ENERGY STORAGE CAPACITY

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

TABLE OF CONTENTS

Clause number and description	Page
PREAMBLE	4
INTRODUCTION	4
1. DEFINITIONS	4
2. INTERPRETATION.....	36
3. SUSPENSIVE CONDITIONS AND TERM	39
4. PROJECT SITE AND CONSTRUCTION	41
5. TESTING AND COMMISSIONING.....	46
6. SALE OF STORED ENERGY OUTPUT.....	51
7. DECLARATIONS AND DISPATCH	52
8. TARIFF AND OTHER CHARGES	56
9. INVOICING	57
10. OUTAGES AND DERATINGS.....	60
11. REPORTS, RECORDS, PLANS AND MONITORING	60
12. METERING, COMMUNICATION, MONITORING AND CONTROL SIGNALS	62
13. UTILITIES AND CONSUMABLES	69
14. PROVISION FOR DECOMMISSIONING COSTS.....	69
15. SOCIO-ECONOMIC DEVELOPMENT	71
16. CONSEQUENCES OF A LATE SYSTEM CONNECTION EVENT	80
17. CONSEQUENCES OF A COMPENSATION EVENT	87
18. FORCE MAJEURE	91
19. UNFORESEEABLE CONDUCT AND CHANGE IN LAW.....	96
20. TERMINATION	100
21. PROJECT INSURANCE	107
22. GENERAL SELLER UNDERTAKINGS	107
23. INTELLECTUAL PROPERTY OF THE BUYER.....	108
24. SET-OFF.....	110
25. ASSIGNMENT	110

26.	CONTRACTORS	111
27.	CHANGES IN CONTROL OR EQUITY	111
28.	DISPUTE RESOLUTION	111
29.	FAST TRACK DISPUTE RESOLUTION	113
30.	LIABILITY	115
31.	THIRD PARTY INDEMNITY	116
32.	CONFIDENTIALITY	116
33.	GOVERNING LAW AND JURISDICTION	119
34.	NOTICES	119
35.	WARRANTIES	121
36.	REPRESENTATIVES	124
37.	MISCELLANEOUS	125
Schedule 1	–DETAILS OF THE PROJECT AND FACILITY	129
Schedule 2	–COMPLETION MILESTONES AND FORMS OF NOTICES	134
Schedule 3	–OUTAGES AND DERATINGS	140
Schedule 4	–LIST OF FIRMS - INDEPENDENT ENGINEER.....	142
Schedule 5	–PROJECT DOCUMENTS	143
Schedule 6	–DIRECT AGREEMENT	144
Schedule 7	–INDEPENDENT ENGINEER AGREEMENT	145
Schedule 8	–INSPECTION AND TESTING	146
Schedule 9	–CALCULATION OF PAYMENTS	159
Schedule 10	–REPORTING	165
Schedule 11	–PERFORMANCE REQUIREMENTS	170
Schedule 12	–SOCIO-ECONOMIC DEVELOPMENT FORMS	172
Schedule 13	–DECOMMISSIONING PLANS.....	176
Schedule 14	–FINANCIAL MODEL	177
Schedule 15	–FORM OF LIQUIDITY SUPPORT	178

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 and Maintain and to provide Capacity, and to make Energy Output available from, a [●] MW **[insert type]** Battery Energy Storage System within a 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 stored Energy Output of the Project, and the Buyer wishes to purchase the stored Energy Output made available by the Seller from the Project, 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 design, engineering, Construction, financing, insurance, commissioning, Operation and Maintenance of the Project, and the sale and purchase of stored Energy Output.

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 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):

- 1.1. "**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 of this Agreement, where the Agreement provides for its calculation;
- 1.2. "**Affected Party**" has the meaning given to it in clause 18.1 of this Agreement;

- 1.3. **"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;
- 1.4. **"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;
- 1.5. **"Ambient Site Conditions"** means the range of environmental conditions at a site in which the Facility is located, in which the Facility is designed to Operate, as detailed in the table with the title "Ambient Site Conditions Applicable to the Facility" in Part 1 (*Facility*) of Schedule 1 (*Details of the Project and Facility*);
- 1.6. **"Anti-Bribery and Corruption Laws"** means the Prevention and Combating of Corrupt Activities Act, 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;
- 1.7. **"Assign"** shall have the meaning given to it in clause 25.1 (*Prohibition on Assignment*) and **"Assignment"** shall be construed accordingly;
- 1.8. **"Automatic Generation Control" or "AGC"** has the meaning given to it in the Codes;
- 1.9. **"Auxiliary Consumption"** means the energy consumed by the Facility itself in the process of drawing Energy Input or storing Energy or delivering Energy Output, including consumption in respect of the provision of related services and operating auxiliary equipment; and which is internal consumption of the Facility and therefore accounted for in the Main Metering Installation;
- 1.10. **"Availability"** means, at any time and from time to time on an hourly or intra-hour basis, the capability of the Facility to:
- (a) draw Energy Input to be stored by the Facility; or
 - (b) make available Capacity and deliver Energy Output at the Delivery Point, whether or not the Facility is actually Dispatched to deliver Energy Output at the Delivery Point;

- 1.11. **"Availability Notice"** means any notice from the Seller to the Buyer, updating any Declaration issued in terms of clause 7 (*Declarations and Dispatch*) of this Agreement, which declares any change in respect of the current Declared Capacity for any reason whatsoever;
- 1.12. **"Availability Period"** means a period of one (1) hour (namely, 60 consecutive minutes) starting at 00:00 and ending at 00:60 minutes in each day;
- 1.13. **"Back Energisation"** means the initial connection of the Facility to the System for energising the main step-up transformer and back-feeding power to the Facility;
- 1.14. **"Base Date"** means 1 July 2025;
- 1.15. **"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 Signature Date, forecast in the Financial Model to achieve on its investment in Equity over the Term;
- 1.16. **"Baseline Equivalent Number of Cycles"** means the Cycles which the Facility will normally be expected to perform in a Billing Period, as calculated in accordance with formula (7) in Schedule 9 (*Calculation of Payments*);
- 1.17. **"Battery"** means a set of battery energy storage devices of the same type forming part of the Unit or the Facility;
- 1.18. **"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 an Energy Output 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 end on the Termination Date;
- 1.19. **"BESF Code"** means the Code titled "Grid Connection Code for Battery Energy Storage Facilities (BESF) Connected to the Electricity Transmission System (TS) or the Distribution System (DS) in South Africa", version 5.3 published by NERSA, as amended from time to time;
- 1.20. **"Black People"** refers to Africans, Coloureds and Indians, limited to those who are Citizens;
- 1.21. **"Business Day"** means a day, other than a Saturday or a Sunday or an official public holiday in South Africa;

- 1.22. **"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 Late System Connection 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 8.6 (*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 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 Support 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 Support (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);
- 1.23. **"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 that date (or for the first Contract Year, if that date falls in that first Contract Year), for a nine (9) month period;
- 1.24. **"Capacity"** means, in respect of a Unit or the Facility, at any time and from time to time, the capacity (expressed in MW available over a two hour period) of the Unit or Facility to (i) draw Energy Input; (ii) store Energy; and (iii) make Energy Output available to the System following Dispatch Instructions from the Buyer. Capacity shall be net of capacity attributable to Auxiliary Consumption and the electrical losses up to the Delivery Point;
- 1.25. **"Capital Expenditure"** means any expenditure treated as capital expenditure under IFRS;
- 1.26. **"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;

1.27. **“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 Signature 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 Signature Date, in each case coming into effect after the Signature Date;

1.28. **“Check Metering Installation”** means the metering equipment including all meters, fittings, equipment and wiring used for measuring the flow of electricity and associated infrastructure at a Delivery Point for each corresponding Main Metering Installation in accordance with clause 12 (*Metering*), and as detailed in Schedule 1 (*Details of the Project and Facility*):

- (a) comprising meters procured by the Seller only from one of the suppliers detailed in the Buyer’s list of approved meter suppliers (as that list may be amended and updated from time to time), such list to be obtained by the Seller from the Buyer;
- (b) installed by the Seller;
- (c) tested, calibrated, sealed, commissioned and, if permitted in terms of clause 12.6 (*Final testing, calibration and sealing prior to Back-Energisation*), released to service by the Metering Certifier in accordance with the Codes;
- (d) owned, Operated and Maintained by the Seller; and
- (e) in respect of the class specifications of the meters, conforming with the requirements of and standards set out in this Agreement and in the Codes;

1.29. **“Citizens”** means people who have obtained citizenship of the Republic of South Africa by birth, descent or naturalisation in terms of the South African Citizenship Act 88 of 1995;

1.30. **“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;

1.31. **“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;

1.32. **"Commence Construction"** means that:

- (a) the Seller has authorised a Contractor(s) to commence works under the terms of a binding written contract that is directly related to the construction of the Project and such Contractor(s) have 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 Project 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 Part 4 (*Commencement of Construction Confirmation Form*) of Schedule 2 (*Completion Milestones and Forms of Notices*),

provided that Commence Construction does not include:

- (A) preparing unpaved access roads to and around the Project Site;
- (B) exploration of the Project Site, including geotechnical investigations to determine foundation conditions and other preconstruction monitoring or testing to establish background information related to the ground conditions of the Project Site;
- (C) clearing land or erecting fences on and surrounding the Project Site;
- (D) commencing an action set out in (A) to (C) above but thereafter failing to actively pursue the actions set out in (a) and (b) above shortly thereafter other than for reasons of being prevented to continue due to Force Majeure, a Compensation Event, Unforeseeable Conduct or Change in Law; and
- (E) dismantling pre-existing buildings or machinery on the Project Site in order to Construct the Project,

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

1.33. **"Commencement of Construction Confirmation Form"** means the form attached to this Agreement as Part 4 (*Commencement of Construction Confirmation Form*) of Schedule 2 (*Completion Milestones and Forms of Notices*), 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 4.5 (*General Construction Obligations*);

- 1.34. **"Commercial Operation Date"** or **"COD"** means in respect of the Facility, the date specified in the Notice of Commencement of Facility as being the Commercial Operation Date of the Facility in terms of clause 5.5.6, provided that such date may not be before the Scheduled COD;
- 1.35. **"Commissioning Energy"** means any Energy delivered by the Facility to the Delivery Point prior to the Commercial Operation Date for purposes of the Facility Completion, if applicable;
- 1.36. **"Compensation Event"** means any material breach by the Buyer of any of its obligations under this Agreement, including any failure to make any payments that are undisputed, due and payable 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 Supplier or by Force Majeure, a Late System Connection 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;
- 1.37. **"Connection Works"** means the Facility Connection Works and the Distribution Connection Works, as applicable;
- 1.38. **"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 of any of the Construction, Operation and Maintenance of the Facility by the Seller;
- 1.39. **"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"** and **"Constructed"** shall have a corresponding meaning;
- 1.40. **"Construction Cost"** means the Capital Expenditure incurred by the Seller during the Construction Measurement Period, in respect of the Construction of the Facility;
- 1.41. **"Construction Measurement Period"** means the period commencing on the Effective Date, and ending on the Commercial Operation Date;
- 1.42. **"Consumer Price Index"** or **"CPI"** means the 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);
- 1.43. **"Contracted Capacity"** means:

- (a) prior to the Commercial Operation Date, the anticipated Capacity of the Facility, as stated in Table D (*Guaranteed parameters*) in Part 1 (*Facility*) of Schedule 1 (*Details of Project and Facility*); and
 - (b) with effect from the Commercial Operation Date, the anticipated Capacity of the Facility, based on the number of completed Cycles, as reflected in Table D (*Guaranteed parameters*) in Part 1 (*Facility*) of Schedule 1 (*Details of Project and Facility*);
- 1.44. **"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;
- 1.45. **"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;
- 1.46. **"Contract Semester Construction Cost"** means the Construction Cost projected, in the Financial Model, to be incurred in any Contract Semester;
- 1.47. **"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;
- 1.48. **"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;
- 1.49. **"Corrupt Practice"** means the offering, giving, receiving or soliciting, directly or indirectly, 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;

- 1.50. **"Cumulative Deemed Energy"** means the cumulative sum of all Deemed Energy during the period commencing on the COD or, in the event of a Late Connection System Event, the Scheduled COD, and ending on the last day of the particular Billing Period in question, calculated in accordance with formula (5) in Schedule 9 (*Calculation of Payments*);
- 1.51. **"Cycle"** means the full charge of the Facility or Unit, as applicable, charging from minimum State of Charge to the Net Dependable Capacity, followed by a full discharge of the Energy stored, from the Net Dependable Capacity level to the minimum State of Charge;
- 1.52. **"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;
- 1.53. **"Declaration"** has the meaning given to it in clause 7.2.1;
- 1.54. **"Declared Capacity"** means, in respect of the relevant Availability Period, the figure (expressed in MW available over a two-hour period) at the prevailing Ambient Site Conditions stated by the Seller in the most recent Declaration or unexpired Availability Notice, to be the Capacity of the Facility or the Unit, which shall not be greater than the Net Dependable Capacity;
- 1.55. **"Decommissioning Costs"** means the costs of decommissioning the Facility upon 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 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 but not limited to Batteries 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;

1.56. **"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 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 Decommissioning Financial Plan is included as Part 1 of Schedule 13 (*Decommissioning Plans*);

1.57. **"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 13 (*Decommissioning Plans*);

- 1.58. **"Deemed Energy"** means the Energy Output that was available from the Facility at the Delivery Point but which was not Dispatched, or the stored Energy which the Seller was able to deliver but which could not be delivered due to circumstances beyond the Seller's control, and for which the Seller is entitled in terms of this Agreement to be paid the Energy Output Payment, calculated in accordance with formula (4) in Schedule 9 (*Calculation of Payments*);
- 1.59. **"Delivery Point"** means the physical point/s, situated on the medium voltage side of the transformers 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 Input is to be delivered by the Distributor to the Facility and Energy Output is to be delivered by the Seller to the Buyer and the Net Dependable Capacity is to be measured, as such points are described in Schedule 1 (*Details of the Project and Facility*);
- 1.60. **"Derating"** means a Planned Derating or an Unplanned Derating;
- 1.61. **"DFFE"** means the Department of Forestry, Fisheries and Environment of the Government;
- 1.62. **"Direct Agreement"** means the direct agreement entered into (or to be entered into) between the Buyer, the Lenders (as defined in the Direct Agreement) (or their agent) and the Seller in relation to this Agreement, substantially in the form set out in Schedule 6 (*Direct Agreement*), as it may be amended from time to time by agreement of the parties thereto;
- 1.63. **"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;
- 1.64. **"Dispatch"** means the right of the Buyer, subject to the Codes, to issue a Dispatch Instruction to the Seller in order to schedule, coordinate and manage the flow of Energy Input or Energy Output of the Facility, or commence, increase, decrease, shut-down or cease draw down of Energy Input or delivery of the Energy Output of the Facility;
- 1.65. **"Dispatch Compliance"** means the Seller's compliance with:
- (a) a Dispatch Instruction, within a tolerance of plus or minus two point five percent (2.5%) of the MW value and/or MWh value (as the case may be) specified in the Dispatch Instruction; and
 - (b) where applicable, the requirements in clause 4.6.2 below;
- 1.66. **"Dispatch Instruction"** means an instruction issued by the Buyer to the Seller to receive Energy Input from the System or to deliver Energy Output to the Delivery Point, given in accordance with clause 7.5 (*Dispatch Instruction*);

- 1.67. **"Dispatch Schedule"** means a schedule provided by the Buyer to the Seller in accordance with clause 7.4 (*Dispatch Schedule*), specifying the Energy Output that the Buyer anticipates may be required from the Facility, for each hour of the following day;
- 1.68. **"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 or the Project (as the case may be) will be connected to and use the Distribution System;
- 1.69. **"Distribution Connection Works"** means the Municipality Connection Works as defined in the Distribution Agreement;
- 1.70. **"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);
- 1.71. **"Distributor"** means the Stellenbosch Local Municipality in its capacity as such;
- 1.72. **"Due Date"** has the meaning given to it in clause 9.3 (*General principles as regards invoicing*);
- 1.73. **"Effective Date"** means the first Business Day following fulfilment of the suspensive conditions listed in clause 3;
- 1.74. **"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;
- 1.75. **"End Of Life Contracted Capacity" or "EOL Contracted Capacity"** means the Contracted Capacity of the Facility at the end of life of the Battery, as reflected in Table D (*Guaranteed Parameters*) in Part 1 (*Facility*) of Schedule 1 (*Details of Project and Facility*);
- 1.76. **"Energy"** means electrical energy drawn from the System, stored and to be delivered by the Facility and measured in MWh;
- 1.77. **"Energy Input"** means the Energy drawn by the Unit or Facility and metered as delivered to the Unit or Facility at the Delivery Point, from the System, for charging of and storage through the Facility, pursuant to a Dispatch Instruction;
- 1.78. **"Energy Input Difference"** means the difference, measured in kWh, between the Energy Input and the Guaranteed Energy Input, calculated in accordance with formula (2) of Schedule 9 (*Calculation of Payments*);
- 1.79. **"Energy Output"** means the Energy delivered by the Unit or Facility and metered as delivered at and to the Delivery Point by the Seller, pursuant to a Dispatch Instruction or Set Point;

- 1.80. **"Energy Output Payment"** means, in relation to each Billing Period, the amount in Rand (excluding VAT) that shall be due and payable by the Buyer to the Seller for Energy Output, Energy Input Difference and/or Deemed Energy during that Billing Period, which amount shall be calculated in accordance with the relevant formula/e in Schedule 9 (*Calculation of Payments*);
- 1.81. **"Environmental Consents"** means any consents, licences, authorisations, permissions or approvals required from any organ of state in the local, provincial or national sphere of government or any regulatory agency in terms of any environmental law or heritage law for the development, Construction or Operation of the Facility;
- 1.82. **"Environmental Laws"** means any Laws designed to:
- (a) protect ecosystems and dependant 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;
- 1.83. **"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;
- 1.84. **"Equity"** means the entire issued share capital of and Shareholder Loans to the Seller;
- 1.85. **"Expiry Date"** means the date falling fifteen (15) years after the Scheduled COD, or as may be extended or amended in accordance with the terms of this Agreement;
- 1.86. **"Facility"** means the energy storage facility located at the Project Site capable of being Dispatched and comprising all plant, machinery and equipment, including the Facility, Key Equipment, all associated buildings and structures specifically required for the type of technology utilised in such energy storage facility, including any 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;
- 1.87. **"Facility Completion"** means the mechanical and electrical completion of each Unit and the Facility in accordance with the Codes, the Distribution Agreement and the standards of a

Reasonable and Prudent Operator, and the issue of the Facility Completion Form by the Independent Engineer;

- 1.88. **"Facility Completion Form"** means the form attached to this Agreement as Part 2 (*Form of Facility Completion Form*) of Schedule 2 (*Completion Milestones and Forms of Notices*), which is to be completed by the Independent Engineer and delivered to the Buyer for the Facility;
- 1.89. **"Facility Connection Works"** has the meaning given to it in the Distribution Agreement;
- 1.90. **"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;
- 1.91. **"Financial Model"** means the financial base case for the Project as reflected in the Excel-based financial model to be attached to this Agreement on an electronic storage device that can be used to store data, as provided for in Schedule 14 (*Financial Model*), 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;
- 1.92. **"Financing Agreements"** means the agreements relating to the Debt as at the Effective 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 with the provisions of the agreements in relation to the hedging of exposure to interest rate changes and foreign currency exchange rate fluctuations only;
- 1.93. **"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) – (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 or 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 affecting the Project and/or the Project Site, save where the Force Majeure relief is in respect of such action is 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 the Republic of South Africa;
7. acts of a political nature including rebellion, riot, civil commotion, act or campaign of terrorism, sabotage, in each case occurring within the Republic of 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; or

11. 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 (11) 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 wilful 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's 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 enter 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; or
 - 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;
- 1.94. **"Government"** means the Government of South Africa as contemplated in the Constitution of the Republic of South Africa, 1996;
- 1.95. **"Group"** means the Seller and each Group Company;
- 1.96. **"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;
- 1.97. **"Guaranteed Energy Input"** means, based on the Energy Output and the Guaranteed Round-Trip Efficiency, the amount of Energy Input, in kWh, which the Facility should have measured at the Delivery Point, as calculated in accordance with formula (3) of Schedule 9 (*Calculation of Payments*);
- 1.98. **"Guaranteed Round-Trip Efficiency"** means the Round-Trip Efficiency values specified in Table D (*Guaranteed Parameters*) in Part 2 of Schedule 1 (*Details of the Project and Facility*);
- 1.99. **"IDP"** means the Stellenbosch Municipality's Integrated Development Plan, 2022-2027, or the IDP in force at the relevant time;
- 1.100. **"IFRS"** means International Financial Reporting Standards as developed by the International Accounting Standards Board;

- 1.101. **"Independent Engineer"** means any independent consulting engineer from the list of firms in Schedule 4 (*List of firms - Independent Engineer*) that is appointed in accordance with the provisions of clause 5.2 (*Independent Engineer*), to act jointly on behalf of the Seller and the Buyer;
- 1.102. **"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 7 (*Independent Engineer Agreement*);
- 1.103. **"Independent Expert"** means an impartial and independent third party, who shall be:
- (a) an engineer of not less than ten (10) years professional experience in 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;
 - (b) a qualified accountant with no less than ten (10) years professional experience, preferably in power purchase arrangements agreed to between the Parties and, failing agreement, nominated (at the request of either Party) by the President for the time being 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 attorney or advocate with no less than ten (10) years professional experience, preferably in power purchase arrangements or project finance, agreed to between the Parties, 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;
- 1.104. **"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;
- 1.105. **"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;
- 1.106. **"Invoice"** means a tax invoice meeting the requirements of the VAT Act, and denominated in Rand;
- 1.107. **"Job Creation"** means those measures that a Measured Entity can account for as being employed or implemented to achieve Employment through the Project Activities;

- 1.108. **"Key Equipment"** means the equipment identified in Table E (*Key Equipment*) in Part 1 (*Facility*) of Schedule 1 (*Details of the Project and Facility*), which shall include as minimum the following:
- (a) Battery, including the battery management system ("**BMS**");
 - (b) inverters;
 - (c) energy management system; and
 - (d) telemetric systems;
- 1.109. **"Last COD"** means the date which falls six (6) months after the Scheduled COD;²
- 1.110. **"Late System Connection Event"** means any delay in the connection of the Facility to the System beyond the date which falls [●]³ months after the Effective Date, provided that such delay is not caused by:
- (a) an act or omission of the Seller or a Contractor or Key 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 (if applicable); or
 - (c) the termination of the Distribution Agreement by the Distributor due to breach of such agreement by the Seller;
- 1.111. **"Late System Connection Event Payment"** means an amount (excluding VAT) that shall be due and payable by the Buyer to the Seller upon the occurrence of a Late System Connection Event which is not the result of *force majeure* under the Distribution Agreement, subject to compliance by the Seller with the obligations set out in clause 16.1.3 and subject to the remaining provisions of clause 16.1 (*Consequences of a Late System Connection Event*), which payment shall be calculated in accordance with clause 2.1 (*Payment in respect of a Late System Connection Event*) of Schedule 9 (*Calculation of Payments*);
- 1.112. **"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

² Time period can be extended if motivated by bidder, based on individual Project circumstances.

