

DIRECT AGREEMENT

in respect of

POWER PURCHASE AGREEMENT

pursuant to the

**STELLENBOSCH MUNICIPALITY INDEPENDENT POWER PRODUCER PROCUREMENT
PROGRAMME**

between

STELLENBOSCH LOCAL MUNICIPALITY

(as "**Buyer**")

and

(as "**Seller**")

and

(as "**Agent**")

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DIRECT AGREEMENT

THIS AGREEMENT is made between:

- (1) Stellenbosch Local Municipality (the "**Buyer**");
- (2) _____, a limited liability company (Registration No. **[Insert Registration Number]**) incorporated under the laws of South Africa and having its principal place of business at **[Insert Address]** in the Republic of South Africa (the "**Seller**"); and
- (3) **[INSERT NAME OF AGENT BANK]** as agent appointed to act on behalf of the Lenders acting through its offices at **[•]** (the "**Agent**").

RECITALS

- (A) Following the Seller's selection by the Buyer pursuant to the Stellenbosch Municipality Independent Power Producer Procurement Programme ("**STMIPPPP**") conducted under Request for Proposals number **[x]**, the Buyer and the Seller have entered into a power purchase agreement dated on or about the date of this Agreement (the "**PPA**") pursuant to which the Seller will supply Energy Output of the Facility in return for payment by the Buyer in accordance with the terms and conditions set out therein.
- (B) By a common terms agreement entered into between, *inter alia*, the Seller (as borrower), the financial institutions referred to therein as lenders (the "**Lenders**") and the Agent (the "**Loan Agreement**"), the Lenders have agreed, subject to the conditions set out in the Loan Agreement and other finance documents, to make available to the Seller certain credit facilities to finance the Project.
- (C) It is a suspensive condition to the Loan Agreement that the Seller, the Agent and the Buyer enter into this Agreement.
- (D) This Agreement is the "**Direct Agreement**" into which, pursuant to the PPA, the Buyer and the Seller have agreed to enter.

1. Interpretation

1.1 Unless inconsistent with the context, terms used in this Agreement with capitalised initial letters, and not otherwise defined herein, shall have the meaning ascribed thereto in the PPA and the following terms shall have the following meanings:

"Appointed Representative" has the meaning ascribed thereto in clause 5 (*Step-In*);

"Enforcement Event" means:

- (a) any placing on demand of or acceleration of the Lenders' Debt (following an Event of Default);
- (b) the commencement of any enforcement procedure under the Security Documents; and/or
- (c) the commencement of business rescue proceedings in respect of the Seller, as notified by the Agent to the Buyer, which notice shall describe the Event of Default in respect of which such acceleration, enforcement and/or business rescue is carried out;

"Event of Default" has the meaning ascribed thereto in the Loan Agreement;

"Exempt Refinancing" means refinancing, re-arrangement, or increase in the amount of or rescheduling of the Debt or Equity which:

- (a) does not result (directly or indirectly) in any distribution or payment being made to any Lender or Shareholder pursuant to such refinancing or re-arrangement;
- (b) follows an Event of Default or Seller Default; and
- (c) is implemented for the sole purpose of ensuring the continuation and financial stability of the Project;

"Financing Agreements" has the meaning ascribed thereto in the Loan Agreement;

"Lenders" has the meaning ascribed thereto in the Loan Agreement;

"Lenders' Debt" at any date, means all amounts due and payable by the Seller that are outstanding under the Financing Agreements at that date;

"Notice of Existing Liabilities" has the meaning ascribed thereto in clause 3 (*Notices of Pre-termination and Existing Liabilities*);

"Notice Period" has the meaning given to it in clause 5.2;

"Parties" means the Buyer, the Seller and the Agent and **"Party"** shall mean any one of them, as the context requires;

"Required Period" means the period starting on the date of a Suspension Notice or the date on which the Agent notifies the Buyer in writing that an Enforcement Event has occurred (as the case may be) and ending on the earlier of:

- (a) the date on which the Agent delivers to the Buyer a notice in writing informing the Buyer that the Agent has elected not to step-in pursuant to clause 5 (*Step-In*);
- (b) the Step-In Date; and
- (c) subject to clause 5.3, the date which is one hundred and twenty (120) days after the date of delivery of the Suspension Notice or the date on which the Agent notifies the Buyer in writing that an Enforcement Event has occurred (as the case may be);