³ To be linked to the required time for grid connection of the Project.

- (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;
- 1.113. **"Lender"** has the meaning given to it in the Direct Agreement;
- 1.114. **"Liquidity Guarantor"** means [.....] with registration number [....], a company duly incorporated in South Africa;
- 1.115. **"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 15 (*Form of Liquidity Support*);
- 1.116. **"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 that date falls in that first Contract Year), for a three (3) month period;
- 1.117. **"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;
- 1.118. **"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"** and **"Maintained"** shall be construed accordingly;
- 1.119. **"Main Metering Installation"** means the metering equipment, including all meters, fittings, equipment, wiring and associated infrastructure, used for measuring the flow of electricity at the Delivery Point in accordance with clause 12 (*Metering*) and as detailed in Schedule 1 (*Details of the Project and Facility*):
- (a) comprising meters procured by the Seller only from one of the suppliers detailed in the Buyer's list of approved meter suppliers (as that list may be amended and updated from time to time), such list to be obtained by the Seller from the Buyer;
- (b) installed by the Seller;

- (c) tested, calibrated, sealed, commissioned and, if permitted in terms of clause 12.6 (*Final testing, calibration and sealing prior to Back-Energisation*) released to service by the Metering Certifier in accordance with the Codes;
 - (d) owned, Operated and Maintained by the Seller; and
 - (e) conforming with the requirements of and standards set out in this Agreement and in the Codes;
- 1.120. **"Material Contractor"** means one or more Contractors engaged by the Seller to Construct or Operate and Maintain the Facility, as the case may be;
- 1.121. **"Measured Entity"** means an entity relied upon by the Seller to perform and evidence any one or more of the Socio-Economic Development Obligations;
- 1.122. **"Metering Certifier"** means a reputable and experienced individual (representing a company) appointed by the Seller with the consent of the Buyer (not to be unreasonably delayed or withheld) to perform the electricity meter certification, testing, calibration, sealing and commissioning functions under clause 12 (*Metering*) of this Agreement and who, for the purposes of this Agreement and subject to the Codes, shall be an individual qualified as a Level 4 (or greater) meter worker according to SANS474/NRS057 (as those standards may be updated, amended or replaced), provided that, if such an individual is not appointed within ten (10) days of a request by one Party to the other in respect of the same, then the dispute shall be resolved in terms of clause 29 (*Fast Track Dispute Resolution*);
- 1.123. **"Metering Installation"** means the Main Metering Installation, the Check Metering Installation and/or any other metering installations required in order for the Seller to fulfil its obligations in this Agreement, in each case conforming with the requirements of and standards set out in this Agreement and in the Codes;
- 1.124. **"Minimum Acceptance Capacity"** means ninety five percent (95%) of the Contracted Capacity;
- 1.125. **"Minimum Energy Quantity"** means the minimum Energy Output, in kWh, which the Buyer commits to purchase from the Seller in any Billing Period, as calculated in accordance with formula (6) in Schedule 9 (*Calculation of Payments*);
- 1.126. **"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;
- 1.127. **"National Transmission Company" or "NTC"** means National Transmission Company South Africa SOC Ltd, or any entity to which such functions of National Transmission Company South Africa SOC Ltd are transferred pursuant to a restructuring of the South African electricity

market (including the creation of an independent system operator), or otherwise as mandated by the Government or any other Responsible Authority;

- 1.128. **"NERSA"** means the National Energy Regulator of South Africa as established by section 3 of the National Energy Regulator Act 40 of 2004;
- 1.129. **"Net Dependable Capacity"** or **"NDC"** means, from the Commercial Operation Date, the Capacity of the Facility at Reference Site Conditions, measured at the Delivery Point, which:
- (a) is based on the Contracted Capacity of the Facility;
 - (b) shall be determined by the initial and periodic tests done in accordance with Schedule 8 (*Inspection and Testing*), with the test results adjusted to take into consideration the Reference Site Conditions;
 - (c) must be continuously dependable, as demonstrated by the tests for Net Dependable Capacity undertaken in accordance with the provisions of Schedule 8 (*Inspection and Testing*); and
 - (d) shall never exceed the Contracted Capacity;
- 1.130. **"Net Dependable Capacity Test"** or **"NDC Test"** means the test referred to in clause 5.5.2 (*Output Active Power Test or NDC Test*) in Schedule 8 (*Inspection and Testing*) of this Agreement;
- 1.131. **"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 5.5 (*Commercial Operation Date*);
- 1.132. **"Operate"** means to manage and operate the Facility and/or the Project, and otherwise operate as required by this Agreement, and the term **"Operation"** or **"Operated"** shall be construed accordingly;
- 1.133. **"Operating Expenditure"** means any expenditure treated as operating expenditure under IFRS;
- 1.134. **"Operating Period"** means the period commencing on the Commercial Operation Date and ending on the Termination Date;
- 1.135. **"Outage"** means a Scheduled Outage or an Unscheduled Outage;
- 1.136. **"Personal Information"** has the meaning given to it in the POPI Act;
- 1.137. **"Person Month"** means a total of one hundred and sixty (160) hours worked by an Employee;

- 1.138. **"Planned Derating"** means any event or occurrence, other than an Outage, that reduces the Capacity of a Unit or Facility (as the case may be) but not below zero (0) MW and for a period no longer than 7 (seven) days unless agreed to with the Buyer, which shall be determined in accordance with [Schedule 3] (*Outages and Deratings*);
- 1.139. **"Planning Obligations"** means the planning obligations of the Seller to the Buyer, in terms of clause 15.2.1;
- 1.140. **"POPI Act"** means the Protection of Personal Information Act 4 of 2013, as amended;
- 1.141. **"Processing"** or **"Process"** has the meaning set out in the POPI Act;
- 1.142. **"Project"** means ownership or lease of the Project Site and the ownership, finance, Construction, Operation and Maintenance of the Facility;
- 1.143. **"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, 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;
- 1.144. **"Project Data"** has the meaning ascribed to it in clause 11.2.1;
- 1.145. **"Project Documents"** means the contracts described in Schedule 5 (*Project Documents*) relating to the Project, of which true copies of the contracts listed in Part A (*PPA Related Project Documents*) of Schedule 5 (*Project Documents*) shall be delivered by the Seller to the Buyer within twenty (20) Business Days of the Effective Date;
- 1.146. **"Project Schedule"** means the Project schedule contained in Part 1 (*Completion Milestones*) of Schedule 2 (*Completion Milestones and Forms of Notice*);
- 1.147. **"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*);
- 1.148. **"Public Good"** means a commodity or service that is provided without profit to all members of a society, in support of their well-being;
- 1.149. **"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;

- 1.150. **"Rand", "ZAR" and "Cent"** means the lawful currency of South Africa and **"Cent"** is a one-hundredth (100th) part of one Rand;
- 1.151. **"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;
- 1.152. **"Reference Site Conditions"** means the environmental conditions at the Project Site, or at which the Contracted Capacity or Net Dependable Capacity (as the case may be) are stated, as detailed in Table C (*Reference Site Conditions*) in Part 1 (*Facility*) of Schedule 1 (*Details of the Project and Facility*) with the title **"Reference Site Conditions"**;
- 1.153. **"Reporting Obligations"** means the reporting obligations of the Seller to the Buyer, in terms of clause 15.2.2;
- 1.154. **"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 the NTC and 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;
- 1.155. **"Revenue"** means, in relation to any reporting period, all amounts paid to and received by the Seller in terms of this Agreement, excluding any Use of System Charges;
- 1.156. **"Round Trip Efficiency" or "RTE"** means the ratio of total Energy Output to the total Energy Input over one Cycle, determined in accordance with the Round Trip Efficiency Test and measured at the Delivery Point;
- 1.157. **"Round Trip Efficiency Test" or "RTE Test"** means the test provided for in clause 5.4 (*Round Trip Efficiency Test*) in Schedule 8 (*Inspection and Testing*), for testing Round Trip Efficiency;
- 1.158. **"RSA-based"** means based within the borders of the Republic of South Africa;
- 1.159. **"Scheduled COD"** means the date which corresponds to the stated 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;

- 1.160. **"Scheduled Outage"** means the removal of a portion of the Facility, or of the Facility, from service in order to perform work on specific components, scheduled in accordance with Schedule 3 (*Outages and Deratings*) and which must have a predetermined start date and duration;
- 1.161. **"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 Effective 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;
- 1.162. **"Self-Build Agreement"** means the 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 and connected to the System;
- 1.163. **"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 Late System Connection 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 Project 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, or any material part of the Facility;
 - (f) the Seller, after the Commercial Operation Date, fails to ensure that (i) the Round Trip Efficiency, in a Round Trip Efficiency Test, is equal to or more than 85% (eighty five percent); and -
 - (i) either (a) fails to submit a remedial plan to the Buyer within fifteen (15) Business Days of the RTE Test date; or (b), having submitted such a remedial plan timeously, 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 one hundred and eighty (180) days); or

- (ii) 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 one hundred and eighty (180) days), but the Seller then fails to remedy completely and successfully the RTE within the time period specified in the remedial plan;
- (g) the Seller fails to comply with any of its obligations under clause 14 (*Provision for Decommissioning Costs*);
- (h) the Seller fails to comply with any of its Socio-Economic Development Obligations under clause 15 (*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;
- (i) any Consent is suspended or revoked, and not discharged, due to a material breach by the Seller (save for a withdrawal, revocation or cancellation by NERSA of any generation licence or registration required to be held by the Seller);
- (j) the Seller fails to maintain compliance with the requirements of any Consents or the Codes;
- (k) the Seller fails to comply with any provision of clause 25 (*Assignment*) or clause 27 (*Changes in Control or Equity*);
- (l) 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 for a 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 20.3.2 on ten (10) days' notice to the Seller;

- (m) any of the warranties in clause 35.1 (*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;

1.164. "**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;

1.165. "**Semesterly Obligations**" means the Socio-Economic Development Obligations for each Contract Semester, denoted in Annexure B (*Semesterly Obligations*) of Schedule 12 (*Socio-Economic Development Forms*);

1.166. "**Set Point**" means the Energy Input target and or Energy Output target provided by the Buyer to the Seller either by means of a Dispatch Instruction or by means of the Buyer's Automatic Generation Control (AGC) software, if the Facility is in AGC mode. The Set Point shall:

- (a) never be greater than the Declared Capacity;
- (b) never be greater than the Net Dependable Capacity; and
- (c) always be within the performance parameters outlined in Schedule 11 (*Performance Requirements*);

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

1.168. "**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);

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

1.170. "**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;

1.171. **"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 9 of 1999;
- (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:
 - (i) the learners completing the relevant studies within the prescribed time; or
 - (ii) 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;

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

1.173. **"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;

- 1.174. **"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;
- 1.175. **"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;
- 1.176. **"Socio-Economic Development Independent Monitor"** means a person appointed as such in terms of clause 15.6.5;
- 1.177. **"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 12 (*Socio-Economic Development Forms*);
- 1.178. **"Socio-Economic Development Performance"** has the meaning attributed to it in clause 15.3.2;
- 1.179. **"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 12 (*Socio-Economic Development Forms*);
- 1.180. **"South Africa"** or **"RSA"** means the Republic of South Africa;
- 1.181. **"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;

- 1.182. **"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;
- 1.183. **"State of Charge"** or **"SoC"** means the ratio of (i) the Energy stored within the Facility; and (ii) the product of the NDC and 2 (two) hours, expressed as a percentage;
- 1.184. **"Suppliers"** means any and all suppliers of Key Equipment;
- 1.185. **"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;
- 1.186. **"System"** means the Distribution System;
- 1.187. **"Tariff"** means the amount in Rand per kilowatt hour (Rand//kWh) specified in Table A.1 (*Tariff utilised in this Schedule 9 at the Base Date*) in Appendix A (*Agreed Values for Payment Calculations*) of Schedule 9 (*Calculation of Payments*), and applied for purposes of calculation of the Energy Output Payment for a Billing Period;
- 1.188. **"Term"** has the meaning given to it in clause 3 (*Suspensive Conditions and Term*), as such period of time may be amended, reduced or extended in accordance with the terms of this Agreement;
- 1.189. **"Termination Date"** means the earliest of the Expiry Date, the date when the NDC is lower than the EOL Contracted Capacity, and the date of termination of this Agreement in accordance with clause 20 (*Termination*);
- 1.190. **"Unavailable Energy Quantity"** means the quantity of Energy in kWh which the Facility was not available to deliver due to (i) the Declared Capacity being less than the Net Dependable Capacity; and/or (ii) the Energy Output being less than the Set Point, calculated in accordance with formula (8) of Schedule 9 (*Calculation of Payments*);
- 1.191. **"Unforeseeable Conduct"** shall occur if, after the Signature Date, the Buyer, Distributor or any Responsible Authority takes any action in terms of applicable Law (including the introduction of 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 Tariff 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 falling within sub-clause (a) or (b):

- (i) the principal effect of which is directly borne by:
 - (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 Signature Date or if it was foreseen, the impact on the Project was not foreseen; and
- (iv) which could not reasonably have been foreseen by any person in the position of the Seller on or before the Signature Date or if it could have reasonably have been foreseen, the impact on the Project could not reasonably have been foreseen,

provided that in respect of all situations falling within sub-clauses (a), (b) and (c):

- (e) Unforeseeable Conduct shall be deemed not to have occurred under circumstances where any action or omission of the Buyer, the Distributor, or the Responsible Authority is in direct response to any act or omission of the Seller which is illegal (other than an act or omission rendered illegal by virtue of such conduct of the Buyer, the Distributor, or Responsible Authority) or in violation of agreements to which the Seller is a party;
- (f) 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;
- (g) Unforeseeable Conduct shall be deemed not to have occurred if such conduct by the Buyer, or the Distributor, or any Responsible Authority is required as a result of an event of Force Majeure and is reasonably proportionate thereto;
- (h) Unforeseeable Conduct shall not include any Law that was enacted or made but not yet in force as at the Signature Date, or any proposed or draft Law that was promulgated for comment at any time before the Signature Date if and to the extent that such Law is materially unchanged when enacted and brought into effect; and

- (i) Unforeseeable Conduct shall be deemed not to have occurred if the conduct in question was the conduct of a municipal Distributor or a person appointed by a municipal 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;

- 1.192. **"Unit"** means, in relation to a Facility which supplies multiple Delivery Points, the single Battery or combination of Batteries making up that portion of the Facility which supplies Energy Output to a single Delivery Point;⁴
- 1.193. **"Unplanned Derating"** means a derating that is not a Planned Derating;
- 1.194. **"Unscheduled Outage"** means an outage that is not a Scheduled Outage;
- 1.195. **"Unskilled"** means not having or requiring special skill or training;
- 1.196. **"Use of System Charges"** means the Distribution Use-of-System Charges as defined in the Distribution Agreement, which may not exceed the NERSA approved schedule of standard pricing as applicable to the Distributor;
- 1.197. **"VAT"** means value-added tax levied in terms of the VAT Act;
- 1.198. **"VAT Act"** means the Value-Added Tax Act 89 of 1991, as amended or replaced from time to time;
- 1.199. **"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

⁴ 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.

Police Service station located within the Local Community, or a signed letter from the Local Municipality that confirms Local Community residency;

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

1.201. **"Water Use Right"** means either a water use agreement or a water use licence in terms of 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; and

1.202. **"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 **"Weekly"** shall be construed accordingly.

2. INTERPRETATION

2.1. Interpretation

In this Agreement, unless otherwise specified:

- 2.1.1. 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;
- 2.1.2. words importing the singular shall include the plural and vice versa and words importing one gender shall include the other genders;
- 2.1.3. 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;
- 2.1.4. unless otherwise specified, all references to any time shall be to the time of day in Stellenbosch, South Africa;
- 2.1.5. **"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;
- 2.1.6. 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;

- 2.1.7. **"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;
- 2.1.8. 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;
- 2.1.9. 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;
- 2.1.10. references to any amount shall mean that amount exclusive of VAT, unless the amount expressly includes VAT;
- 2.1.11. references to legislation include any statute, by-law, regulation, rule, subordinate legislation or delegated legislation or order, and a reference to
- 2.1.12. 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;
- 2.1.13. 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;
- 2.1.14. 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;
- 2.1.15. 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
- 2.1.16. if any provision in clause 1 (*Definitions and Interpretation*) 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.

2.2. Abbreviations

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

C	Degrees Centigrade
COD	Commercial Operation Date
CT	Transformer
H	Hours
Hz	Hertz
kV	Kilovolts
M	Metres
ms	Milliseconds
MW	Megawatts
MWh	Megawatt-hours
MVA _r	Megavolt ampere reactive
MVA _r h	Megavolt ampere reactive hour
PT	Potential (Voltage) Transformer
s	Seconds
V	Volts
W	Watts

2.3. 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).

2.4. Rounding up

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

- 2.4.1. the calculation of any sums of money owing by either Party under this Agreement shall be performed to the nearest Cent; and

- 2.4.2. 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.

3. **SUSPENSIVE CONDITIONS AND TERM**

- 3.1. This Agreement, save for this clause 3 (*Suspensive Conditions and Term*) and clauses 1 (*Definitions*), 19 (*Force Majeure*), 21 (*Termination*), 24 (*Intellectual Property of the Buyer*), 26 (*Assignment*), 29 (*Dispute Resolution*) to 38 (*Miscellaneous*) which shall be of immediate force and effect, is subject to the fulfilment or, if permitted, waiver of the following suspensive conditions, namely that by no later than [●]:⁵

- 3.1.1. [Financial Close is achieved].⁶

- 3.2. As soon as possible after the Signature Date, but in any event by no later than the times and dates for fulfilment thereof, each Party shall use best endeavours to procure the fulfilment of the suspensive condition/s for which that Party is wholly or partly responsible, and in addition the Parties shall be obliged to co-operate with each other and provide such assistance as may reasonably be required to procure the fulfilment of all suspensive conditions, including signing all documents and providing all information necessary to make any notification or filing that may be required by any Relevant Authority, and keeping each other informed of the progress of any notification or filing procedures.

- 3.3. Each Party shall bear and pay his/her/its own costs for and associated with complying with his/her/its obligations in clause 3.2.

- 3.4. The suspensive condition/s set out in:

- 3.4.1. clause/s [●] have been stipulated for the benefit of [Party A]. Accordingly, [Party A] shall be entitled to waive fulfilment of any such suspensive condition (in whole or in part, and, if in part, the remainder of the relevant suspensive condition will still be required to be fulfilled) by giving written notice to that effect to [Party B] prior to the relevant time and date for fulfilment thereof;

- 3.4.2. clause/s [●] have been stipulated for the benefit of [Party B]. Accordingly, [Party B] shall be entitled to waive fulfilment of any such suspensive condition (in whole or in part, and, if in part, the remainder of the relevant suspensive condition will still be required to be fulfilled) by giving written notice to that effect to [Party A] prior to the relevant time and date for fulfilment thereof;

⁵ Time period to be determined for each bidder.

⁶ Since the concept of "Financial Close" is required, provision is made for a suspensive condition to this effect. Other suspensive conditions may be agreed between the parties prior to the Signature Date, in which event some references to the "Signature Date" in this Agreement may be amended to refer to the "Effective Date".

- 3.4.3. clause/s [●] have been stipulated for the benefit of both [Parties]. Accordingly, [the Parties] may by written agreement waive fulfilment of any such suspensive condition (in whole or in part and, if in part, the remainder of the relevant suspensive condition will still be required to be fulfilled) prior to the relevant time and date for fulfilment thereof;
- 3.4.4. clause/s [●] are not capable of being waived.
- 3.5. If, for the purposes of the suspensive condition/s in clause [●], an approval is given but subject to the imposition of any condition which is not trivial, the Party affected by the condition shall be entitled, by giving written notice to the other Party prior to the earlier of the 7th (seventh) day after the date on which the Party affected by the condition is notified of such conditional approval and the time and date for fulfilment of the relevant suspensive condition, to notify the other Party that the relevant suspensive condition has not been fulfilled, or failing such notice the Party affected by the condition shall be deemed to have accepted all the condition/s and the relevant suspensive condition will be fulfilled.
- 3.6. If any suspensive condition is not fulfilled or, if permitted, waived, by the relevant time and date for fulfilment thereof, then clauses [●] shall lapse and cease to be of any further force or effect, clause/s [●] shall continue to be of force and effect, and the remaining clauses of this Agreement shall never become effective.
- 3.7. If the fulfilment of any suspensive condition makes it necessary for a Party to perform any act which may constitute a breach of this Agreement, that Party shall immediately notify the other Party thereof in writing and refrain from performing that act without the prior written consent of the other Party.
- 3.8. Subject to clause 3.9, neither Party shall have any liability towards the other Party if this Agreement does not become effective as a result of the failure of the timeous fulfilment of a suspensive condition, save if a Party has deliberately frustrated the fulfilment of that suspensive condition or where the failure is as a result of a breach of this clause 3 (*Suspensive Conditions and Term*) or any provision of this Agreement by which the Parties remain bound.
- 3.9. The Buyer shall be entitled to call up the Preferred Bidder Guarantee if the Agreement fails due to non-fulfilment of a suspensive condition for which the Seller was responsible.
- 3.10. This Agreement shall, subject to clause 3.1, be effective from the Effective Date until the earlier of:
- 3.10.1. its termination in accordance with clause 20 (*Termination*); or
- 3.10.2. the Expiry Date,

(such period being the “**Term**” of this Agreement).