"Security Party" means the security company or other entity that guarantees to the Lenders the obligations of the Seller under the Financing Agreements, and in favour of which the Seller has granted security for its obligations under a counter-indemnity given by it to such entity;

"Security Documents" has the meaning ascribed thereto in the Loan Agreement;

"Seller Default" has the meaning given to it in the PPA;

"Seller Default Termination Notice" has the meaning given to it in clause 3.1 (*Notice of Termination*);

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

"Step-In Date" means the date on which the appointment of the Appointed Representative takes effect pursuant to clause 5.4 (*Step-In*);

"Step-In Period" means the period from the Step-In Date up to and including the earlier of:

- (a) the Step-Out Date;
- (b) the date of any termination under clause 6.3 (*Step-In Period*);
- (c) the date of expiry of the PPA;
- (d) the payment or discharge of all amounts outstanding under the Financing Agreements; or
- (e) the date when the assignment, cession and delegation or transfer of the PPA to a Substitute Seller becomes effective in accordance with this Agreement;

"Step-Out Date" means the date falling on the earlier of:

- (a) the date falling twenty four (24) months after the Step-In Date, which date may be extended if there is a delay in obtaining the consent of the Buyer for the cession and delegation or transfer of the PPA pursuant to clause 8 (*Cession and Delegation or Transfer of PPA to Substitute Seller*) despite the Seller having applied timeously for such consent; and
- (b) the effective date of the termination of the appointment of the Appointed Representative as specified in the notice given under clause 7.1 or 7.2;

"Substitute Seller" means a Substitute Seller proposed or appointed under clause 8 (*Cession and Delegation or Transfer of PPA to Substitute Seller*); and

"Suspension Notice" has the meaning ascribed thereto in clause 3.1 (*Notices of Pre-termination and Existing Liabilities*).

1.2 In this Agreement, except where the context otherwise requires:

- 1.2.1 the index and headings of clauses of this Agreement are for ease of reference only and shall be ignored in the interpretation and application of this Agreement;
- 1.2.2 words importing the singular shall include the plural and vice versa and words importing one gender shall include the other genders;
- 1.2.3 references to any Recital, clause or paragraph are to those contained in this Agreement;
- 1.2.4 unless otherwise specified, all references to any time shall be to the time of day in Johannesburg, South Africa;
- 1.2.5 **"person"** includes a corporation, company, firm, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of any of the foregoing that is 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 permitted assigns or permitted transferees;
- 1.2.6 in computation of periods of time from a specified day to a later specified day, **"from"** means from and including and **"until"** or **"to"** means to and including;
- 1.2.7 **"include"**, **"including"** and **"in particular"** shall not be construed as being by way of limitation, illustration or emphasis only and shall not be construed as, nor shall they take effect as, limiting the generality of any preceding words. The words **"other"** and **"otherwise"** shall not be construed so as to be limited or defined by

any preceding words, where a wider construction is possible; and

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

1.3 This Agreement shall commence on the Signature Date.

2. Consent to Security

2.1 The Buyer acknowledges notice of, and consent to:

- 2.1.1 the creation, preservation and enforcement of the security interests granted over the rights of the Seller under the PPA respectively pursuant to **[INSERT NAME OF THE RELEVANT SECURITY DOCUMENT]**; and
- 2.1.2 the creation and preservation of the security interests granted over the Equity of the Seller pursuant to **[INSERT NAME OF THE RELEVANT SECURITY**

DOCUMENT].

- 2.2 The Buyer confirms that it has not received notice of any other security interest granted over the rights of the Seller under the PPA.

3. Notices of Pre-Termination and Existing Liabilities

- 3.1 The Buyer shall not terminate the PPA and no notice of default served by the Buyer on the Seller shall have the effect of terminating the PPA, in each case, pursuant to clause 20.3 (*Termination for Seller Default*) of the PPA for Seller Default or clause 20.4 (*Termination for Corrupt Practices*) of the PPA in respect of breach and termination for Corrupt Practices (a "**Seller Default Termination Notice**"), unless:

- 3.1.1 the Buyer has copied such Seller Default Termination Notice to the Agent; and
- 3.1.2 the Agent has failed to serve on the Buyer a notice suspending the effectiveness of such Seller Default Termination Notice (a "**Suspension Notice**") within a period of twenty (20) Business Days of service of the Seller Default Termination Notice, on the Agent,

provided that the Agent shall not be entitled to serve a Suspension Notice and, for the avoidance of doubt, shall have no rights under clauses 3 (*Notices of Pre-Termination and Existing Liabilities*), 5 (*Step-In*), 6 (*Step-In Period*), 8 (*Cession and Delegation or Transfer of PPA to Substitute Seller*) or 9 (*Revival of Remedies*) of this Agreement, if the Seller Default Termination Notice is delivered in terms of clause 20.4.6.1 (*Termination for Corrupt Practices*) of the PPA.