4. **PROJECT SITE AND CONSTRUCTION**

4.1. **Project Site**

- 4.1.1. 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.
- 4.1.2. The Seller shall acquire such other land and/or rights in respect of land as it requires in order to perform its obligations under this Agreement and all such land and rights shall be deemed to form part of the Project Site and, as between the Buyer and the Seller, shall be at the sole risk of the Seller.
- 4.1.3. Subject to applicable Laws, the Seller shall be fully responsible for the suitability of the Project Site, for the development of the Project, for 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, 1999), the adequacy of the road, pipelines and rail links to, and routing of power lines existing at the Signature Date on, the Project Site and the availability of adequate supplies of utilities.
- 4.1.4. Details of the Project Site, including a scale map that identifies the location of the Project Site, are included in Schedule 1 (*Details of the Project and Facility*) and a diagram setting out the distribution lines and substation, interconnection facility, and significant ancillary facilities including the facilities at the Delivery Point, is included in Part 2 (*Single Line Diagram*) of Schedule 1 (*Details of the Project and Facility*).
- 4.1.5. The Seller agrees and undertakes that, as between it and the Buyer:
 - 4.1.5.1. 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, and all obligations in relation to any contamination of the Project Site pursuant to and in accordance with the applicable Consents and Laws, and 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;
 - 4.1.5.2. it shall be solely responsible for, shall bear full responsibility for and shall discharge all obligations that arise as a direct or indirect result

of any appeal or review proceedings being lodged against any amendment to any of the Consents issued in terms of any Environmental Laws or that arise 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;

- 4.1.5.3. it shall be solely responsible for, and shall bear full responsibility for any disturbance to the Project and the Project Activities resulting from events including rebellion, riot, civil commotion, acts or campaigns 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;
- 4.1.5.4. 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 said clause 22 (*General Seller Undertakings*); and
- 4.1.5.5. if the Seller fails to comply with any of its obligations under this clause 4.1.5, 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;
- 4.1.5.6. 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, or any of the Consents; and
- 4.1.5.7. 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 this clause 4.1.5.

- 4.1.6. The provisions of this clause 4.1 (*Project Site*) shall remain in full force and effect after the Termination Date.

4.2. Independent Engineer's and Buyer's inspection rights

- 4.2.1. 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.
- 4.2.2. The Seller and the Independent Engineer shall:
- 4.2.2.1. in addition to the Gantt Charts submitted by the Seller during the Construction Measurement Period, submit regular current and relevant project information including Gantt Charts, the first to be issued as on the Facility Completion Date as a base line and included in this Agreement as an annexure, which Gantt Charts shall be submitted in their native format and provide level three (3) detail, as such term is understood to mean in respect of Gantt Chart systems; and
 - 4.2.2.2. ensure that the Buyer has reasonable access to Project Documents, and meeting minutes of the Seller and the Contractors.

4.3. No Improvements

- 4.3.1. Following the certification of the installed Capacity of the Facility pursuant to clause 5.5 (*Commercial Operation Date*), 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 an increase in the installed Capacity of the Facility above the relevant Contracted Capacity once it has been determined on the relevant Commercial Operation Date.
- 4.3.2. 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, without limitation, the Contracted Capacity or the load profile of the Facility.

- 4.3.3. The Seller shall be required to provide the Buyer with written evidence that it has obtained any amendments or revisions to its Consents pursuant to making such modifications or undertaking such replacements.

4.4. Use of electricity from the System

- 4.4.1. The Facility shall, pursuant to this Agreement, be connected to the System in accordance with the Distribution Agreement and able to use energy from the System including for Energy Input pursuant to a Dispatch Instruction and for Auxiliary Consumption.

4.5. General Construction Obligations

- 4.5.1. The Seller shall Commence Construction of the Project and procure the issue of the Commencement of Construction Confirmation Form all within ninety (90) days of the Effective Date. Should the Seller fail to Commence Construction of the Project within such period, the Buyer shall be entitled to terminate this Agreement in accordance with clause 20.3 (*Termination for Seller Default*) for a Seller Default.
- 4.5.2. Should the Seller, having Commenced Construction, materially reduce, suspend, or cease to carry on the Construction, or any material part thereof, for a period of forty five (45) consecutive days, the Seller shall notify the Buyer thereof in writing as soon as reasonably practicable, which notification shall serve as an early warning to the Buyer and shall not, in itself, constitute a Seller Default.
- 4.5.3. The Seller shall procure the Construction of the Facility and undertake the Project Activities in accordance with:
- 4.5.3.1. all applicable Laws, including the Consents; and
 - 4.5.3.2. the standards of a Reasonable and Prudent Operator.
- 4.5.4. 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 4.5 (*General Construction Obligations*).
- 4.5.5. The Seller shall ensure the following in respect of the Project:

- 4.5.5.1. that the configuration of and the technology used in respect of the Energy Input, storage and Energy Output equipment (including all Key Equipment) is appropriate for the Project and enables the Seller to meet its obligations in terms of this Agreement;
 - 4.5.5.2. the Project is Constructed on a greenfield or previously cleared brownfield site; and
 - 4.5.5.3. the infrastructure required for the Facility (including point of connection to the System) is provided and Operated exclusively for the Facility without sharing with another facility that is not part of the Facility.
- 4.5.6. The Seller must diligently continue Construction after it has commenced, and provide the Buyer with such information and documents as may be requested by the Buyer evidencing same.

4.6. Commercial Operation Date

- 4.6.1. The Seller shall use its reasonable endeavours to achieve the Commercial Operation Date by the Scheduled COD.
- 4.6.2. If the Seller becomes aware that, for any reason, the Commercial Operation Date will not be achieved by the Scheduled COD, the Seller shall:
- 4.6.2.1. 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
 - 4.6.2.2. 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.

4.7. Monthly Construction Progress Reports

The Seller shall provide the Buyer with monthly progress reports, in the form of updated versions of the Project Schedule Gantt Chart provided in Part 1 (*Completion Milestones*) of Schedule 2 (*Completion Milestones and Forms of Notices: Completion Milestones*), in respect of Construction of the Facility from the time of the commencement of the Construction up to,

and including, the Commercial Operation Date or Last COD, as the case may be, as detailed in Schedule 10 (*Reporting*). The Seller shall ensure that these monthly progress reports:

- 4.7.1. 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;
- 4.7.2. include a level three (3) project schedule Gantt chart updated against the project baseline schedule, in pdf and native format in respect of the Project; and
- 4.7.3. are supplemented by such further information as the Buyer may request from time to time.

5. TESTING AND COMMISSIONING

5.1. Connection to the System

- 5.1.1. The Seller warrants that it has entered into a Self-Build Agreement, and/or Distribution Agreement with the Distributor for the Facility on or before the Effective Date.
- 5.1.2. 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 Distribution Agreement or the Self-Build Agreement, as the case may be, the Facility to be connected to the System.
- 5.1.3. The Seller shall not be permitted to give the Buyer the Notice of Commencement of Facility until:
 - 5.1.3.1. the Seller has, in terms of clause 5.3 (*Independent Engineer and Testing*) and the requirements of Schedule 8 (*Inspection and Testing*), demonstrated to the Independent Engineer that the Facility required to be connected for Commercial Operation is compliant with the Codes and meets the requirements of the Facility Completion Form;
 - 5.1.3.2. the Seller has provided written confirmation from the Independent Engineer to the Buyer that the Facility is compliant with the Codes;
 - 5.1.3.3. 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;
 - 5.1.3.4. the Distributor has confirmed in writing to the Seller that the Facility may be connected to the System;

- 5.1.3.5. the Buyer has issued to the Seller, written notice (such notice not to be unreasonably withheld or delayed) that the Buyer has received and accepted the notice provided by the Independent Engineer that the Facility is in compliance with the Codes; and
- 5.1.3.6. the Independent Engineer has issued the Facility Completion Form.
- 5.1.4. The Parties record that it is intended that:
 - 5.1.4.1. the Seller shall Construct or procure the Construction of the Distribution Connection Works in terms of a Self-Build Agreement entered into by the Seller and the Distributor in respect of which the Seller shall Construct or procure the Construction of the Distribution Connection Works at its sole risk and cost; and
 - 5.1.4.2. the Seller shall Construct the Facility Connection Works to connect the Facility with or to the System.
- 5.1.5. 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 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.

5.2. Independent Engineer

- 5.2.1. It is recorded that the Independent Engineer as approved by the Buyer has been appointed by the Seller, at its sole cost and expense on terms substantially similar to the terms contained in the agreement set out in Schedule 7 (*Independent Engineer Agreement*) of this Agreement.
- 5.2.2. 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 Project, 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, any of the Lender's advisers and/or engineer.
- 5.2.3. Neither Party shall, without the prior written consent of the other Party (such consent not to be unreasonably withheld):
 - 5.2.3.1. terminate or seek to amend materially the contract with the Independent Engineer; or

5.2.3.2. 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 4 (*List of firms - Independent Engineer*) or as agreed between the Buyer and the Seller.

5.2.4. If the contract with the Independent Engineer is terminated at any point during the term of the contract of the Independent Engineer, a new Independent Engineer shall be appointed in accordance with this clause 5.2 (*Independent Engineer*) from one of the firms listed in Schedule 4 (*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 7 (*Independent Engineer Agreement*).

5.3. Independent Engineer Inspection and Testing

5.3.1. The Seller shall, no later than three (3) Months before the date on which it is anticipated that the relevant test will be undertaken on the Facility, propose to the Independent Engineer the detailed procedure for the inspection and testing of the Facility and/or the Project for the purposes of Schedule 8 (*Inspection and Testing*). These tests shall include but not be limited to the following:

5.3.1.1. the Net Dependable Capacity Test;

5.3.1.2. the RTE Test;

5.3.1.3. all tests required to demonstrate compliance with the Codes; and

5.3.1.4. any other functional test referred to in this Agreement as required by the Independent Engineer.

5.3.2. The detailed procedure for the inspection and testing of the Facility for the purposes of Schedule 8 (*Inspection and Testing*) shall be finalised in accordance with the provisions of the Independent Engineer Agreement and the Buyer and the Seller shall provide the Independent Engineer with all information and documents required to perform its obligations under the Independent Engineer Agreement.

5.3.3. The Seller shall also provide, to the Buyer, all the information provided to the Independent Engineer in terms of clause 5.3.2 above.

5.4. Facility Completion and Commissioning

5.4.1. The Seller shall not procure the issue of the Notice of Commencement of Facility:

- 5.4.1.1. before the Scheduled COD;
- 5.4.1.2. until the Seller has demonstrated to the Independent Engineer and the Buyer that the Facility is compliant with the Codes and meets the representations and warranties by the Seller provided for in the Facility Completion Form;
- 5.4.1.3. until the RTE Test and NDC Test for the Facility have been successfully completed in accordance with the provisions of Schedule 8 (*Inspection and Testing*), to the satisfaction of the Independent Engineer;
- 5.4.1.4. unless the Net Dependable Capacity is equal to or greater than the Minimum Acceptance Capacity; and
- 5.4.1.5. until the Independent Engineer has issued a Facility Completion Form.
- 5.4.2. The Seller shall provide the Buyer on a Weekly basis with relevant information regarding the commissioning and testing undertaken pursuant to this clause 5.4 (*Facility Completion and Commissioning*).
- 5.4.3. The Facility Completion Form issued by the Independent Engineer shall, as between the Seller and the Buyer:
 - 5.4.3.1. be sufficient evidence that the RTE Test and NDC Test for the Facility have been successfully completed in accordance with the provisions of Schedule 8 (*Inspection and Testing*);
 - 5.4.3.2. be sufficient evidence that the Net Dependable Capacity is above the Minimum Acceptance Capacity; and
 - 5.4.3.3. accordingly, in those respects, be final and binding on the Seller and the Buyer,

and insofar as it states the Net Dependable Capacity at a value below the Minimum Acceptance Capacity and/or the Contracted Capacity (respectively), be prima facie evidence of such values, which values, if disputed by either the Seller or the Buyer, shall be referred to and determined in accordance with the provisions of clause 28 (*Dispute Resolution*).

5.5. Commercial Operation Date

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

Commencement of Facility shall at all times be deemed to have been received by the Buyer sixty (60) days after the Seller has given the Buyer the requisite written notice of its intention.

- 5.5.2. The Seller may not issue the Notice of Commencement of Facility before the Scheduled COD.
- 5.5.3. Subject to clause 5.5.5, following compliance with clause 5.5.1 and upon the Facility achieving Facility Completion, 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*).
- 5.5.4. If the Facility has achieved Facility Completion in terms of clause 5.4 (*Facility Completion and Commissioning*) and the Net Dependable Capacity is equal to or greater than the Contracted Capacity, then clause 4.3 (*No improvements*) shall be applicable.
- 5.5.5. If the Facility has achieved Facility Completion in terms of clause 5.4 (*Facility Completion and Commissioning*) and the Net Dependable Capacity is equal to or greater than the Minimum Acceptance Capacity but less than the Contracted Capacity, the Seller shall:
 - 5.5.5.1. if necessary, at its own expense and in the shortest possible time, on giving notice to the Buyer, which notice will suspend the Facility Completion Form, effect such repairs or replacements to the Facility, or any part thereof, as necessary for the Facility to achieve the Contracted Capacity, following which the Facility Completion shall be re-assessed in accordance with clause 5.4 (*Facility Completion and Commissioning*) and the Seller shall be entitled to repeat this process as many times as it may wish, provided that all 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
 - 5.5.5.2. elect, without effecting any repairs or replacements 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.

- 5.5.6. 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, the Notice of Commencement of Facility.

5.6. Delays in Achieving the Commercial Operation Date

For every day that the achievement of the Commercial Operation Date is delayed beyond the Scheduled COD (unless such delay is caused by a Late System Connection Event or a Compensation Event), the Expiry Date shall be reduced by one (1) day (in addition to the day in the Term which was lost through the delay in achieving the Commercial Operation Date).

5.7. Last COD

- 5.7.1. The Seller shall be entitled to declare the Commercial Operation Date at any time up to 17:00 hours on the Last COD in respect of that Net Dependable Capacity for which the Independent Engineer has completed the Facility Completion Form(s) by no later than 17:00 hours on the Last COD and, if the Seller does so and the Net Dependable Capacity is greater than the Minimum Acceptance Capacity, the Buyer shall not be entitled to call a Seller Default in terms of sub-clause (c) of the definition of “**Seller Default**”.
- 5.7.2. 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.

5.8. Coordination with the Distributor

In addition to complying with the other requirements of this clause 5 (*Testing and Commissioning*), the Seller shall:

- 5.8.1. 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;
- 5.8.2. discuss and coordinate with any relevant Responsible Authority, and the Distributor, the actions contemplated in this clause 5 (*Testing and Commissioning*); and
- 5.8.3. 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.

6. SALE OF STORED ENERGY OUTPUT

6.1. Sale of stored Energy Output

Subject to and in accordance with the terms and conditions set out in this Agreement:

- 6.1.1. the Capacity of the Facility shall be limited to the Contracted Capacity and only Energy Output that is made Available from the Contracted Capacity may be delivered to the Buyer pursuant to this Agreement. Any payments made by the Buyer for Energy Output will be made with reference to the Net Dependable Capacity made Available;
- 6.1.2. during the Operating Period:
 - 6.1.2.1. the Seller shall make Available to the Buyer the Capacity;
 - 6.1.2.2. the Buyer shall pay the Seller the Energy Output Payment; and
 - 6.1.2.3. the Seller shall, in the event that any penalty is imposed in terms of and in accordance with Schedule 9 (*Calculation of Payments*), acting as a Reasonable and Prudent Operator implement such measures as are necessary to return the Facility to the level of performance required in order to ensure that further penalties are not triggered in terms of and in accordance with Schedule 9 (*Calculation of Payments*).

6.2. Title and Risk

- 6.2.1. The Seller shall bear the risk of losses relating to Energy Input while being drawn to the Facility, all Energy while stored in the Facility, and Energy Output while being delivered to the Delivery Point.
- 6.2.2. Title in, and risk of loss of, all Energy Output delivered to the Buyer in accordance with clause 6.1 (*Sale of Energy Output*), shall pass to the Buyer at the Delivery Point.

6.3. No Third Party Sales

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

7. DECLARATIONS AND DISPATCH

7.1. Ability to make Capacity Available

Subject to the Codes, the Seller shall issue a Declaration stating the Declared Capacity, and where Capacity is not Available, the Seller shall still issue a Declaration advising the Buyer of the level of Declared Capacity and where it is below the NDC, the Seller must, on request

from the Buyer, provide detailed reasons for the non-Availability of Capacity, which shall be limited to the following:

- 7.1.1. where the Facility is unable to Operate due to a breach by the Buyer of its obligations under this Agreement;
- 7.1.2. for reason of any Outage;
- 7.1.3. where to do so would not be in accordance with the standards of a Reasonable and Prudent Operator;
- 7.1.4. in circumstances relating to safety (of either personnel or of the Facility or apparatus);
- 7.1.5. to the extent of any illegality, in circumstances where to do so would be unlawful;
- 7.1.6. for reasons of Force Majeure, Unforeseeable Conduct or a Change in Law; or
- 7.1.7. in any other circumstances, with the Buyer's approval (which approval shall not be unreasonably withheld).

7.2. Declarations

- 7.2.1. Not later than 10:00 hours on each day during the Operating Period, the Seller shall, in accordance with the Information Exchange Code and subject to Schedule 11 (*Performance Requirements*), provide notice of the Capacity ("**Declaration**") to the Buyer for each Availability Period during the following six (6) consecutive days.
- 7.2.2. If the Seller fails to give a Declaration on or before the time specified in clause 7.2.1, the Declared Capacity in clause 7.2.1 for each Availability Period of the relevant day shall be deemed to be the same as the most recent (as at that point in time) Declaration.
- 7.2.3. The Seller shall be entitled to deliver a Declaration even if it knows or suspects that the Buyer may be unable to Dispatch the Facility for any reason.

7.3. Availability Notice

- 7.3.1. The Seller may, in accordance with the Information Exchange Code and subject to Schedule 11 (*Performance Requirements*), by issuing an Availability Notice to the Buyer:
 - 7.3.1.1. revise downwards and continue to revise downwards the Declared Capacity for any Availability Period at any time up to and until the start of the applicable Availability Period; or

- 7.3.1.2. revise upwards and continue to revise upwards the Declared Capacity for any Availability Period at any time up to and until the start of the applicable Availability Period,

provided that the Seller shall immediately issue an Availability Notice revising the Declared Capacity for any Availability Period, if the Seller believes there are factors which, in the opinion of the Seller, may have a material effect on the ability of the Facility to draw Energy Input or store Energy or deliver Energy Output in the relevant Availability Period.

- 7.3.2. Each Availability Notice must be time stamped and shall specify, for the Facility:
 - 7.3.2.1. a duration for the reduction in the Declared Capacity below the Contracted Capacity; or
 - 7.3.2.2. a deadline by which the Declared Capacity shall be restored to the Contracted Capacity; or
 - 7.3.2.3. that the Net Dependable Capacity shall be determined at a new level upon the resumption of Operation following the relevant Outage or Derating.

7.4. Dispatch Schedule

Before 14:00 hours on each day, the Buyer shall in accordance with the Information Exchange Code provide the Seller with a schedule for Dispatch in respect of the Facility ("**Dispatch Schedule**") in respect of each Availability Period in the following day. The Dispatch Schedule shall indicate the Energy Input that the Buyer anticipates may need to be drawn from the System or the Energy Output that the Buyer anticipates may be required in each Availability Period of the following day.

7.5. Dispatch Instruction

- 7.5.1. The Buyer may, in accordance with the Information Exchange Code, at its discretion:
 - 7.5.1.1. issue a Dispatch Instruction that specifies its requirements in ten (10) minutes intervals or longer intervals of up to an hour of the period covered by the Dispatch Instruction; and
 - 7.5.1.2. alter a Dispatch Instruction in ten (10) minutes intervals or longer intervals of up to an hour on an intra-hour basis.
- 7.5.2. A Dispatch Instruction issued by the Buyer on any day must be time stamped and may differ from the Dispatch Instruction that was anticipated in the Dispatch

Schedule issued by the Buyer in respect of the same Availability Period. The Buyer shall use reasonable endeavours, in accordance with the Information Exchange Code, to notify the Seller of such changes to the Dispatch Schedule in advance of issuing the relevant Dispatch Instruction.