- 3.2 During the Required Period the Buyer shall not terminate the PPA, nor shall any Seller Default Termination Notice have the effect of terminating the PPA.

- 3.4 Not later than the date falling twenty (20) Business Days after the date on which the Agent serves on the Buyer a Suspension Notice, or the date falling thirty (30) Business Days after the date on which the Agent notifies the Buyer in writing that an Enforcement Event has occurred, the Buyer shall deliver to the Agent a written notice (the "**Notice of Existing Liabilities**") containing details of any sum due and payable by the Seller to the Buyer, and any other existing liabilities due by or unperformed obligations of the Seller under the PPA of which the Buyer is aware after reasonable inquiry:

- 3.4.1 at the date of the Suspension Notice or the date of the Agent's written notice of the Enforcement Event, as the case may be; and/or
- 3.4.2 which will or are anticipated to fall due for payment or performance at any time in the period from the date of the Suspension Notice or the date on which the Agent notifies the Buyer in writing that an Enforcement Event has occurred (as the case

may be) to the end of the Required Period.

3.5 The Parties record and agree that, during the Required Period:

3.5.1 the Buyer shall continue to pay the Commercial Energy Payment, or the Deemed Energy Payment, as the case may be, and applicable Use of System Charges, and such other amounts as may become due and payable by the Buyer to the Seller in accordance with the provisions of the PPA; and

3.5.2 all rights and obligations of the Parties under the PPA, except the rights in relation to termination detailed in clause 3.2 of this Agreement, shall continue to apply to the relevant Parties and be of full force and effect.

3.6 If the Required Period ends and the Agent has elected not to step-in pursuant to clause 5 (*Step-In*), then the Buyer shall be entitled to terminate the PPA in accordance with its terms.

4. Agreements and Undertakings of the Parties

4.1 The Buyer agrees to make all payments due or which may become due from the Buyer under or arising from the PPA to the account of the Seller, the details of which account shall be notified by the Seller to the Buyer in writing on or before the date on which the PPA become effective in accordance with its terms, or such other account as may be notified in writing to the Buyer by the Agent from time to time, and it is agreed by the Seller that the authority and instruction in this clause 4.1 cannot be revoked or varied without the prior written consent of the Agent. The Seller acknowledges and agrees that all payments made by the Buyer to any account, not being the account of the Seller, on the instruction of the Agent shall discharge the Buyer's liability to the Seller in respect of such payments.

4.2 As between the Buyer and the Agent, notice from the Agent to the Buyer that an Enforcement Event has occurred and/or is continuing shall be prima facie evidence thereof and, following receipt of such notice, the Buyer shall assume and shall be entitled to rely upon the assumption that the Enforcement Event referred to in that notice has occurred and/or is continuing (as the case may be) until it has received written notice to the contrary from the Agent. The Agent shall serve notice of the Enforcement Event on the Buyer as soon as practicable after serving it on the Seller.

4.3 The Agent shall ensure that all notices referred to in clause **[INSERT CLAUSE DEALING WITH EVENTS OF DEFAULT]** of the Loan Agreement, when delivered by it to the Seller, are contemporaneously copied to the Buyer, it being acknowledged and agreed by the Agent and the Seller that such notice shall not be valid or enforceable

unless it has been copied to the Buyer.

5. Step-In

5.1 Without prejudice to the rights of the Security Party under the Security Documents, but subject to clause 5.2, the Agent may at any time:

5.1.1 during which an Enforcement Event is continuing (whether or not a Suspension Notice has been served); or

5.1.2 during the Required Period,

on at least twenty (20) Business Days' notice to the Buyer, nominate a person to be appointed as the representative (the "**Appointed Representative**") who shall, when the appointment takes effect in accordance with clause 5.4 below, jointly and severally assume all the Seller's rights under the PPA.

5.2 If the Appointed Representative is not the Agent, a Lender and/or Affiliate of the Agent or such Lender, the Buyer shall, within fifteen (15) Business Days of receipt of the aforesaid notice from the Agent ("**Notice Period**"), notify the Agent in writing of whether or not it approves such Appointed Representative (provided that the Buyer shall act reasonably in either granting or withholding its approval).

5.3 If the Buyer does not approve such Appointed Representative, the process set out in clause 5.2 shall be repeated until such time as a person acceptable to the Buyer is nominated by the Agent. If the process in clause 5.2 is repeated, the Required Period shall be extended by such additional time as is reasonably required to complete such process.

5.4 The appointment of the Appointed Representative shall take effect on the next Business Day following the expiry of the Notice Period or acceptance of the Appointed Representative, whichever is the earlier. The Appointed Representative shall be appointed in respect of the PPA.

5.5 Subject to clause 5.6, and within forty (40) Business Days after the appointment of the Appointed Representative becomes effective, the Agent shall provide the Buyer with a detailed remedial programme, to be implemented by the Appointed Representative, in respect of the Seller Defaults, or Corrupt Practices, detailed in the Seller Default Termination Notice, as the case may be. The remedial programme must be drafted on the basis of assumptions which are reasonable at the time, in view of the need to remedy the relevant Seller Defaults or Corrupt Practices, as the case may be, and, if the Appointed Representative is appointed before the Commercial Operation Date, result in the issue of the Facility Completion Form. The Buyer is not obliged to approve

or comment thereon, and to the extent that they do, they do not accept any liability in respect thereof.

5.6 If no Seller Default Termination Notice was delivered by the Buyer, the Agent shall not be obliged to provide the Buyer with a remedial programme in terms of clause 5.5.

5.7 During the Step-In Period, the Appointed Representative shall:

5.7.1 use its reasonable endeavours to implement the remedial programme issued in terms of clause 5.5;

5.7.2 be deemed for all purposes to be a party to the PPA as an additional party thereof, jointly and severally entitled with the Seller to exercise all the Seller's rights under the PPA; and

5.7.3 be irrevocably authorised to remedy any Seller Default or Corrupt Practices, and carry out all obligations of the Seller under the PPA.

5.8 The Seller agrees that any exercise of the rights of the Seller by the Appointed Representative shall also bind the Seller under the PPA.

6. Step-In Period

6.1 If the Step-In Date occurs before the Commercial Operation Date, then there shall be a new Last COD that shall occur after the expiry of a period equal to twice the number of months required to achieve the issue of the Facility Completion Form, as detailed in the remedial programme issued in terms of clause 5.5 or, if no remedial programme was required, as stated by the Agent and confirmed by the Independent Engineer.

6.2 Without limiting clause 3 (*Notices of Pre-termination and Existing Liabilities*) but subject to clause 6.3, the Buyer shall not terminate the PPA during the Step-In Period on the grounds:

6.2.1 that the Agent has taken any action referred to in clause 5 (*Step-In*); or

6.2.2 of a default or circumstance (which would otherwise have entitled the Buyer to terminate under clause 20 (*Termination*) of the PPA arising prior to the Step-In Date of which the Buyer was aware on the Step-In Date.

6.3 The Buyer shall only be entitled to terminate the PPA during the Step-in Period, by written notice to the Seller copied to the Appointed Representative if:

6.3.1 any amount set out in the Notice of Existing Liabilities referred to in clause 3.4.1 (*Notices of Pre-termination and Existing Liabilities*) is not paid to the Buyer on or before the Step-In Date, or, if such Notice of Existing Liabilities is only delivered after the Step-In Date, within ten (10) Business Days after it has been delivered;