7.5.3. Subject to Schedule 11 (*Performance Requirements*), the Buyer may not knowingly issue a Dispatch Instruction to the Seller which requires the Facility:

7.5.3.1. to draw Energy Input or deliver Energy Output at a level which exceeds the Declared Capacity;

7.5.3.2. to Operate in a manner contrary to safety and technical guidelines for the Facility, including the specifications contained in Schedule 11 (*Performance Requirements*);

7.5.3.3. to Operate in a manner contrary to the standards of a Reasonable and Prudent Operator;

7.5.3.4. to Operate in contravention of the Codes; or

7.5.3.5. to Operate in a manner inconsistent with the status of the System at the time at which the Dispatch Instruction is to be implemented,

and, if the Buyer does issue a Dispatch Instruction in contravention of any of the above, such Dispatch Instruction shall be a “**Non-Compliant Dispatch Instruction**”.

7.5.4. As soon as reasonably practicable after it becomes aware of any Non-Compliant Dispatch Instruction, the Seller shall notify the Buyer of any limitations to the Dispatch Instruction necessary to ensure that the performance of the Facility remains in compliance with this Agreement and the Codes.

7.6. Seller's Obligation to Comply with Dispatch Instruction

7.6.1. Provided the Dispatch Instruction complies with the provisions of clause 7.5 (*Dispatch Instruction*) and is not a Non-Compliant Dispatch Instruction, the Seller shall ensure that Dispatch Compliance is achieved by the Facility.

7.6.2. The Facility shall achieve Dispatch Compliance for any Availability Period in which it increases or decreases its Capacity above or below that required in the Dispatch Instruction for that Availability Period if such increase or decrease is required in order to draw the Energy Input or deliver the Energy Output specified in a Dispatch Instruction for the subsequent Availability Period, provided that the increase or decrease in Capacity:

- 7.6.2.1. is undertaken at the ramp rate specified in the Dispatch Instruction (which shall not be greater than the applicable maximum dispatch ramp rate in accordance with the BESF Code);
 - 7.6.2.2. if a ramp rate is not specified in the Dispatch Instruction, is undertaken at the applicable maximum dispatch ramp rate in accordance with the BESF Code; and
 - 7.6.2.3. in each case, shall commence at the latest possible point during the Availability Period as is necessary to increase or decrease, at the applicable maximum dispatch ramp rate, in accordance with the BESF Code, to draw the Energy Input or deliver the Energy Output of the Facility to provide Capacity specified in a Dispatch Instruction for the subsequent Availability Period at the commencement of that subsequent Availability Period.
- 7.6.3. If the Seller delivers the Capacity in excess of 110% of a Dispatch Instruction for a period of longer than two (2) consecutive hours, the Buyer shall be entitled forthwith to disconnect the Facility from the System. The Seller shall issue a revised Availability Notice, revising the Declared Availability, and shall notify the Buyer once the exceedance has been resolved, following which the Seller shall be immediately reconnected to the System. The Seller will not be paid for any Energy Output that exceeds the Dispatch Instruction.

8. **TARIFF AND OTHER CHARGES**

8.1. **Tariff for calculation of Energy Output Payment and Indexation**

- 8.1.1. The value of the Tariff, as at the Base Date, required for the calculation of the Energy Output Payment, is detailed in Table A.1 (*Tariff utilised in this Schedule 9 at Base Date*) of Appendix A (*Agreed Values for Payment Calculations*) of Schedule 9 (*Calculation of Payments*).
- 8.1.2. The Tariff shall be subject to adjustment in accordance with Appendix B (*Indexation*) of Schedule 9 (*Calculation of Payments*).

8.2. **Energy Output Payment**

The Buyer shall pay to the Seller the Energy Output Payment, calculated in accordance with Schedule 9 (*Calculation of Payments*).

8.3. **Late System Connection Event Payment**

In the event and to the extent that a Late System Connection Event occurs that causes a delay in the achievement of the Commercial Operation Date beyond the Scheduled COD and does

not result from a *force majeure* event under the Distribution Agreement, as contemplated in clause 16.1 (*Consequences of a Late System Connection Event*), the Buyer shall be liable to compensate the Seller in the form and to the extent of the Late System Connection Event Payment.

8.4. Use of System Charges

The Buyer shall reimburse 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 8.4 (*Use of System Charges*) and the Buyer shall be entitled to deduct such amounts in the next Invoice issued to the Seller.

8.5. No Payment for Commissioning Energy

- 8.5.1. The Buyer shall not be liable for Commissioning Energy or to make any payments to the Seller for Commissioning Energy made available to the System by the Seller.
- 8.5.2. The Seller shall be solely responsible to make arrangements with the Buyer and make payment for the Energy drawn from the System to charge the Unit or Facility as part of the commissioning of the Unit or Facility.

8.6. Failure to make Payments

- 8.6.1. 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.
- 8.6.2. 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, the Seller may serve notice on the Buyer calling on the Buyer to rectify such failure and specifying details thereof.
- 8.6.3. 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 five (5) Business Days of the end of a Billing Period, submit to the Buyer, for that Billing Period, an Invoice separately specifying:
- 9.1.1.1. the Energy Output Payment calculated in accordance with the relevant provisions of Schedule 9 (*Calculation of Payments*), due to the Seller for such Billing Period, setting out the calculations upon which the Energy Output Payment is based;
 - 9.1.1.2. the Use of System Charges (if any) due to the Seller in terms of clause 8.4 (*Use of System Charges*) for such Billing Period;
 - 9.1.1.3. any amounts owed by the Seller to the Buyer, including payments under clauses 8.4 (*Use of System Charges*) and 8.5.2, which shall be deducted from the total due to the Seller; and
 - 9.1.1.4. any other amounts owed by the Buyer to the Seller, which shall be added to the total due to the Seller.
- 9.1.2. The Seller shall prepare the Invoice for the Billing Period based on the billing data report retrieved by the Seller in accordance with clause 12.8 (*Readings and Inaccuracy*) which report shall reflect metering data obtained by it for that Billing Period from the Main Metering Installation, the Availability of the Facility for that Billing Period, and the Dispatch Instructions received by the Seller 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

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

- 9.3.1. save as provided in the VAT Act, every payment due and payable by either Party to the other pursuant to this Agreement shall be subject to VAT;

- 9.3.2. every Invoice issued by the Seller shall contain the Buyer's vendor registration number allocated to the Seller upon compliance by the Seller with the Buyer's vendor registration requirements;
- 9.3.3. subject to clause 8.6.1, the Party who received the Invoice shall pay to the other Party (who issued the Invoice) the amount of each Invoice within thirty (30) days of receipt of (i) such Invoice, and (ii) in the case of an Invoice issued by the Seller, 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) ("**Due Date**");⁷ and
- 9.3.4. all payments due by either Party to the other under this Agreement shall be made:
 - 9.3.4.1. in Rand in immediately available funds to such bank account in South Africa as the recipient Party shall from time to time nominate; and
 - 9.3.4.2. subject to clause 24 (*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 (*Billing disputes*). Without limiting the generality of the foregoing, where the dispute is in respect of the billing data obtained by the Seller from the Main Metering Installation, the Buyer shall be entitled to request a test of the Main 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 Main Metering Installation pursuant to clause 12.7 (*Testing and inspection*)) that all or part of a

⁷ Any amendments to the Buyer's vendor registration requirements are to be notified to the Seller and the Seller will use reasonable endeavours to comply.

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 this clause 9.4 (*Billing disputes*) was served, either Party shall be entitled to refer the dispute for determination in accordance with clause 29 (*Fast Track Dispute Resolution*).

10. OUTAGES AND DERATINGS

10.1. Scheduled Outages or Planned Deratings

- 10.1.1. The Seller shall comply with the requirements of Schedule 3 (*Outages and Deratings*) in relation to Outages and Planned Deratings.
- 10.1.2. Subject to clause 10.1.1, the Seller shall be entitled to remove the Unit(s) or, 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 Unit(s) or the Facility during any Scheduled Outage or Planned Derating.

10.2. Unscheduled Outages or Unplanned Deratings

- 10.2.1. In case of an Unscheduled Outage or Unplanned Derating due to a failure of any part of any equipment forming part of the Facility, the Seller shall inform the Buyer promptly of the Unscheduled Outage or Unplanned Derating of the time period that the Facility is expected not to be Available or is expected to be operating at reduced Capacity.
- 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 or Unplanned Derating.

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 Unit(s) comprising at least ten percent (10%) of the Contracted Capacity, as the case may be, is incapable of making Capacity Available for any

of the following reasons (and provided that its unavailability has not already been notified as part of a Scheduled Outage):

- 11.1.1.1. for reasons of any Outages;
- 11.1.1.2. where to do so would not be in accordance with the standards of a Reasonable and Prudent Operator;
- 11.1.1.3. in circumstances relating to safety (of either personnel or of the Facility or apparatus);
- 11.1.1.4. in circumstances where to do so would be unlawful; or
- 11.1.1.5. for reasons of Force Majeure, a Late System Connection Event, Government Default 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 10 (*Reporting*).

11.2. Data and records

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

- 11.2.1. for each ten (10) minute period in each day, the Energy Input, SoC, number of Cycles, and Energy Output;
- 11.2.2. changes in Operating status during the day;
- 11.2.3. the number of Outages or Deratings in the day and the duration of each Outage or Derating;
- 11.2.4. any unusual conditions found during maintenance inspections;
- 11.2.5. data used for corrections referred to in Schedule 8 (*Inspection and Testing*) and Schedule 9 (*Calculation of Payments*); and
- 11.2.6. information relating to the performance of the Facility and data obtained from the meters.

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 or suppliers of equipment (including Key Equipment) 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 in addition to that set out in any provision of this Agreement, acting reasonably, from the Seller.
- 11.4.5. The receipt of information by 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.

11.5. Buyer's Request for Information

- 11.5.1. The Seller shall retain copies of the relevant contracts (including amendments) concluded by the Seller with the Contractor, including a copy of the Construction Schedule submitted by the Contractor 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**").
- 11.5.2. The Buyer is entitled to request the Seller to provide it with copies of contracts concluded by the Seller with the Contractor, and the Construction Schedule.

12. METERING, COMMUNICATION, MONITORING AND CONTROL SIGNALS

12.1. Metering Certifier

The Seller shall, at the Seller's cost and by written notification to the Buyer and subject to the Buyer's approval (not to be unreasonably withheld or delayed), appoint a third party to act as a Metering Certifier and to perform and fulfil both the Seller's and the Buyer's rights and obligations pursuant to this clause 12 (*Metering*), provided that should the Seller appoint such a Metering Certifier, the Buyer and the Seller shall nonetheless remain liable under this Agreement for any breach or failure to perform by the Metering Certifier to perform their respective duties and obligations in terms of this clause 12 (*Metering*) and the Codes in respect of the Metering Installations. Such Metering Certifier must be independent of both Parties and the Buyer shall mandate it to perform and fulfil the Buyer's rights and obligations pursuant to this clause 12 (*Metering*) and the Codes.

12.2. Main Metering Installation

- 12.2.1. The Seller shall, acting in accordance with the standards of a Reasonable and Prudent Operator, in respect of the Facility, procure, install, Operate and Maintain a Main Metering Installation at each Delivery Point of the Facility at its cost in such a manner and location so as to ensure that:
 - 12.2.1.1. the Main Metering Installation measures the Energy Input and Energy Output; and
 - 12.2.1.2. Auxiliary Consumption is accounted for in the Energy Input and Energy Output measurement.
- 12.2.2. The Metering Certifier shall test, calibrate, seal, commission and, if permitted, release for service the Main Metering Installation in accordance with clause 12.6 (*Final testing, calibration and sealing prior to Back-Energisation*).
- 12.2.3. The Main Metering Installation shall be used for invoicing purposes as provided herein.

12.3. Check Metering Installation

- 12.3.1. The Seller shall, at its sole cost, cause the Distributor to procure, install, test, commission, Operate and Maintain a Check Metering Installation adjacent to the Main Metering Installation at the Delivery Point, in accordance with the Distribution Agreement.
- 12.3.2. The Metering Certifier shall test, calibrate, seal, commission and, if permitted, release for service the Check Metering Installation in accordance with clause 12.6 (*Final testing, calibration and sealing prior to Back-Energisation*).

- 12.3.3. The purpose of the Check Metering Installation shall be to provide data for comparison purposes as against the data to be provided by the Main Metering Installation.

12.4. Capabilities of Meters

- 12.4.1. Each 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, the NTC and/or NERSA from time to time:

12.4.1.1. active and reactive energy in terms of four (4) quadrant metering; and

12.4.1.2. on a ten (10) minute profile data.

- 12.4.2. The Seller shall ensure that the meters within the Main Metering Installation utilise separate CT cores and separate PT circuits to the meters within the Check Metering Installation.

- 12.4.3. The Buyer shall be entitled to, and each Metering Installation shall enable the Buyer to, access each Metering Installation and their data remotely at any time, without any notice and in priority to the Seller and/or any other party.

12.5. Sealing

- 12.5.1. The meters within each Metering Installation and each Metering Installation itself shall be sealed by the Metering Certifier in the presence of duly authorised representatives of both Parties after the commissioning of the relevant meter and/or Metering Installation in accordance with clause 12.6 (*Final testing, calibration and sealing prior to Back-Energisation*).

- 12.5.2. Seals shall only be broken for the purposes of inspection, testing, maintenance, calibration or adjustment of the relevant meter and/or Metering Installation, and shall be immediately re-sealed by the Metering Certifier 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 Metering Installation has been sealed shall inform the other.

12.6. Final testing, calibration and sealing prior to Back-Energisation

- 12.6.1. Authorised representatives of the Buyer, Seller and Independent Engineer shall, in respect of each 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 Back-Energisation*); and
 - 12.6.1.2. if reasonably satisfied with the final testing, calibration and sealing, sign the certificate of release to service issued by the Metering Certifier in terms of clause 12.6.3 (such signature not to be unreasonably delayed or 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 29 (*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 Metering Installation has been sealed shall inform the absent Party.
- 12.6.3. After the installation of each Metering Installation and prior to the required date of Back Energisation, and prior to the initial Net Dependable Capacity Test of the Facility, the Seller shall cause the Metering Certifier to:
 - 12.6.3.1. inspect and test the Metering Installation to ensure that the performance of each Metering Installation is within specified accuracy limits;
 - 12.6.3.2. perform the final calibration of the Metering Installation;
 - 12.6.3.3. install an identifiable calibration seal on each billing meter device; and
 - 12.6.3.4. install an identifiable seal on the Metering Installation.
- 12.6.4. If the Seller has ensured that the provisions of this clause 12.6 (*Final testing, calibration and sealing prior to Back-Energisation*) 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 Main Metering Installation and/or the Seller may request a test of the Check Metering Installation, by notice in writing to the Seller.
- 12.7.2. The Metering Installation shall be tested by a Metering Certifier as often as the Party responsible for such Metering Installation 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 Main 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 Check Metering Installation in any period of twelve (12) Months. The Buyer shall be entitled to call for additional tests if it has concerns, on reasonable grounds, including a suspected inaccuracy determined pursuant to clause 12.7.4, that an inaccuracy exists.
- 12.7.4. Without limiting clause 12.7.1, if readings taken from the Metering Installations 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 Metering Installations 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 investigated and, if necessary, the relevant equipment shall be replaced 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.

12.8. Readings and inaccuracy

- 12.8.1. The Seller shall be responsible for retrieving and analysing data from the Main 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 Main 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 12.7.7, then the Main Metering Installation shall be retested and, if necessary, the relevant equipment shall be replaced in accordance with clause 12.7.7 and the Energy Input and Energy Output to and from the Facility shall for the period referred to in clause 12.8.4, be measured on the basis of the readings registered by the Check Metering Installation.
- 12.8.3. Should the Main Metering Installation and Check 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 Main Metering Installation and/or Check Metering Installation shall be retested and, if necessary, the relevant equipment shall be replaced in accordance with clause 12.7.7, and the Energy Output from 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 Codes, including estimated data prepared in accordance with the relevant Codes), and in the absence of agreement shall be referred to an Independent Expert for determination in accordance with clause 29 (*Fast Track Dispute Resolution*).
- 12.8.4. The period referred to in clauses 12.8.2 and 12.8.3 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 Main Metering Installation equal to one-half ($\frac{1}{2}$) of the time from the date of the last previous test of the Main Metering Installation; or
 - 12.8.4.3. in the case of clause 12.8.3, from the date of the last previous test of the Main Metering Installation and/or Check Metering Installation, whichever was most recently tested (with the remaining period being calculated on the basis of the measurements as actually recorded by Main Metering Installation and/or Check Metering Installation, as the case may be).
- 12.8.5. Both the Main Metering Installation and the Check Metering Installation shall be synchronised to South African Standard Time (“**SAST**”) and maintain time offsets not exceeding 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 Installation, 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 Main Metering Installation and/or Check Metering Installation shall not be relocated without the prior written agreement of both Parties.
- 12.9.3. The Buyer shall be entitled to, and the Seller shall ensure that the capabilities are present to, access each Metering Installation remotely to download data for the purposes of performing its obligations and exercising its rights under this Agreement, without prior notice to the Distributor.

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.

12.11. Communication, Monitoring and Control signals

- 12.11.1. The Facility is required to be designed for remote Dispatch by the Buyer at his/her sole discretion, which design must meet the requirements of this Agreement, the Code and all applicable Laws.
- 12.11.2. As a minimum the Seller shall ensure that:
 - 12.11.2.1. the Facility energy management and control system is designed to allow the Buyer full access for control and monitoring of the Facility remotely in accordance with the BESF Code and relevant standards;
 - 12.11.2.2. the Facility is able to measure and record:
 - 12.11.2.2.1. actual power input and output (in MW); and
 - 12.11.2.2.2. frequency in Hz;
 - 12.11.2.3. data recorded is done so in intervals of 20 ms; and
 - 12.11.2.4. the data must be readily accessible and retrievable for analysis and investigation.
- 12.11.3. All communications, control and monitoring signals as specified in the BESF Code shall be made available to the Buyer.

13. UTILITIES AND CONSUMABLES

13.1. Responsibility for the supply of utilities

At all times during the Term, the Seller shall be solely 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 Facility.

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.

14. PROVISION FOR DECOMMISSIONING COSTS

- 14.1. The Seller shall, in accordance with the terms 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 last day 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 Laws;
 - 14.5.2. confirmation of the amount deposited into the account referred to in clause 14.4.2 during that Contract Year, as well as a bank statement in respect thereof; and

14.5.3. a progress report in respect of the scope of work undertaken and applicable timelines, relative to the Decommissioning Plan.

14.6. If the Seller fails to comply with any of 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 hereby 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 its obligations, and/or the Buyer exercising its rights in terms of this clause 14 (*Provision for Decommissioning Costs*).

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 Effective 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 12 (*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;
 - 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 12 (*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 29 (*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 LATE SYSTEM CONNECTION EVENT

16.1. Consequences of a Late System Connection Event

- 16.1.1. The Seller shall not be entitled to bring any claims under this clause 16.1 (*Consequences of a Late System Connection Event*) in respect of the period prior to the Scheduled COD, or in respect of a Late System Connection Event which results from a *force majeure* event under the Distribution Agreement.
- 16.1.2. Subject to clause 16.1.1, if and to the extent that a Late System Connection Event occurs that causes a delay in the achievement of the Commercial Operation Date beyond the Scheduled COD, then the Seller shall, in accordance with the provisions of this clause 16.1 (*Consequences of a Late System Connection Event*), be entitled to:

- 16.1.2.1. relief from any rights of the Buyer arising under clause 20.3 (*Termination for Seller Default*), in respect of the Seller Default described in sub-clause (c) of the definition of “Seller Default”; and
 - 16.1.2.2. payment of the Late System Connection Event Payment, for the period between the Scheduled COD and the Commercial Operation Date.
- 16.1.3. In order to obtain such relief and/or the Late System Connection Event Payment, the Seller must:
- 16.1.3.1. as soon as practicable, and in any event within ten (10) days after it becomes aware or ought to have been reasonably aware that a Late System Connection 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 Late System Connection Event has caused or is likely to cause delay in the achievement of the Commercial Operation Date beyond the Scheduled COD; and
 - 16.1.3.2. within fifteen (15) days of the notice referred to in sub-clause 16.1.3.1, provide the Buyer with the full details of such Late System Connection Event, stating:
 - 16.1.3.2.1. the anticipated revised date for the connection of the Facility to the System; and
 - 16.1.3.2.2. whether the Seller anticipates a delay in the achievement of the Commercial Operation Date beyond the Scheduled COD, and if so the extent of such delay;
 - 16.1.3.3. notify the Buyer if, at any time, it receives or becomes aware of any further information relating to the Late System Connection Event, giving details of that information to the extent that such information is new or renders information previously submitted materially inaccurate or misleading;
 - 16.1.3.4. provide the Buyer with all Project information (including schedules, milestones and communications and other data) and amendments mutually agreed with the Distributor under the Distribution Agreement;
 - 16.1.3.5. demonstrate to the reasonable satisfaction of the Buyer and the Independent Engineer that:

- 16.1.3.5.1. if the Seller is delayed in the achievement of the Commercial Operation Date beyond the Scheduled COD, the Late System Connection Event directly caused such delay and that such delay impacted on the critical activities by submitting clear substantiating records and documents;
- 16.1.3.5.2. the Facility would otherwise, but for the inability to commission and test the Facility due to the Late System Connection Event, have been Available;
- 16.1.3.5.3. the Late System Connection Event 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;
- 16.1.3.5.4. the Seller is using reasonable endeavours to perform its obligations under this Agreement; and
- 16.1.3.6. identify all delays, including delays arising from the conduct of the Seller, Contractors and the Contractors' subcontractors as at the date on which the Late System Connection Event occurred, which do not result from the Late System Connection Event ("**Non- Late System Connection Event Delays**").
- 16.1.4. If the Seller has complied with its obligations under clause 16.1.3 above, and subject to clause 16.1.5, then:
 - 16.1.4.1. the Scheduled COD shall remain unchanged, but the Expiry Date shall occur fifteen (15) years after COD, and the Operating Period shall continue to commence on the Commercial Operation Date;
 - 16.1.4.2. the Last COD shall be postponed by one (1) day for every day by which the Commercial Operation Date is delayed by the Late System Connection Event. The postponement to the Last COD shall not include postponement on account of delays arising from Non- Late System Connection Event Delays;
 - 16.1.4.3. 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

- 16.1.4.4. the Capacity of the Facility shall be deemed to be the Contracted Capacity of the Facility, and the Seller shall be entitled to receive the Late System Connection Event Payment for the period by which the Commercial Operation Date has been delayed beyond the Scheduled COD by the Late System Connection Event.
- 16.1.5. If the Net Dependable Capacity that is determined by the initial tests done in accordance with Schedule 8 (*Inspection and Testing*), with the test results adjusted to take into consideration the Reference Site Conditions, is less than the Contracted Capacity of the Facility, then the Buyer shall be entitled to recover the amounts which the Buyer will have overpaid pursuant to clause 16.1.4.4.
- 16.1.6. If information required by clause 16.1.3 above is provided after the dates referred to in that clause, then the Seller shall not be entitled to any relief or payments equivalent to the Late System Connection Event Payment, for the same number of days as the number by which it missed any or all of the relevant deadlines for submission of information.
- 16.1.7. If the Parties cannot agree on the extent of the relief required, or the Buyer disagrees that a Late System Connection Event has occurred or that the Seller is entitled to any extension of the Last COD and/or to the Late System Connection Event Payment, and/or to relief from other obligations under this Agreement, the Parties shall be entitled to resolve the matter in accordance with clause 28 (*Dispute Resolution*).

16.2. Late System Connection Event as a Result of Force Majeure

- 16.2.1. If and to the extent that a Late System Connection Event is caused by a *force majeure* event under the Distribution Agreement, which affects the performance of the Buyer or the Distributor of all or part of its obligations under the Distribution Agreement and such Late System Connection Event causes a delay in the achievement of the Commercial Operation Date beyond the Scheduled COD, then:
 - 16.2.1.1. the Seller shall not be entitled to the Late System Connection Event Payment or any other relief other than as provided for in this clause 16.2 (*Late System Connection Event as a Result of Force Majeure*);
 - 16.2.1.2. the Seller shall be entitled to relief from any rights of the Buyer under clause 20.3 (*Termination for Seller Default*), in respect of the Seller

Default described in sub-clause (c) of the definition of “Seller Default”;
and

16.2.1.3. the Seller shall be entitled to such relief so as to place the Seller in the same overall economic position it would have been but for such Late System Connection Event arising from a *force majeure* event under the Distribution Agreement. The Buyer shall have the option to compensate the Seller, so as to place it in the same overall economic position, by one or more of the following mechanisms:

16.2.1.3.1. adjusting the Tariff for the remainder of the Term;

16.2.1.3.2. extending the Expiry Date, provided that the Term, as extended, is limited to the maximum Cycles of the Facility; or

16.2.1.3.3. a lump sum payment (whether paid in one or more tranches).

16.2.2. For the purposes of clause 16.2.1.3, the “same overall economic position” shall be accomplished by the Seller achieving its Base IRR over the Term, and the value thereof at a point in time 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 29 (*Fast Track Dispute Resolution*), in the following manner:

16.2.2.1. quantify the loss suffered by the Seller, which could include additional costs incurred by the Seller resulting directly from the occurrence of the Late System Connection Event caused by a force majeure event under the Distribution Agreement, less the amount of any variable costs that the Seller saved during the period that the Late System Connection Event continued;

16.2.2.2. in calculating the “same overall economic position” required to compensate for the quantified loss:

16.2.2.2.1. use the Financial Model;

16.2.2.2.2. update the Financial Model with the quantified loss for the period by which the Late System Connection Event caused the Commercial Operation Date to be delayed beyond the original Scheduled COD, in order to:

- 16.2.2.2.1. calculate the resulting reduction in the Base IRR; and
 - 16.2.2.2.2. make the changes in accordance with the Buyer's election under clause 16.2.1.3, to place the Seller in the same overall economic position.
- 16.2.3. On an annual basis not more than six (6) months after the last day of its Financial Year, the Seller shall:
 - 16.2.3.1. 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 up to the Expiry Date; and
 - 16.2.3.2. notify the Buyer of its Achieved IRR.
- 16.2.4. If the calculation referred to in clause 16.2.3, at any point during the Term, shows that the Seller will exceed the Base IRR by the Expiry Date, the Buyer will have the right to amend the compensation determined in accordance with clause 16.2.2, so as to put the Seller in the same overall economic position.
- 16.2.5. The Buyer shall, without prejudice to the provisions of clause 16.2.1.3, be entitled to relief under this clause 16.2 (*Late System Connection Event arising from Force Majeure*) from the performance of its obligations for a period equal to the lesser of the duration of such Late System Connection Event and a period of up to 1 (one) year calculated from the date of the commencement of the Late System Connection Event, whichever comes first ("**Buyer's Force Majeure Relief Period**").
- 16.2.6. Subject to clause 16.2.5, after the expiry of the Buyer's Force Majeure Relief Period the Seller shall be entitled to payments equivalent to the Late System Connection Event Payment, in accordance with clause 8.3.
- 16.2.7. In order to obtain the relief referred to in clause 16.2.5, the Buyer must:
 - 16.2.7.1. as soon as practicable, and in any event within ten (10) days after it becomes aware or ought to have been reasonably aware that a *force majeure* event under the Distribution Agreement has caused a Late System Connection 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 Late System Connection Event, the date of occurrence and its likely duration (if known);

16.2.7.2. within fifteen (15) days of the notice referred to in sub-clause 16.2.7.1, provide the Seller with the full details of such *force majeure* under the Distribution Agreement which caused the Late System Connection Event and the consequences of such Late System Connection Event including its likely impact on the Project including the anticipated revised date for the connection of the Facility to the System;

16.2.7.3. demonstrate to the reasonable satisfaction of the Seller and the Independent Engineer:

16.2.7.3.1. that the Late System Connection Event is a direct result of such *force majeure* event; and

16.2.7.3.2. that such delay impacted on the critical activities, by submitting clear substantiating records and documents and its impact on the achievement of the Commercial Operation Date beyond the Scheduled COD;

16.2.7.4. there is a need for relief from other obligations of the Buyer under this Agreement as a direct result of the Late System Connection Event in question;

16.2.7.5. 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

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

16.2.8. The Buyer shall notify the Seller if, at any time, it receives or becomes aware of any further information relating to the Late System Connection Event, giving details of that information to the extent that such information is new or renders information previously submitted materially inaccurate or misleading.

16.2.9. Upon receipt of the information set out in clause 16.2.7 from the Buyer, the Seller shall as soon as reasonably possible:

- 16.2.9.1. notify the Buyer whether it anticipates a delay in the achievement of the Commercial Operation Date beyond the Scheduled COD as a result of such Late System Connection Event, and if so the extent of such delay;
 - 16.2.9.2. provide the Buyer with the information referred to in clause 16.1.3.5 and clause 16.1.3.6;
 - 16.2.9.3. provide the Buyer with all reasonable assistance in respect of the Buyer's discussions with and actions against the Distributor in respect of that Late System Connection Event; and
 - 16.2.9.4. provide proof that the Seller is using reasonable endeavours to continue to the extent possible the performance of its obligations under this Agreement.
- 16.2.10. If the Parties cannot agree on the extent of the relief required, or the Seller disagrees that the Late System Connection Event is as a result of a *force majeure* event under the Distribution Agreement, or that the Seller is entitled to any extension to the Expiry Date or the period of the extension of the Expiry Date, and/or to any Late System Connection Event Payment after expiry of the Buyer's Force Majeure Relief Period, and/or relief from other obligations under this Agreement, the Parties shall resolve the matter in accordance with clause 28 (*Dispute Resolution*).
- 16.3. No claim for any relief in terms of this clause 16 (*Consequences of a Late System Connection 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 Late System Connection 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 all or any part of its revenue,

then the Seller is entitled to apply for relief from its obligations under this Agreement, 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 8.6 (*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 all or any part of the Energy Output Payment, 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 all or any part of the Energy Output Payment 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 all or any part of the Energy Output Payment 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 all or any part of the Energy Output Payment 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. 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, but the Expiry Date shall occur fifteen (15) years after the Commercial Operation Date. 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, excluding the postponement to the Last COD and shall not include postponement on account of delays arising from Non-Compensation Event Delays;

17.3.2. in the case of any additional cost being incurred by the Seller, arising from the Compensation Event:

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 in terms of 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 agreement in terms of 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 payment of compensation for the estimated change in project costs that does not result in Capital Expenditure being incurred by the Seller but which reflects a change in the costs being incurred by the Seller after the Commercial Operation Date; and/or

17.3.3.2. all or any part of Energy Output Payment 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 28 (*Dispute Resolution*).
- 17.6. In the case of any payment of compensation for loss referred to in clause 17.3.3:
- 17.6.1. the provisions of clause 16.1.4.4 and clause 16.1.5, if the Compensation Event occurs before the Commercial Operation Date, shall apply; and
- 17.6.2. if the Compensation Event occurs after the Commercial Operation Date, the Seller shall be entitled to claim the Energy Output Payment calculated in terms of Schedule 9 (*Calculation of Payments*) for the duration of the delay caused by the Compensation Event, which shall not include Non-Compensation Event Delays,
- and the payment of compensation 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 the 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 [x] 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 8.6 (*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 or, acting as a Reasonable and Prudent Operator, should have reasonably become aware of the event or circumstances giving rise to 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, within a further fifteen (15) Business Days, serve a subsequent notice (such notice being a “**Force Majeure Notice**”) setting out:

18.2.1. full particulars of the Force Majeure Event including the date on which it occurred;

18.2.2. the impact of the Force Majeure Event on the Affected Party's obligations under this Agreement and relief claimed;

18.2.3. 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;

18.2.4. 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

18.2.5. an estimate of the period of time required to overcome it (and/or its effects),

and 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, programmes and updates to the programme prepared to assess the impact of the Force Majeure event) and the 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, shall 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 18 (*Force Majeure*);
- 18.3.3. in 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 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 18 (*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 18 (*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 18 (*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 be reduced on account of 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 after the Commercial Operation Date, 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 Agreement shall be amended so as to place in the Seller in the same overall economic position, in terms of clause 18.10 (after taking into account the Non-Force Majeure Event Delays and any other relief and compensation to which the Seller may be entitled, 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. 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 allowed to claim relief 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 fifteen (15) 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 (*Force Majeure*);
 - 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 18 (*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.
- 18.8. If the Force Majeure Event affects the Seller's performance or part (but not all) of its obligations under this Agreement, then the Buyer shall have the right to require the Seller to undertake a Net Dependable Capacity Test in accordance with Schedule 8 (*Inspection and Testing*) to establish the Net Dependable Capacity of the Facility during such Force Majeure Event.
- 18.9. Subject to the Seller complying with its obligations under the provisions of this clause 18 (*Force Majeure*), the Seller shall be entitled to receive and the Buyer shall make any Energy Output Payments to the Seller that are due to the Seller to the extent that the Seller, notwithstanding the existence of the Force Majeure Event, makes Available any Capacity.
- 18.10. For the purposes of clause 18.6.3, the "same overall economic position" shall be accomplished by the Seller achieving its Base IRR over the Term. The Buyer shall have the option to compensate the Seller, so as to place it in the same overall economic position, by one or more of the following mechanisms:
- 18.10.1. adjusting the Tariff for the remainder of the Term;
 - 18.10.2. extending the Expiry Date, provided that the Term, as extended, is limited to the maximum Cycles of the Facility; or
 - 18.10.3. a lump sum payment (whether paid in one or more tranches).
- 18.11. The value of the "same overall economic position" at a point in time 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 29 (*Fast Track Dispute Resolution*), in the following manner:
- 18.11.1. 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;

- 18.11.2. in calculating “the same overall economic position” required to compensate for the quantified loss:
 - 18.11.2.1. use the Financial Model; and
 - 18.11.2.2. update the Financial Model with the quantified loss for the period referred to and determined in terms of clause 18.6.3 in order to:
 - 18.11.2.2.1. calculate the resulting reduction in the Base IRR; and
 - 18.11.2.2.2. make the changes in respect of the Buyer’s election under clause 18.10, to place the Seller in the same overall economic position.
- 18.12. On an annual basis not more than six (6) months after the last day of its Financial Year, the Seller shall:
 - 18.12.1. 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; and
 - 18.12.2. notify the Buyer of its Achieved IRR.
- 18.13. If the calculation referred to in clause 18.12 shows that the Seller will exceed the Base IRR by the Expiry Date, the Buyer will have the right to amend the compensation so as to put the Seller in the same overall economic position.
- 18.14. No claim for any relief in terms of this clause 18 (*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.
- 18.15. The Seller, where it is an Affected Party, must comply strictly with all terms, requirements and time-periods stated in this clause 18 (*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 18 (*Force Majeure*), and the Buyer shall be discharged from all liability whatsoever in connect with the relief sought under this clause 18 (*Force Majeure*).
- 18.16. Where the Parties are unable to agree that a Force Majeure Event has occurred or disagree with the relief determined under this clause 18 (*Force Majeure*), either Party is entitled to refer the matter to dispute resolution in accordance with clause 28 (*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 is in excess of R1 000 000,00 (one million Rands), per annum in any Contract Year ("**Threshold Amount**"). The relief or compensation claimed may only be for the amount in excess of the Threshold Amount.
- 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 fifteen (15) 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 the relevant remedy within the specified 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 28 (*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 its 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, ("**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 purposes of clauses 19.1.1 and 19.1.2, the "same overall economic position" shall be accomplished by the Seller achieving its Base IRR over the Term, and 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 28 (*Fast Track Dispute Resolution*), in the following manner:
- 19.1.9.1. quantify the 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

- 19.1.9.2. quantify the 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 Signature Date, which requires the Seller to incur any additional Capital Expenditure or Operating Expenditure, then the Seller shall be entitled to such relief so as to place the Seller in the same overall economic position it would have been in but for such Change in Law. The Buyer shall have the option to compensate the Seller as to place the Seller in the same overall economic position by one or more of the following mechanisms:

- 19.2.1.1. adjusting the Tariff for the remainder of the Term;
- 19.2.1.2. extending the Expiry Date, provided that the Term, as extended, is limited to the maximum Cycles of the Facility; or
- 19.2.1.3. a lump sum payment (whether paid in one or more tranches).

- 19.2.2. The “same overall economic position” shall be accomplished by the Seller achieving its Base IRR over the Term, and 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 29 (*Fast Track Dispute Resolution*), in the following manner:

- 19.2.2.1. quantify the loss suffered by the Seller, which could include additional costs incurred by the Seller resulting directly from the occurrence of the Change in Law;
- 19.2.2.2. in calculating the “same overall economic position” required to compensate for the quantified loss:
 - 19.2.2.2.1. use the Financial Model;

- 19.2.2.2.2. update the Financial Model with the quantified loss in order to:
 - 19.2.2.2.2.1. calculate the resulting reduction in the Base IRR; and
 - 19.2.2.2.2.2. make the changes in respect of the Buyer's election under clause 19.2.1, to place the Seller in the same overall economic position.
- 19.2.3. On an annual basis not more than six (6) months after the last day of its Financial Year, the Seller shall:
 - 19.2.3.1. 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; and
 - 19.2.3.2. notify the Buyer of its Achieved IRR.
- 19.2.4. 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.
- 19.2.5. The provisions of this clause 19.2 (*Change in Law*) shall not apply in respect of any Change in Law which:
 - 19.2.5.1. was foreseen by the Seller or could reasonably have been foreseen by the Seller on or before the Signature Date as being reasonably likely to occur and to impact the Project; and
 - 19.2.5.2. could reasonably have been foreseen by any person in the position of the Seller on or before the Signature Date as being reasonably likely to occur and to impact the Project; or
 - 19.2.5.3. 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
 - 19.2.5.4. 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; or

19.3. The Seller shall:

- 19.3.1. use all reasonable endeavours to minimise and mitigate the effects of any Change in Law on the Seller;
- 19.3.2. 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 19.1 (*Unforeseeable Conduct*); and
- 19.3.3. identify all delays, including delays arising from the Seller, Contractors and the Contractors' subcontractors, as at the date on which the Change in Law occurred, which do not result from the Change in Law ("**Non-Change in Law Delays**").

19.4. The Seller shall not be entitled to relief on account of Non- Change in Law Delays. or where an extension to the compensation is impacted or caused by both Unforeseeable Conduct and Change in Law Delays, 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.

19.5. 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.

19.6. Any Change in Law which constitutes Unforeseeable Conduct shall be dealt with in terms of clause 19.1 (*Unforeseeable Conduct*).

19.7. 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 22.1 (*Intellectual Property of the Buyer*) to 26 (*Contractors*) and clauses 28 (*Dispute Resolution*) to 34 (*Notices*) and clauses 36 (*Representatives*) to 37 (*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 (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); (c) (namely, the Seller fails to achieve the Commercial Operation Date on or before the Last COD); or (k) (namely, the Seller fails to comply with any provision of clause 25 (*Assignment*) or clause 27 (*Changes in Control or Equity*)) of the definition of "Seller Default", serve a notice on the Seller terminating this Agreement (save for clause 4.1 (*Project Site*), and clauses 23 (*Intellectual Property of the Buyer*) to 26 (*Contractors*) and clauses 28 (*Dispute Resolution*) to 34 (*Notices*) and clauses 36 (*Representatives*) to 37 (*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 Project within sixty (60) days of the Effective Date), (e) (namely, the Seller abandons the Construction or Operation and Maintenance, or any material part thereof of the Facility), (f) (namely, the Seller fails to ensure the required aggregate amount of the Round Trip Efficiency and the NDC of the Facility); (g) (namely, the Seller has failed to make provision for Decommissioning Costs); (h) (namely, the Seller has failed to comply with its Socio-Economic Development Obligations); (i) (namely, any Consent is suspended or revoked, and not discharged due to a material breach by the Seller); or (j) (namely, the Seller fails to maintain compliance with the requirements of any Consents or 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 clauses 22.1 (*Intellectual Property of the Buyer*) to 26 (*Contractors*) and clauses 28 (*Dispute Resolution*) to 34 (*Notices*) and clauses 36 (*Representatives*) to 37 (*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 clauses 23 (*Intellectual Property of the Buyer*) to 26 (*Contractors*) and clauses 28 (*Dispute Resolution*) to 34 (*Notices*) and clauses 36 (*Representatives*) to 37 (*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 Signature Date and 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, Contractor or any of their respective directors or employees;
- 20.4.1.1.1. has at any time during five (5) years preceding the Signature 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 five (5) years preceding the Signature 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 believe 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 Signature Date and for the Term of this Agreement, in relation to the Project, Project Activities, 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 procure that the Group and 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 (*Undertakings in regard to Corrupt Practices and Anti Bribery and Corruption Laws*) above.

20.4.4. Reporting Obligations

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

- 20.4.4.1. 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
- 20.4.4.2. should it become aware that any of its directors, officers, employees, contactors 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.
- 20.4.4.3. Where the Seller becomes aware of the conduct listed in clauses 20.4.4.1 or 20.4.4.2 the Seller shall report to the Buyer of steps taken to mitigate (i) the breach referred to in clause 20.4.4.1 and (ii) the impact of the contravention referred to in clause 20.4.4.2 from causing any loss, damage or harm to the Project and the Buyer.

20.4.5. Breach and termination for Corrupt Practices

- 20.4.5.1. Subject to clause 20.4.5.2 below, 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, 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 in question, or the Contractor terminates the relevant contract with the sub-contractor in question, or that employee's, director's, officer's or agent's involvement in the Project, the Seller or 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.

20.4.5.2. 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:

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

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

20.4.5.2.3. in the case of clause 20.4.5.2.1 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 20.4.5.2.2, that the employees', director's or officer's, involvement in the Project and the Lender has been terminated, as applicable.

20.4.5.3. 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 a court order or determination by a competent authority.

20.4.6. 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:

20.4.6.1. the amount or value of the item which is the subject of the Corrupt Practice; and

- 20.4.6.2. 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 20.4.4 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 (including any information in relation to claims) 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 and the Project, 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 5 (*Project Documents*) to the Buyer within twenty (20) Business Days of the Effective Date.
- 22.3. If the Seller requires any change to a Project Document listed in Part A (*PPA Related Project Documents*) of Schedule 5 (*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) 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.
- 22.5. 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. INTELLECTUAL PROPERTY OF THE BUYER

- 23.1. 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.
- 23.2. Subject to existing rights and obligations and clause 23.3, 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 Term of this Agreement.

- 23.3. 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.
- 23.4. 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 23.5.
- 23.5. 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.
- 23.6. 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.
- 23.7. 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.
- 23.8. 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:
- 23.8.1. de-register the company bearing any of the Protected Names; or
- 23.8.2. change the name to a name not substantially similar to any of the Protected Names.
- 23.9. 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 23.8 shall not be applicable and the intellectual property shall be the sole property of the Seller.

24. **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.

25. **ASSIGNMENT**

25.1. Prohibition on Assignment

Save as provided in clause 25.2 (*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.

25.2. Restrictions on Assignment

Notwithstanding clause 25.1 (*Prohibition on Assignment*) and subject to all applicable Laws:

25.2.1. the Buyer may Assign all (and not less than all) of its rights and obligations under this Agreement to another creditworthy municipality, or a large customer located within the area of jurisdiction of the Buyer::

25.2.1.1. provided that, prior to such Assignment, it obtains the prior written approval of the Seller and the Lender, which approval shall not be unreasonably withheld, conditioned or delayed; and

25.2.1.2. 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

25.2.2. 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:

25.2.2.1. the dissolution, restructuring, amalgamation or reorganisation of the Buyer or its businesses or of the electricity sector in general, or the occurrence of an analogous event; or

- 25.2.2.2. the transfer of all or a material part of the Buyer's business, property, assets, including this Agreement, and/or undertaking to one or more third parties and/or successor entities;

provided that, in each case:

- 25.2.2.3. 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
- 25.2.2.4. the Buyer assigns its corresponding rights and obligations under the Direct Agreement to its assignee simultaneously with its Assignment of this Agreement.