- 6.3.2 any amount set out in the Notice of Existing Liabilities referred to in clause 3.4.2 (*Notices of Pre-termination and Existing Liabilities*) is not paid to the Buyer on or before the date on which that amount is due; or
- 6.3.3 any payment liability by the Seller to the Buyer incurred prior to the date of the Seller Default Termination Notice (of which the Buyer was not aware, having made reasonable enquiry at the time), and that is subsequently notified by the Buyer to the Agent, is not discharged on or before the date falling twenty (20) Business Days after the date of such notice or the date on which such payment is due, whichever is later.
- 6.4 If an additional right on the part of the Buyer to terminate the PPA pursuant to clause 20.3 (*Termination for Seller Default*) or clause 20.4 (*Termination for Corrupt Practices*) of the PPA arises, then the Agent shall be obliged to amend the remedial programme issued in terms of clause 5.5 in order to address and cure such Seller Default or Corrupt Practices, provided that the Step-In Period shall not be extended by virtue of such amendment.
- 6.5 Save as provided in clause 6.3, the Buyer shall deal with the Appointed Representative and not the Seller during the Step-In Period.
- 6.6 The Seller shall be jointly and severally liable for all actions or omissions of the Appointed Representative, as if these actions and omissions were those of the Seller. The Parties may rely on the actions and omissions of the Appointed Representative as if it were the Seller and:
- 6.6.1 due performance by the Appointed Representative of any of the Seller's obligations under and in accordance with the PPA shall constitute due performance by the Seller of such obligation;
- 6.6.2 any failure in the performance by the Appointed Representative of any of the Seller's obligations under and in accordance with the PPA shall be construed as a failure by the Seller in the performance of such obligation; and
- 6.6.3 any performance by the Buyer of an obligation in favour of the Appointed Representative shall be construed as a performance of that obligation in favour of the Seller.

7. Step-Out

- 7.1 At any time during the Step-In Period, if the Agent is of the opinion that:
- 7.1.1 the Seller Default or Corrupt Practice, which is the subject of the Step-In Period, is not capable of being remedied; or

- 7.1.2 the Seller Default or Corrupt Practice, which is the subject of the Step-In Period or the Required Period, as the case may be, is remedied to its satisfaction (acting reasonably), the Agent may deliver to the Buyer a notice in writing notifying the Buyer that the appointment of the Appointed Representative shall be terminated, which notice shall specify the effective date of such termination which shall not be less than ten (10) Business Days from the date of the notice.
- 7.2 If the Step-In Period occurred as a result of an Enforcement Event, the Agent shall be entitled, at any time during the Step-In Period, to deliver to the Buyer a notice in writing notifying the Buyer that the appointment of the Appointed Representative shall be terminated, such notice to specify the effective date of such termination which shall not be less than ten (10) Business Days from the date of the notice.
- 7.3 On expiry of the Step-In Period:
- 7.3.1 the Appointed Representative shall be released from all its obligations and liabilities to the Buyer under the PPA arising prior to the Step-Out Date, and all rights of the Appointed Representative arising prior to the Step-Out Date against the Buyer shall be deemed to be cancelled with effect from the Step-Out Date;
- 7.3.2 the Seller shall not be released from any of its obligations and liabilities to the Buyer under the PPA;
- 7.3.3 the Buyer shall no longer deal with the Appointed Representative and shall deal exclusively with the Seller in connection with the PPA; and
- 7.3.4 the Buyer shall be entitled to terminate the PPA in accordance with its terms, and upon the effective date of termination of the PPA, this Agreement shall automatically terminate provided that the Buyer shall not be entitled to terminate the PPA where a default or circumstance, in respect of which a Seller Default Termination Notice was issued, has been remedied by the Step-Out Date.

8. Cession and Delegation or Transfer of PPA to Substitute Seller

- 8.1 Subject to clause 8.2, at any time:
- 8.1.1 during the Required Period; or
- 8.1.2 during which an Enforcement Event is continuing; or
- 8.1.3 during a Step-In Period,

the Agent may notify the Buyer and the Appointed Representative (if any) of its desire to cede and delegate or transfer the PPA to any person ("**Substitute Seller**") and the proposed date of such cession, delegation or transfer. The provisions of clause 26

(Assignment) of the PPA shall be applicable to the process of ceding and delegating or transferring the PPA to a Substitute Seller.