26. **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 and sub-contractors to the Contractor.

27. **CHANGES IN CONTROL OR EQUITY**

From the Signature Date, the Seller shall procure that there is no Change in Control in the Seller (or in any company of which the Seller is a subsidiary) or change in Equity, unless:

- 27.1. the Buyer has been provided with copies of any Consents which are required by the Seller to authorise such Change in Control; and
- 27.2. such Change in Control has been approved by the Buyer, which approval shall not be unreasonably withheld, delayed or conditioned.

28. **DISPUTE RESOLUTION**

28.1. **Referable Disputes**

The provisions of this clause 28 (*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.

28.2. **Internal Referral**

28.2.1. 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:

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

28.2.1.2. if the Parties have been unable to resolve the dispute within fifteen (15) Business Days of referral to the persons specified in clause 28.2.1.1, either Party may refer the dispute for a decision to the chief executive officer or equivalent officer of the Buyer and the chief executive officer or equivalent officer of the Seller.

28.2.2. In attempting to resolve the dispute in accordance with the provisions of this clause 28.2 (*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.

28.2.3. Any dispute which has not been resolved by the representatives contemplated in clause 28.2.1.2 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.

28.3. Performance to Continue

No reference of any dispute to any resolution process in terms of this clause 28 (*Dispute Resolution*) shall relieve either Party from any liability for the due and punctual performance of its obligations under this Agreement.

28.4. Litigation

28.4.1. Save where any dispute has been expressly referred for determination in terms of clause 29 (*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.

- 28.4.2. 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.
- 28.4.3. 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, at the request of the Buyer, be provided in duplicate in hard copy (either through hand-delivery or by pre-paid registered post).

29. **FAST TRACK DISPUTE RESOLUTION**

- 29.1. Disputes expressly referred for determination pursuant to this clause 29 (*Fast Track Dispute Resolution*) shall be determined by the relevant Independent Expert.
- 29.2. Within five (5) Business Days after a dispute has been referred by either Party to the appropriate Independent Expert, the Independent Expert shall require the Parties to submit in writing their respective arguments. The Independent Expert shall, in his absolute discretion, consider whether a hearing is necessary in order to resolve the dispute.
- 29.3. 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.
- 29.4. The Independent Expert shall set the date for the hearing, choose the venue (which must be a venue in Johannesburg, 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.
- 29.5. 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.
- 29.6. 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 29.5.
- 29.7. The Independent Expert's costs of any referral (including the costs of the separate third party expert referred to in clause 29.6) and any logistical disbursements directly related to the referral including the venue for the actual hearing and transcription services as mutually agreed in writing by both Parties with the Independent Expert, shall be borne 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 (irrespective of whether such costs are payable in foreign currency).

- 29.8. The Independent Expert shall act impartially and may take the initiative in ascertaining the facts and the Law.
- 29.9. 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.
- 29.10. 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 32 (*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.
- 29.11. 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.
- 29.12. 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:
- 29.12.1. 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
- 29.12.2. 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.
- 29.13. 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 that the Independent Expert's decision may be submitted to the High Courts for review as contemplated in clause 28.4.

30. **LIABILITY**

30.1. **Direct losses**

- 30.1.1. 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. 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.
- 30.1.2. Notwithstanding anything contained to the contrary in this Agreement, neither Party shall be liable to the other Party for any Special Loss suffered by such other Party as a result of any act or omission by the first Party (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 31 (*Third Party Indemnity*) and clause 35.1 (*Seller warranties*) and the reimbursement of the Buyer's costs in terms of clause 20.3.4 (*Buyer's Costs*).
- 30.1.3. Save for the obligations indemnities provided under clause 31 (*Third Party Indemnity*) and clause 35.1 (*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.
- 30.1.4. Nothing in this Agreement shall limit or exclude liability, which cannot be limited or excluded by law.

30.2. **Mitigation**

- 30.2.1. 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.

- 30.2.2. 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.

31. **THIRD PARTY INDEMNITY**

Each Party (the "**Indemnifying Party**") shall indemnify and hold harmless the other Party, its Affiliates, and their respective officers, employees, consultants, agents and representatives ("**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.

32. **CONFIDENTIALITY**

32.1. 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.

32.2. Exclusions to Confidential Information

For the purposes of this clause 32 (*Confidentiality*), the term "Confidential Information" shall not include information which:

- 32.2.1. constitutes Project Data;
- 32.2.2. 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 32 (*Confidentiality*);

- 32.2.3. 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 32 (*Confidentiality*);
- 32.2.4. 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
- 32.2.5. is published by, or the publication of which is required by, a Responsible Authority or any court.

32.3. Permitted disclosure of Confidential Information

Notwithstanding the provisions of clause 32.1 (*Confidential Information*), the Confidential Information may be disclosed:

- 32.3.1. by either Party to any Responsible Authority (where for the purposes of this clause 32.3 (*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:
 - 32.3.1.1. 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
 - 32.3.1.2. 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;
- 32.3.2. 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;
- 32.3.3. by either Party as may be necessary to comply with any obligation under any applicable Law;

- 32.3.4. by the Buyer to the Distributor, as may be necessary to enable the Distributor to operate the System and carry out its obligations in relation thereto as a Reasonable and Prudent Operator (including in relation to the application by any person for connection to the System);
- 32.3.5. by either Party if required by any court, any arbitrator or administrative tribunal or an expert in the course of proceedings before it to which the disclosing Party is a party;
- 32.3.6. by the Buyer as may be necessary to the Government and the NTC; or
- 32.3.7. by either Party, if so agreed in writing by the Parties prior to the disclosure.

32.4. Ownership and treatment

- 32.4.1. 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.
- 32.4.2. 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.

32.5. Protection of Personal Information

- 32.5.1. 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**”);
- 32.5.2. Accordingly, the Disclosing Party hereby expressly consents to share the Personal Information with the Receiving Party and further consents to the Receiving Party Processing of the Personal Information disclosed to it by the Disclosing Party in accordance with this Agreement.
- 32.5.3. The Parties record that the Receiving Party will Process the Personal Information 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:
 - 32.5.3.1. identify all reasonably foreseeable internal and external risks to the Personal Information in its possession or under its control; and

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

32.5.4. 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 Data Protection Legislation, 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:

32.5.4.1. the transmission by the Disclosing Party to the Receiving Party in accordance with this Agreement or otherwise permitted by law;

32.5.4.2. the transmission by the Disclosing Party or the Receiving Party of the Personal Information to the third parties in accordance with this Agreement or otherwise permitted by law; and

32.5.4.3. 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.

33. **GOVERNING LAW AND JURISDICTION**

33.1. The validity, construction and performance of this Agreement shall be governed by the laws of South Africa.

33.2. Subject to the provisions of clause 29 (*Fast Track Dispute Resolution*), each Party agrees that the High Court of South Africa, Western Cape Division, Cape Town 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.

34. **NOTICES**

34.1. 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, electronic mail or facsimile to the address or number within South Africa of the Party concerned set out in clause 34.2 (*Addresses*) or such other address or number as contemplated in clause 34.4 (*Change in address*). No communication shall be effective until received by the addressee and a communication shall be deemed to have been received:

- 34.1.1. if delivered by hand (including by courier) during ordinary business hours, to its physical address in clause 34.2 (*Addresses*), when so delivered; and
- 34.1.2. 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).

34.2. Addresses

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

34.2.1. The Seller:

Postal Address: [•]

[•]

[•]

Physical Address: [•]

[•]

Fax No.: [•]

Tel No.: [•]

Email: [•]

and marked for the attention of [•]

34.2.2. The Buyer:

Postal Address: [•]

[•]

[•]

Physical Address: [•]

[•]

Fax No.: [•]

Tel No.: [•]

Email: [•]

and marked for the attention of [●]

34.3. Domicilium citandi et executandi

The Parties choose the physical address set out opposite their names in clause 34.2 (*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*.

34.4. 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.

34.5. Notice of Claims

Notwithstanding clause 34.1 (*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.

35. WARRANTIES

35.1. Seller warranties

The Seller represents and warrants to the Buyer as on the Signature Date and on each day thereafter during the Term (unless the contrary is indicated in the relevant provision), that:

- 35.1.1. 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;
- 35.1.2. it has the sole purpose, object and business of undertaking the Project in terms of this Agreement;
- 35.1.3. its obligations under this Agreement are legal, valid and binding and enforceable against it, in accordance with the terms of this Agreement;
- 35.1.4. all the Project Documents and the counterparties to them are as detailed and identified in [Schedule 5] (*Project Documents*) and have been duly executed on

proper authority and will be in full force and effect as at the Signature Date, save for those Project Documents that will be executed after the Signature Date on proper authority;

- 35.1.5. 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, or any order or other decision of any Responsible Authority or arbitrator that is binding on the Seller as at the Signature Date;
- 35.1.6. all Consents (whether provisional or final) required for the conduct of the Project are in full force and effect as at the Signature Date, save for any Consents which are not required under the Laws to be obtained by the Signature Date, provided that:
 - 35.1.6.1. 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,
 - 35.1.6.2. 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 Operation and Maintenance;
- 35.1.7. no litigation, arbitration, investigation or administrative proceeding is in progress as at the Signature Date or, to the best of the knowledge of the Seller as at the Signature Date (having made all reasonable enquiries), are 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;
- 35.1.8. 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;
- 35.1.9. none of its directors or employees, or the directors or employees of the Contractors:
 - 35.1.9.1. is an employee or official of, or special advisor in, any national or provincial government department or any municipality in South Africa;
 - 35.1.9.2. has been listed on the National Treasury's Register for Tender Defaulters, or its List of Restricted Suppliers;

- 35.1.10. 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, business rescue practitioner or similar officer over it or over any of its assets;
- 35.1.11. 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 entry into of this Agreement and the other Project Documents);
- 35.1.12. all information disclosed by or on behalf of the Seller to the Buyer at any time up to the Signature Date and, in particular, during the bid process preceding the award of this Agreement to the Seller, is true, complete and accurate in all material respects and the Seller is not aware of any material facts or circumstances not disclosed to the Buyer which would, if disclosed, be likely to have an adverse effect on the Buyer's decision (acting reasonably) to enter into this Agreement with the Seller;
- 35.1.13. following the execution from time to time of Project Documents listed in Part A (*PPA Related Project Documents*) of Schedule 5 (*Project Documents*), copies of the Project Documents listed in Part A (*PPA Related Project Documents*) of Schedule 5 (*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;
- 35.1.14. the Suppliers and Contractors have, at all times during the Term, all Supplier Consents required to enable them to fulfil their obligations in terms of the Supply Agreements, and have complied in all material or relevant respects, with such Supplier Consents and the Laws applicable to the Suppliers;
- 35.1.15. as at the Signature Date, it has appointed the Independent Engineer;
- 35.1.16. as at the Signature Date, it has an adequate supply of Water and the Water Use Right shall grant it access to an adequate supply of Water to enable it to Construct, Operate and Maintain the Facility and to make it Available and to generate Energy Output; and that to the best of its knowledge and belief, after all due and proper enquiry, there is no actual or potential reason why it will not have, nor is there any actual or potential threat to, such a supply of Water at any time

in the future. This warranty is given at the Signature Date and is not repeated;
and

35.1.17. in respect of intellectual property:

35.1.17.1. where the Seller is not the owner of the intellectual property, it is the holder of a valid licence for the manufacture and/or supply of the Key Equipment;

35.1.17.2. it has not and will not infringe any intellectual property rights belonging to a third party; and

35.1.17.3. 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.

35.2. Buyer warranties

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

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

35.2.2. the execution and performance of this Agreement by it has been duly authorised by all necessary corporate action, and its obligations.

36. REPRESENTATIVES

36.1. Buyer's Representative

36.1.1. The Buyer shall appoint from the Signature Date until the Expiry Date an individual ("**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.

36.1.2. 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.

- 36.1.3. 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.

36.2. Seller's Representative

- 36.2.1. The Seller shall appoint from the Signature Date until the Expiry Date, an individual ("**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.
- 36.2.2. 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.

37. MISCELLANEOUS

37.1. 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.

37.2. 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.

37.3. Waiver

- 37.3.1. The failure of any Party to exercise any contractual right or remedy shall not constitute a waiver thereof.
- 37.3.2. No waiver shall be effective unless it is communicated in writing to the other Parties.
- 37.3.3. 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.

37.4. 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.

37.5. 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.

37.6. Entire Agreement

37.6.1. 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.

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

37.7. 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.

37.8. Direct Agreement

If required by the Seller, the Buyer agrees that it shall enter into a Direct Agreement with the Seller and the Lenders.

37.9. Public Relations and Publicity

37.9.1. 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:

37.9.1.1. Parliament and its members and officers in accordance with the Rules of the National Assembly;

37.9.1.2. the Auditor-General under the Public Audit Act, No. 25 of 2004; and

37.9.1.3. persons acting in the public interest in accordance with the provisions of the Promotion of Access to Information Act, No. 2 of 2000.

37.9.2. Subject to clause 37.9.3, 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.

37.9.3. To the extent that the Buyer is obliged to disclose or publish information pursuant to clause 37.9.1, it undertakes to the Seller, if time permits, to consult with the Seller prior to any communication contemplated by this clause 35.9.3, and if time does not so permit, such consultation shall be dispensed with by the Parties.

37.9.4. 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.

37.10. 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.

37.11. Costs

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

37.12. 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.

37.13. Claims for relief and/or compensation

If the Seller claims relief and/or compensation 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.

THE 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

1. **Facility description and scale drawing:**

[Seller to provide a one (1) paragraph description of the Project and the Facility as applicable (i.e. this Schedule should be completed for the Facility), and its components; and a scale drawing of the Facility, in high resolution, showing the layout of the Facility, including:

- 1.1. location of Facility (including each Unit, if applicable);
- 1.2. Facility layout including all Batteries, infrastructure and buildings;
- 1.3. Facility Connection Works;
- 1.4. Distribution Connection Works;
- 1.5. Delivery Point;
- 1.6. cables up to the Delivery Point;
- 1.7. the location of all Metering Installations;
- 1.8. access roads;
- 1.9. the legal description of the property or properties covered by the Project Site, including (in respect of each property, where the Project Site covers multiple properties) farm name, farm number and registration division, magisterial district and farm subdivision name; and
- 1.10. a clear depiction of the Project Site boundary/ies as well as the co-ordinates of each corner point along the boundary/ies (including the coordinate system used). The polygon formed by the property boundary for each property comprising the Project Site should close, so the last co-ordinate must be the same as the first co-ordinate.

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

2. **Tables:**

[This Schedule will be populated in the following details, which will be extracted from the Bid Response submitted in respect of the Project]

Table A - Facility Details [Bidders are required to provide a completed table in respect of the Facility, or where the Facility consists of multiple Units, for each Unit.]

Facility / Unit Name	
Rated Input/Output Power [MW]	
Installed BESS capacity [MWh]	
Auxiliary Consumption of the Facility at 25°C [MW]	
BESS Technology (Chemistry)	
Planned voltage connection level	
Delivery Point name	

Table B - Ambient Site Conditions Applicable to the Facility

Parameter	Units	Value
Minimum Ambient temperature	°C	
Maximum Ambient temperature	°C	
Average Ambient temperature	°C	
Altitude	m	
Humidity	%	

Table C - Reference Site Conditions

Parameter	Units	Value
Ambient air temperature	°C	25
Altitude	m	< 1000
Humidity	%	< 95% with no condensation

Table D - Guaranteed parameters

Cycles	Contracted Capacity (MW)	Round Trip Efficiency (%)
--------	--------------------------	---------------------------

COD		
624		
1248		
1872		
2496		
3120		
3744		
4368		
4992		
5616		
6240		
6864		
7488		
8112		
8736		
9360		
EOL		

Table E - Key Equipment

Item	Manufacturer	Brief description <i>[Specific equipment details including description, model or other unique identifier, size and rating]</i>
Battery including battery management system		
Inverter		
Energy management system		
Telemetric system		
Transformers		
Switchgear		
Instrument transformers		

3. Technical codes and standards

The Key Equipment and other 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 systems, equipment, components and structures for the Facility. In addition, the latest version of all applicable standards should be used.

Part 2 – Single Line Diagram

1. [Seller to provide single line diagram and network diagram of the Project, and the Facility and/or Units (as applicable). The single line diagram should show a clear demarcation of the following:
 - 1.1. Ownership and operational boundaries;
 - 1.2. Delivery Point/s;
 - 1.3. Point/s of Connection (as defined in the Distribution Agreement or Self Build Agreement);
 - 1.4. Substation/s;
 - 1.5. Metering Installation layout; and
 - 1.6. Municipality SCADA integration and C&I system architecture.

**Schedule 2 –COMPLETION MILESTONES AND FORMS
OF NOTICES**

Part 1 – Completion Milestones

[The Seller must include in this schedule, a baseline level three (3) Project Schedule Gantt chart at monthly resolution to show the key activities, events, dependencies and milestones from early Project development through to Commercial Operation Date, dependencies and critical path in its native format and pdf. Other than for the Facility Scheduled COD or Scheduled COD or as specifically provided for elsewhere in this Agreement, failure to achieve the milestones in such chart shall not be a breach of this Agreement.]

Project Schedule to be inserted here.

Part 2 – Form of Facility Completion Form

[For the Facility]

[on the letterhead of the Independent Engineer]

Stellenbosch Local Municipality

[Address]

Attention: [●]

Dear Sirs

Facility Completion Form

1. We refer to the Power Purchase Agreement entered into between [●] and Stellenbosch Local Municipality on [insert date] (the "PPA").
2. All capitalised terms in this notice ("**Notice**") shall, unless separately defined herein, bear the meaning ascribed to them in the PPA.
3. This Notice is the Facility Completion Notice as defined in and required to be issued in terms of the PPA.
4. We hereby represent and warrant the following:
 - 4.1. the Facility has been successfully connected to the Distribution System as required in terms of the Distribution Agreement and the Codes;
 - 4.2. the Facility is compliant with the Codes;
 - 4.3. 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;
 - 4.4. the NDC Test required to be carried out in terms of Schedule 8 (*Inspection and Testing*) of the PPA has been successfully completed; and
 - 4.5. the RTE Test for the Facility, required to be carried out in terms of Schedule 8 (*Inspection and Testing*) of the PPA, has been successfully completed;
 - 4.6. the Net Dependable Capacity at COD of the Facility is [●]MW for a two hour period, which is equal to or greater than the Minimum Acceptance Capacity for the Facility;

- 4.7. the RTE of the Facility at COD is [●]%, which is equal to or greater than 85%;
- 4.8. the Facility has a mechanism installed to limit the Capacity exported from the Facility to the Contracted Capacity;
- 4.9. the Facility has a mechanism installed to receive and interpret Dispatch Instructions and Set Points provided by the Buyer, and to dispatch the Facility in accordance with these Dispatch Instruction and Set Points;
- 4.10. the Metering Installation has been procured, installed, tested and successfully commissioned in accordance with the PPA and the Codes, and the Buyer is able to remotely access the Metering.
- 5. The Facility is ready to commence commercial operation, draw Energy Input from the Distribution System, store Energy and deliver Energy Output to the Buyer.

Yours faithfully,

[NAME OF INDEPENDENT ENGINEER]

Part 3 – Form of Notice of Commencement of Facility

[on the letterhead of the Seller]

Stellenbosch Local Municipality

[Address]

Attention: [●]

Dear Sirs,

Notice of Commencement of Facility

1. We refer to the power purchase agreement dated [●] (the "**PPA**") between Stellenbosch Local Municipality (the "**Buyer**") and ourselves, [●] (the "**Seller**").
2. This notice ("**Notice**") is the Notice of Commencement of Facility referred to in clause 4.6 (*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.
3. We hereby represent and warrant as at the date hereof the following:
 - 3.1. the Facility has achieved Facility Completion and the Facility Completion Form has been issued in respect of it;
 - 3.2. the Net Dependable Capacity of the Facility is [●] MW (for a two hour period);
 - 3.3. the Facility has a mechanism installed to limit the Capacity exported from the Facility up to the Net Dependable Capacity;
 - 3.4. the Facility has a mechanism installed to receive and interpret Dispatch Instructions and Set Points provided by the Buyer and to dispatch the Facility in accordance with these Dispatch Instruction and Set Points;
 - 3.5. the RTE Test for the Facility, required to be carried out in terms of Schedule 8 (*Inspection and Testing*) of the PPA, has been successfully completed;
 - 3.6. the Facility is ready to commence commercial operation, to draw Energy Input from the Distribution System, to store Energy and to deliver Energy Output to the Buyer, and the Facility Commercial Operation Date shall be **[insert date]**;

- 3.7. NERSA or a person nominated by NERSA for such purpose has issued to the Seller a certification of the Facility's compliance with the Codes, as required by clause 5.1.3.3 of the PPA, and such certificate is attached hereto;
- 3.8. the Distributor has provided written confirmation to the Seller certifying that the Facility may be connected to the Distribution System, as required by clause 5.1.3.4 of the PPA, and such confirmation is attached hereto;
- 3.9. the Buyer has issued to the Seller written notice that the Buyer has received and accepted the notice from the Independent Engineer that the Facility is in compliance with the Codes, as required by clause 5.1.3.5 of the PPA, and such notification is attached hereto;
- 3.10. 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;
- 3.11. 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;
- 3.12. the Metering Installation has been procured, installed, tested and successfully commissioned in accordance with the PPA and the Codes and the Buyer is able to remotely access the Metering;
- 3.13. none of the events entitling the Buyer to terminate the PPA in accordance with clause 20 (*Termination*) have occurred and are continuing; and
- 3.14. 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]

Representative of the Seller

Part 4 – Commencement of Construction Confirmation Form

[on the letterhead of the Independent Engineer]

Stellenbosch Local Municipality

[Address]

Attention: [●]

Dear Sirs,

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 –OUTAGES AND DERATINGS

The following conditions shall apply to ensure good co-ordination between Seller and Buyer in relation to the Operation of the Project, as regards Scheduled Outages and Planned Deratings and any allowances made by the Seller for Unscheduled Outages and Unplanned Deratings.