- 8.2 The Agent shall provide the Buyer with all information regarding any person it wishes to appoint as a Substitute Seller which the Buyer may reasonably require for the purposes of determining whether or not that person meets the criteria for a Substitute Seller pursuant to clause 8.3.
- 8.3 The Buyer shall notify the Agent as to whether or not such person is approved by the Buyer as a Substitute Seller by no later than twenty (20) Business Days after the Buyer has received all the information contemplated by clause 8.2. The Buyer shall be entitled to withhold its approval under this clause 8.3 if:
- 8.3.1 the proposed Substitute Seller does not have the technical and financial ability and resources available to it (including committed financial resources, subcontracts and persons with appropriate expertise) to exercise the rights and to perform the obligations of the Seller under the PPA; or
- 8.3.2 there is any continuing Seller Default or Corrupt Practice and the Buyer has not received the remedial programme in accordance with clause 5.5.
- 8.4 Upon the Buyer approving the nominated Substitute Seller, the Seller shall cede its rights and delegate or transfer all of its obligations under the PPA to such Substitute Seller and the Buyer and the Agent shall consent to the cession and delegation or transfer of any of the Seller's obligations to such Substitute Seller, provided that:
- 8.4.1 the proposed Substitute Seller has the legal capacity, power and authority to become a party to the PPA and to perform the obligations of the Seller thereunder;
- 8.4.2 the directors of the Substitute Seller have no criminal convictions;
- 8.4.3 the Substitute Seller has no outstanding tax liabilities (save for any such liability which is the subject of a bona fide dispute);
- 8.4.4 the Substitute Seller shall be obliged to assume all existing, future and outstanding obligations of the Seller, as well as the remedy of all outstanding obligations of the Seller, under the PPA;
- 8.4.5 the Substitute Seller shall be obliged to undertake to pay all amounts owed by the Seller to the Buyer under the PPA, regardless of when those amounts became due and payable, and to ensure that such payment obligations rank in priority to any other payment obligations of the Seller or the Substitute Seller, including payments in respect of the Debt; and
- 8.4.6 any approvals (if any) that may be required from any Responsible Authority under

applicable Law for the selection and appointment of such Substitute Seller shall have been obtained.

- 8.5 On any cession and delegation or transfer to any Substitute Seller becoming effective:
 - 8.5.1 the Seller shall be released from any obligations arising under or in connection with the PPA from that date, and the Substitute Seller shall become liable for all obligations of the Seller under the PPA, whether arising prior to or after that date;
 - 8.5.2 any then subsisting ground for termination of the PPA by the Buyer shall be deemed to have no effect and any subsisting notice of termination shall be deemed to have been automatically revoked; and
 - 8.5.3 the Buyer shall, at the request of the Agent, enter into a direct agreement with the Agent and the Substitute Seller on substantially the same terms as this Agreement and this Agreement will then terminate.
- 8.6 The Buyer shall, at the expense of the Substitute Seller, take whatever action the Agent may require to give effect to any cession, delegation or transfer of the PPA under this clause 8 (*Cession and Delegation or Transfer of PPA to Substitute Seller*).

9. Revival of Remedies

If a Seller Default Termination Notice has been given, the grounds for that notice are continuing and either:

- 9.1 the Required Period relating thereto ends and no Appointed Representative or Substitute Seller becomes a party to the PPA; or
- 9.2 an Appointed Representative becomes a party to the PPA but the Step-in Period relating to such Appointed Representative ends without a Substitute Seller becoming a party thereto or the cause for the issue of the Seller Default Termination Notice having been remedied, then, on and from the date such Required Period or, as the case may be, such Step-in Period expires, the Buyer shall be entitled to:
 - 9.2.1 act upon any and all grounds for termination available to it in relation to the PPA in respect of breaches not remedied or waived; and
 - 9.2.2 pursue any and all claims and exercise any and all remedies against the Seller.

10. Seller as a Party

- 10.1 The Seller joins in this Agreement to acknowledge and consent to the arrangements in this Agreement.
- 10.2 The Seller agrees not to do or omit to do anything, knowingly, that may prevent any Party to this Agreement from enforcing its rights under this Agreement.

11. Corrupt Practices

The Lenders acknowledge and agree to be bound by the provisions of the PPA relating to Corrupt Practices in so far as they relate to the Lenders.

12. Cession and Delegation or Transfer of this Agreement

No Party to this Agreement may cede any of its rights or delegate or transfer any of its obligations under this Agreement, except that:

- 12.1 the Agent and Lenders may cede their rights and delegate or transfer their obligations under this Agreement to a successor Agent or Lenders (as the case may be) in accordance with the terms of the Loan Agreement; and
- 12.2 the Buyer may cede, delegate or otherwise transfer all or any of its respective rights, benefits or obligations under this Agreement to a permitted transferee or permitted assignee under the PPA.