1. Annual Capacity Plan

- 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 submit the Capacity forecast to be Available, including Scheduled Outages and Planned Deratings and an allowance for Unscheduled Outages and Unplanned Deratings for that Contract Year ("**Annual Capacity Plan**"), to the Buyer following consultation with the Buyer regarding the Buyer's anticipated Maintenance Schedule for that Contract Year.
- 1.2. The Annual Capacity Plan shall be required to detail the Capacity forecast to be Available in respect of each Billing Period, including the number of hours for which a Scheduled Outage or Planned Derating shall endure in respect of each Billing Period in the Contract Year to which the current Annual Capacity Plan relates.
- 1.3. To allow for variations in the Scheduled Outages and Planned Deratings which may reasonably be expected through the Operating Period, when the Seller submits the Annual Capacity Plan to the Buyer in terms of clause 1.1 of this Schedule 3 (*Outages and Deratings*), it may also include an application to exchange the Energy Output and projected loss of Energy Output values for any particular Contract Year with the equivalent values for any subsequent Contract Year.
- 1.4. The Buyer shall, acting reasonably, consider such application and revert with its written acceptance or rejection of either or both of the Annual Capacity Plan and such application, within forty (40) Business Days of the receipt by it of the Annual Capacity Plan and such application. The Seller shall be entitled to revise either or both of such plan and application and resubmit them to the Buyer for its approval in accordance with this clause 1. If the Buyer fails to respond with either a written acceptance or rejection of either or both of the Annual Capacity Plan and such application within the period of forty (40) Business Days, it shall be deemed to have accepted the Annual Capacity Plan and or such application.
- 1.5. 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 or Planned Derating 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.
- 1.6. The Seller may on no less than twenty (20) Business Days' prior written notice to the Buyer reschedule a Scheduled Outage or Planned Derating to an alternative Month, provided that such rescheduling is consented to in writing by the Buyer, which consent may not be unreasonably

withheld. The Buyer shall be required to respond to such notice within ten (10) Business Days of receiving such notice. If the Buyer fails to respond to such notice within such period of ten (10) Business Days, it shall be deemed to have consented to such rescheduling.

2. Monthly and Weekly planned maintenance schedule

- 2.1. Following consultation with the Buyer regarding the Buyer's Maintenance Schedule in respect of a Month, not later than seven (7) Business Days prior to the commencement of each Month, the Seller shall submit its Scheduled Outages and Planned Deratings for that Month ("**Monthly Schedule**") to the Buyer. The Monthly Schedule shall detail the Scheduled Outages and Planned Deratings on a Weekly basis. The Buyer's approval shall not be required in respect of the Monthly Schedule if the Monthly Schedule is in accordance with the Annual Capacity Plan.
- 2.2. 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 or Planned Derating to another 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.
- 2.3. The Seller may on no less than five (5) Business Days' prior written notice to the Buyer reschedule a Scheduled Outage or Planned Derating to an agreed time period provided that such rescheduling is consented to in writing by the Buyer, which consent may not be unreasonably withheld.
- 2.4. The Seller shall issue a final Monthly Schedule for the Project by the Thursday preceding the first Week of the Month to which that Monthly Schedule relates.
- 2.5. The Seller may not undertake Scheduled Outages or Planned Deratings other than in accordance with the Monthly Schedule, unless it has received the approval of the Buyer.

3. Reactions to unplanned Outages

In case of a System Unavailability 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 Unavailability Event, request the Seller to reschedule a Scheduled Outage to be commenced during the time period of System Unavailability 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.

4. Failures to agree or disputes

Any failure by the Seller and the Buyer to reach agreement, or any disputes between the Seller and the Buyer, in respect of any of the Indicative Capacity Plan, the Maintenance Schedule, the Annual Capacity Plan or the Monthly Schedule shall be dealt with in accordance with the provisions of clause 28 (*Dispute Resolution*) of the PPA.

Schedule 4 –LIST OF FIRMS - INDEPENDENT ENGINEER

Firm Name	Physical Address	Telephone Number	Contact person and email address
[•]	[•]	[•]	[•]
[•]	[•]	[•]	[•]
[•]	[•]	[•]	[•]

Schedule 5 –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. Water Use Agreement (if applicable)
 - 1.4. Distribution Agreement (if applicable);
 - 1.5. Self-Build Agreement (if applicable);
 - 1.6. Connection Direct Agreement (if applicable); and
 - 1.7. Direct Agreement in respect of the PPA.

Schedule 6 –DIRECT AGREEMENT

[Form of Direct Agreement is at Appendix 17B to the RFP]

**Schedule 7 –INDEPENDENT
ENGINEER AGREEMENT**

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

Schedule 8 –INSPECTION AND TESTING

1. Introduction
 - 1.1. Clauses 5.3 (*Independent Engineer Inspection and Testing*) and 5.4 (*Facility Completion and Commissioning*) of this Agreement provide for the Facility to be inspected and tested prior to the issue by the Independent Engineer of the Facility Completion Form.
 - 1.2. Such inspections and tests shall be carried out for the Facility unless stated otherwise, in accordance with the provisions of this Agreement and the requirements set out in this Schedule 8 (*Inspection and Testing*).
 - 1.3. The tests detailed in this Schedule 8 (*Inspection and Testing*) are the tests agreed between the Seller and the Buyer as being the tests which the Buyer requires to be carried out for the purposes of the Independent Engineer issuing the Facility Completion Form for the purposes of the Operation of the Facility.
 - 1.4. The obligations on the Seller to carry out the tests detailed in this Schedule 8 (*Inspection and Testing*) are obligations which are independent of the Seller's other obligations in this Agreement, including the Seller's undertakings in clause 20 (*General Seller Undertakings*) to Construct the Project (inclusive of the Facility) in compliance with the requirements of the standards of a Reasonable and Prudent Operator, and accordingly the carrying out of tests detailed in this Schedule 8 (*Inspection and Testing*) to the reasonable satisfaction of the Independent Engineer shall not be a defence to an averment that the Seller has failed to comply with any such other obligations in this Agreement.
 - 1.5. The detailed procedure for the inspection and testing sequence will be agreed or determined in accordance with the provisions of clause 5.3 (*Independent Engineer Inspection and Testing*) of this Agreement.
 - 1.6. The Seller shall coordinate the timing for all tests that export Energy to the System with the Buyer.
2. General
 - 2.1. Facility Compliance prior to Back Energisation
 - 2.1.1. The Seller shall, prior to Back Energisation, demonstrate to the reasonable satisfaction of the Independent Engineer that the Facility comprises the Key Equipment and that the Facility and Key Equipment have been designed, manufactured and installed in accordance with South African Standards and or for the Key Equipment standards published by the relevant authorities specified in Part 1 (*Facility*) of Schedule 1 (*Details of the Project and Facility*) of this Agreement or their equivalent as listed in Schedule 1 (*Details of the Project and Facility*).
 - 2.1.2. Documentation to demonstrate such compliance shall be submitted to the Independent Engineer by the Seller on a progressive basis throughout the Construction period as soon as practicably possible

after the Seller receives or produces same, and shall consist of the certifications evidencing that (a) the design of the Facility and Key Equipment complies with South African Standards and the Codes and or for the Key Equipment standards published by the relevant authorities specified in Part 1 (*Facility*) of Schedule 1 (*Details of the Project and Facility*) of this Agreement or their equivalent as listed in Schedule 1 (*Details of the Project and Facility*) and (b) the Facility and Key Equipment have been installed in accordance with their designs.

2.2. Testing Program Principles

2.2.1. The overall testing program shall consist of, and be carried out in, the following phases:

2.2.1.1. tests during manufacture;

2.2.1.2. tests during construction and commissioning;

2.2.1.3. functional tests;

2.2.1.4. Round Trip Efficiency and Net Dependable Capacity Tests.

2.3. Test procedures

2.3.1. Development and implementation of test procedures for the construction and commissioning of the Facility, the Connection Works and the Delivery Point in accordance with clause 5.3 (*Independent Engineer Inspection and Testing*) of this Agreement will be the responsibility of the Seller.

2.3.2. The testing procedures which are required to be submitted by the Seller to the Independent Engineer in accordance with the provisions of clause 5.3 (*Independent Engineer Inspection and Testing*) of this Agreement shall include:

2.3.2.1. a test program;

2.3.2.2. the test standards;

2.3.2.3. the type of inspection and the type of tests;

2.3.2.4. the methodology of the tests;

2.3.2.5. the check lists that are required to be completed, including the list of the process data to be recorded;

2.3.2.6. the equations and correction curves for the process data;

2.3.2.7. the description of instrumentation to be used, including calibration test results;

2.3.2.8. the location of measurements;

2.3.2.9. the list of tests which are to be witnessed by third parties;

2.3.2.10. the quality control procedures; and

2.3.2.11. the forms of test records and of the report.

2.4. Witness of Tests by Independent Engineer

2.4.1. All testing on the Project Site in respect of the tests referred to in clause 3.3 (*Functional Testing*) and clause 4 (*Performance Tests (Capacity, Round Trip Efficiency, Active Power and Ramp Rate Tests)*) of this Schedule 8 (*Inspection and Testing*) shall be witnessed by the Independent Engineer, the Buyer (in its sole discretion) and a Responsible Authority if such witnessing by a Responsible Authority is required by Law.

2.4.2. All other testing on the Project Site may be witnessed by the Independent Engineer and the Buyer (in its sole discretion), and shall be witnessed by a Responsible Authority if such witnessing by a Responsible Authority is required by Law.

2.4.3. The tests during manufacture may be witnessed by the Independent Engineer and the Buyer (in its sole discretion).

2.4.4. The Seller shall notify the Independent Engineer and the Buyer in writing of the date and time on which all tests are to be performed.

2.4.5. Unless otherwise specified in this Schedule 8 (*Inspection and Testing*):

2.4.5.1. twenty-one (21) days' prior written notice shall be given by the Seller to the Independent Engineer and the Buyer for all tests off the Project Site, including tests during manufacture;

2.4.5.2. ten (10) days' prior written notice shall be given by the Seller to the Independent Engineer and the Buyer for all tests on the Project Site, including tests during construction and commissioning;

2.4.5.3. twenty-four (24) hours' written notice shall be given by the Seller to the Independent Engineer and the Buyer for any re-test on the Project Site.

3. **Testing of Equipment and Systems**

3.1. Tests during manufacture

3.1.1. The Seller shall ensure that all components, plant, machinery and equipment of the Facility are tested during manufacture.

3.1.2. Such tests shall be conducted in accordance with the codes and standards set out in Schedule 1 (*Details of the Project and Facility*) or as otherwise required in accordance with the standards of a Reasonable and Prudent Operator.

3.1.3. The Seller shall, at the same time as it gives notice to the Independent Engineer and the Buyer, in terms of clause 2.4.5.1 above, of tests during manufacture, provide the Independent Engineer and

the Buyer with copies of the codes and standards and test procedures pertaining to each test. The Seller shall also, as soon as practically possible after the Seller receives same, provide copies of test certificates and reports of all tests carried out during manufacture to the Independent Engineer and the Buyer.

3.2. Tests during construction and commissioning

3.2.1. The Seller shall ensure that all components, plant, machinery and equipment of the Facility are tested during construction and commissioning.

3.2.2. Such tests shall be conducted in accordance with the codes and standards set out in Schedule 1 (*Details of the Project and Facility*) or as otherwise required in accordance with the standards of a Reasonable and Prudent Operator.

3.2.3. The Seller shall, at the same time as it gives notice to the Independent Engineer and the Buyer, in terms of clause 2.4.5.2 above, of tests on the Project Site, provide the Independent Engineer and the Buyer with copies of the codes and standards and test procedures pertaining to each test. The Seller shall also, as soon as practicably possible after the Seller receives same, provide copies of test certificates and reports of all tests carried out during manufacture to the Independent Engineer and the Buyer.

3.3. Functional Testing

3.3.1. On completion of the construction of the Facility, the Seller shall undertake a series of tests to demonstrate the Facility's operational capability, performance and reliability are in accordance with the requirements of this Agreement and the Codes.

3.3.2. All tests shall be conducted in accordance with the codes and standards set out in Schedule 1 (*Details of the Project and Facility*) or as otherwise required in accordance with the standards of a Reasonable and Prudent Operator.

3.3.3. For the Facility, the Seller shall ensure that the following tests shall be carried out to demonstrate that key features of the design operate satisfactorily:

3.3.3.1. Test and Start-up of Auxiliaries

3.3.3.1.1. All auxiliaries shall be tested to verify that they can be operated safely, that their performance satisfies the design specifications,

3.3.3.1.2. and that all protective devices, mechanical as well as electrical, are functioning effectively at their correct settings.

3.3.3.1.3. Automatic start-up of stand-by auxiliaries upon the loss of running auxiliaries shall also be tested.

3.3.3.2. Control System

Automatic control systems shall be tested for correct functioning and controls tuning shall be carried out.

3.3.3.3. Synchronising Checks

Before each part of the Facility is permitted to Operate synchronised in parallel with the System, tests shall be performed to ensure that it is safe to do so and that all the instruments associated with the synchronising operation are functioning correctly and in accordance with the Codes.

3.3.3.4. Protective Devices

3.3.3.4.1. All electrical and mechanical protective systems, circuits, devices, equipment and instruments associated with the interconnection of the Facility and Connection Works with the Distribution System shall be tested on site to prove Operation and stability, as well as compliance of the actual relays and current transformers with the Equipment Supplier's published information.

3.3.3.4.2. Battery module and inverter protection and tripping settings shall be tested for proper Operation.

3.3.3.5. Stability

3.3.3.5.1. Each Battery module shall have an inverter and the inverter shall, in compliance with the Codes, be tested for proper and stable Operation over zero to maximum load.

3.3.3.5.2. The tests must demonstrate the ability to Operate at the range of voltages, frequencies and power factors specified in the Connection Agreements and in compliance with the Codes.

3.3.3.5.3. Tests shall also be conducted to test the ability of the Facility to control the system and respond appropriately in compliance with the Codes.

3.3.3.6. Response times

The automatic Start Up times and raise and lower ramp rates from various initial conditions shall be tested to demonstrate that the performance in Schedule 11 (*Performance Requirements*) of this Agreement has been achieved.

3.3.3.7. Load Rejection Test and Step-Load Change Rejection Test

3.3.3.7.1. The Seller shall:

- 3.3.3.7.1.1. carry out load rejection tests relevant to the technology and applicable Codes;
- 3.3.3.7.1.2. simulate tests of load rejection relevant to the technology and applicable Codes; and
- 3.3.3.7.1.3. verify and check Operating Stability with load variations relevant to technology and applicable Codes.

3.3.3.7.2. Full load rejection testing shall be carried out relevant to the technology and applicable Codes.

3.3.3.7.3. The Seller shall carry out step load changes relevant to the technology to maintain operation and recovery applicable in the Codes.

3.3.3.8. Metering Installations

The Metering Installations shall be inspected and tested in accordance with the Codes and clause 12 (*Metering, Communication, Monitoring and Control Systems*) of this Agreement.

3.3.3.9. Grid Compliance

Any other tests required to demonstrate compliance with the System and the Connection Works requirements and the Codes shall be carried out.

3.3.3.10. Environmental Compliance

Environmental compliance tests (including noise level tests) to demonstrate compliance with all Consents under Environmental Laws shall be carried out.

3.4. Test Reports

3.4.1. As soon as possible after each of the tests specified in clauses 3.3 (*Functional Testing*) and 4 (*Performance Tests (Capacity, Round Trip Efficiency, Active Power and Ramp Rate Tests)*) of this Schedule 8 (*Inspection and Testing*), but in no case later than seven (7) days from the end of a test, the Seller shall prepare and submit to the Independent Engineer a draft test report and required test certificates.

3.4.2. All draft test reports shall include:

3.4.2.1. a brief description of the Facility tested;

3.4.2.2. procedure for testing and calculations;

3.4.2.3. calculations;

3.4.2.4. results (corrected and uncorrected);

3.4.2.5. correction curves;

3.4.2.6. copy of log sheets; and

3.4.2.7. calibration certificates of all instruments used in the tests.

3.4.3. One (1) electronic copy of the final test report shall be submitted to the Independent Engineer.

3.4.4. One (1) electronic copy of a full set of documentation of the tests referred to in clause 3 (*Testing of Equipment and Systems*) of this Schedule 8 (*Inspection and Testing*) shall be submitted to the Independent Engineer and submission to, and acceptance by, the Independent Engineer of such

documentation for electrical protection devices shall be required prior to the issue by the Independent Engineer of a Unit Completion Form and or the Facility Completion Form.

4. **Performance Tests (Capacity, Round Trip Efficiency, Active Power and Ramp Rate Tests)**

4.1. General

4.1.1. After successful completion of the tests in clause 3 (*Testing of Equipment and Systems*) of this Schedule 8 (*Inspection and Testing*) for the Facility, the Seller shall be entitled to prepare the Facility for the initial tests for Capacity, Round Trip Efficiency, Active Power and Ramp Rate of the Facility.

4.1.2. All the Tests shall be undertaken in accordance with the requirements of IEC 62933-2-1 or any other suitable performance testing standard and the procedures agreed or determined in accordance with the provisions of clause 5.3 (*Independent Engineer Inspection and Testing*) of this Agreement.

4.1.3. All tests shall both be carried out while the Facility is Operating in compliance with all the Consents under Environmental Laws.

4.2. Scheduling

4.2.1. The Seller shall determine and give the Independent Engineer sixty (60) days prior written notice of the date and time scheduled for commencement of the tests.

4.2.2. Any rescheduling of the tests to a date other than the date set forth in the written notice to the Independent Engineer pursuant to the preceding clause shall require two (2) weeks' advance written notice from the Seller. If any unforeseen delays arise to the start of the tests within the latter period, the Seller shall provide daily confirmations of the expected date of the tests by no later than 15:00 hours on each day.

4.3. Energy Capacity Test

4.3.1 The Energy Capacity is the energy that can be output by the Facility at the Delivery Point under the standard testing conditions specified in clause 4.3.2 of this Schedule 8 (*Inspection and Testing*). The Energy capacity shall be evaluated considering energy losses including conversion loss and energy used for the auxiliary subsystem. The unit of energy capacity shall be defined as kWh.

4.3.2 This test shall be performed under the standard conditions specified in IEC 62933-2-1 and shown in the table below. However, if the test cannot be conducted under the standard test conditions, a correction to standard test conditions must be done.

Item	Conditions

Ambient air temperature	25°C
Altitude	< 1000m
Humidity	< 95% with no condensation

- 4.3.3 Values of Energy Output from the Facility shall be obtained at the Delivery Point by placing calibrated power meters at the Delivery Point.
- 4.3.4 The Facility shall be discharged to its minimum available Energy level in accordance with the system specifications and operating instructions.
- 4.3.5 The Facility shall be charged to its full available Energy level at rated input power in accordance with the system specifications and operating instructions.
- 4.3.6 The Facility shall be discharged at the Installed Capacity in accordance with the system specifications and operating instructions. The system shall be discharged to the minimum available Energy level associated with the system specification and operating instructions (including the needed rest times between input and output power operation). The constant output power, output time and Energy consumption of the auxiliary subsystem shall be measured and recorded during the test.
- 4.3.7 The actual Energy capacity is calculated as follows:

$$E_{OUT} = \sum_{i=1}^n P_{O_i} \times \Delta t$$

Where

E_{OUT} is the calculated total Energy Output at the Delivery Point.

P_{O_i} is the active output at time i, measured at the Delivery Point.

Δt is the sampling time of the measurement.

- 4.3.8 The result of the Energy Capacity Test divided by 2 hours will be used to determine the constant power output in the NDC Test.
- 4.4 Round Trip Efficiency Test (RTE Test)

The RTE Test shall be conducted to determine the amount of Energy Output that the Facility can deliver, relative to the amount of Energy Input into the Facility during the preceding charge and

discharge under the standard testing conditions specified in clause 4.3 (*Energy Capacity Test*) of this Schedule 8 (*Inspection and Testing*).

- 4.4.1 This test shall be performed using the Energy capacity Test routine in clause 4.3 (*Energy Capacity Test*) of this Schedule 8 (*Inspection and Testing*) and the Cycle performed shall deliver the total amount of energy at the Delivery Point which equals the Energy capacity of the Facility.
- 4.4.2 The Facility shall be tested for its Round Trip Efficiency following the test procedures in clause 4.3 (*Energy Capacity Test*) of this Schedule 8 (*Inspection and Testing*). This test shall be performed under the rated Energy Input active power and rated Energy Output active power.
- 4.4.3 The Round Trip Efficiency shall be determined in accordance with the formula below (at least two Cycles) based on the data secured from the tests conducted in accordance with clause 4.3 (*Energy Capacity Test*) of this Schedule 8 (*Inspection and Testing*), taking into account possible Auxiliaries Consumptions from auxiliary loads during idle/rest times and as well as the standard testing conditions.

$$\eta_{rt} = \frac{E_{OUT}}{E_{IN}}$$

Where:

E_{IN} is the total Energy Input measured at the (primary) POC;

E_{OUT} is the total Energy Output measured at the Delivery Point considering energy losses including conversion loss and energy used for the auxiliary subsystem (i.e. BMS, sensors, etc);

- 4.4.4 The Round Trip Efficiency shall be reported as shown in the table below.