13. Buyer Representations and Warranties to the Agent

- 13.1 The Buyer represents and warrants to the Agent as on the Signature Date and on each day thereafter during the Term, as follows:
 - 13.1.1 it has the right, power and authority to enter into this Agreement and to perform its obligations hereunder; and
 - 13.1.2 the execution and performance of this Agreement by it has been duly authorised by all necessary corporate action, and its obligations hereunder constitute valid, binding and enforceable obligations.

14. Governing Law and Jurisdiction

- 14.1 This Agreement is governed by the laws of South Africa.
- 14.2 Subject to the provisions of clause 29 (*Dispute Resolution*) of the PPA (which are incorporated herein by reference, *mutatis mutandis*), 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.

15. Miscellaneous

15.1 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.

15.2 Waiver

- 16.2.1 The failure of any Party to exercise any contractual right or remedy shall not constitute a waiver thereof.
- 16.2.2 No waiver shall be effective unless it is communicated in writing to the other Parties.
- 16.2.3 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.

15.3 Third parties

The Parties intend that the terms and conditions of this Agreement shall be solely for the benefit of the Parties, the Lenders and their respective successors, and in relation to clause 2 (*Consent to Security*), the grantee of the security interests, and shall not confer any rights upon any other third parties.

15.4 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.

15.5 Entire Agreement

- 15.5.1 This Agreement together with the PPA contains the whole agreement between the Parties in respect of the subject matter hereof and supersedes any prior written or oral agreement between them.
- 15.5.2 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 any other Party at any time prior to the date of this Agreement, unless it is expressly set out in this Agreement.

15.6 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.

15.7 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.

15.8 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 on the terms of a mutually acceptable and satisfactory alternative provision in place of the provision so deleted.

15.9 Confidentiality

The restrictions of clause 33 (*Confidentiality and Protection of Personal Information*) of the PPA shall apply to the Seller, the Lenders and the Buyer as if such clause were set out here in full with any necessary changes.

16. Notices

16.1 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 or facsimile to the address or number within South Africa or email address of the Party concerned set out in clause 16.3 below.

16.2 No communication shall be effective until received by the addressee and a communication shall be deemed to have been received:

16.2.1 if delivered by hand during ordinary business hours, to its physical address in clause 18.3, when so delivered;

16.2.2 if delivered by email during ordinary business hours, on the date of successful transmission of the email, and if delivered after business hours or on a day which is not a Business Day, on the following Business Day; and

16.2.3 if delivered by pre-paid registered post, to its postal address in clause 16.3, seven (7) Business Days after posting, subject to proof of posting.

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

The Seller:

Postal Address: [●]

Physical Address: [●]

Tel No.: [●]

Email: [●]

Attention: [●]

The Buyer:

Postal Address: Stellenbosch Local Municipality

[insert]

Physical Address: Stellenbosch Local Municipality

[insert]

Tel No.: [insert]

Email: [insert]

Attention: [insert]

The Agent

Postal Address: [●]

Physical Address: [●]

Tel No.: [●]

Email: [●]

Attention: [●]

- 16.4 The Parties choose the physical address set out opposite their names in clause 16.3 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 is chosen domicilium citandi et executandi.
- 16.5 Any Party may by written notice to the other Parties 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 Parties.

17. Warranties and Authority of the Agent

17.1 The Agent hereby warrants that:

17.1.2 it is duly authorised by each of the Lenders to assume the obligations expressed to be assumed by it on their behalf under this Agreement, or any agreement amending this Agreement; and

17.1.3 its signature hereto, or any agreement amending this Agreement, shall bind each of the Lenders as if they had been a party to this Agreement.

19.2 The Buyer shall:

19.2.1 be entitled to assume that any action, notice, execution of an agreement, or waiver given by the Agent shall have been duly authorised by each of the Lenders; and

19.2.2 not be obliged to make any enquiry as to the authority of the Agent in doing, executing, entering into or giving such act, document, notice or waiver.

19.3 The Agent shall not be obliged to make any enquiry as to the authority of any purported representative of the Buyer in doing or giving any act, document, notice or waiver.

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

By: _____
Name: _____
Title: _____
Date: _____

STELLENBOSCH LOCAL MUNICIPALITY

By: _____
Name: _____
Title: _____
Date: _____

[NAME OF AGENT BANK]

By: _____
Name: _____
Title: _____
Date: _____