	E_{OUT} (kWh)	E_{IN} (kWh)	η_{rt} (%)
Test 1			
Test 2			
Average			

Where an additional test is performed beyond the minimum required two test Cycles, an additional row shall be added to the table for test 3. The average values shall be calculated for each measured value and the RTE shall be reported based on those average values.

The test shall be deemed successful if the RTE is not less than 85%.

- 4.5 Active Power Test

The **Rated Input Power** of the Facility is the maximum value of active power that can be input at constant for a specified duration at the Delivery Point from the lower State of Charge limit. Rated Input Power shall be expressed with a negative sign according to IEC 62933-1 and IEC TR 61850-90-7.

The **Rated Output Power** of the Facility is the maximum value of active power that can be output for a specified duration at the Delivery Point from the full available energy level. Rated Output Power shall be expressed with a positive sign as shown in Figure 4 according to IEC 62933-1 and IEC TR 61850-90-7.

4.5.1 Input Active Power Test

It shall be confirmed that the Facility can absorb (or be charged at) constant power for a specified duration at the Delivery Point in accordance with the following procedures.

- 4.5.1.1 The Rated Input Power of the Facility shall be applied as the constant power value in this test.
- 4.5.1.2 The input power and the charging duration shall be measured.
- 4.5.1.3 The measured values of the input active power and the charging time duration shall be recorded.

4.5.2 Output Active Power Test or NDC Test

It shall be confirmed that the Facility can output constant power for 2 hours at the Delivery Point in accordance with the following procedures.

- 4.5.2.1 The result of the Energy capacity test in clause 5.3 divided by two hours shall be used as the initial constant output power set point for the test.
- 4.5.2.2 The actual output power shall be measured at every one second time interval during the two hours test.
- 4.5.2.3 The smallest value of output power recorded during any one second time interval within the two hour test period shall be recorded as P_{OUT} (kW) for that test.
- 4.5.2.4 The test shall be repeated until the P_{OUT} (kW) values from two consecutive tests are within 2.5% of each other.
- 4.5.2.5 If the P_{OUT} (kW) values from two consecutive tests are not within 2.5% of each other, then the constant output power set point for the next test shall be reduced.
- 4.5.2.6 The NDC shall be calculated as the average of the P_{OUT} (kW) values from the two consecutive tests which are within 2.5% of each other.

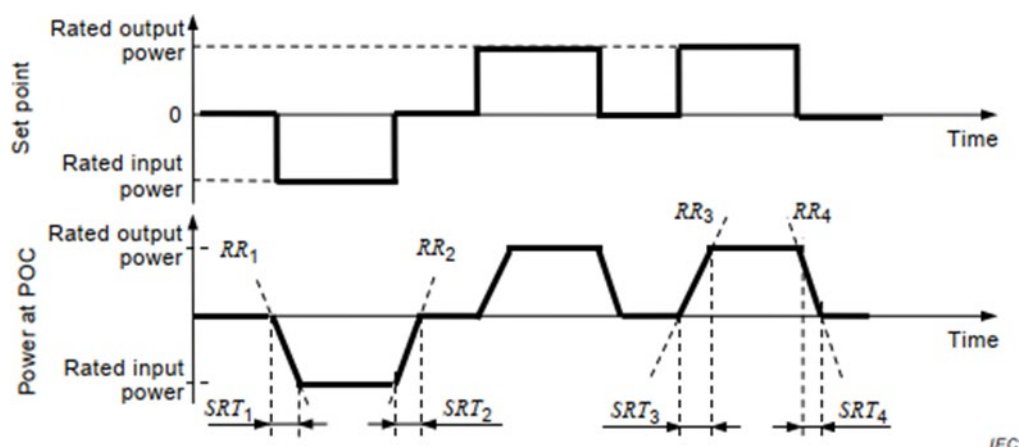
	P _{OUT} (kW)	E _{OUT} (kWh)
Test 1		
Test 2		
Average (NDC)		

4.6 Ramp Rate Test

The ramp rate of the Facility is the average rate of active power variation per unit of time between T2 and T1. T1 is the time when the active power at the Delivery Point becomes higher than 2 % of the set point value. T2 is the time when the active power at the Delivery Point becomes higher than 98 % of the set point value.

- 4.6.1 The Facility shall absorb or provide the active power according to the set point which indicates rated input / output power. The set point and the input/output power at the Delivery Point shall be recorded with a data acquisition system at regular intervals of time, with a high time resolution.
- 4.6.2 The Facility shall be charged or discharged to a 50 % state of available Energy.
- 4.6.3 The set point shall be zero. The set point value shall be retained until the output comes to within (0 ± 2) % of Rated Input Power.
- 4.6.4 The set point shall be changed to Rated Input Power. The set point value shall be retained until the active power at the Delivery Point reaches within 2 % of the range of rated input power. Step response time and ramp rate shall be recorded as SRT1 and RR1 respectively.
- 4.6.5 The set point shall be changed to zero. The set point value shall be retained until the active power at the Delivery Point reaches within (0 ± 2) % of Rated Input Power. Step response time and ramp rate of shall be recorded as SRT2 and RR2 respectively.
- 4.6.6 The Facility shall be charged or discharged to a 50% state of available Energy or specified Capacity value agreed between the system supplier and user.
- 4.6.7 The set point shall be changed to Rated Output Power. The set point value shall be retained until the active power at the Delivery Point reaches within 2 % of the range of Rated Output Power. Step response time and ramp rate for step shall be recorded as SRT3 and RR3 respectively.
- 4.6.8 The set point shall be zero. The set point value shall be retained until the active power at the Delivery Point reaches within (0 ± 2) % of Rated Input Power. Step response time and ramp rate shall be recorded as SRT4 and RR4 respectively.

- 4.6.9 The figure below shows the procedure described in clauses 4.6.2 to 4.6.8 of this Schedule 8 (*Inspection and Testing*).



- 4.6.10 The ramp rate shall be calculated with the formula below:

$$RR = \frac{P(T_2) - P(T_1)}{T_2 - T_1} \text{ (W/s)}$$

- 4.6.11 The test shall be deemed successful if the actual ramp rate between 0MW and the Contracted Capacity is achieved in less than 400ms (four hundred milliseconds).

4.7 Retest

If the Facility fails any of the tests, the Seller may elect to void the test and to implement corrective action and retest the Facility as soon as reasonably practicable in accordance with the above procedures, upon forty eight (48) hours' notice thereof having been given to the Independent Engineer.

5 Performance Test During Operation

- 5.1 The performance tests in section 4 (*Performance Tests (Capacity, Round Trip Efficiency, Active Power and Ramp Rate Tests)*) of this Schedule 8 (*Inspection and Testing*) shall be performed when the Facility has completed the first 312 Cycles. Subsequent to this, the performance tests in section 4 (*Performance Tests (Capacity, Round Trip Efficiency, Active Power and Ramp Rate Tests)*) of this Schedule 8 (*Inspection and Testing*) shall be performed after every 624 Cycles.

5.2 Buyer Acceptance

If the test results are acceptable to the Seller, the Seller shall submit such results in writing to the Buyer. The Buyer shall indicate in writing whether they accept or dispute such test results within ten (10) Business Days after receiving from the Seller the information reasonably necessary to evaluate such results in accordance with this Schedule 8 (*Inspection and Testing*). If the Buyer fails to respond in writing within such ten (10) Business Day period, they shall be deemed to have accepted the test results submitted by the Seller.

5.3 Dispute of Test Results

If the Buyer disputes the results submitted by the Seller, such dispute shall first be discussed by senior members of the Buyer and the Seller for resolution. If a satisfactory resolution of the dispute cannot be reached within ten (10) Business Days, such dispute shall be submitted for resolution in accordance with the provisions of clause 26 (*Dispute Resolution*) of this Agreement, provided, however, that the Test results submitted by the Seller shall be deemed accepted until the final decision of the Independent Expert, upon which any excess amounts paid by the Buyer during the period of such dispute may be taken as credit by the Buyer against amounts invoiced pursuant to clause 8 (*Invoicing*) of this Agreement.

5.4 Test Report Form

The result of the Tests shall be documented by the Seller in the Net Dependable Capacity Test Result Form in Table A.1 (*Updated Contracted Capacity*) in Schedule 9 (*Calculation of Payments*). The Seller shall, within two (2) Business Days, deliver a copy of the completed Net Dependable Capacity Test Result Form and the updated Schedule 9 (*Calculation of Payments*) to the Buyer ("**Delivery Date**"). The updated Net Dependable Capacity shall become effective at 00:00 hours on the first Business Day following the Delivery Date.

Schedule 9 –CALCULATION OF PAYMENTS

1. Payment Structure

The payments that may become due by the Buyer in terms of this Agreement shall be the following:

1.1 Late System Connection Event Payment

Determined in accordance with the following formula.

$$E_{DE_late} = CC \times t \times D_{late} \times T$$

E_{DE_late} = the Deemed Energy paid to the Seller due to a Late System Connection Event. (kWh)

CC = Contracted Capacity

D_{late} = number of weekdays and Saturdays during the Late System Connection Event

T = Tariff

t = 4, which is the 2 hours during 2 cycles per day

1.2 Energy Output Payment

The Energy Output Payment shall comprise payment for Energy Output, Energy Input Difference and Deemed Energy, to be calculated as provided in clause 2 (*Payment Formulae*) of this Schedule 9 (*Calculation of Payments*).

2 Payment Formulae

2.1 In applying the payment formulae which may apply in respect of each Billing Period, the factors and Tariff to be used shall be those factors and Tariff that are in effect for such Billing Period, namely the relevant factors and the Tariff specified in or determined in accordance with Appendix A (*Agreed Values for Payment Calculations*), and adjusted in accordance with Appendix B (*Indexation*), of this Schedule 9 (*Calculation of Payments*).

2.2 Payments in respect of the Project, as applicable during the Operating Period

Energy Output Payments in each Billing Period in respect of the Project:

$$P_n = (E_{OUT_n} \times T_y) - (E_{IN_dif_n} \times C_{IN_n}) + (E_{DE_n} \times T_y) \quad (1)$$

Where:

P_n	=	Energy Output Payment for the current Billing Period n (Rand)
E_{OUT_n}	=	the Energy Output for the current Billing Period n (kWh)
T_y	=	Tariff for Contract Year y (Rand/kWh)
$E_{IN_dif_n}$	=	means the Energy Input Difference for the current Billing Period n, calculated according to formula (2) (kWh)
C_{IN_n}	=	the cost rate of electricity for the Energy Input Difference for the current Billing Period n, (ZAR/kWh)
E_{DE_n}	=	Deemed Energy for the current Billing Period n, calculated according to formula (4) (kWh)
N	=	the current Billing Period in a Contract Year
Y	=	the current Contract Year

Energy Input Difference

$$E_{IN_dif_n} = \max(0; E_{IN_n} - E_{IN_gua_n}) \quad (2)$$

Where:

$E_{IN_dif_n}$	= the Energy Input Difference for the current Billing Period n (kWh)
E_{IN_n}	= the Energy Input for the current Billing Period n (kWh)
$E_{IN_gua_n}$	= the Guaranteed Energy Input for the current Billing Period n, calculated according to formula (3) (kWh)

Guaranteed Energy Input

$$E_{IN_gua_n} = \frac{E_{OUT_n}}{RTE_{gua_n}} \quad (3)$$

Where:

$E_{IN_gua_n}$	= the Guaranteed Energy Input for the current Billing Period n (kWh)
------------------	--

E_{OUT_n} = the Energy Output for the current Billing Period n (kWh)

RTE_{gua_n} = the Guaranteed Round-Trip Efficiency for the current Billing Period n, as per *Table D (Guaranteed Parameters)* in *Schedule 1 (Details of the Project and Facility)* (%)

Deemed Energy

$$E_{DE_n} = E_{DE_cum_n} - E_{DE_cum_n-1} \quad (4)$$

Where:

E_{DE_n} = the quantity of Deemed Energy for the current Billing Period n (kWh)

$E_{DE_cum_n}$ = the Cumulative Deemed Energy up to and including the current Billing Period n, calculated according to formula (5) (kWh)

$E_{DE_cum_n-1}$ = the Cumulative Deemed Energy up to and including the previous Billing Period (n – 1) (kWh)

Cumulative Deemed Energy

$$E_{DE_cum_n} = \max \left(E_{DE_late} + \sum_{i=1}^n MEQ_i - \sum_{i=1}^n E_{OUT_i} - \sum_{i=1}^n UEQ_i ; 0 \right) \quad (5)$$

Where:

$E_{DE_cum_n}$ = the Cumulative Deemed Energy for the current Billing Period n (kWh)

E_{DE_late} = the Deemed Energy paid to the Seller due to a Late System Connection Event (kWh)

MEQ_i = the Minimum Energy Quantity for the Billing Period i, calculated according to formula (6) (kWh)

E_{OUT_i} = the Energy Output for the Billing Period i (kWh)

UEQ_i = the Unavailable Energy Quantity for the Billing Period i, calculated according to formula (8) (kWh)

n = the current Billing Period

Minimum Energy Quantity

$$MEQ_i = NDC_i \times B_{eqc_i} \times t \quad (6)$$

Where:

MEQ_i = the Minimum Energy Quantity for the Billing Period i (kWh)

NDC_i = the Net Dependable Capacity for the Billing Period i (kW)

T = two (2) hours (h)

B_{eqc_i} = the Baseline Equivalent Number of Cycles for the Billing Period i, calculated according to formula (7)

Baseline Equivalent Number of Cycles

$$B_{eqc_i} = (W_i + S_i) \times C \quad (7)$$

Where:

B_{eqc_i} : means the Baseline Equivalent Number of Cycles for the Billing Period i

W_i : means the total number of Weekdays in the Billing Period i

S_i : means the total number of Saturdays in the Billing Period i

C : means two (2), being the number of full Cycles per Weekday or Saturday

Unavailable Energy Quantity

$$UEQ_i = \sum_{j=1}^k \{(NDC_j - DC_j) \times t + AU_j\} \quad (8)$$

Where:

UEQ_i : means the Unavailable Energy Quantity for the Billing Period i (kWh)

NDC_j : means the average Net Dependable Capacity over time interval j (kW)

DC_j: means the average Declared Capacity over time interval j (kW)

t: means the duration of each time interval which is equal to 10/60 hours (i.e. 10 minutes) (h)

AU_j: means any additional unavailability if the Energy Output is less than the Set Point for time interval j, calculated according to formula (9) (kWh)

j: means each time interval of 10/60 hours (i.e. 10 minutes) duration

k: means the total number of time intervals in the Billing Period i

Additional Unavailability if Energy Output is Less Than Set Point

If the average Energy Output over time interval j (EOUT_j) is less than the average Set Point for time interval j (SP_j) for any reason other than a System Event, then the additional unavailability for time interval j (AU_j) shall be calculated according to formula (9). Otherwise, the additional unavailability for time interval j (AU_j) shall be zero (0).

$$AU_j = (DC_j \times t) - E_{OUT_j} \quad (9)$$

Where:

AU_j: means any additional unavailability if the Energy Output is less than the Set Point for time interval j (kWh)

DC_j: means the average Declared Capacity over time interval j (kW)

EOUT_j: means the Energy Output over time interval j (kWh)

t: means the duration of each time interval j which is equal to 10/60 hours (i.e. 10 minutes) (h)

Appendix A - Agreed Values for Payment Calculations

The table below sets out the Tariff required for the calculations in Schedule 9 (*Calculation of Payments*), at the Base Date. The Tariff shall be subject to adjustment in accordance with Appendix C (*Indexation*) of this Schedule 9 (*Calculation of Payments*).

Table A.1: Tariff utilised in this Schedule 9 at the Base Date

Agreed value	Unit of Measure
	Rand/kW/h

Appendix B – Indexation

The Tariff at Base Date listed in Table A.1 of Appendix A (Agreed Values for Payment Calculations) shall be adjusted on 1 July in each Contract Year based on full indexation, starting twelve (12) months after the Base Date, using the following formula:

$$T_y = T_b \times \frac{I_y}{I_b}$$

Where:

Tariff listed above are as previously defined in this Schedule 9 (Calculation of Payments) with subscript 'y' denoting the applicable Contract Year and subscript 'b' denoting the Base Date:

I_y = CPI index in Contract Year y for the immediately preceding year commencing 1 April and ending 31 March

I_b = CPI index at Base Date.

Schedule 10 – REPORTING

The monthly construction report shall be in the form of a level three (3) Gantt chart and in PDF Format and provided no later than ten (10) days after the end of each month during the period of Construction 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. Table of Contents

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 (in native form) and in PDF. The Project Schedule shall be to Level 3 detail and include progress against the agreed baseline.

2.13 Distribution Connection Works

2.14 Summary

2.15 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

2.16 Procurement and Manufacturing

2.17 Shipment and Delivery to Site

2.18 Erection

2.19 Commissioning

2.20 Testing

2.21 Quality Report

2.22 Health and Safety

2.23 Environmental issues

2.24 Schedule

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

Area of Work	% Actual vs Planned
Engineering & Design	
Civil works	
Power Plant	
Electrical system (excluding switchyard)	

Instrumentation and control system	
Water and waste water treatment	
Other Balance of plant items	
Procurement and Manufacturing	
As per above	
Shipment	
As per above	
Erection	
As per above	
Commissioning	
As per above	
Testing	
As per above	
Total percentage of work performed	

Table 2 – Connection Works example: percentage of work actually done versus the planned progress

Area of Work	% Actual vs Planned
Engineering & Design	
Switchyard	
Foundations	
Towers	
Line/ Cabling	
OPGW (Optical Ground Wire)	
Line Routing	
Determination of routing	
EIAs and other approvals	
Acquisition of land or easements	
Procurement and Manufacturing	
As per above	
Shipment	
As per above	
Erection	

<i>As per above</i>	
<i>Commissioning</i>	
<i>As per above</i>	
<i>Testing</i>	
<i>As per above</i>	
<i>Total percentage of work performed</i>	

**Schedule 11 –
PERFORMANCE
REQUIREMENTS**

[Note to Bidders: Bidders should note the requirements of Technical Criterion 4 – Technical Compliance (clause 17.2.4 of the RFP). Bidders should ensure that their Bid Responses are consistent with the requirements in the RFP. In situations where there is a discrepancy between the requirements stated in the RFP and the Codes, the more stringent or stricter requirement takes precedence]

1. Table 1.1 – Capability under all Ambient Site Conditions

Condition	Facility		
	100%		
Round trip efficiency at the Point of Connection/ Delivery point		%	At least 85%
NDC or active output power		MW	Contracted capacity for a minimum duration of 2 hours, 95% of the Contracted Capacity
Continuous Operation at Minimum & Maximum voltages at the Point of Connection/ Delivery point		Minimum Voltage	At least 0.95 pu as per 5.1 in the BESF Code
		Maximum Voltage	At maximum 1.05 pu as per 5.1 in the BESF Code
Continuous Operation at Minimum & Maximum system frequency at the Point of Connection/ Delivery Point		Minimum System Frequency	Above 47Hz as per 5.1 in the BESF Code
		Maximum System Frequency	Below 51.5Hz as per 5.1 in the BESF Code
Stable Reactive power capability of the Facility on the HV side of the step-up transformer		Lagging Power Factor	As per the BESF Code 5.2 Section 8
		Leading Power Factor	As per the BESF Code 5.2 Section 8
Maximum design Number of Cycles per Contract Year		Equivalent Number of Cycles	Not exceeding 624 Cycles per Contract Year

3 Table 1.2: Facility Start-Up Data

Project Start up Parameter	Criteria	
Time for the Facility to synchronise in voltage range at the point of Connection		At least 3 seconds after voltage at point of connection is between 0.95pu & 1.05 pu as per 5.2 of the BESF Code
Time for the Facility to synchronise in frequency range at the point of connection		At least 3 seconds after frequency at point of connection is between 49Hz & 50.2Hz as per 5.2 of the BESF Code

**Schedule 12 –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 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 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 Period: [XX] Person Months.
- 2 **Skills Development:** Zero-point two percent (0.2%) of total Revenue, in each Contract Year during the Operating Period.
- 3 **Social Spending:** Zero-point eight percent (0.8%) of total Revenue, in each Contract Year during the Operating 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:

1. **Objective/Goals:** Clearly define what you aim to achieve. Objectives should be Specific, Measurable, Achievable, Relevant, and Time-bound (SMART).
2. **Scope:** Describe the boundaries of the plan. What is included? What is excluded?
3. **Situation Analysis:** Assess the current status or situation, including strengths, weaknesses, opportunities, and threats (SWOT analysis).
4. **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.
5. **Resources:** Identify the resources required to execute the plan. This includes people, technology, financial resources, and materials.
6. **Stakeholders:** Identify individuals or groups who have an interest in the plan and its outcomes. Consider their needs and how they will be engaged.
7. **Roles and Responsibilities:** Define who is responsible for each task or component of the plan. Clear accountability is critical.
8. **Action Plan/Tasks:** Break down the plan into actionable steps or tasks. Include timelines, deadlines, and sequencing of activities.
9. **Budget:** Provide a financial plan that outlines the estimated costs involved in executing the plan.
10. **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 13 –DECOMMISSIONING
PLANS**

PART 1: Decommissioning Financial Plan

PART 2: Decommissioning Plan

**Schedule 14 –
FINANCIAL MODEL**

Schedule 15 –FORM OF LIQUIDITY SUPPORT

LIQUIDITY SUPPORT Performance Security

[INSERT BANK DETAILS]

THIS BOND is made on []

- (1) [insert name of bank], whose registered office is situated at [] (the **Bank**), is irrevocably and unconditionally bound to [], whose registered office is situated at [] (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 [] (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 [] (*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

Document last saved:-17/07/2025 02:12 PM

(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.

Document last saved:-17/07/2025 02:12 PM

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 [] on []

For: []

Signatory:

Capacity:

Authority: