

REISSUED FOR THE SIXTH BID SUBMISSION PHASE

TENDER NO: DMRE/001/2022/23

The Republic of South Africa

Department of Mineral Resources and Energy

**REQUEST FOR QUALIFICATION AND PROPOSALS FOR NEW
GENERATION CAPACITY UNDER SIXTH BID SUBMISSION
PHASE OF THE REIPP PROCUREMENT PROGRAMME**

VOLUME 2: APPENDIX K2

***POWER PURCHASE AGREEMENT – ONSHORE WIND
PROJECTS***



**mineral resources
& energy**

Department:
Mineral Resources and Energy
REPUBLIC OF SOUTH AFRICA

**POWER PURCHASE AGREEMENT -
WIND PROJECTS**

between

[INSERT NAME OF PROJECT COMPANY]
as Seller

and

ESKOM HOLDINGS SOC LTD
as Buyer

pursuant to the

**RENEWABLE ENERGY INDEPENDENT POWER PRODUCER PROCUREMENT
PROGRAMME**

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PREAMBLE:

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

- (1) **[INSERT NAME OF PROJECT COMPANY]**, a ring-fenced 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
- (2) **ESKOM HOLDINGS SOC LTD** (Registration No. 2002/015527/30), acting through its Single Buyer Office (the "**Buyer**"),

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

INTRODUCTION

- (A) The Seller has been granted, and currently holds, an electricity generation licence permitting it to operate, generate and sell energy from a **[* MW]** wind power generation facility located in the **[Insert general location of the Facility]**.
- (B) The Buyer has been authorised to enter into this Agreement following the Seller's selection by the DMRE pursuant to the Renewable Energy Independent Power Producer Programme.
- (C) The Seller wishes to sell the Energy Output from the Facility to the Buyer, and the Buyer wishes to purchase the Energy Output of the Facility from the Seller, on the terms and conditions of this Agreement.
- (D) The Parties wish to record their agreement in respect of the terms and conditions governing the Construction, financing, insurance of, Operation and Maintenance of the Facility, and the sale and purchase of Energy Output from the Facility.

THE PARTIES AGREE as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

"Achieved Capacity" means the Capacity of the Facility, as specified in the Facility Completion Form;

"Affected Party" has the meaning in clause 16 (*Force Majeure*);

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

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

"Allowance for Grid Unavailability and Curtailment" means the provision of an Energy allowance estimated to be sufficient to permit a Reasonable and Prudent Operator to maintain and operate its System during Grid Unavailability in any Contract Year. The extent of the allowance is calculated with reference to the Allowed Grid Unavailability Period, and the expected annual Energy Output of the Facility and is calculated in accordance with relevant provisions of Schedule 6 (*Deemed Energy Payment*);

"Allowed Grid Unavailability Period" means:

- (a) where the Facility is or is to be connected to the Transmission System, a period of one hundred and seventy five point two (175.2) hours and in every Contract Year, as applicable, reduced for the first and last Contract Year to reflect the proportion which the number of days in that first or last Contract Year bears to three hundred and sixty five point two five (365.25) days; or
- (b) where the Facility is or is to be connected to the Distribution System, a period of four hundred and thirty eight (438) hours and in every Contract Year, as applicable, reduced for the first and last Contract Year to reflect the proportion which the number of days in that first or last Contract Year bears to three hundred and sixty five point two five (365.25) days;

"Ancillary Services" shall have the meaning ascribed to it in Schedule 12 (*Ancillary Services*) to this Agreement;

"Ancillary Service Instruction" shall have the meaning ascribed to it in Schedule 12 (*Ancillary Services*) to this Agreement;

"Ancillary Service Payment" means, in relation to each Billing Period, the total amount in Rand (excluding VAT) payable in respect of Ancillary Services provided in that Billing Period calculated in terms of Schedule 1 (*Details of the Project and Facility*) Part 3 (*Energy Rates*) clause 5.1(*Ancillary Service Payment and Penalties*);

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

"Assign" shall have the meaning given to it in clause 23.1 (*Prohibition on Assignment*) and the term **"Assignment"** shall be construed accordingly;

"Available Active Power ($P_{\text{available}}$)" means the amount of active power (MW), measured at the Point of Delivery, that the Facility could produce based on Facility Availability as well as current renewable primary energy conditions (e.g. wind speed, solar radiation). Where:

$P_{\text{available}} > P_{\text{min}} + 3\%$ of Contracted Capacity for Instantaneous Reserve and

$P_{\text{available}} > P_{\text{min}} + 10\%$ of Contracted Capacity for Regulating Reserve;

"Base Date" means 1 April 2022;

"Billing Period" means each period of one (1) Month which falls within the Term, provided that:

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

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

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

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

"Change in Control" has the meaning given to it in the Implementation Agreement;

"Change in Law" means:

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

in each case coming into effect after the Effective Date;

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

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

"Commence Construction" means that:

- (a) the Seller has authorised a Contractor to commence works under the terms of a binding written contract that is directly related to the construction of the Facility and such Contractor has begun significant ground works, such as excavations for laying foundations or cables or other substantial action that would involve significant cost for and effort from such Contractor to undertake, and the Seller has provided proof to the Buyer's reasonable satisfaction of same; or

- (b) the Seller has procured Key Equipment that involve material expenditure in relation to the construction of the Facility, and has provided proof to the Buyer's reasonable satisfaction that such procurement has taken place and expenditure has been incurred; and
- (c) in respect of both subclauses (a) and (b), the Independent Engineer has provided the Buyer with a properly completed Commencement of Construction Confirmation Form, substantially in the form of Schedule 2 (*Completion Milestones and Forms of Notices*) Part 6 (*Commencement of Construction Confirmation Form*),

provided that to Commence Construction does not include:

- (a) preparing unpaved access roads to and around the Project Site;
- (b) exploration of the Project Site, including borehole investigations to determine foundation conditions and other preconstruction monitoring or testing to establish background information related to the ground conditions of the Project Site;
- (c) clearing land or erecting fences on and surrounding the Project Site;
- (d) commencing an action set out 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 from continuing due to Force Majeure, a Compensation Event, Unforeseeable Conduct or a Change in Law; and
- (e) dismantling pre-existing buildings or machinery on the Project Site in order to Construct the Facility,

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

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

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

"**Commercial Energy Payment**" means, in relation to each Billing Period, the total amount in Rand (excluding VAT) payable in respect of Commercial Energy delivered

during that Billing Period, calculated in terms of Schedule 1 (*Details of the Project and Facility*) Part 3 (*Energy Rates*) of this Agreement;

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

"Commercial Operation Date" or **"COD"** means the date specified in the Notice of Commencement of Facility as being the Commercial Operation Date of the Facility in terms of clause 4.5 (*Commercial Operation Date*);

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

"Compensation Event" means any material breach by the Buyer of any of its obligations under this Agreement (save for any breach that constitutes a Government Default), including any failure to make any payments due and payable to the Seller on the due date for payment, to the extent in each case that the breach is not caused or contributed to by the Seller or any Contractor or by Force Majeure, a System Event, Change in Law or Unforeseeable Conduct;

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

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

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

"Consumer Price Index" means the weighted average consumer price index (Dec 2016 = 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);

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

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

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

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

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

"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 in connection with the Project or this Agreement;
- (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;

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

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

"Decommissioning Costs" has the meaning ascribed to it in the Implementation Agreement;

"Decommissioning Costs Bank Guarantee" has the meaning ascribed to it in the Implementation Agreement;

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

"Deemed Energy Payment" means an amount (excluding VAT) that shall be due and payable by the Buyer to the Seller for the Deemed Energy during a specified period pursuant to the provisions of clause 14 (*Consequences of a System Event*) or clause 15 (*Consequences of a Compensation Event*), which payment shall be calculated in accordance with Schedule 6 (*Deemed Energy Payment*);

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

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

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

"Direct Loss" means, in respect of either Party, any losses, liabilities, expenses, damages, costs and claims (including Claims) arising directly as a result of the other Party's failure to perform its obligations under this Agreement;

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

"Distribution Connection Works" means the Eskom Connection Works or the Municipality Connection Works, as appropriate, and as defined in the Distribution Agreement;

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

"Distributor" means Eskom Holdings SOC Ltd acting through its distribution division, or any entity to which such functions of Eskom Holdings SOC Ltd are transferred pursuant to a restructuring of the South African electricity market, or otherwise as mandated by the Government or any other Responsible Authority, or a licensed municipal distributor to whose Distribution System the Facility will be connected, as applicable;

"DMRE" means the Department of Mineral Resources and Energy of the Government;

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

"Early Operating Energy" means the Energy Output delivered by the Seller to the Buyer during the Early Operating Period which shall not exceed the Contracted Capacity;

"Early Operating Energy Payment" means, in relation to each Billing Period during the Early Operating Period, the total amount (excluding VAT) payable in respect of Early Operating Energy delivered during that Billing Period, calculated in terms of Schedule 1 (*Details of the Project and Facility*) Part 3 (*Energy Rates*) of this Agreement;

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

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

"Economic Development Obligations" has the meaning given to it in Schedule 2 of the Implementation Agreement;

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

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

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

"Environmental Laws" means any Laws designed to:

- (a) protect ecosystems and 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;

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

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

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

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

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

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

"Facility Completion Form" means the form attached to this Agreement as Schedule 2 (*Completion Milestones and Forms of Notices*) Part 3 (*Facility Completion Form*), which

is to be completed by the Independent Engineer and delivered to the Buyer in accordance with clause 4.3 (*Facility completion and commissioning*);

"Facility Connection Works" has the meaning given to it in the Transmission Agreement or the Distribution Agreement, as applicable;

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

"Financial Model" has the meaning given to it in the Implementation Agreement;

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

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

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 subclauses (a) to (d) above:

- (a) 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;
- (b) lightning, fire, earthquake, tsunami, drought, unusual flood, violent storm, cyclone, typhoon, tornado, ionizing radiation or other natural calamity or act of God;
- (c) 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;

- (d) strikes, lock-outs and other industrial action at the Project Site, save where the Force Majeure relief is in respect of such action as excluded by operation of the provisions of sub-clause (vii) below;
- (e) accidents or explosions;
- (f) 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;
- (g) acts of a political nature in each case occurring within the Republic of South Africa including rebellion, riot, civil commotion, act or campaign of terrorism, or sabotage of a political nature, save where the Force Majeure relief is in respect of such action excluded by operation of the provisions of sub-clause (vii) below;
- (h) boycott, sanction or embargo;
- (i) 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, ionising radiation, pandemic, epidemic or plague);
- (j) any failure or delay by a Responsibility Authority to issue any permits, licenses 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;
- (k) a force majeure event in terms of the Transmission Agreement, Distribution Agreement, other than a Distribution Agreement concluded with a municipal Distributor, or the Self-Build Agreement, other than a Self-Build Agreement concluded with a municipal Distributor; or
- (l) a Compensation Event as contemplated and defined in the Implementation Agreement,

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 (a) to (l) above:

- i. failure of either Party to make any payment of money in accordance with its obligations under this Agreement, provided always that the obligation of the

Affected Party to make such a payment of money is not excused in terms of this Agreement by reason of an event of Force Majeure;

- ii. late delivery of equipment, machinery, plant, spare parts or materials, caused by negligent conduct or willful misconduct on the part of the Affected Party or any of its Equipment Suppliers or contractors;
- iii. late performance by either Party, caused by such Party or such Party's Equipment Suppliers, Contractors or subcontractors, unless such late performance is as a result of another event which constitute Force Majeure pursuant to and as defined in this Agreement, notwithstanding the meaning attributed thereto in any other agreement that a Party or its Equipment Suppliers, Contractors or subcontractors may have entered into from time to time;
- iv. mechanical or electrical breakdown or failure of equipment, machinery or plant owned or operated by either Party due to the manner in which such equipment, machinery or plant has been operated or maintained;
- v. delays resulting from reasonably foreseeable unfavourable weather or reasonably foreseeable unsuitable ground conditions or other similar reasonably foreseeable adverse conditions;
- vi. any failure by the Affected Party to obtain and/or maintain or cause to be obtained and/or maintained any Consent, save in the event that such failure is as a result of any failure or delay by a Responsible Authority contemplated in sub-clause (j) 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 are Project Site specific that may result in riots, sabotage, acts of unrest or interruptions by the past and/or present employees of the Affected Party at the Project Site, any of its Affiliates or any Contractors, subcontractors or Equipment Suppliers of the Affected Party or of any Affiliate, unless such action is part of any wider industrial action involving a significant section of the construction industry or the electricity supply sector;
- viii. wear and tear or random flaws in materials and equipment or breakdown in or degradation of equipment or machinery of the Affected Party;

- ix. an event, circumstance or situation that arises as a direct or indirect result of any appeal or review being lodged against any amendment to any of the Consents issued in terms of any Environmental Laws;
- x. unavailability of personnel employed by or contracted to the Seller, its Contractors and Equipment Suppliers;
- xi. an act or omission of a municipal Distributor or a person appointed by a municipal Distributor to undertake any Distribution Connection Works;
- xii. a force majeure event in terms of a Distribution Agreement or a Self-Build Agreement concluded with a municipal Distributor;

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

"Forecast Penalty" means the penalty to be applied in respect of an inaccurate Daily Forecast Generation Profile as provided for in clause 7.1 (*Daily generation forecast*) and which penalty is to be calculated in terms clause 4.4 (*Calculation of Forecast Penalty*) of Schedule 1 (*Details of the Project and Facility*) Part 3 (*Energy Rates*) of this Agreement;

"Government" means the Government of the Republic of South Africa as contemplated in The Constitution of the Republic of South Africa, 1996, acting through its Department of Public Enterprises or DMRE;

"Government Default" has the meaning given to it in the Implementation Agreement;

"Group" means the Seller and each Group Company;

"Grid Unavailability" means the unavailability of the System to connect the Facility and/or receive Energy delivered by the Facility, due to a System Event;

"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;

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

"Implementation Agreement" means the agreement entitled the Implementation Agreement entered into, on or about the Effective Date, between the Seller and the DMRE;

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

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

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

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

"Indexed" or "Indexation" reference in this Agreement to amounts "Indexed" shall unless where the Agreement provides otherwise, be escalated on on 1 April in each Calendar Year starting 12 months following the Base Date in accordance with the following formula:

$$EA_n = A_b \times (I_n/I_b)$$

Where

EA_n	=	Escalated Amount in Year n;
A_b	=	The amount specified in this Agreement as Indexed;
I_n	=	Consumer Price Index as published in Contract Year n for the immediately preceding year commencing 1 January and ending 31 December; and
I_b	=	CPI Index at Base Date, being the published Consumer Price Index (Dec 2016 = 100) in respect of the month of December 2021, as rebased by Statistics South Africa (or its equivalent successor entity) from time to time.

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

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

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

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

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

- (a) Wind Turbines;
- (b) Power plant controller/management system;
- (c) High voltage and medium voltage transformers;
- (d) High and medium voltage switchgear; or
- (e) Cables and/or overhead lines;

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

"Law" means:

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

statutes and legislation and all municipal by-laws, as well as the common law and customary law and any judgment, decision, order or rule of any court or tribunal with relevant jurisdiction, in each case having the force of law in South Africa; and

- (b) any present or future directive, requirement, instruction, request, order, regulation, condition of or limitation in any necessary approval, permission, permit, approval, consent, licence, authorisation, registration, grant, acknowledgement, exemption or agreement to be obtained from any Responsible Authority, or direction or rule of a Responsible Authority which is legally binding or, if not legally binding, would customarily be complied with by a Reasonable and Prudent Operator, including the Codes;

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

"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 20 (*General Seller Undertakings*), and the term **"Maintenance"** shall be construed accordingly;

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

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

"Minimum Active Power (P_{min})" means the minimum active power as confirmed by the independent reviewer, at which the power-generating module can control active power;

"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;

"National Transmission Company" or "NTC" means Eskom Holdings SOC Ltd acting through its transmission division, or any entity to which such functions of Eskom Holdings 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;

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

"Notice of Commencement of Facility" means a notice in the form of Schedule 2 (*Completion Milestones and Forms of Notices*) Part 5 (*Form of Notice of Commencement of Facility*), delivered by the Seller to the Buyer in terms of clause 4.5 (*Commercial Operation Date*);

"Notice of Commencement of Unit" means a notice in the form of Schedule 2 (*Completion Milestones and Forms of Notices*) Part 4 (*Form of Notice of Commencement of Unit*), delivered by the Seller to the Buyer in terms of clause 4.4.1;

"Operate" means to dispatch a Unit or Units or the Facility, and otherwise operate as required by clause 20 (*General Seller Undertakings*), and the term **"Operation"** shall be construed accordingly;

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

"Operating Period" means the period from the Commercial Operation Date to the Termination Date;

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

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

"POPI Act" means the Protection of Personal Information Act No. 4 of 2013, as amended;

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

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

"Project Activities" means the ownership or lease of the Project Site and the design, ownership, finance, Construction, Operation and Maintenance of the Facility and all associated Connection Works which are the responsibility of the Seller;

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

"Project Documents" means the contracts described in Schedule 7 (*Project Documents*) relating to the Project, of which true copies of the contracts listed in Part A

(*PPA Related Project Documents*) must be delivered by the Seller to the Buyer within twenty (20) Business Days of the Effective Date;

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

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

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

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

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

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

"Responsible Authority" means any organ of state, any official in the public administration or any other governmental or regulatory department, commission, institution, entity, service utility, board, agency, instrumentality or authority (in each case, whether national, provincial or municipal) within South Africa, including specifically any authority or board of such authority that is responsible for the allocation of any Water Use Rights, or any court, each having jurisdiction over the matter in question within South Africa, but excluding for all purposes the Buyer, the NTC, the Distributor and any (other) state-owned company undertaking commercial activities;

"Sanctioned Entity" means:

- (a) a person which is listed in a Sanctions List or is subject to Sanctions; or
- (b) a person which is ordinarily resident, organised or operating in a country or territory which is listed on a Sanctions List or is subject to Sanctions;

"Sanctioned Transaction" means any transaction that is prohibited by, or would cause any breach of, Sanctions;

"Sanctions" means trade, economic or financial sanctions, embargoes or restrictions imposed or applied pursuant to applicable Laws and regulations which are administered or enforced from time to time by any Sanctions Authority;

"Sanctions Authority" means:

- (a) the United Nations;
- (b) the European Union;
- (c) the government of the United States of America;
- (d) the government of the United Kingdom;
- (e) the government of the Republic of France,

and any of their applicable and authorised governmental authorities, including, without limitation, the Office of Foreign Assets Control for the US Department of Treasury (also known as "OFAC"), the US Department of Commerce, the US State Department or the US Department of the Treasury, Her Majesty's Treasury (also known as "HMT"), the Bank of England and the French Ministry of Finance;

"Sanctions List" means:

- (a) the Specially Designated Nationals and Blocked Persons List maintained by OFAC;
- (b) the Consolidated List of Financial Sanctions Targets and the Investments Ban List maintained by HMT,

and any similar list maintained, or a public announcement of a Sanctions designation made by any Sanctions Authority, in each case as amended, supplemented or substituted from time to time;

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

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

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

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

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

- (a) an order being made for the winding-up, liquidation, business rescue or dissolution of the Seller (in any of these cases, where applicable, whether provisional or final and whether voluntary or compulsory);
- (b) the Seller has not Commenced Construction of the Facility within [■]¹ ([■]) days of the Effective Date;
- (c) the Seller fails to achieve the Commercial Operation Date on or before the Last COD;
- (d) NERSA lawfully withdraws, revokes or cancels the Seller's generation licence due to the Seller's act or omission;
- (e) the Seller abandons the Construction or Operation and Maintenance of the Facility;
- (f) the Implementation Agreement is terminated, in accordance with its terms, due to failure by the Seller to comply with any of its obligations in terms of the Implementation Agreement;
- (g) the Seller fails to comply with any provision of clause 23 (*Assignment*) or clause 25 (*Changes in Control*); and
- (h) any other breach of any material provision of this Agreement has occurred more than once and:
 - (i) the Buyer has given an initial warning notice to the Seller describing that breach in reasonable detail and stating that if that breach persists or recurs then the Buyer may take further steps to terminate this Agreement; and
 - (ii) the Buyer has issued a second and final warning notice following the persistence or recurrence of that breach in the period of forty five (45) days after the initial warning notice, stating that if that breach persists or recurs

¹ The timelines to be determined following the finalization of the connection timelines in terms of the Budget Quotes.

within the period of forty five (45) days after the final warning notice then the Buyer may exercise its rights in terms of clause 18.3.3 on ten (10) days' notice to the Seller;

- (i) the Seller, having Commenced Construction, thereafter materially reduces, suspends or ceases to carry on, for a period of forty five (45) consecutive days, the Construction, or any material part thereof, of the Facility;
- (j) any Consent is suspended or revoked, and not discharged, due to a material breach by the Seller;
- (k) the Seller fails to maintain compliance with the requirements of the Codes;
- (l) the Seller fails to settle (whether by way of set-off or payment) any amount in excess of two hundred thousand Rand per MW (R200 000/MW) Indexed of the Contracted Capacity that is due and payable by it to the Buyer pursuant to this Agreement and not disputed in good faith and the same remains unpaid, for a period of sixty (60) Business Days after written demand by the Buyer; or
- (m) any of the warranties in clause 33.1 (*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;

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

"South Africa" means the Republic of South Africa;

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

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

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

"System" means, as applicable, the Transmission System or the Distribution System;

"System Event" means:

(a) any delay in the connection of the Facility to the System, beyond:

- (i) the date which falls [●]² ([■]) months after the date on which the last of the Budget Quote Conditions (as defined in the budget quote issued by the Distributor or NTC (as the case may be)) has been fulfilled; or
- (ii) such extended date, after such date of fulfilment of the Budget Quote Conditions, as may be issued by the Distributor or NTC and agreed in writing by the parties to the budget quote and informed to the Buyer (provided that such date shall never be earlier than the date calculated in accordance with (i) above),

such date of fulfilment of the Budget Quote Conditions having been agreed in writing between the Seller and the Distributor or NTC (as the case may be), and whether or not notified separately to both the Buyer and the DMRE, substantially in the form of Schedule 11 (*Form of Budget Quote Effective Date Confirmation*); or

(b) any constraint, unavailability, interruption, Curtailment, breakdown, inoperability or failure of or disconnection from, the whole or any part of the System,

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

- (a) an act or omission of the Seller or a Contractor or Equipment Supplier;
- (b) a failure by the Seller to comply with its obligations relating to the Connection Works, including the Seller's obligations under the Self-Build Agreement (if applicable);
- (c) the termination of the Distribution Agreement or Transmission Agreement by the Distributor or the NTC (as the case may be) due to breach of such agreement by the Seller;
- (d) an act or omission of a municipal Distributor or a person appointed by a municipal Distributor to undertake any Distribution Connection Works;

² The timelines to be determined within the timelines set out in the Budget Quotes. The dates will be different for the Projects.

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

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

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

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

"Transmission Connection Works" has the meaning given to it in the Transmission Agreement;

"Transmission System" means the national transmission system of the NTC, consisting of all lines and substation equipment which operate at a nominal voltage of above 132 kV, 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 customers of the NTC);

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

- (a) has the effect of amending the Commercial Energy Rate or the Early Operating Energy Rate other than as provided for in this Agreement; or
 - (b) results in one or more changes to the Codes that have a material financial impact on the Project; or
 - (c) has an effect other than an effect detailed in sub-clauses (a) or (b):
 - (i) the principal effect of which is directly borne by:
 - (A) the Project and no other similar projects;
 - (B) the Seller and not other persons; or
 - (C) parties undertaking projects similar to the Project and no other persons;
- and

- (ii) in respect of which the Seller is not entitled to any other relief pursuant to any other provisions of this Agreement;
- (iii) which was not foreseen by the Seller on or before the Effective Date or if it was foreseen, the impact on the Project was not foreseen; and
- (iv) which could not reasonably have been foreseen by any person in the position of the Seller on or before the Effective Date or if it could have reasonably have been foreseen, the impact on the Project could not reasonably have been foreseen,

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

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

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

"Unit Commencement Date" means, in respect of each Unit (if applicable), the date specified in the Notice of Commencement of Unit set out in Schedule 2 (*Completion*

Milestones and Forms of Notices) Part 4 (*Form of Notice of Commencement of Unit*) as being the date on which that Unit will begin generation and delivery of Early Operating Energy to the Delivery Point;

"Unit Completion" means the mechanical and electrical completion of the Unit in accordance with the Codes, the Transmission Agreement or the Distribution Agreement (as the case may be) and the standards of a Reasonable and Prudent Operator, and where applicable the issue of the relevant Unit Completion Form in accordance with clause 4.4.1;

"Unit Completion Form" means the form attached to this Agreement as Schedule 2 (*Completion Milestones and Forms of Notices*) Part 2 (*Unit Completion Form*), completed by the Independent Engineer and delivered to the Buyer to demonstrate Unit Completion as contemplated in clause 4.4.1;

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

"Use of System Charges" means the Transmission Use of System ("**TUOS**") Charge as defined in the Transmission Agreement, or the Distribution Use-of-System Charges as defined in the Distribution Agreement, as the case may be, which may not exceed the NERSA approved schedule of standard pricing as applicable to the NTC or Distributor, as the case may be;

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

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

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

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

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

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

1.2 Interpretation

In this Agreement, unless otherwise specified:

- 1.2.1 the index and headings of clauses of this Agreement are for ease of reference only and shall be ignored in the interpretation and application of this Agreement;

- 1.2.2 words importing the singular shall include the plural and vice versa and words importing one gender shall include the other genders;
- 1.2.3 references to any Recital, clause, paragraph, Schedule or Annex are to those contained in this Agreement, and references to a part of a Schedule are to the part of the Schedule in which the reference is relevant, and all Schedules and Annexes to this Agreement are an integral part of this Agreement. If there is any conflict between the provisions of the main body of this Agreement and the provisions of any of the Schedules or Annexes, the provisions of the main body shall prevail;
- 1.2.4 unless otherwise specified, all references to any time shall be to the time of day in 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 assigns or transferees;
- 1.2.6 in computation of periods of time from a specified day to a later specified day, "**from**" means from and including and "**until**" or "**to**" means to and including;
- 1.2.7 "**include**", "**including**" and "**in particular**" shall not be construed as being by way of limitation, illustration or emphasis only and shall not be construed as, nor shall they take effect as, limiting the generality of any preceding words. The words "**other**" and "**otherwise**" shall not be construed so as to be limited or defined by any preceding words, where a wider construction is reasonably possible;
- 1.2.8 references to a "**Party**", the "**Seller**" or the "**Buyer**" shall include its successors and permitted assignees, provided that, in the case of the Seller, the relevant transfer or assignment has received the prior written approval of the Buyer;
- 1.2.9 references to this "**Agreement**" or any other document shall be construed as references to this Agreement or that other document as amended, varied, novated, supplemented, or replaced from time to time, provided that, in the case of any other document, such amendment, variation, novation, supplement or replacement has received the prior written approval of the Buyer;
- 1.2.10 references to any amount shall mean that amount exclusive of VAT, unless the amount expressly includes VAT;

- 1.2.11 references to legislation include any statute, by-law, regulation, rule, subordinate legislation or delegated legislation or order, and a reference to any legislation is to such legislation as amended, modified or consolidated from time to time, and to any legislation replacing it or made under it;
- 1.2.12 the terms "**hereof**", "**herein**", "**hereunder**" and similar words refer to this entire Agreement and not to any particular clause, paragraph, Part, Schedule or any other subdivision of this Agreement;
- 1.2.13 the rule of construction that, in the event of ambiguity, an agreement shall be interpreted against the Party responsible for the drafting thereof, shall not apply in the interpretation of this Agreement;
- 1.2.14 the expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that these provisions do not expressly state this;
- 1.2.15 if any provision in clause 1.1 (*Definitions*) is a substantive provision conferring rights or imposing obligations on either Party then, notwithstanding that such provision is contained in such clause, effect shall be given thereto as if such provision were a substantive provision in the body of this Agreement; and
- 1.2.16 if the Facility is to be connected to the Distribution System, then all references to the terms "Transmission System", "Transmission Agreement", "National Transmission Company", "NTC" and "Transmission Connection Works" in this Agreement may be ignored. If the Facility is to be connected to the Transmission System, then all references to the terms "Distribution System", "Distribution Agreement", "Distributor" and "Distribution Connection Works" in this Agreement may be ignored.
- 1.3 **Alternative Distributor**
 - 1.3.1 The references in this Agreement to "Distribution System", "Distribution Agreement", "Distributor" and "Distribution Connection Works" refer to Eskom Holdings SOC Ltd (or its successor in title) and or the Distribution System owned and operated by it, or where applicable a licensed municipal Distributor and or the Distribution System owned and operated by it.
 - 1.3.2 Notwithstanding anything to the contrary in this Agreement, where:
 - 1.3.2.1 the Seller enters into a Distribution Agreement with a municipal Distributor;

1.3.2.2 the Facility is connected to a Distribution System owned or controlled by a municipal Distributor; or

1.3.2.3 the Distribution Connection Works are undertaken by a municipal Distributor or a person appointed by a licensed municipal Distributor,

the Seller acknowledges and agrees that the activities referred to in clauses 1.3.2.1, 1.3.2.2 and 1.3.2.3 are undertaken at the Seller's sole risk and that the Seller shall not be entitled to any relief or payment from the Buyer that would otherwise be available under this Agreement, associated with the "Distribution System", "Distribution Agreement", "Distributor" and "Distribution Connection Works".

1.3.3 The exclusion of Buyer liability for the acts and omissions of licensed municipal Distributors referred to in this clause 1.3 (*Alternative Distributor*) applies, for the avoidance of doubt, in the event of Force Majeure, System Events and Unforeseeable Conduct, and also has the consequence that the provisions of clause 8.4 (*Use of System Charges*) dealing with reimbursement by the Buyer to the Seller of Distribution Use of System Charges paid by the Seller, shall not apply in circumstances where the Facility is connected to the Distribution System of a municipal Distributor.

1.4 **Abbreviations**

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

A	-	means Amperes
°C	-	means Degrees Centigrade
CT	-	means Current Transformer
kV	-	means Kilovolts
M	-	means Metres
MW	-	means Megawatt
MWh	-	means Megawatt-hours
MVAr	-	means Megavolt ampere reactive
MVArh	-	means Megavolt ampere reactive hour
PT	-	Means Potential Transformer
s	-	means Seconds

V	-	means Volts
W	-	means Watts

1.5 Units of measurement

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

1.6 Rounding up

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

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

2. TERM

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

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

3. PROJECT SITE AND CONSTRUCTION

3.1 Project Site

- 3.1.1 The Seller shall obtain and maintain the peaceful use and possession of the Project Site and such associated rights as may be necessary for the purposes of undertaking and implementing the Project for the duration of the Term. The Seller shall acquire such other land and/or rights in respect of land as it requires in order to perform its obligations under this Agreement and all such land and rights shall, as between the Buyer and the Seller, be deemed to form part of the Project Site and shall be at the sole risk of the Seller. Details of the Project Site, including a scale map that identifies the location of the Project Site, are included in Schedule 1 (*Details of the Project and Facility*) and a diagram setting out the transmission lines

and substation, interconnection facility, and significant ancillary facilities including the facilities at the Delivery Point, is included in Schedule 1 (*Details of the Project and Facility*) Part 2 (*Single Line Diagram*).

- 3.1.2 The Seller agrees and undertakes that, as between it and the Buyer:
- 3.1.2.1 it shall be solely responsible for, shall bear full responsibility for and shall discharge all obligations in relation to any contamination of the Project Site pursuant to and in accordance with the applicable Consents and Laws, whether such contamination was existing at the time that the Seller obtained its rights in respect of the Project Site or arises during the term of this Agreement;
 - 3.1.2.2 it shall be solely responsible for, shall bear full responsibility for and shall discharge all obligations pursuant to any remediation order issued by any Responsible Authority pursuant to and in accordance with the applicable Consents and Environmental Laws in respect of any contamination of the Project Site, whether such contamination was existing at the time that the Seller obtained its rights in respect of the Project Site or arises during the term of this Agreement;
 - 3.1.2.3 it shall be solely responsible for, shall bear full responsibility for any disturbance to the Project and the Project Activities resulting from events including rebellion, riot, civil commotion, act or campaign of terrorism, or sabotage, protest, blockade or intimidation of the workforce by the surrounding communities, resulting solely from its failure to diligently investigate and engage with the surrounding community in respect of the Project in accordance with the standards of a Reasonable and Prudent Operator;
 - 3.1.2.4 if the Seller fails to comply with any of its obligations under clause 3.1.2, it alone shall be liable for and bear the full responsibility of and consequences for such failure, and the Buyer shall not bear any liability, responsibility or consequence for or of such failure;
 - 3.1.2.5 the Buyer has no obligations of any nature to monitor compliance with or to enforce the terms and conditions of any remediation order issued by any Responsible Authority in respect of any contamination of the Project Site; and

3.1.2.6 it indemnifies and shall hold harmless, upon demand, the Buyer against any claims, damages, losses, expenses and any other consequences of or arising out of the Seller's failure to comply with clause 3.1.2.

3.1.3 The provisions of this clause 3.1 (*Project Site*) shall remain in full force and effect after the Termination Date.

3.2 **Risk and liability**

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

3.2.2 The Seller agrees and undertakes that, as between it and the Buyer:

3.2.2.1 it shall be solely responsible for, shall bear full responsibility for and shall discharge all environmental obligations in relation to the Facility and the Project Site pursuant to and in accordance with the applicable Consents and Laws;

3.2.2.2 if applicable, it shall be solely responsible for, shall bear full responsibility for, shall discharge all obligations and shall bear all consequences (including the possibility that any of the following could lead, directly or indirectly, to a Seller Default) that arise as a direct or indirect result of any appeal or review being lodged against any amendment to any of the Consents issued in terms of any Environmental Laws;

3.2.2.3 it shall be solely responsible for, shall bear full responsibility for and shall discharge all obligations pursuant to any obligations or requirements to decommission the Facility at the end of its life, pursuant to and in accordance with the applicable Consents and Environmental Laws. The Seller shall comply with all of its obligations in clause 20 (*General Seller Undertakings*) of the Implementation Agreement and shall provide the Buyer with copies of all documents and notices that it provides to the DMRE pursuant to said clause 20 (*General Seller Undertakings*);

- 3.2.2.4 if the Seller fails to comply with any of its obligations under clause 3.2.2.2, it alone shall be liable for and bear the full responsibility of and consequences for such failure, and the Buyer shall not bear any liability, responsibility or consequence for or of such failure;
- 3.2.2.5 if any consequence arises pursuant to any circumstance, event or situation detailed in clause 3.2.2.2, it alone shall be liable for and bear the full responsibility of and consequences for such circumstance, event or situation, and the Buyer shall not bear any liability, responsibility or consequence for or of such circumstance, event or situation, including any consequential Seller Default;
- 3.2.2.6 the Buyer has no obligations of any nature to monitor compliance with or to enforce the terms and conditions of any of the Consents; and
- 3.2.2.7 it indemnifies and shall hold harmless, upon demand, the Buyer against any claims, costs (including Claims for indirect losses), damages, losses, expenses and any other consequences of or arising out of the Seller's failure to comply with clause 3.2.2.2 and arising out of any circumstance, event or situation detailed in clause 3.2.2.2.
- 3.2.3 The provisions of this clause 3.2 (*Risk and liability*) shall remain in full force and effect after the Termination Date.
- 3.3 Independent Engineer's and Buyer's inspection rights**
- 3.3.1 The Independent Engineer and the Buyer shall have the right from time to time, on not less than two (2) Business Days' written notice, to designate not more than four (4) of the Independent Engineer's or Buyer's representatives (as the case may be) who shall be entitled to have access to the Project Site at reasonable times for the purposes of viewing the Facility and verifying the Seller's compliance with its obligations under this Agreement, provided that the Independent Engineer or Buyer (as the case may be) shall ensure that its representatives shall comply with all Project Site health and safety rules, precautions and standards, and any other reasonable requirements of the Seller and its Contractors, and shall not interfere with the Construction or Operation of the Facility.
- 3.3.2 In addition to the access rights provided for in clause 3.3.1, the Seller shall enable the Buyer to have reasonable rights of access to Project Documents, and meeting minutes of the Seller and the Contractor.

3.4 **No improvements**

- 3.4.1 The Seller shall not be entitled to Construct or procure the Construction of any addition to or any expansion of the Facility that is intended to or may or will result in increasing the installed Capacity of the Facility beyond the Capacity installed at the Commercial Operation Date.
- 3.4.2 The Seller may, after providing the Buyer with written notice of its intention to do so, replace or modify the equipment of the Facility in order to Operate the Facility in accordance with the standards of a Reasonable and Prudent Operator, but only to the extent that such modifications or replacements of equipment shall not have an adverse effect on the performance of the Facility or change the Contracted Capacity of the Facility. The Seller shall be required to provide the Buyer with written evidence that it has obtained any required amendments or revisions to its Consents pursuant to making such modifications or undertaking such replacements.

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

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

require in order to demonstrate the Seller's compliance with its obligations in clause 3.5.2.

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

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

3.6 **General Construction Obligations**

3.6.1 The Seller shall Commence Construction of the Project and procure the issue of the Commencement of Construction Confirmation Form all within [■]³ ([■]) days of the Effective Date. Should the Seller fail to Commence Construction of the Project within such period or thereafter materially reduce, suspend or cease to carry on, for a period of forty five (45) consecutive days, the Construction, or any material part thereof, the Buyer shall be entitled to terminate this Agreement in accordance with clause 18.3 (*Termination for Seller Default*) for a Seller Default.

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

3.6.2.1 all applicable Laws, including the Consents; and

3.6.2.2 the standards of a Reasonable and Prudent Operator.

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

3.6.4 Any dispute arising from or relating to the Commencement of Construction as confirmed by the Independent Engineer shall be referred to and determined by an Independent Expert in accordance with the provisions of clause 27 (*Fast Track Dispute Resolution*).

³ The timelines to be determined within the timelines within the Budget Quotes.

3.7 **Commercial Operation Date**

- 3.7.1 The Seller shall use its reasonable endeavours to achieve the Commercial Operation Date by the Scheduled COD.
- 3.7.2 If the Seller becomes aware that, for any reason, the Commercial Operation Date will not be achieved by the Scheduled COD, the Seller shall:
- 3.7.2.1 promptly upon becoming aware of the actual or potential delay in the achievement of the Commercial Operation Date by the Scheduled COD, notify the Buyer in writing of that fact and the measures that it will take to mitigate such delay and of the impact of such measures on its ability to achieve the Scheduled COD, upon implementing such measures; and
 - 3.7.2.2 provide to the Buyer, any reports and such further information and documents as may be required by the Buyer in relation to the delay or potential delay within five (5) Business Days of receiving a written request from the Buyer.

3.8 **Monthly Construction Progress Reports**

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

4. TESTING AND COMMISSIONING

4.1 Connection to the System

- 4.1.1 The Seller warrants that it has entered into a [Self-Build Agreement]⁴, Distribution Agreement or Transmission Agreement with the Distributor or the NTC, as applicable, on or before the Effective Date.
- 4.1.2 The Seller shall give the Buyer at least sixty (60) days' advance written notice of the date on which it anticipates it shall require, in terms of the Self-Build Agreement, Transmission Agreement or the Distribution Agreement, as the case may be, a Unit or Units (if the Facility is being commissioned in phases) and, in any event, the Facility, to be connected to the System.
- 4.1.3 The Parties record that it is intended, in the Distribution Agreement or the Transmission Agreement, that:
- 4.1.3.1 the Distributor or the NTC, as applicable, shall Construct or procure the Construction of the Distribution Connection Works or the Transmission Connection Works (as the case may be) unless a Self-Build Agreement has been entered into by the Seller and the Distributor or the NTC (as the case may be) in terms of which the Seller shall Construct or procure the Construction of the Distribution Connection Works or the Transmission Connection Works (as the case may be) at its sole risk and cost; and
- 4.1.3.2 the Seller shall Construct the Facility Connection Works to connect the Unit or Units (if the Facility is being commissioned in phases) and, in any event, the Facility with or to the System.
- 4.1.4 The Seller shall provide the Buyer with such information and data, regarding any matter relating to the arrangements between the Seller and the NTC or Distributor (as the case may be), as may be reasonably required by the Buyer to enable the Buyer to comply with its obligations and exercise its rights in terms of this Agreement.

4.2 Independent Engineer

- 4.2.1 It is recorded that an Independent Engineer as approved by the Buyer has been appointed by the Seller, at its sole cost and risk and on terms substantially similar

⁴ To be retained to the extent applicable in respect of each Project.

to the terms contained in the agreement set out in Schedule 10 (*Independent Engineer Agreement*) of this Agreement.

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

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

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

4.2.3.2 appoint any other person to be the Independent Engineer. Any person appointed to replace the existing Independent Engineer, as Independent Engineer, shall be one of the other firms listed in Schedule 5 (*List of firms - Independent Engineer*) or as agreed between the Buyer and the Seller.

4.2.4 If the contract with the Independent Engineer is terminated at any point during the Term, a new Independent Engineer shall be appointed in accordance with this clause 4.2 (*Independent Engineer*) from one of the firms listed in Schedule 5 (*List of firms - Independent Engineer*) or as agreed between the Buyer and the Seller, both acting reasonably, on terms substantially similar to the terms contained in the agreement set out in Schedule 10 (*Independent Engineer Agreement*).

4.3 **Facility completion and commissioning**

4.3.1 The Seller shall use all reasonable endeavours to commission the Facility and to procure the issue of the Facility Completion Form by the Independent Engineer, at its own cost and in each case in accordance with this clause 4.3 (*Facility completion and commissioning*), Schedule 2 (*Completion Milestones and Forms of Notices*), the Codes, the Transmission Agreement or the Distribution Agreement (as the case may be) and the standards of a Reasonable and Prudent Operator, so as to cause the Commercial Operation Date to fall on or before the Scheduled COD.

4.3.2 The Seller may, but shall not be obliged to, procure the issue of the Facility Completion Form where the resulting Achieved Capacity would be expected to be

less than the Contracted Capacity. However, the Seller shall be obliged to procure the issue of the Facility Completion Form in respect of the Facility (regardless of Capacity) in order, *inter alia*, to achieve the Commercial Operation Date in accordance with clause 4.5 (*Commercial Operation Date*).

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

4.4 **Early Operating Period**

4.4.1 The Seller may procure the issue of the Unit Completion Form by the Independent Engineer, at its own cost and in each case in accordance with this clause 4.4.1, in respect of each Unit (if applicable) which the Seller anticipates will generate and deliver Early Operating Energy to the Delivery Point, which notice shall be in the form of Schedule 2 (*Completion Milestones and Forms of Notices*) Part 2 (*Unit Completion Form*), but the Unit Completion Form may not be issued:

4.4.1.1 until the Seller has demonstrated to the Independent Engineer that the Unit is compliant with the Codes;

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

4.4.1.3 until NERSA, or any person nominated by NERSA for such purpose, has issued to the Seller a notification of the Unit's compliance with the Codes;

4.4.1.4 until NTC and or the Distributor has provided written confirmation to the Seller certifying that the Unit may be connected to the System for the purposes of delivering Early Operating Energy; and

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

4.4.2 Pursuant to clause 4.4.1 and upon the Independent Engineer determining Unit Completion and receipt of the relevant Unit Completion Form, the Seller may in respect of such Unit issue the Notice of Commencement of Unit to the Buyer at least ten (10) Business Days before the Seller anticipates that the relevant Unit or Units will begin generation and delivery of Early Operating Energy to the Delivery Point, which notice shall be in the form of Schedule 2 (*Completion Milestones and*

Forms of Notices) Part 4 (Form of Notice of Commencement of Unit). The Seller shall not be entitled to issue the first Notice of Commencement of Unit more than one hundred and eighty (180) days before the Scheduled COD.

4.4.3 Until:

4.4.3.1 the Seller has complied with its obligations under clauses 4.4.1 and 4.4.2; and

4.4.3.2 00:00 on the Unit Commencement Date in respect of a Unit,

the Buyer shall not be obliged to purchase Early Operating Energy generated by that Unit or to pay the Early Operating Energy Rate in respect of any Early Operating Energy generated by that Unit.

4.5 **Commercial Operation Date**

4.5.1 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.

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

4.5.2.1 earlier than the day before the Scheduled COD;

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

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

4.5.2.4 until NERSA, or any person nominated by NERSA for such purpose, has issued to the Seller a notification of the Facility's compliance with the Codes;

4.5.2.5 until NTC and or the Distributor has provided written confirmation to the Seller certifying that the Facility may be connected to the System for the purposes of delivering Commercial Energy; and

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

4.5.3 Following compliance with clause 4.5.1 and clause 4.5.2 and upon the Independent Engineer ascertaining the Facility Completion and receipt of the

relevant Facility Completion Form pursuant to clause 4.3 (*Facility completion and commissioning*), the Seller shall issue the Notice of Commencement of Facility to the Buyer within two (2) Business Days of the delivery of the relevant Facility Completion Form, which notice shall be in the form of Schedule 2 (*Completion Milestones and Forms of Notices*) of Part 5 (*Form of Notice of Commencement of Facility*).

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

4.5.4.1 for the purposes of this Agreement, the power output of the Facility shall be limited to the Contracted Capacity, and only Energy Output that is generated from the Contracted Capacity shall be subject to this Agreement;

4.5.4.2 the Seller shall deliver to the Buyer a Notice of Commencement of Facility, following which the Commercial Operation Date will be the first day starting at 00:00 hours following the day upon which the Buyer receives from the Seller such Notice of Commencement of Facility; and

4.5.4.3 the Seller shall not be entitled to increase the installed Capacity of the Facility beyond the Capacity installed at the Commercial Operation Date at any time in the future.

4.5.5 If the Facility has achieved Facility Completion in terms of clause 4.3 (*Facility completion and commissioning*) and the Achieved Capacity is equal to or greater than the Minimum Acceptance Capacity but less than the Contracted Capacity, the Seller shall:

4.5.5.1 if necessary, at its own expense and in the shortest possible time, on giving notice to the Buyer, effect such repairs or replacements to the Facility, or any part thereof, as necessary for the Facility to achieve its Contracted Capacity, following which the Facility Completion shall be re-assessed in accordance with clause 4.3 (*Facility completion and commissioning*), and:

4.5.5.1.1 if the Achieved Capacity, as re-assessed, is equal to or greater than the Contracted Capacity, then clause 4.5.4 shall then apply; and

4.5.5.1.2 if the Achieved Capacity, as re-assessed, remains equal to or greater than the Minimum Acceptance Capacity but less than the Contracted Capacity, then clause 4.5.5.2 shall then apply,

provided in each case that such repairs or replacements must be completed and the Facility Completion Form must have been completed and submitted by the Seller to the Buyer by the Last COD; or

4.5.5.2 elect, without effecting any repairs or replacements (or further repairs or replacements, as the case may be) to the Facility, to deliver to the Buyer a Notice of Commencement of Facility, following which the Commercial Operation Date will be the first day starting at 00:00 hours following the day upon which the Buyer receives from the Seller such Notice of Commencement of Facility and clause 4.8 (*Reduction in Contracted Capacity*) shall apply.

4.5.6 If the Facility has achieved Facility Completion in terms of clause 4.3 (*Facility completion and commissioning*) and the Achieved Capacity is less than the Minimum Acceptance Capacity, then the Seller shall, at its own expense and in the shortest possible time, effect such repairs or replacements to the Facility, or any part thereof, necessary for the Facility to achieve an Achieved Capacity greater than or equal to the Minimum Acceptance Capacity, provided that such repairs or replacements must have been completed, the Facility Completion must have been re-assessed and the duly completed Facility Completion Form must have demonstrated an Achieved Capacity equal to or greater than the Minimum Acceptance Capacity by the Last COD, and clause 4.8 (*Reduction in Contracted Capacity*) shall apply.

4.6 **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 System Event or a Compensation Event), the twenty (20) year period referred to in the definition of 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).

4.7 **Last COD**

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

- 4.7.2 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 18.3 (*Termination for Seller Default*) for a Seller Default.

4.8 Reduction in Contracted Capacity

If the Achieved Capacity on the Commercial Operation Date is less than the Contracted Capacity but greater than the Minimum Acceptance Capacity, then, on and from the Commercial Operation Date, the Contracted Capacity shall be reduced to the Achieved Capacity of the Facility as at the Commercial Operation Date, Schedule 1 (*Details of the Project and Facility*) shall be amended accordingly, and for the purposes of this Agreement, the power output of the Facility shall be limited to the amended Contracted Capacity, and only Energy Output that is generated from the amended Contracted Capacity shall be subject to this Agreement. The Seller shall not be entitled to increase the installed Capacity of the Facility beyond the Capacity installed at the Commercial Operation Date, at any time in the future.

4.9 Coordination with Distributors and the NTC

- 4.9.1 To the extent that the Facility is connected with or shall be connected with such part of the System as is owned, operated or administered by a Distributor or the NTC (as the case may be), in addition to complying with the other requirements of clause 4 (*Testing and Commissioning*), the Seller shall:

- 4.9.1.1 provide the Distributor or the NTC (as the case may be) with such information as may be necessary under Law or the Codes, or usual in terms of the practices of a Reasonable and Prudent Operator in respect thereof;

- 4.9.1.2 procure all substantiating documents from the Distributor or the NTC as required by the Buyer pursuant to the Buyer's obligations under this Agreement; and

- 4.9.1.3 collectively discuss and coordinate with any relevant Responsible Authority, the Distributor or the NTC (as the case may be),

regarding the actions contemplated in clause 4 (*Testing and Commissioning*) and shall additionally comply with such reasonable requests and instructions that are in accordance with the Codes and the practices of a Reasonable and Prudent Operator, as may be received from the Distributor or the NTC (as the case may be) from time to time.

5. SALE OF ENERGY

5.1 Sale of Energy

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

- 5.1.1 the Capacity of the Facility shall be limited to the Contracted Capacity, and only Energy Output that is generated from that Contracted Capacity may be sold to the Buyer pursuant to this Agreement; and for the avoidance of doubt, any payments made by the Buyer for Energy Output will be made with reference to the metered values at the Delivery Point;
- 5.1.2 the Seller shall sell all the Early Operating Energy and Commercial Energy generated by a Unit or the Facility (as the case may be) to the Buyer at the Delivery Point, on a self-dispatch basis, and subject only to the Codes and the standards of a Reasonable and Prudent Operator;
- 5.1.3 the Buyer shall pay the Early Operating Energy Payment for the Early Operating Energy, or the Commercial Energy Payment for the Commercial Energy, delivered by the Seller to the Delivery Point;
- 5.1.4 subject to clause 14 (*Consequences of a System Event*) and clause 15 (*Consequences of a Compensation Event*), the Buyer shall pay the Deemed Energy Payment that is payable in respect of the Deemed Energy in accordance with Schedule 6 (*Deemed Energy Payment*).

5.2 Ancillary Services

The Seller shall, acting as a Reasonable and Prudent Operator and in accordance with Schedule 12 (*"Ancillary Services"*) ensure that the Facility is able to provide the Ancillary Services and that it complies with its obligations in Schedule 12 (*"Ancillary Services"*) in relation to providing Ancillary Services.

5.3 Title and Risk

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

5.4 No Third Party Sales

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

6. MAINTENANCE INSPECTIONS

- 6.1 If the Buyer, on reasonable grounds and based on the number of Unscheduled Outages and Scheduled Outages in any rolling six (6) Month period and the Energy Output of the Facility, at any time is of the opinion that the Facility is not being Maintained to the standard of a Reasonable and Prudent Operator, it may require that the Independent Engineer conduct an inspection (and, based on the outcome of the inspection, such tests of the Facility's condition as may be necessary) to ascertain whether the Facility is being Maintained to the standard of a Reasonable and Prudent Operator.
- 6.2 If the inspection and, if applicable, tests detailed in clause 6.1 show that the Facility is being Maintained to the standard of a Reasonable and Prudent Operator, the Buyer shall bear all costs of conducting such inspection and tests, including the Seller's reasonable costs and losses. If the inspection and, if applicable, tests show that the Facility is not being Maintained to the standard of a Reasonable and Prudent Operator, the Buyer may require the Seller to undertake such works as may be performed by a Reasonable and Prudent Operator to ensure that the Facility is Maintained to such standard, and the Seller shall bear all costs of conducting such inspection and tests and performing such works, including the Buyer's reasonable costs.
- 6.3 Any dispute arising from or relating to the performance of the inspection or tests by the Independent Engineer or the results thereof shall be referred to and determined by an Independent Expert in accordance with the provisions of clause 27 (*Fast Track Dispute Resolution*).

7. GENERATION FORECASTS

7.1 Daily forecast generation

- 7.1.1 The Seller shall, in compliance with the Codes including the Information Exchange Code and Scheduling and Dispatch Rules, provide to the Buyer, and to the System Operator or the Distributor (as appropriate) in writing for each day in the Early Operating Period and the Operating Period, by no later than 10:00 hours on the preceding day, the Seller's estimate made in good faith of the forecast level of Energy expected to be generated each hour (the first such hour starting at 00:00 and ending at 00:60 minutes) in the day (starting at 00:00 hours and ending at 24:00 hours), which shall generally be in the form of Schedule 4 (*Forecasting Information*) ("**Daily Forecast Generation Profile**").
- 7.1.2 The Seller may, in accordance with clause 7.1.1, provide a revised Daily Generation Forecast Profile. The revised forecast must be provided at least twelve (12) hours ahead of the revised hour(s). For example, if the Seller anticipates that

the actual generation output at 14:00 hours will be materially different from that forecasted the previous day, the Seller may provide a revised Daily Forecast Generation Profile by no later than 02:00 hours on the day. Only the revised hour(s) shall be provided and generally be in the form of Schedule 4 (*Forecasting Information*) ("**Daily Forecast Generation Profile**"), and the form should be clearly marked as revised. If provided timeously and in accordance with clause 7.1.1, the revised forecast shall become the Daily Forecast Generation Profile.

7.1.3 If the Seller fails to provide the Daily Forecast Generation Profile for any day, then for purposes of application of the Forecast Penalty regime set out in Schedule 1 (*Details of the Project and Facility*) Part 3 (*Energy Rates*) the Buyer shall use the last Daily Forecast Generation Profile provided to the Buyer in terms of clause 7.1.1, as the basis of calculation of any Forecast Penalty incurred by the Seller during the day in question.

7.1.4 Subject to clause 7.1.3, if the Seller's Daily Forecast Generation Profile deviates from the actual Energy Output delivered, in any hour, by more than ten percent (10%), then for each such hour the difference between the forecasted Energy Output as per the Daily Forecast Generation Profile, and the actual Energy Output, whether over or under, will be subject to the Forecast Penalty.

7.1.5 The Forecast Penalty regime set out in Schedule 1 (*Details of the Project and Facility*) Part 3 (*Energy Rates*) shall not apply to that portion of the forecasted Energy Output which would have been delivered but for a System Event which impacted on the ability of the Seller to deliver Energy Output during any hour. In circumstances of a System Event affecting the delivery of Energy Output, the Seller will be deemed to have delivered that portion of the forecast Energy Output which was impacted by such System Event, for each hour that the System Event continues.

7.2 **Weekly forecast generation**

7.2.1 The Seller shall, in compliance with the Codes including the Information Exchange Code, provide to the Buyer, and to the System Operator or the Distributor (as appropriate) in writing for each Week in the Early Operating Period and the Operating Period, together with the Daily Forecast Generation Profile, by no later than 10:00 hours on the preceding day, the Seller's estimate made in good faith of the forecast level of Energy expected to be generated by the Facility for each hour (the first such hour starting at 00:00 and ending at 00:60 minutes) of the day in the Week (starting at 00:00 hours on day two (2) and ending at 24:00 hours on day

seven (7)), which shall generally be in the form of Schedule 4 (*Forecasting Information*) ("**Weekly Forecast Generation Profile**").

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

8. TARIFF AND OTHER CHARGES

8.1 Early Operating Energy Payments

The Buyer shall pay to the Seller the Early Operating Energy Payment for all Early Operating Energy sold by the Seller and purchased by the Buyer during each Billing Period during the Early Operating Period at the Early Operating Energy Rate, subject to clause 5.1 of Schedule 3 (*Scheduled and Unscheduled Outages*).

8.2 Commercial Energy Payments

The Buyer shall pay to the Seller the Commercial Energy Payment for all Commercial Energy sold by the Seller and purchased by the Buyer during each Billing Period at the Commercial Energy Rate, subject to clause 5.1 of Schedule 3 (*Scheduled and Unscheduled Outages*).

8.3 Deemed Energy Payments

The Buyer shall pay to the Seller the Deemed Energy Payment for all Deemed Energy accruing in each Billing Period calculated in terms of clause 14 (*Consequences of a System Event*), clause 15 (*Consequences of a Compensation Event*) and Schedule 6 (*Deemed Energy Payment*), subject to clause 5.2 of Schedule 3 (*Scheduled and Unscheduled Outages*).

8.4 Use of System Charges

The Buyer shall, subject to clause 1.3 (*Alternative Distributor*), reimburse to the Seller the Use of System Charges, if any, which the Seller is obliged to pay and has paid in terms of the Distribution Agreement or the Transmission Agreement, as the case may be in each Billing Period. If any Use of System Charges are repaid to the Seller as a result of a dispute in terms of either the Distribution Agreement or the Transmission Agreement, then the Seller shall be obliged to repay the Buyer to the extent such amounts have already been reimbursed to the Seller in terms of this clause 8.4 (*Use of*

System Charges), and the Buyer shall be entitled to deduct such amounts in the next Invoice issued to the Seller.

8.5 Ancillary Service Payments

8.5.1 From the Commercial Operation Date, the Buyer shall pay to the Seller the Ancillary Service Payments for all Ancillary Services provided by the Seller during each Billing Period, less any penalties payable due to performance issues as calculated in accordance with Schedule 1 (*Details of the Project and Facility*) Part 3 (*Energy Rates*) clause 5 (*Ancillary Service Payment and Penalties*) and Schedule 12 (*Ancillary Services*).

8.5.2 The Ancillary Services will need to be provided in accordance with Schedule 12 (*Ancillary Services*).

8.6 No Payment for Commissioning Energy Output

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

8.7 Failure to make Payments

8.7.1 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.

8.7.2 If the Buyer fails to pay any amount or amounts that are due and payable by the Buyer under this Agreement, within five (5) Business Days of the Due Date for payment, the Seller may serve notice on the Buyer of such failure and specifying details thereof. If such failure has not been remedied or rectified within twenty (20) Business Days of such notice, the Seller may call a Compensation Event and rely on and enforce the Implementation Agreement, all in terms of clause 15.1 (*Consequences of a Compensation Event*).

9. INVOICING

9.1 Early Operating Period and Operating Period invoices

9.1.1 The Seller shall, within two (2) Business Days of the end of a Billing Period, submit to the Buyer for that Billing Period an Invoice specifying:

9.1.1.1 the calculation for the Energy payment for the Billing Period in respect of Early Operating Energy Payment and/or Commercial Energy Payment (as the case may be) due to the Seller determined in terms of Schedule 1 (*Details of Project and Facility*) Part 3 (*Energy Rates*) at clause 4.1 (*Calculation of*

Energy Payment for Billing Period) setting out the calculations upon which such Early Operating Energy Payment or Commercial Energy Payment is based;

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

9.1.1.2.1 the applicable Allowance for Grid Unavailability and Curtailment Period, in relation to the relevant Contract Year;

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

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

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

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

9.1.1.3 the Use of System Charges (if any) due to the Seller in terms of clause 8.4 (*Use of System Charges*) for such Billing Period;

9.1.1.4 the calculation for Ancillary Service Payment due to the Seller for such Billing Period determined in terms of Schedule 1 (*Details of Project and Facility*) Part 3 (*Energy Rates*) at clause 5.1.1 (*Calculation of Ancillary Services for Billing Period*) setting out the calculations upon which such Ancillary Service Payment is based; and

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

9.1.1.6 any amounts due to the Buyer which shall be deducted from the total due to the Seller.

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

9.2 Vendor Registration Requirements

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

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

9.3 General principles as regards invoicing

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 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) Business Days of the later of (a) the date of receipt of such Invoice; and (b) in the case of the 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) (the "**Due Date**").

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 22 (*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 Facility Metering Installation, the Buyer shall be entitled to request a test of the Facility Metering Installation in accordance with clause 12.7 (*Testing and inspection*).
- 9.4.3 If it is agreed or determined (including as a result of a test of the Facility Metering Installation pursuant to clause 12.7 (*Testing and inspection*)) that all or part of a disputed amount which was paid should not have been paid, then the amount of such overpayment shall be refunded within five (5) Business Days of such agreement or determination, together with interest at the Agreed Interest Rate from the date of such overpayment to, but excluding, the date of repayment.
- 9.4.4 If the Parties fail to resolve a dispute regarding an Invoice within thirty (30) days of the date upon which the notice in this clause 9.4 (*Billing disputes*) was served, the matter shall be dealt with in accordance with clause 27 (*Fast Track Dispute Resolution*).

10. OUTAGES

10.1 Scheduled Outages

- 10.1.1 The Seller shall comply with the requirements of Schedule 3 (*Scheduled and Unscheduled Outages*) in relation to Scheduled Outages.
- 10.1.2 Subject to clause 10.1.1, the Seller shall be entitled to remove the Facility from service during the period of the Scheduled Outage to carry out its planned Maintenance.
- 10.1.3 The Seller shall be responsible for all costs incurred by it in connection with or arising from any Maintenance carried out by it or on its behalf on the Facility during any Scheduled Outage.

10.2 **Unscheduled Outages**

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

11. **REPORTS, RECORDS, PLANS AND MONITORING**

11.1 **Reports**

- 11.1.1 Subject to the terms and conditions of this Agreement, the Seller shall as soon as reasonably possible, and in any event within two (2) hours, notify the Buyer if the Facility or such number of Units comprising at least ten per cent (10%) of the Contracted Capacity, as the case may be, is incapable of generating Energy for any of the following reasons (and provided that its unavailability has not already been notified as part of a Scheduled Outage or pursuant to clause 7 (*Generation Forecasts*)):
- 11.1.1.1 for reasons of any Outages; or
 - 11.1.1.2 where to do so would not be in accordance with the standards of a Reasonable and Prudent Operator; or
 - 11.1.1.3 in circumstances relating to safety (of either personnel or of the Facility or apparatus); or
 - 11.1.1.4 in circumstances where to do so would be unlawful; or
 - 11.1.1.5 for reasons of Force Majeure, a System Event, 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 9 (*Reporting*), in accordance with Schedule 9 (*Reporting*).

11.2 Data and records

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

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

11.3 Recordkeeping

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

11.4 Ownership, inspection, copy and use rights

- 11.4.1 The Buyer shall have the right, upon giving a minimum of two (2) Business Days' prior written notice to the Seller, to examine and take copies of any Project Data at any time during normal business hours (at the Buyer's own cost).
- 11.4.2 The Seller shall ensure that any agreements entered into with the manufacturers of equipment (including Key Equipment) or with Equipment Suppliers in respect of the Facility include provisions which entitle the Buyer to use the Project Data as the Buyer deems appropriate.

- 11.4.3 The Buyer, the DMRE and the Seller shall have joint ownership of the Project Data, but the Seller shall not, by virtue of its ownership rights, have any rights to prevent the use of the Project Data by the Buyer.
- 11.4.4 In order for the Buyer to monitor the performance of the Project and or evaluate any claims for relief by the Seller in terms of this Agreement, the Buyer may request written evidence from the Seller, in addition to that provided for in any provision of this Agreement, acting reasonably; and may utilise and rely on the information and reports provided to the DMRE by the Seller in terms of the Implementation Agreement.
- 11.4.5 The provision of information to the Buyer in accordance with this Agreement in no way detracts from the Seller's responsibilities under this Agreement, and the Buyer incurs no obligation nor is any notice or consent tacitly provided by the Buyer nor is the Buyer estopped from exercising any right it may have under this Agreement as a result of receipt of this information from the Seller.

12. METERING

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

12.1 Metering agents

The Buyer may, by written notification to the Seller, appoint a Distributor / NTC as the metering agent or, if agreed with the Distributor / NTC, a third party to act as a metering agent and to perform and fulfil the Buyer's rights and obligations pursuant to this clause 12 (*Metering*), provided that should the Buyer appoint such a metering agent, the Buyer shall nonetheless remain liable to the Seller under this Agreement for any breach or failure to perform by the metering agent.

12.2 Facility Metering Installation

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

12.3 **System Metering Installation**

- 12.3.1 The Seller shall, at its sole cost, cause the NTC or the Distributor (as applicable) to procure, install, test, commission, Operate and Maintain a System Metering Installation adjacent to the Facility Metering Installation at the Delivery Point, in accordance with the Transmission Agreement or the Distribution Agreement, as applicable.
- 12.3.2 The purpose of the System Metering Installation shall be to provide data for comparison purposes as against the data to be provided by the Facility Metering Installation.

12.4 **Capabilities of Meters**

- 12.4.1 The Facility Metering Installation and the System Metering Installation shall be capable of measuring and recording the following parameters for various time and frequency blocks in accordance with applicable Laws, the Codes and any other standards, policies and or regulations made available by the Buyer, the NTC and or NERSA from time to time:
- 12.4.1.1 Energy Output and Reactive Energy Output in terms of four (4) quadrant metering;
 - 12.4.1.2 instantaneous voltage, current and power factor;
 - 12.4.1.3 frequency;
 - 12.4.1.4 maximum demand in MVA/MW for each demand period and for the total period since the last reset;
 - 12.4.1.5 MWh/MVArh since last reading;
 - 12.4.1.6 real time and time of day metering; and
 - 12.4.1.7 number of resets.
- 12.4.2 The Seller shall ensure that the meters within the Facility Metering Installation utilise separate CT cores and separate PT circuits to the meters within the System Metering Installation.
- 12.4.3 The Facility Metering Installation and the System Metering Installation shall also have the capability to download and transmit such real time data to a Supervisory Control and Data Acquisition ("**SCADA**") system, in a form and format suitable for SCADA.

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

12.5 **Sealing**

12.5.1 The Facility Metering Installation and the System Metering Installation shall each be sealed in the presence of duly authorised representatives of both Parties immediately after the commissioning of the relevant meter and or installation in accordance with clause 12.6 (*Final testing, calibration and sealing prior to Early Operating Period and Commercial Operation Date*).

12.5.2 Seals shall only be broken for the purposes of inspection, testing, maintenance or adjustment of the relevant meter, and shall be immediately re-sealed after that purpose is completed, all in the presence of duly authorised representatives of both Parties. If a Party was informed within a reasonable time but fails to ensure that its representatives are present, then such sealing shall be deemed as valid and the Party whose meter and or installation has been sealed shall inform the other.

12.6 **Final testing, calibration and sealing prior to Early Operating Period and Commercial Operation Date**

12.6.1 Authorised representatives of the Buyer, Seller and Independent Engineer shall, in respect of the Facility Metering Installation and the System Metering Installation, be entitled to:

12.6.1.1 witness the final testing, calibration and sealing thereof as contemplated in this clause 12.6 (*Final testing, calibration and sealing prior to Early Operating Period and Commercial Operation Date*); and

12.6.1.2 if reasonably satisfied with the final testing, calibration and sealing, sign the certificate of release to service in terms of clause 12.6.3 (such signature not to be unreasonably withheld), failing which there shall be deemed to be a dispute in relation thereto and such dispute shall be referred to an Independent Expert for determination in accordance with clause 27 (*Fast Track Dispute Resolution*).

12.6.2 If a Party was informed within a reasonable time but fails to ensure that its representatives are present, then:

12.6.2.1 the absent Party shall be deemed to have witnessed the final testing, calibration and sealing in clause 12.6.1.1;

- 12.6.2.2 the absent Party shall be deemed to have been reasonably satisfied with the final testing, calibration and sealing and shall be deemed to have signed the certificate of release to service in clause 12.6.1.2; and
- 12.6.2.3 the Party whose meter and or installation has been sealed shall inform the absent Party.
- 12.6.3 After the installation of each metering installation and prior to Early Operating Period and Commercial Operation Date, the Seller shall ensure:
- 12.6.3.1 that the performance of each metering installation is within specified accuracy limits;
- 12.6.3.2 the final calibration of the metering installation;
- 12.6.3.3 that an identifiable calibration seal on each billing meter device had been installed;
- 12.6.3.4 that an identifiable seal on the metering installation had been installed.
- 12.6.4 If the Seller has ensured that the provisions of this clause 12.6 (*Final testing, calibration and sealing prior to Early Operating Period and Commercial Operation Date*) have been complied with in respect of a metering installation, then that metering installation shall be released to service.
- 12.7 Testing and inspection**
- 12.7.1 Subject to clauses 12.7.2 and 12.7.5, the Buyer may request a test of the Facility Metering Installation and/or the Seller may request a test of the System Metering Installation, by notice in writing to the other Party.
- 12.7.2 The Facility Metering Installation and the System Metering Installation shall be tested by the Party responsible for such meter or may be tested by a Metering Certifier as often as it deems necessary, but in any event within thirty (30) days of receipt of written request for such test pursuant to clause 12.7.1.
- 12.7.3 Save on reasonable grounds, including a suspected inaccuracy determined pursuant to clause 12.7.4, the Buyer shall not be entitled to call for more than one (1) test of the Facility Metering Installation in any period of twelve (12) Months, and the Seller shall not be entitled to call for more than one (1) test of the System Metering Installation in any period of twelve (12) Months.
- 12.7.4 Without limiting clause 12.7.1, if readings taken from the Facility Metering Installation and the System Metering Installation are significantly different from one another and or demonstrate a level of inaccuracy falling outside the particular

standard and specification used for the relevant Metering Installation, or are beyond a tolerance level of zero point five percent ($\pm 0.5\%$) on active energy (MWh) readings accumulated over the Billing Period, whichever is the lesser, then each Metering Installation shall be tested.

12.7.5 The Parties shall provide each other with not less than seven (7) days' prior written notice of any test to be held pursuant to this clause 12.7 (*Testing and inspection*), which shall be held between 09:00 and 17:00 hours on any Business Day. Both Parties shall have the right to be represented at the conduct of any such test by representatives of each Party.

12.7.6 The Parties shall promptly provide each other with copies of test reports, including all supporting metering data and records, if so requested in writing by the other Party. The Parties shall answer any questions as regards the test report promptly and in full.

12.7.7 The Facility Metering Installation and the System Metering Installation shall be treated as working satisfactorily so long as the errors are within the limits prescribed for meters of the particular standard and specification used, or are within a tolerance level of zero point five percent ($\pm 0.5\%$), whichever is the lesser. If, as a result of a test conducted pursuant to this clause 12.7 (*Testing and inspection*), the measure of error is found to be outside this maximum tolerance, then the cause for the error in respect of the Metering Installations, as the case may be, shall be recalibrated as soon as practicable and in any event within two (2) days of the relevant Metering Installation owner being notified of such event, at the expense of the Party responsible for the non-compliant Metering Installation, and the provisions of clause 12.8 (*Readings and inaccuracy*) shall apply in respect of any data retrieved from such non-compliant Metering Installation and used for billing purposes prior to the relevant Metering Installation test.

12.7.8 If any related monitoring equipment or associated circuits are found not to comply with the requirements of the relevant standards as set out in applicable Law and the Codes, they shall be repaired or replaced at the expense of the Party which owns them as soon as practicably possible.

12.8 **Readings and inaccuracy**

12.8.1 The Seller shall be responsible for retrieving and analysing data from the Facility Metering Installation for billing purposes on the last Business Day of each Month during each Billing Period, as the case may be, at a time mutually agreed between the Parties.

- 12.8.2 Should the Facility Metering Installation fail to register or, upon testing pursuant to clause 12.7 (*Testing and inspection*), be found to have a level of inaccuracy falling outside the maximum tolerance level specified in clause 12.7.4, then the Facility Metering Installation shall be recalibrated in accordance with clause 12.7.7 and the Energy Output from the Unit or the Facility, as the case may be, shall, for the period referred to in clause 12.8.4, be measured on the basis of the readings registered by the System Metering Installation.
- 12.8.3 Should both the System Metering Installation and the Facility Metering Installation fail to register or, upon testing, be found to have a level of inaccuracy falling outside the maximum tolerance level specified in clause 12.7.7, then each of the System Metering Installation and the Facility Metering Installation shall be recalibrated in accordance with clause 12.7.7, and the Energy Output from the Unit or the Facility, as the case may be, shall, for the period referred to in clause 12.8.4, be calculated on the basis of such correction procedure as the Parties may agree (using such data as permitted by the relevant Code, including estimated data prepared in accordance with the relevant Code), and in the absence of agreement shall be referred to an Independent Expert for determination in accordance with clause 27 (*Fast Track Dispute Resolution*).
- 12.8.4 The period referred to in clauses 12.8.1 and 12.8.2 shall be:
- 12.8.4.1 the actual period during which inaccurate measurements were made, if such period can be determined from the logged readings; or
- 12.8.4.2 if not determinable from the logged readings, the period immediately preceding the test of the Facility Metering Installation equal to one-half of the time from the date of the last previous test of the Facility Metering Installation; or
- 12.8.4.3 in the case of clause 12.8.2, from the date of the last previous test of the System Metering Installation or Facility Metering Installation, whichever was most recently tested (with the remaining period being calculated on the basis of the measurements as actually recorded by the System Metering Installation, or the Facility Metering Installation, as the case may be)
- 12.8.5 Both the Facility Metering Installation and the System Metering Installation shall be synchronised to South African Standard Time ("**SAST**") and maintain time offsets not exceeding two (2) minutes from SAST.

12.9 **Miscellaneous**

12.9.1 Each Party shall not, and shall ensure that its contractors (including the Contractors, in the case of the Seller) do not, interfere in any manner whatsoever with the proper functioning of the other Party's metering equipment, save in the course of an inspection, testing, Maintenance or agreed adjustment in the presence of duly authorised representatives of both Parties.

12.9.2 The Facility Metering Installation and the System Metering Installation shall not be relocated without the prior written agreement of both Parties.

12.9.3 The Seller shall be entitled, upon written request to the Buyer, to access the metering data from the System Metering Installation for the purposes of performing its obligations and exercising its rights under this Agreement.

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

12.10.1 The Seller shall ensure that each Metering Installation provides for the capability to interface with the Buyer's communication protocols by liaising with the Buyer prior to procurement.

12.10.2 The Seller shall, at its sole cost and risk, ensure that the telecommunication systems and associated infrastructure required to fulfil its metering obligations in terms of this Agreement are:

12.10.2.1 installed, Operated and Maintained in compliance; and

12.10.2.2 able to interface,

with the Buyer's metering communication protocols and or standards as those protocols and or standards may be changed and or updated from time to time.

13. **UTILITIES AND CONSUMABLES**

13.1 **Responsibility for the supply of utilities**

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

13.2 **Responsibility for the supply of consumables**

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

14. CONSEQUENCES OF A SYSTEM EVENT

14.1 The Seller shall not be entitled to bring any claims under this clause 14 (*Consequences of a System Event*) in respect of the period prior to the Scheduled COD.

14.2 The Seller shall not be entitled to bring any claims under this clause 14 (*Consequences of a System Event*) in respect of:

14.2.1 the period that the Commercial Operation Date is delayed beyond the Scheduled COD; or

14.2.2 the Operating Period, in any Contract Year,
if the impact of any System Event or combination of System Events which has or have accumulated is less than the Allowance for Grid Unavailability and Curtailment for such period or Contract Year.

14.3 Subject to clauses 14.1 and 14.2, if and to the extent that a System Event occurs:

14.3.1 that causes a delay in the achievement of the Commercial Operation Date beyond the Scheduled COD; and/or

14.3.2 after the Commercial Operation Date, that materially adversely affects the ability of the Seller to perform any of its obligations or exercise any of its rights under this Agreement,

then the Seller shall, subject to the remaining provisions of this clause 14, be entitled to the relief and/or extensions of time and/or Deemed Energy Payments provided for in terms of clauses 14.4.2, 14.4.4, 14.5.2 or 14.5.4 (as applicable).

14.4 System Events referred to in clause 14.3.1

14.4.1 In order to obtain relief and/or payment of the Deemed Energy Payment pursuant to a System Event referred to in clause 14.3.1, the Seller must:

14.4.1.1 as soon as practicable, and in any event within five (5) days after it becomes aware, or ought reasonably to have become aware, that the System Event is likely to occur, or has occurred, give to the Buyer a notice thereof which includes details of whether and to what extent the System Event has caused or is likely to cause delay in the achievement of the Commercial Operation Date beyond the Scheduled COD; and

14.4.1.2 within ten (10) days of the notice referred to in sub-clause 14.4.1.1, provide the Buyer with the full details of such System Event and any relief claimed, stating:

- 14.4.1.2.1 the anticipated revised date for the connection of the Facility to the System; and
- 14.4.1.2.2 whether the Seller anticipates a delay in the achievement of the Commercial Operation Date beyond Scheduled COD, and if so the extent of such delay;
- 14.4.1.3 notify the Buyer if, at any time, it receives or becomes aware of any further information relating to the System Event, giving details of that information to the extent that such information is new or renders information previously submitted materially inaccurate or misleading;
- 14.4.1.4 where applicable, provide the Buyer with all Project information (including schedules, milestones, communications and other data) and amendments agreed with the Distributor or NTC under the Distribution Agreement or the Transmission Agreement as the case may be;
- 14.4.1.5 provide the Buyer with all reasonable assistance in respect of the Buyer's discussions with and actions against the NTC or the Distributor (as the case may be) in respect of that System Event;
- 14.4.1.6 demonstrate to the reasonable satisfaction of the Buyer that:
 - 14.4.1.6.1 the System Event directly caused the delay in the achievement of the Commercial Operation Date beyond Scheduled COD by impacting critical activities, as evidenced by clear substantiating records and documents submitted by the Seller to the Buyer;
 - 14.4.1.6.2 the Seller would, but for the inability to commission and test the Facility due to the System Event, have been able to achieve the Commercial Operation Date and generate and deliver Energy Output;
 - 14.4.1.6.3 the Facility would, but for the System Event, have been able to generate and deliver Energy Output;
 - 14.4.1.6.4 the System Event, Deemed Energy Payment and/or relief from the obligations under this Agreement claimed could not reasonably be expected to be mitigated or recovered by the affected Party acting in accordance with the standards of a Reasonable and Prudent Operator, without incurring material expenditure; and
 - 14.4.1.6.5 the Seller is using reasonable endeavours to perform its obligations under this Agreement.

- 14.4.2 If the Seller has complied with its obligations under clause 14.4.1 above, then subject to the provisions of clause 14.4.4 below:
- 14.4.2.1 the Scheduled COD shall remain unchanged, the Expiry Date shall continue to occur twenty (20) years after Scheduled COD, and the Operating Period shall continue to commence on the later of the unchanged Scheduled COD and the Commercial Operation Date;
 - 14.4.2.2 the Last COD shall be postponed by one (1) day for every day by which the Commercial Operation Date is delayed by the System Event;
 - 14.4.2.3 the Buyer shall only be entitled to exercise its rights to terminate this Agreement under clause 18.3 (*Termination for Seller Default*) if the Seller fails to achieve the Commercial Operation Date by such postponed Last COD; and
 - 14.4.2.4 the Seller shall, after exhaustion of the Allowance for Grid Unavailability and Curtailment, be entitled to receive payments in the amount of the Deemed Energy Payment for the period by which the System Event caused the Commercial Operation Date to be delayed beyond the original Scheduled COD, calculated in accordance with clause 3 of Schedule 6 (*Deemed Energy Payment*) and subject to any adjustments that may be effected in terms of clause 4 (*Adjustment of Deemed Energy Payments*) of Schedule 6 (*Deemed Energy Payment*).
- 14.4.3 If the Seller provides any of the information required in terms of clause 14.4.1 above after the dates for submission of information referred to in that clause, then the Seller shall not be entitled to any relief or to payment of the Deemed Energy Payment, for the same number of days as the number of days during which the Seller failed to provide such information.
- 14.4.4 If and to the extent that a System Event for which relief or compensation is claimed by the Seller in accordance with clause 14.4.1 is caused by one or more *force majeure* events under the Transmission Agreement or Distribution Agreement (as the case may be) which affect the performance by the Buyer, NTC or Distributor of all or part of its obligations under the Transmission Agreement or Distribution Agreement (as the case may be), then, subject to compliance by the Buyer with clause 14.4.5 below:
- 14.4.4.1 the Scheduled COD shall be deferred for a period equal to the period by which the System Event directly caused the delay in the achievement of the

Commercial Operation Date, beyond the original Scheduled COD (and the Expiry Date shall be calculated from the revised Scheduled COD);

14.4.4.2 the Seller shall not be entitled to receive, and the Buyer shall not be required to pay, any Deemed Energy Payments contemplated in clause 14.4.2; and

14.4.4.3 the Buyer shall not be entitled to exercise its rights in terms of clause 18.3 (*Termination for Seller Default*) of this Agreement; and

14.4.4.4 the Expiry Date shall be extended to such date as to place in the Seller in the same overall economic position it would have been in but for such System Event resulting from one or more of the *force majeure* events under the Transmission Agreement or Distribution Agreement (as the case may be); provided that the Expiry Date may not be extended by more than five (5) years pursuant to this clause.

14.4.5 In order for the provisions of clause 14.4.4 to apply, the Buyer must:

14.4.5.1 as soon as practicable, and in any event within ten (10) days after it became aware or ought to have reasonably become aware that a *force majeure* event under the Transmission Agreement or Distribution Agreement (as the case may be) has caused a System Event which hinders or prevents the achievement of the Commercial Operation Date beyond Scheduled COD, give to the Seller a notice providing details of the *force majeure* event which caused the System Event, the date of occurrence and its likely duration (if known);

14.4.5.2 within fifteen (15) days of the Buyer giving the notice referred to in clause 14.4.5.1, give such additional details of the *force majeure* event under the Transmission Agreement or Distribution Agreement (as the case may be) which caused the System Event and the consequences of such System Event including its likely impact on the Project, including the anticipated revised date for the connection of the Facility to the System;

14.4.5.3 demonstrate to the reasonable satisfaction of the Seller that:

14.4.5.3.1 the System Event is a direct result of such *force majeure* event and that the *force majeure* event impacted on critical activities, as evidenced by clear substantiating records and documents;

14.4.5.3.2 the Buyer could not have avoided the occurrence or consequences of the System Event by steps which it might reasonably be expected to have taken, without incurring material expenditure;

- 14.4.5.3.3 there is a need for relief from other obligations of the Buyer under this Agreement as a direct result of the System Event in question;
- 14.4.5.3.4 any such relief from the Buyer's obligations under this Agreement could not reasonably be expected to be mitigated or recovered by the Buyer acting in accordance with the standards of a Reasonable and Prudent Operator, without incurring material expenditure; and
- 14.4.5.3.5 the Buyer is using reasonable endeavours to perform its obligations under this Agreement.
- 14.4.6 The Seller shall notify the Buyer if, at any time, it receives or becomes aware of any further information relating to the System Event, giving details of that information to the extent that such information is new or renders information previously submitted materially inaccurate or misleading.
- 14.4.7 If the Parties cannot agree on the extent of the relief required, or the Seller disagrees that the System Event was caused by *force majeure* under the Transmission Agreement or Distribution Agreement, or the Buyer disagrees that a System Event has occurred or that the Seller is entitled to any extension of the Scheduled COD or the Last COD or the Expiry Date and/or to any Deemed Energy Payment (all as applicable), the matter shall be dealt with in accordance with clause 26 (*Dispute Resolution*).
- 14.4.8 For the purposes of clause 14.4.4.4, the "same overall economic position" shall, subject to the provisions of clauses 14.4.9 and 14.4.10, be calculated by agreement between the Buyer and the Seller and, in the absence of such agreement, by an Independent Expert at the request of either Party pursuant to clause 27 (*Fast Track Dispute Resolution*), in the following manner:
 - 14.4.8.1 quantify the loss suffered by the Seller, which could include additional costs incurred by the Seller resulting directly from the occurrence of the System Event caused by one or more of the *force majeure* events under the Transmission Agreement or Distribution Agreement (as the case may be) referred to in clause 14.4.4, less the amount of any variable costs that the Seller saved during the period that the System Event continued;
 - 14.4.8.2 in calculating the period of extension of the Expiry Date required to compensate for the quantified loss:
 - 14.4.8.2.1 use the Financial Model; and

- 14.4.8.2.2 update the Financial Model with the quantified loss for the period by which the System Event caused the Commercial Operation Date to be delayed beyond the original Scheduled COD, in order to:
 - 14.4.8.2.2.1 calculate the resulting reduction in the IRR; and
 - 14.4.8.2.2.2 solve for the period of extension of the Expiry Date required to restore the IRR reflected in the Financial Model ("**maximum extension of the Expiry Date**") by extending the projected monthly cashflows, using input parameters contained in the Financial Model, and calculating the IRR up to the date on which the base case Equity IRR is achieved.
- 14.4.9 At a date not less than six (6) months and not more than twelve (12) months before the Expiry Date, the Seller shall calculate its achieved IRR by taking all amounts (by way of dividends, other distributions, interest, and principal on shareholder loans) already paid by the Seller in respect of Equity up to the date of the calculation, taking into account the actual timing of all such payments as well as projected payments to shareholders in the Seller up to the Expiry Date.
- 14.4.10 If the calculation referred to in clause 14.4.9 shows that the Seller:
 - 14.4.10.1 will achieve its base case Equity IRR by the original Expiry Date, the Expiry Date will not be extended for reason of the System Event in question;
 - 14.4.10.2 will not achieve its base case Equity IRR by the original Expiry Date, the period of extension of the Expiry Date will be calculated as follows:
 - 14.4.10.2.1 the Seller will prepare projected monthly cashflows for the "maximum extension of the Expiry Date", using the input parameters contained in the Financial Model unless either Party objects to any such parameter as not properly reflecting the most likely outcome for the issue which is the subject of the input parameter concerned, in which case the Buyer and the Seller shall agree to amend the input parameter concerned to reflect the most likely outcome or, in the absence of agreement between the Parties, refer the matter for determination by an Independent Expert in accordance with clause 27 (*Fast Track Dispute Resolution*); and
 - 14.4.10.2.2 the Seller will calculate the resulting IRR for the "maximum extension of the Expiry Date", in consideration of all the actual historical and projected cashflows on a monthly basis;

14.4.10.2.3 if the calculation referred to in clause 14.4.10.2.2 establishes that the base case Equity IRR shall be achieved on a date which is prior to the "maximum extension of the Expiry Date", then the Expiry Date shall be extended for the period required to enable the Seller to achieve the base case Equity IRR; and

14.4.10.2.4 if the calculation referred to in clause 14.4.10.2.2 establishes that the base case Equity IRR shall not be achieved by the last day of the "maximum extension of the Expiry Date" calculated in terms of clause 14.4.8.2.2.2, the period of extension of the Expiry Date shall be the lesser of (i) the "maximum extension of the Expiry Date" calculated in terms of clause 14.4.8.2.2.2, and (ii) five (5) years (less the aggregate of all other extensions of the Expiry Date in terms of this clause 14 (*Consequences of a System Event*)).

14.5 **System Events referred to in clause 14.3.2**

14.5.1 In order to obtain relief and/or payment of the Deemed Energy Payment pursuant to a System Event referred to in clause 14.3.2, the Seller must:

14.5.1.1 as soon as practicable, and in any event within five (5) days after it becomes aware, or ought reasonably to have become aware, that the System Event is likely to occur, or has occurred, give to the Buyer a notice thereof which includes details of whether and to what extent the System Event materially adversely affects the ability of the Seller to perform its obligations or exercise its rights; and

14.5.1.2 within ten (10) days of the notice referred to in sub-clause 14.5.1.1, provide the Buyer with the full details of such System Event and any relief claimed, stating full details of the nature of the System Event, the first date of occurrence, its likely duration (if known) and the relief claimed;

14.5.1.3 notify the Buyer if, at any time, it receives or becomes aware of any further information relating to the System Event, giving details of that information to the extent that such information is new or renders information previously submitted materially inaccurate or misleading;

14.5.1.4 provide the Buyer with all reasonable assistance in respect of the Buyer's discussions with and actions against the NTC or the Distributor (as the case may be) in respect of that System Event;

14.5.1.5 demonstrate to the reasonable satisfaction of the Buyer that:

- 14.5.1.5.1 the System Event materially adversely affected the ability of the Seller to perform any of its obligations or exercise any of its rights under this Agreement;
 - 14.5.1.5.2 the Facility would, but for the System Event, have been able to generate and deliver Energy Output;
 - 14.5.1.5.3 there is a need for relief from other obligations of the Seller under this Agreement, as a direct result of a System Event;
 - 14.5.1.5.4 the System Event, Deemed Energy Payment and/or relief from the obligations under this Agreement claimed could not reasonably be expected to be mitigated or recovered by the affected Party acting in accordance with the standards of a Reasonable and Prudent Operator, without incurring material expenditure; and
 - 14.5.1.5.5 the Seller is using reasonable endeavours to perform its obligations under this Agreement.
- 14.5.2 If the Seller has complied with its obligations under clause 14.5.1 above, then subject to the provisions of clause 14.5.3 below:
- 14.5.2.1 the Seller shall, after exhaustion of the Allowance for Grid Unavailability and Curtailment, be entitled to receive the Deemed Energy Payment for the period that the System Event continues, calculated in accordance with clause 4 of Schedule 6 (*Deemed Energy Payment*); and/or
 - 14.5.2.2 the Buyer shall not be entitled to exercise its rights to terminate this Agreement under clause 18.3 (*Termination for Seller Default*) for reason of the failure of the Seller to comply with any provision of this Agreement as a result of such System Event.
- 14.5.3 If the Seller provides any of the information required in terms of clause 14.5.1 above after the dates for submission of information referred to in that clause, then the Seller shall not be entitled to any relief or to payment of the Deemed Energy Payment, for the same number of days as the number of days during which the Seller failed to provide such information.
- 14.5.4 If and to the extent that a System Event for which relief or compensation is claimed by the Seller in accordance with clause 14.5.2 is caused by one or more of the *force majeure* events under the Transmission Agreement or Distribution Agreement (as the case may be) which are listed in clause 14.5.5, then, subject to compliance by the Buyer with clause 14.5.6 below:

- 14.5.4.1 the Seller shall not be entitled to receive, and the Buyer shall not be required to pay, any Deemed Energy Payments contemplated in clause 14.5.2;
- 14.5.4.2 the Buyer shall not be entitled to exercise its rights in terms of clause 18.3 (*Termination for Seller Default*) of this Agreement; and
- 14.5.4.3 the Expiry Date shall be extended to such date as to place in the Seller in the same overall economic position it would have been in but for such System Event resulting from one or more of the *force majeure* events listed in clause 14.5.5 below; provided that the Expiry Date may not be extended by more than five (5) years pursuant to this clause.
- 14.5.5 The *force majeure* events under the Transmission Agreement or the Distribution Agreement (as the case may be), to which the provisions of clause 14.5.4 apply, are the following:
 - 14.5.5.1 catastrophic earthquake, tsunami, cyclone, typhoon or tornado;
 - 14.5.5.2 epidemic or plague;
 - 14.5.5.3 acts of war whether declared or not, invasion, armed conflict, act of foreign enemy or blockade in each case occurring with or involving South Africa;
 - 14.5.5.4 acts of rebellion, act or campaign of terrorism, or sabotage of a political nature, in each case occurring within South Africa;
 - 14.5.5.5 boycott, sanction or embargo.
- 14.5.6 In order for the provisions of clause 14.5.4 to apply, the Buyer must:
 - 14.5.6.1 as soon as practicable, and in any event within ten (10) days after it became aware or ought to have reasonably become aware that an event referred to in clause 14.5.5 has caused a System Event which materially adversely affects the ability of the Seller to perform its obligations or exercise its rights, give to the Seller a notice providing details of the event referred to in clause 14.5.5 which caused the System Event, the date of occurrence and its likely duration (if known);
 - 14.5.6.2 within fifteen (15) days of the Buyer giving the notice referred to in clause 14.5.6.1, give such additional details of the event referred to in clause 14.5.5 which caused the System Event and the consequences of such System Event including its likely impact on the Project;
 - 14.5.6.3 demonstrate to the reasonable satisfaction of the Seller that:

- 14.5.6.3.1 the Buyer could not have avoided the occurrence or consequences of the System Event by steps which it might reasonably be expected to have taken, without incurring material expenditure;
- 14.5.6.3.2 there is a need for relief from other obligations of the Buyer under this Agreement as a direct result of a System Event in question;
- 14.5.6.3.3 any such relief from the Buyer's obligations under this Agreement could not reasonably be expected to be mitigated or recovered by the Buyer acting in accordance with the standards of a Reasonable and Prudent Operator, without incurring material expenditure; and
- 14.5.6.3.4 the Buyer is using reasonable endeavours to perform its obligations under this Agreement.
- 14.5.7 Upon receipt of the information set out in clause 14.5.6 from the Buyer, the Seller shall as soon as reasonably possible:
 - 14.5.7.1 provide the Buyer with all reasonable assistance in respect of the Buyer's discussions with an actions against the NTC or Distributor (as the case may be) in respect of the relevant System Event caused by *force majeure* under the Transmission Agreement or Distribution Agreement; and
 - 14.5.7.2 provide proof that the Seller is using reasonable endeavours to perform its obligations under this Agreement.
- 14.5.8 The Seller shall notify the Buyer if, at any time, it receives or becomes aware of any further information relating to the System Event, giving details of that information to the extent that such information is new or renders information previously submitted materially inaccurate or misleading.
- 14.5.9 If the Parties cannot agree on the extent of the relief required, or the Seller disagrees that the System Event was caused by *force majeure* under the Transmission Agreement or Distribution Agreement, or the Buyer disagrees that a System Event has occurred or that the Seller is entitled to any Deemed Energy Payment or any extension to the Expiry Date, and/or relief from other obligations under this Agreement (all as applicable), the matter shall be dealt with in accordance with clause 26 (*Dispute Resolution*).
- 14.5.10 For the purposes of clause 14.5.4.3, the "same overall economic position" shall, subject to the provisions of clauses 14.5.11 and 14.5.12, be calculated by agreement between the Buyer and the Seller and, in the absence of such

agreement, by an Independent Expert at the request of either Party pursuant to clause 27 (*Fast Track Dispute Resolution*), in the following manner:

- 14.5.10.1 quantify the loss suffered by the Seller, which could include additional costs incurred by the Seller resulting directly from the occurrence of the System Event caused by one or more of the *force majeure* events under the Transmission Agreement or Distribution Agreement (as the case may be) referred to in clause 14.5.5, less the amount of any variable costs that the Seller saved during the period that the System Event continued;
- 14.5.10.2 in calculating the period of extension of the Expiry Date required to compensate for the quantified loss:
 - 14.5.10.2.1 use the Financial Model; and
 - 14.5.10.2.2 update the Financial Model with the quantified loss for the period in which the System Event occurred, in order to:
 - 14.5.10.2.2.1 calculate the resulting reduction in the IRR; and
 - 14.5.10.2.2.2 solve for the period of extension of the Expiry Date required to restore the IRR reflected in the Financial Model ("**maximum extension of the Expiry Date**") by extending the projected monthly cashflows, using input parameters contained in the Financial Model, and calculating the IRR up to the date on which the base case Equity IRR is achieved.
- 14.5.11 At a date not less than six (6) months and not more than twelve (12) months before the Expiry Date, the Seller shall calculate its achieved IRR by taking all amounts (by way of dividends, other distributions, interest, and principal on shareholder loans) already paid by the Seller in respect of Equity up to the date of the calculation, taking into account the actual timing of all such payments as well as projected payments to shareholders in the Seller up to the Expiry Date.
- 14.5.12 If the calculation referred to in clause 14.5.11 shows that the Seller:
 - 14.5.12.1 will achieve its base case Equity IRR by the original Expiry Date, the Expiry Date will not be extended for reason of the System Event in question;
 - 14.5.12.2 will not achieve its base case Equity IRR by the original Expiry Date, the period of extension of the Expiry Date will be calculated as follows:
 - 14.5.12.2.1 the Seller will prepare projected monthly cashflows for the "maximum extension of the Expiry Date", using the input parameters contained in

the Financial Model unless either Party objects to any such parameter as not properly reflecting the most likely outcome for the matter which is the subject of the input parameter concerned, in which case the Buyer and the Seller shall agree to amend the input parameter concerned to reflect the most likely outcome or, in the absence of agreement between the Parties, refer the matter for determination by an Independent Expert in accordance with clause 27 (*Fast Track Dispute Resolution*); and

14.5.12.2.2 the Seller will calculate the resulting IRR for the "maximum extension of the Expiry Date", in consideration of all the actual historical and projected cashflows on a monthly basis;

14.5.12.2.3 if the calculation referred to in clause 14.5.12.2 establishes that the base case Equity IRR shall be achieved on a date which is prior to the "maximum extension of the Expiry Date", then the Expiry Date shall be extended for the period required to enable the Seller to achieve the base case Equity IRR; and

14.5.12.2.4 if the calculation referred to in clause 14.5.12.2.2 establishes that the base case Equity IRR shall not be achieved by the last day of the "maximum extension of the Expiry Date" calculated in terms of clause 14.5.10.2.2.2, the period of extension of the Expiry Date shall be the lesser of (i) the "maximum extension of the Expiry Date" calculated in terms of clause 14.5.10.2.2.2, and (ii) five (5) years (less the aggregate of all other extensions of the Expiry Date in terms of this clause 14 (*Consequences of a System Event*)).

15. CONSEQUENCES OF A COMPENSATION EVENT

15.1 If, as a direct result of the occurrence of a Compensation Event:

15.1.1 the Seller is unable to achieve the Commercial Operation Date by the Scheduled COD;

15.1.2 the Seller is unable to comply with its obligations under this Agreement; and or

15.1.3 the Seller incurs costs or loses 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 18.3 (*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*), to enforce the Implementation Agreement.

15.2 To obtain relief and or claim compensation, the Seller must:

15.2.1 as soon as practicable, and in any event within five (5) days after it became aware or ought reasonable to have become aware that the Compensation Event has caused or is likely to cause delay, breach of an obligation under this Agreement, the Seller to incur costs or lose revenue, give to the Buyer a notice of its claim for postponement of the Last COD, payment of compensation and or relief from its obligations under this Agreement;

15.2.2 within ten (10) days of receipt by the Buyer of the notice referred to in clause 15.2.1 above, give the Buyer full details of the Compensation Event and the extension of time and or any estimated change in project costs claimed and or the loss of revenue claimed; and

15.2.3 demonstrate to the reasonable satisfaction of the Buyer that:

15.2.3.1 the Compensation Event was the direct cause of the estimated change in project costs, the loss of revenue claimed and or any delay in the achievement of the Commercial Operation Date by the Scheduled COD; and

15.2.3.2 the estimated change in project costs, the loss of revenue claimed, time lost, and or relief from the obligations under the Agreement claimed, could not reasonably be expected to be mitigated or recovered by the Seller acting in accordance with the standards of a Reasonable and Prudent Operator.

15.3 If the Seller has complied with its obligations under clause 15.2, then:

15.3.1 prior to the Commercial Operation Date, the Scheduled COD shall remain unchanged, the Expiry Date shall continue to occur twenty (20) years after Scheduled COD and the Operating Period shall continue to commence on the later of the unchanged Scheduled COD and the Commercial Operation Date, but the Last COD shall be postponed by such time as shall be reasonable for such a Compensation Event, taking into account the likely effect of the delay;

15.3.2 in the case of any additional costs being incurred by the Seller:

15.3.2.1 on or before the Commercial Operation Date; or

15.3.2.2 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:

- 15.3.2.2.1 in one lump-sum payment, payable within ninety (90) Business Days of its receipt of a written demand by the Seller supported by all relevant information; or
- 15.3.2.2.2 in equal monthly instalments for the remainder of the Term, commencing within ninety (90) Business Days of its receipt of a written demand by the Seller supported by all relevant information, 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;
- 15.3.3 in the case of:
 - 15.3.3.1 a change in project costs that does not result in Capital Expenditure being incurred by the Seller but which reflects a change in the costs incurred by the Seller after the Commercial Operation Date; and or
 - 15.3.3.2 revenue lost by the Seller,
- the Buyer shall compensate the Seller in accordance with clause 15.6;
- 15.3.4 the Buyer shall give the Seller such relief from its obligations under this Agreement, as is reasonable for such a Compensation Event; and or
- 15.3.5 the Seller shall be entitled to enforce the Implementation Agreement, 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*).
- 15.4 If information is provided after the dates referred to in clause 15.2, then the Seller shall not be entitled to any extension of time, compensation, or relief from its obligations under this Agreement in respect of the period for which the information is delayed.
- 15.5 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 15 (*Consequences of a Compensation Event*), the Parties shall resolve the matter in accordance with clause 26 (*Dispute Resolution*).
- 15.6 The amount of any compensation for loss of revenue referred to in clause 15.3.3 shall be calculated in accordance with:

- 15.6.1 clause 2 of Schedule 6 (*Deemed Energy Payment*) if the Compensation Event occurs before the Commercial Operation Date; or
 - 15.6.2 clause 3 of Schedule 6 (*Deemed Energy Payment*) if the Compensation Event occurs after the Commercial Operation Date,
- and shall be in addition to any other applicable compensation payable under clause 15.3, and reflected as separate line items in the Invoice.

16. FORCE MAJEURE

- 16.1 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 of the Force Majeure Event, and shall give sufficient details to identify the particular event claimed to be the Force Majeure Event.
- 16.2 The Affected Party shall, within a further fifteen (15) Business Days, serve a subsequent notice (such notice being a "**Force Majeure Notice**") setting out:
 - 16.2.1 full particulars of the Force Majeure Event;
 - 16.2.2 the impact of the Force Majeure Event on the Affected Party's obligations under this Agreement;
 - 16.2.3 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; and
 - 16.2.4 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 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.
- 16.3 The Affected Party shall 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.
- 16.4 If the Parties are, on the basis of the Force Majeure Notice and any supporting documentation, unable to agree as to the existence or as to the effect of a Force Majeure Event by the date falling sixty (60) Days after the receipt by the non-Affected Party of the

Force Majeure Notice, either Party shall be entitled to refer the matter to dispute resolution in accordance with clause 26 (*Dispute Resolution*).

- 16.5 If information is provided after the dates referred to in this clause 16 (*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.
- 16.6 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 16 (*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:
 - 16.6.1 such performance is prevented, hindered or delayed by Force Majeure; and
 - 16.6.2 such failure could not have been mitigated by the Affected Party (acting as a Reasonable and Prudent Operator).
- 16.7 Provided that the Seller has complied with the requirements of this clause 16 (*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:
 - 16.7.1 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;
 - 16.7.2 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; and
 - 16.7.3 during any twelve (12) month period commencing on 1 April, where the period by which the Seller's performance of all (or part) of its obligations under this Agreement has been prevented, hindered or delayed by one or more Force Majeure Events (each of which events lasts twenty four (24) hours or longer) for a period in excess of sixty (60) days in such twelve (12) month period, the Expiry Date shall be extended to such date as shall place the Seller in the same overall economic position (after taking into account 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, provided further that the aggregate extensions to the Expiry Date under this clause 16.7.3 shall not result in the Expiry

Date falling more than thirty (30) years after Scheduled COD. The Seller shall not be entitled to enforce this clause 16.7.3 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 19.1 (*Insurances and information*).

16.8 The Affected Party shall use all reasonable efforts to mitigate, rectify and overcome the effects of such Force Majeure Event and to minimise the effect on the Project and shall give the other Party:

16.8.1 regular reports on the progress of the mitigation measures; and

16.8.2 notice promptly on the cessation of the Force Majeure Event.

16.9 Subject to the Seller complying with its obligations under the provisions of this clause 16 (*Force Majeure*), the Seller shall be entitled to receive and the Buyer shall make any Payments to the Seller that are due to the Seller to the extent that the Seller, notwithstanding the existence of the Force Majeure Event sells to the Buyer the Commercial Energy.

16.10 For the purposes of clause 16.7.3, the "same overall economic position" shall, subject to the provisions of clauses , 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 27 (*Fast Track Dispute Resolution*), in the following manner:

16.10.1 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;

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

16.10.2.1 use the Financial Model; and

16.10.2.2 update the Financial Model with the quantified loss for the period in which the Force Majeure Event caused the Commercial Operation Date to be delayed beyond the original Scheduled COD, in order to:

16.10.2.2.1 calculate the resulting reduction in the IRR; and

16.10.2.2.2 solve for the period of extension of the Expiry Date required to restore the IRR reflected in the Financial Model ("**maximum extension of the Expiry Date**") by extending the projected monthly cashflows, using

input parameters contained in the Financial Model, and calculating the IRR up to the date on which the base case Equity IRR is achieved.

- 16.11 At a date not less than six (6) months and not more than twelve (12) months before the Expiry Date, the Seller shall calculate its achieved IRR by taking all amounts (by way of dividends, other distributions, interest, and principal on shareholder loans) already paid by the Seller in respect of Equity up to the date of the calculation, taking into account the actual timing of all such payments as well as projected payments to shareholders in the Seller up to the Expiry Date.
- 16.12 If the calculation referred to in clause 16.11 shows that the Seller:
- 16.12.1 will achieve its base case Equity IRR by the original Expiry Date, the Expiry Date will not be extended for reason of the Force Majeure Event in question;
 - 16.12.2 will not achieve its base case Equity IRR by the original Expiry Date, the period of extension of the Expiry Date will be calculated as follows:
 - 16.12.2.1 the Seller will prepare projected monthly cashflows for the "maximum extension of the Expiry Date", using the input parameters contained in the Financial Model unless either Party objects to any such parameter as not properly reflecting the most likely outcome for the matter which is the subject of the input parameter concerned, in which case the Buyer and the Seller shall agree to amend the input parameter concerned to reflect the most likely outcome or, in the absence of agreement between the Parties, refer the matter for determination by an Independent Expert in accordance with clause 27 (*Fast Track Dispute Resolution*); and
 - 16.12.2.2 the Seller will calculate the resulting IRR for the "maximum extension of the Expiry Date", in consideration of all the actual historical and projected cashflows on a monthly basis;
 - 16.12.2.3 if the calculation referred to in clause 16.12.2 establishes that the base case Equity IRR shall be achieved on a date which is prior to the "maximum extension of the Expiry Date", then the Expiry Date shall be extended for the period required to enable the Seller to achieve the base case Equity IRR; and
 - 16.12.2.4 if the calculation referred to in clause 16.12.2 establishes that the base case Equity IRR shall not be achieved by the last day of the "maximum extension of the Expiry Date" calculated in terms of clause 16.10.2.2.2, the period of extension of the Expiry Date shall be the lesser of (i) the "maximum extension

of the Expiry Date" calculated in terms of clause 16.10.2.2.2, and (ii) ten (10) years (less the aggregate of all other extensions to the Expiry Date in terms of this clause 16 (*Force Majeure*)).

17. UNFORESEEABLE CONDUCT AND CHANGE IN LAW

17.1 Unforeseeable Conduct

- 17.1.1 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.
- 17.1.2 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.
- 17.1.3 Neither Party shall be entitled to any relief or compensation under this clause 17 (*Unforeseeable Conduct and Change in Law*) unless the economic consequences of the Unforeseeable Conduct exceed zero point five per cent (0.5%) of the sum of all Early Operating Energy Payments (if any), Deemed Energy Payments (if any), Commercial Energy Payments and Ancillary Service Payments (if any) made to the Seller during the preceding twelve (12) month period.
- 17.1.4 The Party claiming the occurrence of the Unforeseeable Conduct ("**Claiming Party**") shall give written notice to the other Party ("**Receiving Party**") containing reasonable particulars of such conduct and its likely economic consequences to the Seller, whether adverse or beneficial within five (5) Business Days of it becoming aware of the Unforeseeable Conduct. The notice shall also contain such relevant information (and which shall be supported by documentation reasonably required by the Receiving Party for the purposes of assessing the relief that is being claimed) relating to its claim.
- 17.1.5 Subject to clause 17.1.6 and the Claiming Party complying with its obligations under clause 17.1.4, 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. If the Receiving Party does not effect such a remedy within such period, the Parties shall consult within thirty (30) Business Days after the expiration of such period with a view to reaching a mutually satisfactory resolution of the situation. If a mutually

satisfactory resolution has not been reached within such thirty (30) Business Day consultation period, the matter shall be dealt with in accordance with clause 26 (*Dispute Resolution*).

17.1.6 If the Seller is the Claiming Party, and the remedy contemplated by the Buyer under clause 17.1.5 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:

17.1.6.1 in one lump-sum payment, payable within sixty (60) Business Days of its receipt of the notice contemplated in clause 17.1.4 from the Seller; or

17.1.6.2 in equal monthly instalments for the remainder of the Term, commencing within sixty (60) Business Days of its receipt of the notice contemplated in clause 17.1.4 from the Seller, provided that interest shall accrue on the full amount due and payable, at the Agreed Interest Rate, from the Due Date to, but excluding, the date of final payment.

17.1.7 In so far as the Seller is the Claiming Party, it shall 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.

17.1.8 For the purposes of clauses 17.1.1 and 17.1.2, the "same overall economic position" shall be calculated by agreement between the Buyer and the Seller and, in the absence of such agreement, by an Independent Expert at the request of either Party pursuant to clause 27 (*Fast Track Dispute Resolution*), in the following manner:

17.1.8.1 quantify the:

17.1.8.1.1 loss suffered (in the case of clause 17.1.1) 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

17.1.8.1.2 benefit gained (in the case of clause 17.1.2) 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 17.1.6 and, in the event of a benefit, which benefit shall be paid to the Buyer in accordance with clause 17.1.2.

17.2 **Change in Law**

- 17.2.1 If any Change in Law occurs after the Effective Date, which requires the Seller to incur any additional Capital Expenditure or Operating Expenditure, then the Seller shall be entitled to an extension of the Expiry Date as shall place the Seller in the same overall economic position as it would have been in but for such Change in Law, provided that the total extension of the Expiry Date shall not exceed ten (10) years, and the Seller shall be entitled to relief from such other obligations to the extent that it is unable to perform or fulfil such obligations as a result of the Change in Law.
- 17.2.2 The provisions of this clause 17.2 (*Change in Law*) shall not apply in respect of any Change in Law which:
- 17.2.2.1 was foreseen by the Seller or could reasonably have been foreseen by the Seller on or before the Effective Date as being reasonably likely to occur and to impact the Project; and
 - 17.2.2.2 could reasonably have been foreseen by any person in the position of the Seller on or before the Effective Date as being reasonably likely to occur and to impact the Project; or
 - 17.2.2.3 relates to any changes in the rates, effect, application, implementation, enforcement or interpretation of any tax of any nature (including income, capital gains and value added taxes), custom duties, dues, levies, stamp duty, excise fees or charges; or
 - 17.2.2.4 arises as a direct or indirect result of any appeal or review being lodged against any amendment to any of the Consents issued in terms of any Environmental Laws.
- 17.2.3 The Seller shall use all reasonable endeavours to minimise and mitigate the effects of any Change in Law on the Seller.
- 17.2.4 For the purposes of clause 17.2.1, the "same overall economic position" shall be calculated by agreement between the Buyer and the Seller and, in the absence of such agreement, by an Independent Expert at the request of either Party pursuant to clause 27 (*Fast Track Dispute Resolution*), in the following manner:

- 17.2.4.1 quantify the loss suffered by the Seller, which could include loss of revenue and any additional costs incurred by the Seller resulting directly from the occurrence of the Change in Law, less the amount of any variable costs that the Seller saved as a result of the Change in Law;
- 17.2.4.2 in calculating the period of extension of the Expiry Date required to compensate for the quantified loss:
 - 17.2.4.2.1 use the Financial Model; and
 - 17.2.4.2.2 update the Financial Model with the quantified loss for the period in which the Change in Law occurred, in order to:
 - 17.2.4.2.2.1 calculate the resulting reduction in the IRR; and
 - 17.2.4.2.2.2 solve for the period of extension of the Expiry Date required to restore the IRR reflected in the Financial Model ("**maximum extension of the Expiry Date**") by extending the projected monthly cashflows, using input parameters contained in the Financial Model, and calculating the IRR up to the date on which the base case Equity IRR is achieved.
- 17.2.5 At a date not less than six (6) months and not more than twelve (12) months before the Expiry Date, the Seller shall calculate its achieved IRR by taking all amounts (by way of dividends, other distributions, interest, and principal on shareholder loans) already paid by the Seller in respect of Equity up to the date of the calculation, taking into account the actual timing of all such payments as well as projected payments to shareholders in the Seller up to the Expiry Date.
- 17.2.6 If the calculation referred to in clause 17.2.5 shows that the Seller:
 - 17.2.6.1 will achieve its base case Equity IRR by the original Expiry Date, the Expiry Date will not be extended for reason of the Change in Law in question;
 - 17.2.6.2 will not achieve its base case Equity IRR by the original Expiry Date, the period of extension of the Expiry Date will be calculated as follows:
 - 17.2.6.2.1 the Seller will prepare projected monthly cashflows for the "maximum extension of the Expiry Date", using the input parameters contained in the Financial Model unless either Party objects to any such parameter as not properly reflecting the most likely outcome for the matter which is the subject of the input parameter concerned, in which case the Buyer and the Seller shall agree to amend the input parameter concerned to reflect the most likely outcome or, in the absence of

agreement between the Parties, refer the matter for determination by an Independent Expert in accordance with clause 27 (*Fast Track Dispute Resolution*); and

17.2.6.2.2 the Seller will calculate the resulting IRR for the "maximum extension of the Expiry Date", in consideration of all the actual historical and projected cashflows on a monthly basis;

17.2.6.2.3 if the calculation referred to in clause 17.2.6.2.2 establishes that the base case Equity IRR shall be achieved on a date which is prior to the "maximum extension of the Expiry Date", then the Expiry Date shall be extended for the period required to enable the Seller to achieve the base case Equity IRR; and

17.2.6.2.4 if the calculation referred to in clause 17.2.6.2.2 establishes that the base case Equity IRR shall not be achieved by the last day of the "maximum extension of the Expiry Date" calculated in terms of clause 17.2.4.2.2.2, the period of extension of the Expiry Date shall be the lesser of (i) the "maximum extension of the Expiry Date" calculated in terms of clause 17.2.4.2.2.2, and (ii) ten (10) years (less the aggregate of all other extensions to the Expiry Date in terms of this clause 17.2 (*Change in Law*)).

17.2.7 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.

17.2.8 Any Change in Law which constitutes Unforeseeable Conduct shall be dealt with in terms of clause 17.1 (*Unforeseeable Conduct*).

18. TERMINATION

18.1 No Termination

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

18.2 Termination for Government Default

Simultaneously with termination of the Implementation Agreement for a Government Default, this Agreement shall terminate, (save for clause 3.1 (*Project Site*), clause 3.2 (*Risk and liability*) and clauses 21 (*Intellectual Property of the Buyer*) to 24 (*Contractors*) and clauses 26 (*Dispute Resolution*) to 32 (*Notices*) and clauses 34 (*Representatives*) to 35 (*Miscellaneous*)).

18.3 Termination for Seller Default

- 18.3.1 The Seller shall notify the Buyer of the occurrence, and details, of any Seller Default promptly on the Seller becoming aware of its occurrence.
- 18.3.2 None of the terms of any of the Project Documents (including the Water Use Rights) may be used by the Seller as a defense against the Buyer (in the event of the counterparty to the relevant Project Document being unable to perform its obligations or, in the case of the Water Use Rights, the Water supply being inadequate or no longer existing) to prevent the Buyer from exercising its rights in terms of this clause 18.3 (*Termination for Seller Default*).
- 18.3.3 On the occurrence of a Seller Default, or within a reasonable time after the Buyer becomes aware of the same, the Buyer may:
- 18.3.3.1 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 (f) (namely, the Implementation Agreement is terminated, in accordance with its terms, due to failure by the Seller to comply with any of its obligations in the Implementation Agreement); of the definition of "Seller Default", serve a notice on the Seller terminating this Agreement (save for clause 3.1 (*Project Site*), clause 3.2 (*Risk and liability*) and clauses 21 (*Intellectual Property of the Buyer*) to 24 (*Contractors*) and clauses 26 (*Dispute Resolution*) to 32 (*Notices*) and clauses 34 (*Representatives*) to 35 (*Miscellaneous*) with immediate effect;
- 18.3.3.2 where the Seller Default is the default detailed in sub-clauses (b) (namely, the Seller has not Commenced Construction of the Facility within [■]⁵ ([■]) days of the Effective Date), (e) (namely, the Seller abandons the Construction or Operation and Maintenance, or any material part thereof of the Facility), (i) (namely, the Seller, having Commenced Construction, thereafter materially reduces, suspends or ceases to carry on, for a period of forty five (45) consecutive days, the Construction, or any material part

⁵ The timelines to be determined based on the connection agreement timelines pursuant to the Budget Quotes. The dates might be different for the Projects, depending on the terms of the Budget Quotes.

thereof, of the Facility); (j) (namely, any Consent is suspended or revoked, and not discharged due to a material breach by the Seller); or (k) (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 clause 3.1 (*Project Site*), clause 3.2 (*Risk and liability*) and clauses 21 (*Intellectual Property of the Buyer*) to 24 (*Contractors*) and clauses 26 (*Dispute Resolution*) to 32 (*Notices*) and clauses 34 (*Representatives*) to 35 (*Miscellaneous*) with immediate effect; and

18.3.3.3 for any other Seller Default, while the same is subsisting, serve notice of default on the Seller requiring the Seller to remedy the Seller Default referred to in such notice of default (if the same is continuing) within one hundred and twenty (120) days of such notice of default being delivered. If the Seller Default is not remedied within such period, the Buyer may serve a further notice on the Seller terminating this Agreement ((save for clause 3.1 (*Project Site*), clause 3.2 (*Risk and liability*) and clauses 21 (*Intellectual Property of the Buyer*) to 24 (*Contractors*) and clauses 26 (*Dispute Resolution*) to 32 (*Notices*) and clauses 34 (*Representatives*) to 35 (*Miscellaneous*) with immediate effect.

18.3.4 **Buyer's Costs**

18.3.4.1 The Seller shall reimburse the Buyer with all costs incurred by the Buyer in exercising any of its rights in terms of this clause 18.3 (*Termination for Seller Default*). The Buyer shall take reasonable steps to mitigate such costs.

18.3.4.2 The rights of the Buyer (to terminate or otherwise) under this clause 18.3 (*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).

18.4 Termination for Sanctions and Corrupt Practices

18.4.1 Warranties in regard to Sanctions

The Seller hereby warrants to the Buyer that, as at the date of conclusion of this Agreement:

18.4.1.1 to the best of its knowledge and belief after having made due and careful enquiries, no member of the Group, and no Contractor or Lender, or any of their respective directors or employees:

18.4.1.1.1 has been or is targeted under any Sanctions;

18.4.1.1.2 has violated or is violating any applicable Sanctions; or

18.4.1.1.3 is party to or has participated in any Sanctioned Transaction; and

18.4.1.2 each member of the Group, and to the best of its knowledge and belief after having made due and careful enquires, each Contractor and each Lender maintains appropriate policies and procedures designed to promote compliance with applicable Sanctions.

18.4.2 Undertakings in regard to Sanctions and Sanctioned Transactions

The Seller hereby undertakes to the Buyer that it:

18.4.2.1 shall not (and shall procure that no member of the Group) at any time participate in a Sanctioned Transaction in any manner or contravene any Sanctions;

18.4.2.2 shall take reasonable steps to ensure that appropriate controls and safeguards are in place, designed to prevent it (and any member of the Group or a Contractor) from being or becoming involved in a Sanctioned Transaction, or from contravening any Sanctions; and

18.4.2.3 will maintain in effect and enforce policies and procedures designed to promote compliance, in all material respects, by the Seller, each Group Company, and their respective directors, officers, employees and agents with applicable Sanctions.

18.4.3 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 18.4.1 (*Warranties in regard to*

Sanctions) and 18.4.2 (*Undertakings in regard to Sanctions and Sanctioned Transactions*) above.

18.4.4 Warranties in regard to Corrupt Practices

The Seller hereby warrants to the Buyer that, as at the date of conclusion of this Agreement:

- 18.4.4.1 to the best of its knowledge and belief after having made due and careful enquiries, during the five (5) years preceding the Effective Date no member of the Group, a Contractor, Lender or any of their respective directors or employees;
- 18.4.4.1.1 has violated, or is violating, either directly or indirectly, any Anti-Bribery and Corruption Laws; or
- 18.4.4.1.2 is party to or has participated in any Corrupt Practice; and
- 18.4.4.2 each member of the Group, and to the best of its knowledge and belief after having made due and careful enquiry, each Contractor maintains appropriate policies and procedures designed to promote compliance with applicable Anti-Bribery and Corruption Laws.

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

The Seller hereby undertakes to the Buyer that it:

- 18.4.5.1 shall not (and shall procure that no member of the Group or Contractor shall) at any time participate in a Corrupt Practice in any manner or contravene any Anti-Bribery and Corruption Laws;
- 18.4.5.2 shall take all reasonable steps to ensure that appropriate controls and safeguards are in place, designed to prevent it (and any member of the Group) from being or becoming involved in a Corrupt Practice, or from contravening any Anti-Bribery and Corruption Laws; and
- 18.4.5.3 shall (and shall take reasonable steps to procure that the Group or each Contractor shall) maintain in effect and enforce policies and procedures designed to promote compliance, in all material respects, by the Seller, each Group Company and the Contractors and their respective directors, officers, employees and agents with applicable Anti-Bribery and Corruption Laws; and
- 18.4.5.4 shall, with respect to each of its Lenders, take reasonable steps to satisfy itself that each Lender has suitable policies and procedures in place to

ensure compliance by each of the Lenders and their respective directors, officers, employees and agents with applicable Anti-Bribery and Corruption Laws.

18.4.6 Indemnity

Subject to clause 18.4.9, 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 18.4.4 (*Warranties in regard to Corrupt Practices*) and 18.4.5 (*Undertaking in regard to Corrupt Practices and Anti-Bribery and Corruption Laws*) above.

18.4.7 Reporting Obligations

18.4.7.1 The Seller hereby undertakes to notify the Buyer in writing immediately upon becoming aware thereof:

18.4.7.1.1 of any breach of any of the provisions in clauses 18.4.1 to 18.4.6 (*Indemnity*)above; and

18.4.7.1.2 should it become aware that any of its directors, officers, employees and/or agents, or any of the directors, officers, employees and/or agents of any Group Company or any Contractor or Lender, have become a Sanctioned Entity, participated in any Sanctioned Transaction, violated any applicable Sanctions, participated in any Corrupt Practice, and/or contravened any applicable Anti-Bribery and Corruption Laws.

18.4.8 Breach and termination for Sanctions and Corrupt Practices

18.4.8.1 Subject to clause 18.4.8.2 below, any failure on the part of the Seller to comply with the obligations contemplated in clauses 18.4.1 to 18.4.7 (inclusive) shall constitute a material breach of the Agreement by the Seller, and shall entitle the Buyer, in consultation with the DMRE, to terminate this Agreement by issuing the Seller with written notice of such termination, provided that if the breach:

18.4.8.1.1 involves conduct by a Contractor or any of its directors, officers, employees and/or agents 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, unless the Seller or the Contractor which employs another Contractor terminates the relevant contract with the Contractor in question, 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;

18.4.8.1.2 involves conduct by a Lender or any of its directors, officers, employees and/or agents 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 procures the termination of such Lender's involvement in the Project (in any capacity whatsoever including, without limitation, as Lender under the Financing Agreements) and 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.

18.4.8.2 The Buyer, in consultation with the DMRE, will not be entitled to terminate this Agreement for a Corrupt Practice or contravention of any Anti-Bribery and Corruption Laws, unless the occurrence of the conduct in question has been confirmed by an admission, a court order or a determination by a competent authority.

18.4.9 Without prejudice to its other rights or remedied under this clause 18 (*Termination*), the Buyer shall be entitled to recover from the Seller, the greater of:

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

18.4.9.2 any direct losses sustained by the Buyer in consequence of any breach of this clause 18 (*Termination*), 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 18.4.1 to 18.4.7 above.

18.4.10 In the event that the DMRE has already been compensated by the Seller in terms of clause [11.4.6] of the Implementation Agreement in respect of the same Corrupt

Practice, the Buyer's claim in terms of this clause 18 (*Termination*) shall be reduced by an amount equal to any compensation already paid by the Seller to the DMRE in respect of the same Corrupt Practice, save in respect of any costs which are incurred by the Buyer for its own account in investigating and pursuing any claim against the Seller or a Contractor or Lender in respect of clauses 18.4.1 to 18.4.7 above.

19. PROJECT INSURANCE

19.1 Insurances and information

19.1.1 The Seller shall, in accordance with this clause 19 (*Project Insurance*), obtain and maintain in effect, at its own cost and expense, such insurance coverage as is required by:

19.1.1.1 any Laws; and

19.1.1.2 the standards of a Reasonable and Prudent Operator.

19.1.2 The Seller shall take reasonable steps to ensure that its Contractors obtain and maintain in effect at all times such insurance cover as is appropriate for a reasonable and prudent contractor.

19.1.3 The Seller undertakes to provide the Buyer with any information the Buyer may require in order to determine the Seller's compliance or not with this clause 19 (*Project Insurance*).

19.1.4 The Seller shall solely bear the cost and risk of any under-insurance or failure to comply with this clause 19 (*Project Insurance*).

19.2 Application of insurance proceeds

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

20. GENERAL SELLER UNDERTAKINGS

20.1 As between the Parties and save as otherwise expressly provided for in this Agreement, at all times during the Term, the Seller shall exercise its rights and perform all of its obligations as provided for in this Agreement, including the Construction, Operation and Maintenance of the Facility, at its sole cost and risk and in compliance with the requirements of:

- 20.1.1 applicable Laws;
- 20.1.2 the Codes;
- 20.1.3 the Consents;
- 20.1.4 the terms and conditions of this Agreement;
- 20.1.5 the terms and conditions of the Distribution Agreement, the Transmission Agreement or the Self-Build Agreement, as applicable;
- 20.1.6 the standards of a Reasonable and Prudent Operator; and
- 20.1.7 relevant manufacturers' guidelines and instructions.
- 20.2 The Seller shall deliver a copy of each Project Document listed in Part A (*PPA Related Project Documents*) of Schedule 7 (*Project Documents*) to the Buyer within twenty (20) Business Days of the Effective Date of this Agreement.
- 20.3 If the Seller requires any change to a Project Document listed in Part A (*PPA Related Project Documents*) of Schedule 7 (*Project Documents*) as a result of any replacement of such Project Document or a counterparty to such Project Document, it shall, before effecting such replacement, promptly notify the Buyer of the need for the replacement.
- 20.4 The Seller shall at all times ensure, at its own risk and cost, that sufficient suitable and appropriately qualified and experienced personnel will be employed (whether by the Seller or its Contractors) and available to undertake the Construction, Operation and Maintenance of the Facility. Without limiting the generality of the foregoing, the Seller shall ensure that all key personnel positions are always filled as soon as reasonably possible.
- 20.5 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).
- 20.6 The Seller shall in accordance with the provisions of the Implementation Agreement make financial provision for the Decommissioning Costs and comply with its obligations in the Implementation Agreement regarding the Decommissioning Costs.

- 20.7 The Seller agrees that it indemnifies and shall hold harmless, upon demand, the Buyer against any claims, damages, losses, expenses and any other consequences of or arising out of the Seller's failure to comply with its obligations under this clause 20.6, and or the DMRE exercising its rights in terms of clause 14.9.2.2 (*General Seller Undertakings*) of the Implementation Agreement to recoup arrear decommissioning costs from payments due to the Seller by the Buyer under this Agreement.

21. INTELLECTUAL PROPERTY OF THE BUYER

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

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

22. SET-OFF

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

23. ASSIGNMENT

23.1 Prohibition on Assignment

Save as provided in clause 23.2 (*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.

23.2 Restrictions on Assignment

Notwithstanding clause 23.1 (*Prohibition on Assignment*):

23.2.1 where:

23.2.1.1 the Seller's rights and obligations under the Implementation Agreement have been assigned in accordance with the terms of the Implementation Agreement; and

23.2.1.2 the Seller has provided the Buyer with copies of such Consents as are required to authorise such assignment,

the Seller may Assign its rights and obligations under this Agreement to the same assignee as in the assignment under the Implementation Agreement;

23.2.2 the Buyer may Assign all (and not less than all) of its rights and obligations under this Agreement to a creditworthy Affiliate of the Buyer, provided that, prior to such Assignment, it obtains:

23.2.2.1 the prior written approval of the Seller, which approval shall not be unreasonably withheld, conditioned or delayed; and

23.2.2.2 an amendment to the Implementation Agreement, executed by the Government, pursuant to which the Government agrees to extend the terms of the Implementation Agreement to cover the obligations and liabilities of the Buyer's assignee under this Agreement and the Direct Agreement, together with the obligations and liabilities of the Buyer under this Agreement and the Direct Agreement which are due but not yet discharged at date of such Assignment, and provides the same to the Seller,

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; and

23.2.3 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:

23.2.3.1 the dissolution, restructuring, amalgamation or reorganisation of the Buyer or its businesses, or the occurrence of an analogous event; or

23.2.3.2 the transfer of all or a material part of the Buyer's business, property, assets and/or undertaking to one or more third parties and/or successor entities;

provided that, in each case:

- 23.2.3.2.1 such dissolution, restructuring, amalgamation, reorganisation, analogous event or transfer is at the instruction of the Government and/or NERSA and/or any other Responsible Authority, or is required to give effect to any mandatory requirement of Law;
- 23.2.3.2.2 the Buyer obtains and provides to the Seller an amendment to the Implementation Agreement, executed by the Government, pursuant to which the Government agrees to extend the terms of the Implementation Agreement to cover the obligations and liabilities of the Buyer's assignee under this Agreement and the Direct Agreement, together with the obligations and liabilities of the Buyer under this Agreement and the Direct Agreement which are due but not yet discharged at date of such Assignment; and
- 23.2.3.2.3 the Buyer assigns its corresponding rights and obligations under the Direct Agreement to its assignee simultaneously with its Assignment of this Agreement.

24. CONTRACTORS

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

25. CHANGES IN CONTROL

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

- 25.1 such Change in Control has been approved in terms of the Implementation Agreement; and
- 25.2 the Buyer has been provided with:
 - 25.2.1 copies of any Consents which are required by the Seller to authorise such Change in Control; and
 - 25.2.2 evidence of the approval referred to in clause 25.1.

26. DISPUTE RESOLUTION

26.1 Referable Disputes

The provisions of this clause 26 (*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.

26.2 Internal Referral

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

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

26.2.1.2 if the Parties have been unable to resolve the dispute within fifteen (15) Business Days of referral to the persons specified in clause 26.2.1.1 (or any longer period agreed between the Parties), either Party may refer the dispute for a decision by the group divisional executive of the Buyer and the chief executive officer or equivalent officer of the Seller.

26.2.2 In attempting to resolve the dispute in accordance with the provisions of this clause 26.2 (*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.

26.2.3 Any dispute which has not been resolved by the representatives contemplated in clause 26.2.1.2 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.

26.3 Performance to Continue

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

26.4 Litigation

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

27. FAST TRACK DISPUTE RESOLUTION

- 27.1 Disputes expressly referred for determination pursuant to this clause 27 (*Fast Track Dispute Resolution*) shall be determined by the relevant Independent Expert.
- 27.2 Within five (5) Business Days after a dispute has been referred by either Party to the appropriate Independent Expert, the Independent Expert shall convene a meeting with the Parties to determine the date by which the Parties shall submit in writing their respective arguments. The Independent Expert shall, in his absolute discretion, consider whether a hearing is necessary in order to resolve the dispute.
- 27.3 It shall be entirely within the power and competence of the Independent Expert to decide upon any matters related to the proper preparation of the dispute for hearing and in that regard the Independent Expert shall direct the Parties accordingly.
- 27.4 The Independent Expert shall set the date for the hearing, choose the venue (which must be a venue in South Africa) for the hearing and determine all matters regarding any aspect of the hearing. Moreover, the Independent Expert can decide whether at the hearing the Parties are to give oral evidence or confine themselves to presenting their cases in writing or by some other appropriate procedure. In this regard, the Independent Expert must be guided by considerations of fairness, the cost-effective resolution of the dispute, and the need to resolve the dispute quickly.
- 27.5 The Independent Expert shall provide both Parties with his written decision on the dispute, within twenty (20) Business Days of the referral (or such other period as the Parties may agree after the referral). The Independent Expert shall give his reasons for the award, if so requested by either Party.
- 27.6 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 27.4.
- 27.7 The Independent Expert's costs of any referral shall be borne as the Independent Expert shall specify or, if not specified, equally by the Parties. Each Party shall bear its own

costs arising out of the referral, including its legal costs and the costs and expenses of any witnesses.

27.8 The Independent Expert shall act impartially and may take the initiative in ascertaining the facts and the Law.

27.9 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.

27.10 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 30 (*Confidentiality*) of this Agreement, disclose to any person any such information, data or documentation unless the Parties otherwise agree in writing, and all such information, data or documentation shall remain the property of the Party disclosing or delivering the same and all copies shall be returned to such Party on completion of the Independent Expert's work.

27.11 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.

27.12 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:

27.12.1 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

27.12.2 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.

27.13 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, 1965 and any other law relating to arbitration shall not apply to the Independent Expert or his determination or the procedure by which he reaches his determination. The Independent Expert's decision shall be final and binding on the Parties, save in the event of manifest procedural irregularities in which case the Independent Expert's decision may be submitted to the High Court for review.

28. LIABILITY

28.1 Direct losses

28.1.1 The Parties' liability to each other in respect of any claim that arises pursuant to this Agreement, whether under delict or contract, shall be solely as expressly detailed in this Agreement, and no Party shall have any additional liability to the other Party in respect of such claim.

28.1.2 No Party shall have a claim against the other Party for damages pursuant to this Agreement, unless this Agreement expressly grants such a claim to that Party and, if this Agreement grants a Party a right to terminate this Agreement, that Party shall not be entitled to claim damages or compensation in lieu of terminating this Agreement.

28.1.3 Notwithstanding anything to the contrary in this Agreement, neither Party shall be liable to the other Party for any Special Loss suffered by such other Party as a result of any act or omission by the first Party (save in respect of any losses, liabilities, expenses, damages, costs and claims (including Claims) raised by the Buyer in respect of the obligations and indemnities provided under clause 3.2 (*Risk and liability*), clause 29 (*Third Party Indemnity*) and clause 33.1 (*Seller warranties*), and the reimbursement of the Buyer's costs in terms of clause 18.3.4 (*Buyer's Costs*)).

28.1.4 Save for the indemnities provided under clause 3.2 (*Risk and liability*), clause 29 (*Third Party Indemnity*) and clause 33.1 (*Seller warranties*), the reimbursement of the Buyer's costs in terms of clause 18.4 (*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.

28.2 Mitigation

- 28.2.1 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.
- 28.2.2 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.

29. 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 (the "**Indemnified Parties**") against any and all Claims which may be asserted against or suffered by any of the Indemnified Parties, which relate to any death, injury or loss or damage to property suffered by the relevant third party, to the extent resulting from any negligent act or omission of the Indemnifying Party and its respective officers, employees, consultants, agents and representatives, provided that the death, injury, loss or damage suffered by the relevant third party is not attributable to any act or omission of any one or more of the Indemnified Parties or to the failure of one or more of the Indemnified Parties to take reasonable steps to mitigate or avoid the death, injury, loss or damage in question.

30. CONFIDENTIALITY AND PROTECTION OF PERSONAL INFORMATION

30.1 Confidential Information

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

30.2 Exclusions to Confidential Information

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

- 30.2.1 constitutes Project Data;
- 30.2.2 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 30 (*Confidentiality*);
- 30.2.3 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 30 (*Confidentiality*);
- 30.2.4 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
- 30.2.5 is published by, or the publication of which is required by, a Responsible Authority or any court.

30.3 Permitted disclosure of Confidential Information

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

- 30.3.1 by either Party to any Responsible Authority (where for the purposes of this clause 30.3 (*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:
 - 30.3.1.1 such Party notifies the recipient at or about the time of such disclosure that the information is confidential and should not be disclosed by the recipient to third parties; and
 - 30.3.1.2 such Party shall be responsible for ensuring that the recipient keeps the Confidential Information confidential and shall accordingly be responsible for any failure of the recipient to do so;
- 30.3.2 by either Party as may be required by the regulations of any recognised securities exchange upon which the share capital of the Party (or any shareholder (direct or

indirect) in the Party) is or is proposed to be from time to time listed or dealt in, and the Party making the disclosure shall, if reasonably practicable prior to making the disclosure, and in any event as soon as reasonably practicable thereafter, supply the other Party with a copy of such disclosure or statement and details of the persons to whom the Confidential Information is to be, or has been, disclosed;

30.3.3 by either Party as may be necessary to comply with any obligation under any applicable Law;

30.3.4 by the Buyer to the Distributor or NTC, as applicable, as may be necessary to enable the Distributor or NTC 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), provided that:

30.3.4.1 only Confidential Information which is necessary for such purpose is disclosed by the Buyer to the Distributor or NTC, as applicable; and

30.3.4.2 the Buyer 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.

30.3.5 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;

30.3.6 by the Buyer as may be necessary to the DMRE, the DFFE, the National Treasury of the Government, and the Department of Public Enterprises of the Government; or

30.3.7 by either Party, if so agreed in writing by the Parties prior to the disclosure.

30.4 **Ownership and treatment**

30.4.1 Save for all Project Data, all information supplied by or on behalf of a Party shall remain the property of such Party, and this Agreement shall not operate to transfer ownership interest therein.

30.4.2 The Parties shall, in so far as is reasonably practicable, ensure that any copies of the Confidential Information, whether in hard copy or computerised form, shall clearly identify the Confidential Information as confidential.

30.5 **Protection of Personal Information**

- 30.5.1 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**").
- 30.5.2 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.
- 30.5.3 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:
- 30.5.3.1 identify all reasonably foreseeable internal and external risks to the Personal Information in its possession or under its control; and
 - 30.5.3.2 ensure that the safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards;
- 30.5.4 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:
- 30.5.4.1 the transmission by the Disclosing Party to the Receiving Party in accordance with this Agreement or otherwise permitted by law;
 - 30.5.4.2 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
 - 30.5.4.3 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.

31. GOVERNING LAW AND JURISDICTION

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

32. NOTICES

32.1 Methods of delivery

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

- 32.1.1 if delivered by hand during ordinary business hours, to its physical address in clause 32.2 (*Addresses*), when so delivered;
- 32.1.2 if delivered by pre-paid registered post, to its postal address in clause 32.2 (*Addresses*), seven (7) Business Days after posting, subject to proof of posting;
- 32.1.3 if delivered by email, upon receipt by the sender of a return email from the recipient in which the sender's communication is acknowledged (it being the responsibility of the sender to obtain such acknowledgement); and
- 32.1.4 if delivered by facsimile, upon sending, subject to confirmation of uninterrupted transmission on a transmission report and provided that a hard copy is promptly dispatched to the recipient in the manner provided in clauses 3.2.1 or 32.1.2 above.

32.2 Addresses

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

32.2.1 The Seller:

Postal Address: [•]

Physical Address: [•]

Fax No.: [•]
 Tel No.: [•]
 Email: [•]
 and marked for the attention of [•]

32.2.2

The Buyer:

Postal Address: Eskom Holdings SOC Ltd
 Simmer Centre,
 Corner Power and Lake Streets
 Simmerpan ,
 Germiston,
 South Africa

Physical Address: Eskom Holdings SOC Ltd
 Simmer Centre
 Corner Power and Lake Streets, Simmerpan,
 Germiston,
 South Africa

Email Address: Andrew.Etzinger@eskom.co.za

Tel No.: +27 11 800 5316

Fax No: +27 11 800 4190

Attention: Andrew Etzinger
 General Manager,
 Energy Market Services

32.3 **Domicilium citandi et executandi**

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

32.4 **Change in address**

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

32.5 **Notice of Claims**

Notwithstanding clause 32.1 (*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 (either through electronic mail or facsimile), and at the request of the Buyer the hard copy must be provided in duplicate.

33. **WARRANTIES**

33.1 **Seller warranties**

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

- 33.1.1 it is a limited liability company, duly incorporated and validly existing under the Laws and has taken all necessary actions to authorise its execution of and to fulfil its obligations under this Agreement and the Project Documents to which it is a party;
- 33.1.2 it has the sole purpose, object and business of undertaking the Project and selling Energy Output as provided for in terms of this Agreement;
- 33.1.3 its obligations under this Agreement are legal, valid and binding and enforceable against it, in accordance with the terms of this Agreement;
- 33.1.4 all the Project Documents and the counterparties to them are as detailed and identified in Schedule 7 (*Project Documents*) and have been duly executed on proper authority and will be in full force and effect as at the Effective Date, save for those Project Documents that will be executed after the Effective Date on proper authority;
- 33.1.5 the execution and performance of any Project Documents to which it is a party do not and will not contravene or invalidate any provision of this Agreement, the memorandum of incorporation of the Seller as at the Effective Date, or any order or other decision of any Responsible Authority or arbitrator that is binding on the Seller as at the Effective Date;

- 33.1.6 all Consents (whether provisional or final) required for the conduct of the Project are in full force and effect as at the Effective Date, save for any Consents which are not required under the Laws to be obtained by the Effective Date, provided that:
- 33.1.6.1 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
- 33.1.6.2 the Seller knows of no reason why any provisional Consents issued to it in terms of the Environmental Laws will not be converted into final Consents in order for it to be permitted to commence Operations and Maintenance;
- 33.1.7 no litigation, arbitration, investigation or administrative proceeding is in progress as at the Effective Date or, to the best of the knowledge of the Seller as at the Effective Date (having made all reasonable enquiries), threatened against it or any of the Contractors, which is likely to have a material adverse effect on the ability of the Seller to conduct the Project;
- 33.1.8 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;
- 33.1.9 no proceedings or any other steps have been taken or, to the best of the knowledge of the Seller (having made all reasonable enquiries), threatened for the winding-up or liquidation (whether voluntary or involuntary, provisional or final), judicial management (whether provisional or final), business rescue or deregistration of the Seller or for the appointment of a liquidator, judicial manager or similar officer over it or over any of its assets;
- 33.1.10 it has not carried out any trading or business activities since its incorporation or incurred any liabilities other than in connection with the operations of the Project (including the entering into of this Agreement and the other Project Documents);
- 33.1.11 all information disclosed by or on behalf of the Seller to the Buyer at any time up to the Effective Date and, in particular, during the bid process preceding the award of this Agreement to the Seller, is true, complete and accurate in all material respects and the Seller is not aware of any material facts or circumstances not disclosed to the Buyer which would, if disclosed, be likely to have an adverse effect on the Buyer's decision (acting reasonably) to enter into this Agreement with the Seller;

- 33.1.12 following the execution from time to time of Project Documents listed in Part A (*PPA Related Project Documents*) of Schedule 7 (*Project Documents*), copies of the Project Documents listed in Part A (*PPA Related Project Documents*) of Schedule 7 (*Project Documents*) have been delivered to the Buyer in accordance with the terms of this Agreement, and those copies are true and complete copies of such Project Documents, and the Seller has delivered promptly copies of any other documents replacing or relating to any such Project Documents, which documents would materially affect the performance of these Project Documents and or this Agreement, to the Buyer;
- 33.1.13 the Equipment Suppliers and Contractors have, at all times during the Term, all Supplier Consents required to enable them to fulfil their obligations in terms of their supply or other agreements, and have complied in all material or relevant respects, with such Supplier Consents and the Laws applicable to the Equipment Suppliers and Contractors;
- 33.1.14 as at the Effective Date, it has appointed the Independent Engineer; and
- 33.1.15 in respect of Intellectual Property:
- 33.1.15.1 where it 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;
- 33.1.15.2 it has not and will not infringe any Intellectual Property rights belonging to a third party; and
- 33.1.15.3 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.
- 33.2 Buyer warranties**
- The Buyer represents and warrants to the Seller as on the Effective Date and on each day thereafter during the Term, as follows:
- 33.2.1 it is duly incorporated under the laws of South Africa and has the right, power and authority to enter into this Agreement and to perform its obligations hereunder; and
- 33.2.2 the execution and performance of this Agreement by it has been duly authorised by all necessary corporate action, and its obligations hereunder constitute valid, binding and enforceable obligations.

34. REPRESENTATIVES

34.1 Buyer's Representative

34.1.1 The Buyer shall appoint from the Effective Date until the Expiry Date an individual (the "**Buyer's Representative**") whose identity shall be notified to the Seller to act as the Buyer's duly authorised representative for all purposes connected with this Agreement. The Buyer shall notify the Seller in writing forthwith upon the replacement at any time of the Buyer's Representative and such replacement shall not be effective until notice has been given.

34.1.2 The Buyer's Representative may delegate any of his functions from time to time to a person or persons the identity of whom shall be notified to the Seller and references in this Agreement to the Buyer's Representative shall be construed to include such persons.

34.1.3 Any notice, instruction or information required to be given by or made to the Buyer shall only be valid if given by the Buyer's Representative or delivered to the Buyer's Representative.

34.2 Seller's Representative

34.2.1 The Seller shall appoint from the Effective Date until the Expiry Date, an individual (the "**Seller's Representative**") whose identity shall be notified to the Buyer to act as the Seller's duly authorized representative for all purposes connected with this Agreement. The Seller shall notify the Buyer in writing forthwith upon the replacement at any time of the Seller's Representative and such replacement shall not be effective until such notice has been given.

34.2.2 Any notice, instruction or information required to be given by or made to the Seller shall only be valid if given by the Seller's Representative or delivered to the Seller's Representative.

35. MISCELLANEOUS

35.1 No partnership or agency

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

35.2 No amendment or variation

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

35.3 Waiver

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

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

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

35.4 Third Parties

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

35.5 Counterparts

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

35.6 Entire Agreement

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

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

35.7 Further assurances

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

35.8 **Direct Agreement**

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

35.9 **Public Relations and Publicity**

35.9.1 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:

35.9.1.1 Parliament and its members and officers in accordance with the provisions of the Public Finance Management Act, 1 of 1999;

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

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

35.9.2 Subject to clause 35.9.3, 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.

35.9.3 To the extent that the Buyer is obliged to disclose or publish information pursuant to clause 35.9.1, 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.

35.9.4 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.

35.10 **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.

35.11 **Costs**

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

35.12 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.

35.13 Formulation and notification of claims for relief, compensation or Deemed Energy Payments

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

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

/NAME OF SELLER/

By:

Name:

Title:

Date:

ESKOM HOLDINGS SOC LTD

By:

Name:

Title:

Date:

SCHEDULE 1

DETAILS OF THE PROJECT AND FACILITY

Part 1

Facility

Description of Facility

Scale Drawing

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

Facility Details

Project Name:	
Contracted Capacity: [MW]	
Maximum Export Capacity (as defined in the Distribution Agreement or the Transmission Agreement, as the case may be): [MW]	
Wind Turbine Generator (" WTG ") Type and nameplate capacity: [e.g. 3-Bladed, horizontal Axis, 2 MW]	
WTG Model: [e.g. Vestas V90 2.0MW]	
Hub Height: [m]	
WTG Rotor Diameter: [m]	
Number of WTGs:	
Planned voltage connection level:	
Planned connection point (i.e. the name of the substation or distribution line onto which the Project is intended to connect):	

Co-ordinates of WTGs:

Co-Ordinate System:	UTM WGS84 zone 34	
WTG	Easting	Northing
1		
2		
3		
4		
5		
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P50 Forecast Energy Output:

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

Part 2

Single Line Diagram

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DIAGRAM ON THE NEXT PAGE.**

Part 3**Energy Rates**

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

Indexation**3. Commercial Energy Rate**

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

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

where:

P_n	=	Commercial Energy Rate in Year n;
P_b	=	ZAR [*/MWh (being the Commercial Energy Rate at the Base Date);
I_n	=	Consumer Price Index as published in Contract Year n for the immediately preceding year commencing 1 January and ending 31 December; and
I_b	=	CPI Index at Base Date, being the published Consumer Price Index (Dec 2016 = 100) in respect of the month of December 2021, as rebased by Statistics South Africa (or its equivalent successor entity) from time to time.

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

4. Energy Payment and penalties for forecast inaccuracies

The following formula determines the manner of calculation of the Early Operating Energy Payment and the Commercial Energy Payment, including the penalty that will apply in the circumstances referred to in sub-clause 7.1.3 (*Daily generation forecast*) of this Agreement.

⁶ Insert fully indexed Commercial Energy Rate.

Actual Energy Output (AEO) and Forecast Energy Output (FEO), as determined below, are limited to the Contracted Capacity.

4.1 Calculation of Energy Payment for the Billing Period

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

where:

EP_m	=	Energy Payment (in Rand) for Billing Period m , being the Commercial Energy Payment or the Early Operating Energy Payment, whichever is applicable;
AEO_h	=	Actual Energy Output (in MWh) in hour h ;
RRE_h	=	Equivalent Energy from delivering Regulating Reserve (in MWh) in hour h if contracted, as calculated in clause 4.6 below;
ER_n	=	Energy Rate (R/MWh) for contract year n , being the Early Operating Energy Rate or the Commercial Energy Rate, whichever is applicable;
FP_h	=	Forecast Penalty (in Rand) outstanding;
H	=	Total hours for the Billing Period m ;
h	=	one (1) hour

4.2 Calculation of variance that will attract the Forecast Penalty:

The Forecast Variation Ratio (FVR) is a ratio utilised to calculate the Forecast Penalty, determined as the % (percentage) Energy Output which is over or under delivered by the Seller when compared to the Forecast Energy, subject to adjustment for Ancillary Services support provided during the Operating Period.

Consequently, the Forecast Variation Ratio per hour is calculated as follows:

If $(AEO_h + AS_h)$ is greater than FEO_h then:

$$FVR_h = \frac{(AEO_h + AS_h - FEO_h)}{(CC * h)}$$

If FEO_h is greater than $(AEO_h + AS_h)$ then:

$$FVR_h = \frac{(FEO_h - AEO_h - AS_h)}{(CC * h)}$$

where:

FVR_h	=	Forecast Variation Ratio for the hour (as a %)
AEO_h	=	Actual Energy Output (in MWh) in hour h
AS_h	=	Equivalent Ancillary Service (in MWh) provisioned for in hour h, during the Operating Period, calculated as per clause 5.1 below
FEO_h	=	Forecasted Energy Output (in MWh) in hour h as specified in the Daily Forecast Generation Profile
CC	=	Contracted Capacity (MW)
h	=	one (1) hour

Where the Seller fails to deliver Ancillary Services except in the case where such a failure is due to System Event, Ancillary Services will be deemed to be zero

4.3 Determination of the Penalty Factor

The table below shows the manner of determination of the Penalty Factor (PF) for each hour of the Billing Period in relation to over or under delivered Energy Output by the Seller when compared to the Forecast Energy:

Forecast Variation Ratio (FVR)	Penalty Factor (PF)
Variation of 0 to 10%	0.00
Variation of more than 10% and less than or equal to 20%	0.025
Variation of more than 20% and less than or equal to 30%	0.05
Variation of more than 30%	0.10

4.4 Calculation of the Forecast Penalty

The formula below shows the manner of determination of the Forecast Penalty:

If FEO_h is greater than $(AEO_h + AS_h)$ then:

$$FP_h = ER_n \times PF_h \times (FEO_h - (AEO_h + AS_h))$$

If $(AEO_h + AS_h)$ is greater than FEO_h then:

$$FP_h = ER_n \times PF_h \times ((AEO_h + AS_h) - FEO_h)$$

Where:

FP_h	=	Forecast Penalty (in Rand) for the hour;
ER_n	=	Energy Rate (R/MWh) for contract year n, being the Early Operating Energy Rate or the Commercial Energy Rate, whichever is applicable;
PF_h	=	Penalty Factor for the hour as determined in clause 4.3;
AEO_h	=	Actual Energy Output (in MWh) in hour h;
AS_h	=	Equivalent Ancillary Services Energy (in MWh) in respect of which provision has been made in an hour, during the Operating Period, calculated as per clause 5.1 below;
FEO_h	=	Forecast Energy Output (in MWh) for hour h as specified in the Daily Generation Forecast Generation Profile;
h	=	one (1) hour.

4.5 Calculation of Equivalent Ancillary Service Provision

For purposes of calculating the Ancillary Services contracted and dispatched over the billing period the following formula is provided:

During the Early Operating Period:

$$AS_h = 0 \text{ (zero)}$$

During the Commercial Operating Period:

$$AS_h = ((RRC_h + IRC_h) \times h) - RRE_h$$

Where

AS_h	=	Equivalent Ancillary Service Provision (MWh) in hour h; ⁷
RRC_h	=	Regulating Reserve (in MWh) in hour h, that the Seller contracted to be reserved and made available to the System;
IRC_h	=	Instantaneous Reserve (in MWh) in hour h, that the Seller contracted to be reserved and made available to the System;
RRE_h	=	Equivalent Energy from delivering Regulating Reserve (in MWh) in

⁷ Equivalent Ancillary service provision ensures the seller is not penalized for reserving Capacity for Ancillary services by allowing its removal from the Forecasted Energy Output. If the seller is not called on to provide Ancillary services, RRE_h will be zero and the total Capacity reserved for ancillary services will be effectively removed from the Forecasted Energy Output.

		each hour if made available to the System as calculated in clause 4.6 below ⁸
h	=	one (1) hour

Where Ancillary Services are not or are unable to be performed, there will be no deemed Ancillary Service Payments.

4.6 **Regulating Reserve Energy per hour h (RREh) is determined as follows:**

After regulating (up or down) instruction and during periods when AGC pulses are sent to the unit during the Ancillary Service Contracted hour, Regulating Reserve Energy delivered (“Equivalent Energy/ RRE”) in each hour will be determined using the following formula:

$$RRE_h = \sum_{c=0}^{900} (APO_{c+1} - APO_c) \times \frac{4}{3600}$$

RRE_h	=	Equivalent Energy from delivering Regulating Reserve (in MWh) in each hour if made available to the System
APO_c	=	<i>Actual Power Output (in MW) in time step cycle c</i>
APO_{c+1}	=	<i>Actual Power Output (in MW) for subsequent 4 second time step cycle after time step c in each hour</i>
c	=	<i>1 time step cycle of 4 seconds duration within each hour (h)</i>

The formulae for calculating the downward capacity AGC⁹ pulses and the upward capacity AGC pulses are the same for a Regulation over 900 measurement cycles within hour h.

5. **Ancillary Services Payment and penalties**

5.1 **Ancillary Services Payment and penalties for not providing the AS.**

The following formula determines the manner of calculation of the Payment for Ancillary Services, including the penalty that will apply in the circumstances referred to in Schedule 12 (Ancillary Services) of this Agreement with in the Operating Period.

⁸ When the Ancillary Services are required RRE_h will be negative when increasing generation and positive when decreasing generation. This again ensures the seller is not penalized for using/removing Capacity for Ancillary services by allowing this capacity to be added/subtracted to Actual Energy Output. Because the Instantaneous Reserve Energy output per hour being insignificant due to the short time span it is required, it has been omitted from the calculation

⁹ AGC bears the meaning ascribed to it in Schedule 12

5.1.1 Calculation of Ancillary Services Payment for the Billing Period:

$$ASP_m = \sum_{h=1}^H (IRC_h * ER) * PF_{IR} + \sum_{h=1}^H (RRC_h * ER) * PF_{RR} - DP_m$$

Where

ASP _m	=	Ancillary Services Payment for the metering billing period m;
IRC _h	=	Instantaneous Reserve Energy (in MWh) in hour h that the Seller contracted to be reserved and made available to the System;
RRC _h	=	Regulating Reserves Energy (in MWh) in hour h, that the Seller contracted to reserved and made available to the System;
ER _n	=	Commercial Energy Rate (R/MWh) for contract year n;
PF _{IR}	=	Instantaneous Reserve performance factor for the Billing Period. If Seller is not dispatched during the month for IR, PF _{IR} = 1 using the SCADA data. For details of how this is calculated refer to in clause 6.1 (<i>Performance Factors</i>) of Schedule 12 (<i>Ancillary Services</i>).
PF _{RR}	=	Regulating Reserve performance factor for the Billing Period using the SCADA data For details of how this is calculated refer to in clause 6.1 (<i>Performance Factors</i>) of Schedule 12(<i>Ancillary Services</i>).
H	=	Total hours for the billing period m;
h	=	one (1) hour
DP _m	=	Decertification Penalty for the Billing Period. For details of how this is calculated refer to clause 5.1.2 (<i>Calculation of Decertification Penalty for the Billing Period</i>).

Reserve Performance Factor (for both PF _{IR} and PF _{RR})	Value
Performance below 50.00%	0.00
50.00% and less than 90.00%	Actual PF _{IR} or PF _{RR}
90.00% and above	1.00

Refer to the provisions of this Schedule 12 for further detail of Ancillary Service calculations

5.1.2 Calculation of Decertification Penalty for the Billing Period

5.1.2.1 In the event that the Facility is decertified in terms of clause 2.5 (*Decertification*) Schedule 12 (*Ancillary Services*), and for as long as the decertification endures, the following penalty shall apply –

$$DP_m = \sum_{d=1}^D (IR_{Ed} * ER * P_{esc-ir}) + \sum_{d=1}^D (RR_{Ed} * ER * P_{esc-rr})$$

$$IR_{Ed} = IR_{cert} * IR_{h-d}$$

$$RR_{Ed} = RR_{cert} * RR_{h-d}$$

$$P_{esc-ir} = 1.0175^{nIR}$$

$$P_{esc-rr} = 1.0175^{nRR}$$

Where

DP_m	=	Decertification Penalty (in Rands) for the Billing Period m;
IR_{Ed}	=	Equivalent Instantaneous Reserve Energy (in MWh) that the Seller could be contracted for in day d;
RR_{Ed}	=	Equivalent Regulating Reserve Energy (in MWh) that the Seller could be contracted for in day d;
ER	=	Commercial Energy Rate (R/MWh) for contract year n;
IR_{cert}	=	Certified Instantaneous Reserve Capacity (in MW)
RR_{cert}	=	Certified Regulating Reserve Capacity (in MW)
IR_{h-d}	=	1855/365, which is equivalent hours contracted for IR in day d
RR_{h-d}	=	1855/365, which is equivalent hours contracted for RR in day d
D	=	Total days decertified in the billing period m;
d	=	one (1) day
P_{esc-ir}	=	Penalty escalation factor based on number of months that facility is decertified for Instantaneous Reserve
P_{esc-rr}	=	Penalty escalation factor based on number of months that facility is decertified for Regulating Reserve
nIR	=	number of months that facility is decertified for Instantaneous Reserve after the first month
nRR	=	number of months that facility is decertified for Regulating Reserve after the first month

- 5.1.2.2 For the sake of clarity in the case where the Facility is not decertified or in the event that following a decertification, it subsequently becomes recertified in terms of clause 2.5 (*Decertification*) of Schedule 12 (*Ancillary Services*), then DP_m shall be zero unless such DP_m have not been paid or set-off, in which case the DP_m due and payable shall apply.
- 5.2 Refer to Schedule 12 for further details relating to Ancillary Service calculations.

SCHEDULE 2

COMPLETION MILESTONES AND FORMS OF NOTICES

Part 1

Completion Milestones

Scheduled COD for the Facility: [*]

PLEASE SEE THE PROJECT SCHEDULE GANTT CHART ON THE NEXT PAGE

Part 2

Unit Completion Form

[on the letterhead of the Independent Engineer]

[Date]

Eskom Holdings SOC Ltd

Single Buyer Office

Simmer Centre

Corner Power and Lake Streets, Simmerpan,

Germiston,

South Africa

Email copy to sbo.reippp@eskom.co.za

Attention: Buyer Representative

Dear Sirs,

Unit Completion Form

We refer to the Power Purchase Agreement entered into between [●] and Eskom Holdings SOC Ltd (Registration No. 2002/015527/30) 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 Unit Completion Form as defined in and as may be issued in terms of the PPA.

We hereby represent and warrant as at the date hereof the following:

- The Unit [●] of the Facility has been successfully connected to the System as required in terms of the Transmission Agreement or the Distribution Agreement (as the case may be) and the Codes.
- The Capacity of Unit [●], as measured at the Delivery Point, is [●]MW.

- The Unit [●] of the Facility has passed the relevant acceptance tests required for the Operation and Maintenance of Unit [●] and has been successfully completed in accordance with the relevant construction contract, the Codes and the Consents.
- The Facility Metering Installation has been procured, installed, tested and successfully commissioned in accordance with the PPA.

The Unit is ready to begin generation and delivery of Early Operating Energy to the Delivery Point.

Yours faithfully,

[NAME OF INDEPENDENT ENGINEER]

Part 3

Facility Completion Form

[on the letterhead of the Independent Engineer]

[Date]

Eskom Holdings SOC Ltd

Single Buyer Office

Simmer Centre

Corner Power and Lake Streets, Simmerpan,

Germiston,

South Africa

Email copy to sbo.reippp@eskom.co.za

Attention: Buyer Representative

Dear Sirs,

Facility Completion Form

We refer to the Power Purchase Agreement entered into between [●] and Eskom Holdings SOC Ltd (Registration No. 2002/015527/30) on **[insert date]** (the "**PPA**").

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

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

We hereby represent and warrant as at the date hereof the following:

- The Facility is compliant with the Codes.
- The Facility has passed the relevant acceptance tests and has been successfully commissioned in accordance with the relevant construction contract, the Codes and the Consents.

- The Achieved Capacity of the Facility, being the net Capacity of the Facility estimated at the Delivery Point and expressed as AC power capacity, net of capacity attributable to self-consumption and electrical losses up to the Delivery Point, as determined pursuant to the acceptance tests described above, is [●]MW¹⁰.
- The Facility has a mechanism installed to limit the Capacity exported from the Facility to the lower of the Achieved Capacity and the Contracted Capacity.
- The Reference Mast has been installed at the location agreed in the PPA, has been successfully commissioned and is capable of performing its functions as set out in the PPA.

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

Yours faithfully,

[NAME OF INDEPENDENT ENGINEER]

¹⁰ Amount to be included following completion of acceptance tests.

Part 4

Form of Notice of Commencement of Unit

[on the letterhead of the Seller]

[Date]

Eskom Holdings SOC Ltd

Single Buyer Office

Simmer Centre

Corner Power and Lake Streets, Simmerpan,

Germiston,

South Africa

Email copy to sbo.reippp@eskom.co.za

Attention: Buyer Representative

Dear Sirs

Notice of Commencement of Unit [●]

We refer to the power purchase agreement dated [●], (the "PPA") between Eskom Holdings SOC Ltd (Registration No. 2002/015527/30) (the "Buyer") and ourselves, [●] (the "Seller").

This notice ("Notice") is the Notice of Commencement of Unit referred to in clause 5.4 (Early Operating Period) of the PPA. Unless otherwise defined herein, capitalised terms used in this Notice shall have the meanings assigned to them in the PPA.

We hereby give notice that Unit [●] of the Facility has been successfully connected to the System as required in terms of the Transmission Agreement or the Distribution Agreement (as the case may be), and that the Unit Commencement Date for Unit [●] will be [insert date].

The Capacity of Unit [●], as measured at the Delivery Point, is [●]MW.

We hereby represent and warrant that:

1. The Unit has achieved Unit Completion and the Unit Completion Form has been issued in respect of it.

2. We have obtained all of the Consents required for the Operation and Maintenance of Unit [●], 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. NERSA [or [●], being the person nominated by NERSA for such purpose] has issued to the Seller a notification of the Unit's compliance with the Codes, and such notification is attached hereto.
4. NTC and or the Distributor has provided written confirmation to the Seller certifying that the Unit may be connected to the System for purposes of delivering Early Operating Energy or Commercial Energy, and such confirmation is attached hereto.
5. The Facility Metering Installation has been procured, installed, tested and successfully commissioned in accordance with the PPA.
6. None of the events entitling the Buyer to terminate the PPA in accordance with clause 18 (*Termination*) of the PPA has occurred and is continuing.
7. All of the Project insurances required pursuant to clause 19 (*Project Insurance*) of the PPA are in place and in full force and effect.

Yours faithfully,

[NAME OF SELLER]

Representative of the Seller

Part 5

Form of Notice of Commencement of Facility

[on the letterhead of the Seller]

[Date]

Eskom Holdings SOC Ltd

Single Buyer Office

Simmer Centre

Corner Power and Lake Streets, Simmerpan,

Germiston,

South Africa

Email copy to sbo.reippp@eskom.co.za

Attention: Buyer Representative

Dear Sirs

Notice of Commencement of Facility

We refer to the power purchase agreement dated [●] (the "**PPA**") between Eskom Holdings SOC Ltd (Registration No. 2002/015527/30) (the "**Buyer**") and ourselves, [●] (the "**Seller**").

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

We hereby represent and warrant the following:

1. The Facility has achieved Facility Completion and the Facility Completion Form has been issued in respect of it.
2. The Achieved Capacity of the Facility is [●]MW.
3. NERSA [or [●], being the person nominated by NERSA for such purpose] has issued to the Seller a notification of the Facility's compliance with the Codes, and such notification is attached hereto.

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

Yours faithfully,

[NAME OF SELLER]

Representative of the Seller

Commencement of Construction Confirmation Form

[on the letterhead of the Independent Engineer]

[Date]

Eskom Holdings SOC Ltd

Single Buyer Office

Simmer Centre

Corner Power and Lake Streets, Simmerpan,

Germiston,

South Africa

Email copy to sbo.reippp@eskom.co.za

Attention: Buyer Representative

Dear Sirs,

Commencement of Construction Confirmation Form

We refer to the Power Purchase Agreement entered into between [●] and Eskom Holdings SOC Ltd on [insert date] (the "PPA").

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

This Notice is the Commencement of Construction Confirmation Form as defined in and as may be issued in terms of the PPA.

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

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

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

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

Yours faithfully,

[NAME OF INDEPENDENT ENGINEER]

SCHEDULE 3**SCHEDULED AND UNSCHEDULED OUTAGES**

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

1. Three (3) year ahead Planned Maintenance Schedule

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

2. Annual Planned Maintenance Schedule

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

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

3. Monthly and Weekly planned maintenance schedule

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

4. Reactions to System Events resulting from unplanned maintenance

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

5. Consequences of non-compliance with a Curtailment instruction

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

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

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

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

Day	Time	Hours	MWh	Available MW
2nd	00:00	01:00		
	01:00	02:00		
	02:00	03:00		
	03:00	04:00		
	04:00	05:00		
	05:00	06:00		
	06:00	07:00		
	07:00	08:00		
	08:00	09:00		
	09:00	10:00		
	10:00	11:00		
	11:00	12:00		
	12:00	13:00		
	13:00	14:00		

Day	Time	Hours	MWh	Available MW
	14:00	15:00		
	15:00	16:00		
	16:00	17:00		
	17:00	18:00		
	18:00	19:00		
	19:00	20:00		
	20:00	21:00		
	21:00	22:00		
	22:00	23:00		
	23:00	24:00		
3rd	00:00	01:00		
	01:00	02:00		
	02:00	03:00		
	03:00	04:00		
	04:00	05:00		
	05:00	06:00		
	06:00	07:00		
	07:00	08:00		
	08:00	09:00		
	09:00	10:00		
	10:00	11:00		

Day	Time	Hours	MWh	Available MW
	11:00	12:00		
	12:00	13:00		
	13:00	14:00		
	14:00	15:00		
	15:00	16:00		
	16:00	17:00		
	17:00	18:00		
	18:00	19:00		
	19:00	20:00		
	20:00	21:00		
	21:00	22:00		
	22:00	23:00		
	23:00	24:00		
4th	00:00	01:00		
	01:00	02:00		
	02:00	03:00		
	03:00	04:00		
	04:00	05:00		
	05:00	06:00		
	06:00	07:00		
	07:00	08:00		

Day	Time	Hours	MWh	Available MW
	08:00	09:00		
	09:00	10:00		
	10:00	11:00		
	11:00	12:00		
	12:00	13:00		
	13:00	14:00		
	14:00	15:00		
	15:00	16:00		
	16:00	17:00		
	17:00	18:00		
	18:00	19:00		
	19:00	20:00		
	20:00	21:00		
	21:00	22:00		
	22:00	23:00		
	23:00	24:00		
5th	00:00	01:00		
	01:00	02:00		
	02:00	03:00		
	03:00	04:00		
	04:00	05:00		

Day	Time	Hours	MWh	Available MW
	05:00	06:00		
	06:00	07:00		
	07:00	08:00		
	08:00	09:00		
	09:00	10:00		
	10:00	11:00		
	11:00	12:00		
	12:00	13:00		
	13:00	14:00		
	14:00	15:00		
	15:00	16:00		
	16:00	17:00		
	17:00	18:00		
	18:00	19:00		
	19:00	20:00		
	20:00	21:00		
	21:00	22:00		
	22:00	23:00		
	23:00	24:00		
6th	00:00	01:00		
	01:00	02:00		

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

Day	Time	Hours	MWh	Available MW
	23:00	24:00		
7th	00:00	01:00		
	01:00	02:00		
	02:00	03:00		
	03:00	04:00		
	04:00	05:00		
	05:00	06:00		
	06:00	07:00		
	07:00	08:00		
	08:00	09:00		
	09:00	10:00		
	10:00	11:00		
	11:00	12:00		
	12:00	13:00		
	13:00	14:00		
	14:00	15:00		
	15:00	16:00		
	16:00	17:00		
	17:00	18:00		
	18:00	19:00		
	19:00	20:00		

Day	Time	Hours	MWh	Available MW
	20:00	21:00		
	21:00	22:00		
	22:00	23:00		
	23:00	24:00		

2. Daily Forecast Generation Profile

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

Time	Hours	MWh	Available MW
00:00	01:00		
01:00	02:00		
02:00	03:00		
03:00	04:00		
04:00	05:00		
05:00	06:00		
06:00	07:00		
07:00	08:00		
08:00	09:00		
09:00	10:00		
10:00	11:00		
11:00	12:00		

12:00	13:00		
13:00	14:00		
14:00	15:00		
15:00	16:00		
16:00	17:00		
17:00	18:00		
18:00	19:00		
19:00	20:00		
20:00	21:00		
21:00	22:00		
22:00	23:00		
23:00	24:00		

SCHEDULE 5**LIST OF FIRMS - INDEPENDENT ENGINEER**

Firm Name	Physical Address	Telephone Number	Contact person and email address

SCHEDULE 6**DEEMED ENERGY PAYMENT**

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

1. Facility Power Curve ("FPC")

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

- 1.1.1 wind speed (m/s);
 - 1.1.2 wind direction (degrees); and
 - 1.1.3 Energy Output of the Facility,
- (the "**FPC Data**").

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

- 1.2.1 all FPC Data (except Energy Output, which shall be measured using the Facility Metering Installation) shall be measured and recorded using self-supporting wind speed and direction measurement stations mounted upon a mast, turbine or other appropriate location and used to monitor the wind conditions experienced by the Project Site ("**Reference Mast**" and "**Backup Reference Mast**").
- 1.2.2 The Reference Mast and Backup Reference Mast may be separate masts installed adjacent to each other and comprising separate power supplies, data logging equipment, and measuring instruments on the same height, or preferably a single mast comprising fully redundant power supplies, data logging equipment and measuring instruments on the same heights;
- 1.2.3 The Reference Mast and Backup Reference Mast shall be located at or near to the Facility and must be confirmed by the Independent Engineer. The location of the Reference Mast and Backup Reference Mast may not be changed without the prior written agreement of both Parties;
- 1.2.4 The installation and location of the Reference Mast and Backup Reference Mast shall be in compliance with the provisions of IEC 6140012;

- 1.2.5 The Seller may, with prior written agreement from the Buyer, utilise the wind conditions as measured by the Backup Reference Mast in the event of failure or interruption to the Reference Mast;
- 1.2.6 the FPC Data shall be recorded as average values taken over ten (10) minute intervals;
- 1.2.7 the FPC Data shall be logged by a data logger on the Project Site and date stamped;
- 1.2.8 the FPC Data shall be collected by the Facility SCADA system;
- 1.2.9 If the Energy Output of the Facility cannot be measured directly at the Delivery Point, then it may be calculated by summing the electricity measured at the turbine meter at the base of each unit and multiplying by zero point nine seven five (0.975) to account for internal losses;
- 1.2.10 the wind speed data shall be binned into wind speed intervals of 0.5m/s; and
- 1.2.11 the wind direction data shall be binned into direction intervals of fifteen (15) degrees.
- 1.3 The FPC Data shall be stored and analysed by the Seller in order to produce, for each recorded wind speed direction, an FPC, which shall indicate the relationship between the Capacity of the Facility and the wind speed.
- 1.4 The FPC Data must be reported to the Buyer by the end of the first Contract Year following the Commercial Operation Date.
- 1.5 The FPC Data shall be prepared and submitted in accordance to the latest version of the Buyer's FPC data template, which the Seller shall source from the Buyer at the time of the FPC development. The FPC Data shall be delivered in the following formats:
 - 1.5.1 a hard copy of curves showing binned values only;
 - 1.5.2 a hard copy scatter plot showing the individual average ten (10) minute values; and
 - 1.5.3 all raw data obtained from the SCADA, the Reference Mast, the Backup Reference Mast and the Facility Metering Installation, averaged, in electronic format, to enable the Buyer to compare the raw data to the binned data.
- 1.6 Within one (1) Month after the end of the first Contract Year following the Commercial Operation Date, the FPC as at that time shall be confirmed by the Independent Engineer and shall become the "**Approved FPC**" for that Contract

Year. Along with the Approved FPC for that Contract Year, the Independent Engineer shall confirm an annual degradation value, which value will be applied to automatically update the Approved FPC for each subsequent Contract Year, unless the Buyer and Seller agree, at any time, to amend the FPC otherwise than in accordance with the confirmed degradation value, in which case such amended FPC shall be the Approved FPC.

- 1.7 In case of dispute between the Seller and the Buyer involving the Approved FPC, either Party may refer the dispute to an Independent Expert for determination in accordance with clause 27 (*Fast Track Dispute Resolution*).
- 1.8 The Approved FPC shall remain in place for the duration of the PPA unless an update is requested by the Buyer or Seller, in which case, costs of the update will be incurred by the Party requesting the revision.
- 1.9 If there has been insufficient data recorded during the first Contract Year following the Commercial Operation Date to develop a full and complete suite of Approved FPCs then the development of the FPC shall be extended by a further six (6) months.
- 1.10 Subject to clause 1.11 of this Schedule 6 (*Deemed Energy Payment*), if an Approved FPC is not completed within eighteen (18) months of the Commercial Operation Date, Deemed Energy for a period of sixty (60) days beyond that date shall be determined by the Independent Engineer, beyond which no Deemed Energy Payments shall be payable by the Buyer until an Approved FPC is completed (and there shall be no entitlement to retrospective claims for Deemed Energy, after the Approved FPC is completed).
- 1.11 If the insufficiency of data available to complete an Approved FPC is due to the breach, wilful misconduct or negligence of the Seller, then no Deemed Energy Payments shall be payable by the Buyer until such breach, wilful misconduct or negligence is remedied and an Approved FPC is completed.

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

- 2.1 Where the Compensation Event or System Event entitling the Seller to the Deemed Energy Payment commences before the Commercial Operation Date and causes a delay of the Commercial Operation Date beyond the Scheduled COD, the Deemed Energy Payment for the period by which the Commercial Operation Date is delayed beyond the Scheduled COD ("**the Delay Period**"),

subject to application of the Allowance for Grid Unavailability and Curtailment determined in accordance with clause 2.3 below, shall be determined as follows:

$$DEP = EO \times CER$$

2.2 where:

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

2.2.2 EO is the P50 average Energy Output forecast (being Energy Output that the Facility is judged to have a fifty percent (50%) probability of exceeding and a fifty percent (50%) probability of underachieving (MWh)) which, for the avoidance of doubt, is net of all expected losses and expected downtime due to planned and unplanned maintenance), as confirmed in writing by the Independent Engineer ("**the P50 Forecast**") for the Delay Period (MWh); and

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

2.3 Allowance for Grid Unavailability and Curtailment shall be determined as follows:

$$AGUC = \frac{AGUP}{8760} \times P50 \text{ Forecast}$$

where:

2.3.1 AGUC is the Allowance for Grid Unavailability and Curtailment (MWh);

2.3.2 AGUP is the Allowed Grid Unavailability Period (hours);

2.3.3 8760 is the number of hours in a year; and

2.3.4 P50 Forecast is the P50 Forecast for the first Contract Year (MWh).

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

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

3.2 If the Allowance for Grid Unavailability and Curtailment, determined in accordance with clause 2.3 above (save that the P50 Forecast will be the P50 Forecast for the applicable Contract Year and not necessarily the first Contract Year), is exceeded in any Contract Year, then Deemed Energy Payments shall become payable, and shall be calculated based on the extent to which such System Events impact on the Energy Output of the Facility (in excess of the Allowance for Grid Unavailability

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

3.3 Where any System Event commencing in any one Contract Year carries over into the following Contract Year, the System Event will be attributed to each Contract Year based on the period of time for which such System Event endures in the relevant Contract Year.

3.4 Where the Compensation Event or System Event entitling the Seller to the Deemed Energy Payment commences after the Commercial Operation Date, the Deemed Energy Payment for the period in respect of which a Compensation Event or a System Event entitles the Seller to the Deemed Energy Payment (a "**Deemed Energy Period**") shall be calculated as follows:

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

3.5 **where:**

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

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

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

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

3.5.5 *AE* is the Energy Output (MWh) of the Facility, metered at the Delivery Point during each respective ten (10) minute period during the Deemed Energy Period;

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

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

3.5.6.2 after the end of the first Contract Year and following the completion of the Approved FPC, *EO* will be based on the Approved FPC and shall be calculated using the following formula:

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

where:

- 3.5.6.2.1 *EO* is the expected Energy Output (MWh);
- 3.5.6.2.2 *FA* is the Facility Availability calculated for the ten (10) minute period preceding the commencement of the Deemed Energy Period (%); and
- 3.5.6.2.3 *AP* is the estimated Capacity of the Facility during each ten (10) minute period, as determined from the Approved FPC and the FPC Data (MW), or as confirmed by the Independent Engineer in terms of clause 1.10 of this Schedule 6 (*Deemed Energy Payment*).
- 3.6 If the Deemed Energy Period commences during the first five (5) minutes of a ten (10) minute period, such ten (10) minute period shall be taken into account in the calculation of the Deemed Energy Payment. If the Deemed Energy Period commences during the last five (5) minutes of a ten (10) minute period, such ten (10) minute period shall not be taken into account in the calculation of the Deemed Energy Payment.
- 3.7 In the event of a failure of or interruption to the Reference Mast, the Backup Reference Mast may be used. In the event of a failure of or interruption to the Reference Mast and Backup Reference Mast, the relevant expected Energy Output shall be calculated by the Independent Engineer, provided that if the failure of or interruption to the Reference Mast and Backup Reference Mast is due to the breach, wilful misconduct or negligence of the Seller, no Deemed Energy Payment shall be payable by the Buyer for as long as such failure of or interruption to the Reference Mast and Backup Reference Mast persists.
- 3.8 In the case that the Approved FPC has been delayed for six (6) months, the Deemed Energy Payment shall be calculated using the methodology presented in clause 3 (*Deemed Energy Payment for System Events and Compensation Events occurring before the Commercial Operation Date*) of this Schedule 6 (*Deemed Energy Payment*) until the Approved FPC is agreed.

4. Adjustment of Deemed Energy Payments

- 4.1 Where the Approved FPC has been determined, the Buyer or Seller may dispute the Deemed Energy Payment calculated in terms of clause 3.5.6.1 and clause 3 (*Deemed Energy Payment for System Events and Compensation Events occurring before the Commercial Operation Date*) of this Schedule 6 (*Deemed Energy Payment*) retrospectively, if the Deemed Energy Payment calculated based on the Approved FPC proves to be different from the Deemed Energy Payment calculated in terms of clause 3.5.6.1 and clause 2 (*Deemed Energy Payment for System Events and Compensation Events occurring before the Commercial Operation Date*) of this Schedule 6 (*Deemed Energy Payment*). Overpayments made by the Buyer may be set off against payment due by the Buyer, and underpayments may be included in the Invoice for the Billing Period after such underpayment was determined.
- 4.2 The amount of the overpayment or underpayment determined in terms of clause 4.1 of this Schedule 6 (*Deemed Energy Payment*) shall bear interest at the Agreed Interest Rate from the date of such overpayment or underpayment to, but excluding, the date of repayment or set-off, as the case may be.

SCHEDULE 7

PROJECT DOCUMENTS

[THIS MUST INCLUDE THE BUDGET QUOTE, THE DISTRIBUTION AGREEMENT OR TRANSMISSION AGREEMENT, AS APPLICABLE, 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 Agreement
- 1.3 Water Use Agreement
- 1.4 NERSA generation licence
- 1.5 Transmission Agreement (if applicable);
- 1.6 Distribution Agreement (if applicable);
- 1.7 Self-Build Agreement (if applicable);
- 1.8 Budget Quote;
- 1.9 Direct Agreement in respect of the [applicable connection agreement referred to above];

SCHEDULE 8

DIRECT AGREEMENT

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DIRECT AGREEMENT ON THE NEXT PAGE.**

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

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

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

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

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

1.2 Appendices

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

2. Facility**2.1 Summary**

This section shall include details of:

2.1.1 overall Project progress (including a construction "S-curve");

2.1.2 areas of concern/urgent pending items;

2.1.3 *status of work for engineering, procurement, site delivery, commissioning and testing; and*

2.1.4 *a summary table shall be added showing the percentage of work actually performed versus the planned progress. An example table is provided in Table 1 (Facility example: percentage of work actually done versus the planned progress) below.*

2.2 Engineering and Design

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

2.3 Procurement and Manufacturing

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

2.4 Shipment and Delivery to Site

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

2.5 Erection

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

2.6 Commissioning

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

2.7 Testing

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

2.8 Quality Report

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

2.9 Staffing

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

2.10 Health and Safety

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

2.11 Environmental issues

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

2.12 Schedule

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

2.13 Transmission/Distribution Connection Works

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

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

- **Procurement and Manufacturing**
- **Shipment and Delivery to Site**
- **Erection**
- **Commissioning**

- **Testing**
- **Quality Report**
- **Health and Safety**
- **Environmental issues**
- **Schedule**

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

Area of Work	% Actual vs Planned
Engineering & Design	
Civil works	
Power Plant	
Electrical system (excluding switchyard)	
Switchyard	
Instrumentation and control system	
Water and waste water treatment	
Other Balance of plant items	
Area of Work	
Procurement and Manufacturing	
As per above	
Shipment	
As per above	
Erection	
As per above	
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 - Transmission line example: percentage of work actually done versus the planned progress

Area of Work	% Actual vs Planned
Engineering & Design	
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	
As per above	
Commissioning	

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

SCHEDULE 10

INDEPENDENT ENGINEER AGREEMENT

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INDEPENDENT ENGINEER AGREEMENT ON THE NEXT PAGE.**

SCHEDULE 11

FORM OF BUDGET QUOTE EFFECTIVE DATE CONFIRMATION

[on the letterhead of the Seller]

[Date]

Eskom Holdings SOC Ltd

Single Buyer Office

Simmer Centre

Corner Power and Lake Streets, Simmerpan,

Germiston,

South Africa

Email copy to sbo.reippp@eskom.co.za

Attention: Buyer Representative

AND TO:

The Department of Mineral Resources and Energy

192 Visagie Street (corner Visagie Street and Paul Kruger Street),

Pretoria, 0001

CC copy to Fax No.: +27 (12) 323 5819

Attention: Mr. Maduna Ngobeni

Dear Sirs

Confirmation of Budget Quote Effective Date

We refer to the power purchase agreement (the "**PPA**") that has been or is about to be entered into between Eskom Holdings SOC Ltd (Registration No. 2002/015527/30) (the "**Buyer**") and ourselves, [•] (the "**Seller**"). Unless otherwise defined herein, capitalised terms used in this notice shall have the meanings assigned to them in the PPA.

We hereby confirm that the last of the Budget Quote Conditions (as defined in the budget quote issued by the [Distributor or NTC] in respect of the Project) has been fulfilled, and that such date of fulfilment is [●].

Yours faithfully

Confirmed by:

[NAME OF SELLER]

[INSERT NAME]

Representative of the Seller

Representative of [NTC / Distributor]

SCHEDULE 12

ANCILLARY SERVICES

1. Definitions and Interpretation

1.1. Definitions

The following capitalised terms shall have the following meanings in this Schedule 12 (*Ancillary Services*):

"Acceptable Instantaneous Reserve Performance" means an Instantaneous Reserve Percentage Performance greater than or equal to ninety per cent (90%) over a Month;

"Acceptable Regulating Reserve Performance" means a Regulating Reserve Percentage Performance greater than or equal to ninety per cent (90%) over a Month;

"AMS Response" means the average of the Maximum Response and the Sustained Response (expressed in MW) for each Frequency Incident and calculated according to the following formula:

$\text{AMS Response} = 0.5 * (\text{Maximum Response} + \text{Sustained Response})$

"Ancillary Services" means any and or a combination of:

- (a) Instantaneous Reserve for a Facility with a rating greater than or equal to fifty (50) MVA at the Delivery Point; and
- (b) Regulating Reserve for a Facility with a rating greater than or equal to fifty (50) MVA at the Delivery Point;

"Ancillary Service Availability Notice" means any notice from the Seller to the Buyer, updating any Ancillary Services Declaration issued in terms of clause 5.2 (*Ancillary Service Declarations*) of this Schedule 12 (*Ancillary Services*), which declares the current Availability to provide the Ancillary Services;

"Ancillary Service Certificate" means the certificate and or certificates in respect of each Ancillary Service and in respect of each Facility that:

- (a) permits the Seller to provide the relevant Ancillary Service to the Buyer from that Facility; and

- (b) is obtained by the Seller from the System Operator in terms of the Codes and this Agreement;

"Ancillary Service Compliance" means a Facility's full compliance with an Ancillary Service requirement in accordance with the Codes, this Schedule 12 and this Agreement;

"Ancillary Services Data" has the meaning ascribed to it in clause 7.2.1 of this Schedule 12 (*Ancillary Services*);

"Ancillary Service Declaration" means the notice in respect of each Facility:

- (a) provided by the Seller to the Buyer in accordance with the Information Exchange Code;
- (b) that specifies:
 - (i) in respect of all of the Ancillary Services, whether each Facility is Available or not Available;
 - (ii) in respect of all of the Ancillary Services, whether each Facility has exceeded the Instantaneous Reserve Maximum Instances, Instantaneous Reserve Maximum Hours and or Regulating Reserve Maximum Hours;
 - (iii) in respect of all of the Ancillary Services, the capability of each Facility to provide each Ancillary Service; and
 - (iv) additionally, in respect of Regulating Reserve, the maximum range (expressed in MW) within which each Facility is Available to provide Regulating Reserve;

"Ancillary Service Instruction" means a Regulating Reserve Instruction;

"Ancillary Service Schedule" shall have the meaning ascribed to it in clause 5.4.1 (*Ancillary Service Schedule*) of this Schedule 12 (*Ancillary Services*);

"Automatic Generation Control" or **"AGC"** has the meaning given to it in the Codes;

"Availability" means, at any time and from time to time on an hourly or intra-hour basis, the capability of a Facility to make available Ancillary Services, whether or not it is actually providing the Ancillary Services, and **"Available"** shall be construed accordingly;

"Availability Period", shall have the meaning provided in clause 5.3.1.1 (*Ancillary Service Availability Notice*) of this Schedule 12;

"AGC Cycle" means the interval (expressed in seconds) between AGC pulses;

"Dead Band" means the range of frequencies between forty-nine-point-eight-five (49.85) Hz and fifty-point-one-five (50.15) Hz;

"Eskom Ancillary Service Procedures and Work Instructions" means the Eskom documents that specify the procedures and work instructions applicable to the Ancillary Services, including Certification and Performance Monitoring of Generation Reserves with Eskom document unique identifier reference 240 – 11015043 , and which are attached to this Agreement in Appendix 3 (*Eskom Ancillary Service Procedures and Work Instructions*) as may be amended and updated by the Buyer, from time to time and made known by the Buyer to the Seller;

"Facility Control Error" or "FCE" means the integral over the hour of the absolute difference between the contracted set-point and generated power whilst the Facility is on AGC;

"Frequency Incident" means an Instantaneous Reserve Low Frequency Incident or an Instantaneous Reserve High Frequency Incident;

"Information Exchange Code" means the South African Grid Code – Information Exchange Code Rev 10.0 - August 2019, as updated and published by NERSA from time to time;

"Initial Loading Level" is the average sent out level (expressed in MW) during the ten (10) seconds before the start time;

"Instantaneous Reserve" has the meaning given to it in the Codes;

"Instantaneous Reserve High Frequency Incident" means:

- (a) a rise of the frequency of the System above the Target Frequency;
- (b) for a duration greater than or equal to four (4) seconds;
- (c) calculated from the Start of Instantaneous Reserve High Frequency Incident to the earlier of:
 - (i) the instant the frequency has dropped to a point within the Dead Band; or
 - (ii) ten (10) minutes;

"Instantaneous Reserve Low Frequency Incident" means:

- (a) a drop of the frequency of the System below the Target Frequency;
- (b) for a duration greater than or equal to four (4) seconds;
- (c) calculated from the Start of Instantaneous Reserve Low Frequency Incident to the earlier of:
 - (i) the instant the frequency has risen to a point within the Dead Band; or
 - (ii) ten (10) minutes;

"Instantaneous Reserve Maximum Hours" means one thousand eight hundred and fifty five (1855) hours in respect of a Facility providing Instantaneous Reserve in each Contract Year, provided that hours are counted towards the maximum number only if the Seller achieves Ancillary Service Compliance;

"Instantaneous Reserve Maximum Instances" means, if the Project is required to respond to a Frequency Incident, one hundred and fifty five (155) times in each Contract Year, provided that instances are counted towards the maximum number only if the Seller achieves Ancillary Service Compliance;

"Instantaneous Reserve Percentage Performance" means the average of the Percentage Responses of all the Instantaneous Reserve Low Frequency Incidents and High Frequency Incidents over the Month;

"Maximum Response" means:

- (a) in respect of an Instantaneous Reserve Low Frequency Incident, the maximum sent out loading (expressed in MW) over the first ten (10) seconds after the Start of Instantaneous Reserve Low Frequency Incident minus the Initial Loading Level; and
- (b) in respect of an Instantaneous Reserve High Frequency Incident, the Initial Loading Level minus the minimum sent out loading (expressed in MW) over the first ten (10) seconds after the start of the Incident;

"Percentage Response" means, for each Frequency Incident, the AMS Response as a percentage of the certified Instantaneous Reserve capacity (expressed in MW) detailed in the relevant Ancillary Service Certificate;

"Performance Factor" means, the measurement in respect of the Facility Ancillary Service performance for a Billing Period.

"Primary Frequency Control" has the meaning given to it in the Codes;

"Regulating Reserve" has the meaning given to it in the Codes;

"Regulating Reserve Instruction" means an instruction in respect of each Facility from the Buyer to the Seller provided in the form of an AGC pulse sent in four (4) second cycles when the Facility is Operated under AGC;

"Regulating Reserve Maximum Hours" means one thousand eight hundred and fifty five (1855) hours in respect of the Facility providing Regulating Reserve in each Contract Year, provided that hours are counted towards the maximum number only if the Seller achieves Ancillary Service Compliance;

"Regulating Reserve Variation Amount" means the absolute value of the upward and or downward variation (expressed as a percentage of the Contracted Capacity) during a continuous period that the Facility is scheduled for Regulating Reserve, and which shall be calculated in accordance with the following formula:

$$RRVA = \frac{(APO_{max} - APO_{min}) \times 100\%}{CC}$$

Where:

RRVA	=	Regulating Reserve Variation Amount (expressed as a percentage of the Contracted Capacity (CC) of the Facility);
CC	=	Contracted Capacity of the Facility in MW
APO_{max}	=	Maximum Actual Power Output (expressed in MW) of the Facility during a continuous period that the Facility is providing Regulating Reserve; and
APO_{min}	=	Minimum Actual Power Output (expressed in MW) of the Facility during a continuous period that the Facility is providing Regulating Reserve

"Regulating Reserve Percentage Performance" is calculated in terms of clause 4.3.10 of Appendix 2 (*Testing and On-going Monitoring Procedures, Acceptance Criteria and Decertification*) of this Schedule 12 (*Ancillary Services*);

"Regulation Range" means a value of ten per cent (10%) of the Contracted Capacity of the Facility in respect of the Regulating Reserve Variation Amount, and which is the absolute value of the maximum upward and or downward

variation (expressed as a percentage of the Facility Contracted Capacity) during a continuous period that the Facility is scheduled for Regulating Reserve;

"Start of Instantaneous Reserve High Frequency Incident" means the instant (snapshot) in which the frequency first reaches a value greater than or equal to the Target Frequency;

"Start of Instantaneous Reserve Low Frequency Incident" means the instant (snapshot) in which the frequency first falls to a value less than or equal to the Target Frequency;

"Sustained Response" means:

- (a) in respect of an Instantaneous Reserve Low Frequency Incident, the average sent out loading (expressed in MW), minus the Initial Loading Level, during the period from ten (10) seconds from the Start of an Instantaneous Reserve Low Frequency Incident to the earlier of:
 - (i) ten (10) minutes after the Start of Instantaneous Reserve Low Frequency Incident; or
 - (ii) the instant in which the frequency rises to a level greater than or equal to forty nine point eight five (49.85) Hz;
- (b) in respect of an Instantaneous Reserve High Frequency Incident, the Initial Loading Level less the average sent out loading (expressed in MW) during the period from ten (10) seconds after the Start of the Instantaneous Reserve High Frequency Incident to the earlier of:
 - (i) ten (10) minutes after the Start of High Frequency Event; or
 - (ii) the instant in which the frequency falls to a level less than or equal to fifty point one five (50.15) Hz; and

"Target Frequency" or **"TF"** means:

- (a) in respect of an Instantaneous Reserve Low Frequency Incident, forty nine point seven five (49.75) Hz; and
- (b) in respect of an Instantaneous Reserve High Frequency Incident, fifty point two five (50.25) Hz.

2. Use of electricity from the System

The Seller shall ensure that a Facility does not use Energy Input for the purpose of providing the Ancillary Services.

3. Testing and Commissioning

3.1. Ancillary Service Testing Procedures and Acceptance Criteria Order of Precedence

- 3.1.1. The Seller shall obtain the Ancillary Service Certificate from the System Operator in respect of each Ancillary Service and in respect of each Facility in accordance with the Codes and this Agreement.
- 3.1.2. The Ancillary Service testing procedures and acceptance criteria in Appendix 2 (*Testing and On-going Monitoring Procedures, Acceptance Criteria and Decertification*) of this Schedule 12 (*Ancillary Services*) shall be applied in accordance with:
 - 3.1.2.1. the Codes;
 - 3.1.2.2. this Schedule 12 (*Ancillary Services*);
 - 3.1.2.3. the Eskom Ancillary Service Procedures and Work Instructions, as amended and updated by the Buyer acting as a Reasonable and Prudent Operator from time to time and made known by the Buyer to the Seller and for the avoidance of doubt, any such amendments or updates shall be treated as a Change in Law under this Agreement; and
 - 3.1.2.4. the remaining provisions of this Agreement.
- 3.1.3. If there is a conflict between the documents listed in clause 3.1.2 of this Schedule 12 (*Ancillary Services*), then order of priority between the documents shall be the order of priority in which the sub-clauses to clause 3.1.2 of this Schedule 12 (*Ancillary Services*) are listed.

3.2. Independent Engineer Inspection and Testing

- 3.2.1. The Seller shall, no later than six (6) Months before the date on which it is anticipated that the relevant test will be undertaken on a Facility, propose to the Independent Engineer the detailed procedure for the inspection, monitoring and testing of any portion of the Facility for the purposes of Appendix 2 (*Testing and On-going Monitoring Procedures, Acceptance Criteria and Decertification*). The tests shall include, but not be limited to, the following:
 - 3.2.1.1. all tests required to demonstrate compliance with the Ancillary Services requirements of the Codes;

3.2.1.2. all tests required in terms of this clause 3 (*Testing and Commissioning*) of this Schedule 12 (*Ancillary Services*) and Appendix 2 (*Testing and On-going Monitoring Procedures, Acceptance Criteria and Decertification*); and

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

3.2.2. The detailed procedures for the inspection, monitoring and testing of any Facility, for the purposes of Appendix 2 (*Testing and On-going Monitoring Procedures, Acceptance Criteria and Decertification*) shall be finalised in accordance with the provisions of the Independent Engineer Agreement.

3.3. Seller's Obligation to review and revise the Ancillary Services Testing Procedures

3.3.1. The Seller shall:

3.3.1.1. review and revise the Ancillary Services testing procedures following revisions of the Codes; and

3.3.1.2. no later than one (1) month prior to the proposed test, submit the revised Ancillary Services testing procedures in clause 3.3.1.1 of this Schedule 12 (*Ancillary Services*) to the Buyer and Independent Engineer for review and acceptance by the Buyer and Independent Engineer (such acceptance not to be unreasonably withheld).

3.3.2. If the Buyer, Seller and or Independent Engineer dispute the Ancillary Services testing procedures submitted by the Seller in accordance with clause 3.3.1 of this Schedule 12 (*Ancillary Services*), then such dispute shall first be discussed by senior members of the Buyer, Seller and Independent Engineer for resolution. If a satisfactory resolution of the dispute cannot be reached within three (3) Business Days, such dispute shall be submitted to the Independent Expert for resolution in accordance with the provisions of clause 27 (*Fast Track Dispute Resolution*) of this Agreement.

3.4. Ancillary Services after the Facility Commercial Operation Date

In respect of the Facility that has achieved the Facility Commercial Operation Date in accordance with the terms of this Agreement, the Seller:

- 3.4.1.1. shall ensure that the Facility is capable of providing the Ancillary Services;
- 3.4.1.2. provided that the Seller has obtained from the System Operator the Ancillary Service Certificate in respect of the relevant Ancillary Service in respect of each Facility, and subject to and in accordance with clause 4 (*Sale of the Ancillary Services*), shall be entitled to the relevant Ancillary Service Payment; and
- 3.4.1.3. if applicable, shall be liable for any Penalty in respect of the Ancillary Services in accordance with clause 6.1 (*Penalties*) of this Schedule 12 (*Ancillary Services*).

3.5. **Coordination with the Distributor and the NTC**

In addition to complying with the other requirements of this clause 3 (Testing and Commissioning) of this Schedule 12 (*Ancillary Services*), the Parties shall:

- 3.5.1. provide the Distributor or the NTC (as the case may be) with such information as may be necessary under Law or the Codes, or usual in terms of the practices of a Reasonable and Prudent Operator in respect thereof; and
- 3.5.2. collectively discuss and coordinate with any relevant Responsible Authority, the Distributor or the NTC (as the case may be), the actions contemplated in this clause 3 (*Testing and Commissioning*) of this Schedule 12 (*Ancillary Services*) and shall additionally comply with such reasonable requests and instructions that are in accordance with the Codes and the practices of a Reasonable and Prudent Operator, as may be received from the Distributor or the NTC (as the case may be) from time to time.

4. **Sale of the Ancillary Services**

4.1. **Sale of the Ancillary Services**

Subject to and in accordance with the terms and conditions set out in this Agreement and subject to clause 4.2 (*Instantaneous Reserve Payment*) of this Schedule 12 (*Ancillary Services*) and clause 4.3 (*Regulating Reserve Payment*) of this Schedule 12 (*Ancillary Services*):

- 4.1.1. during the Operating Period:
 - 4.1.1.1. the Seller shall make Available at all times to the Buyer the capability of the Facility to provide the Ancillary Services;

4.1.1.2. to the extent that an Ancillary Service Instruction has been issued, the Seller shall provide the Ancillary Service required in terms of the Ancillary Service Instruction;

4.1.1.3. to the extent that an Ancillary Service Instruction has been issued and the Seller has achieved Ancillary Service Compliance, the Buyer shall pay the Ancillary Service Payment for the Ancillary Services specified in the Ancillary Service Instruction and provided by the Seller.

4.2. **No Third Party Sales**

The Seller shall not provide Ancillary Services for or for the benefit of any third party, without the consent of the Buyer.

5. **Ancillary Service Instructions, Schedules, Notices and Declarations**

5.1. **Ability to provide the Ancillary Services**

Until such time as the Codes provide for Ancillary Service Instructions and Ancillary Services Declarations of capability to provide Ancillary Services, the Seller shall issue an Ancillary Services Declaration in respect of the Facility, irrespective of any constraints imposed by the actual capacity generated at any time, except to the extent that a Facility is incapable of providing some or all of the Ancillary Services, for one or more of the following reasons:

5.1.1. where the Facility is unable to Operate due to a breach by the Buyer of its obligations under this Agreement, determined and established in accordance with this Agreement;

5.1.2. where the Facility is unable to Operate due to a lack of Energy Resource (Wind or Solar Irradiance)

5.1.3. for reason of any Outage;

5.1.4. in circumstances relating to safety (of either personnel or of the Facility or apparatus) which would result in a breach determined and established in accordance with this Agreement;

5.1.5. to the extent of any illegality, in circumstances where to do so would be unlawful;

5.1.6. for reasons of Force Majeure, Unforeseeable Conduct or a Change in Law; or

5.1.7. in any other circumstances, with the Buyer's approval (which approval shall not be unreasonably withheld).

5.1.8. in circumstances where -

$P_{\text{available}} < P_{\text{min}} + 3\%$ of Contracted Capacity for Instantaneous Reserve
and $P_{\text{available}} < P_{\text{min}} + 10\%$ of Contracted Capacity for Regulating Reserve.

where:

P_{min}	=	the minimum active power as agreed between the Buyer and the Seller, down to which the power-generating module can control active power.
$P_{\text{available}}$	=	the amount of active power (MW), measured at the Point of Delivery, that the Facility could produce based on Facility Availability as well as current renewable primary energy conditions (e.g. wind speed, solar radiation).

5.2. Ancillary Service Declarations

5.2.1. Not later than 10:00 hours on each day during the Operating Period (as the case may be), the Seller shall deliver an Ancillary Service Declaration to the Buyer for each Availability Period of the following six (6) consecutive days.

5.2.2. If the Seller fails to deliver an Ancillary Service Declaration on or before the time specified in clause 5.2.1 of this Schedule 12 (*Ancillary Services*), the Ancillary Service Declaration in clause 5.2.1 of this Schedule 12 (*Ancillary Services*) 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) Ancillary Service Declaration.

5.3. Ancillary Service Availability Notice

5.3.1. The Seller may, in accordance with the Scheduling and Dispatch Rules, by issuing an Ancillary Service Availability Notice to the Buyer:

5.3.1.1. revise downwards and continue to revise downwards the Ancillary Services that are Available ("**Available Ancillary Services**") for any period during which they are available ("**Availability Period**") at any time up to and until the start of the applicable Availability Period; or

- 5.3.1.2. revise upwards and continue to revise upwards the Available Ancillary Services 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 Ancillary Service Availability Notice revising the Available Ancillary Services for any Availability Period, if the Seller acting as a Reasonable and Prudent Operator establishes that there are factors which may have a material effect on the ability of a Facility and or the Project (as the case may be) to make Available and or provide the Ancillary Services in the relevant Availability Period.

- 5.3.2. For the avoidance of doubt, while there shall be no limit on the number of Ancillary Service Availability Notices that the Seller is permitted to issue, Ancillary Service Availability Notices that are not Code compliant will initiate the decertification process in Appendix 2 (*Testing and On-going Monitoring Procedures, Acceptance Criteria and Decertification*).

5.4. **Ancillary Service Schedule**

- 5.4.1. Before 14:00 hours on each day, the Buyer shall in accordance with the Codes provide the Seller with a schedule (the "**Ancillary Service Schedule**") for each Facility in respect of each Availability Period in the following twenty four (24) hours day-ahead. The Ancillary Service Schedule shall indicate the Ancillary Services and the levels at which those Ancillary Services the Buyer anticipates may be required in each Availability Period of the following day.

- 5.4.2. In respect of Regulating Reserve, if a Facility is scheduled for Regulating Reserve in accordance with clause 5.4.1 of this Schedule 12 (*Ancillary Services*), then the Seller shall ensure that the AGC is switched on for the period of time specified in the Ancillary Service Schedule.

- 5.4.3. In respect of Instantaneous Reserve:

- 5.4.3.1. the Buyer shall schedule the Facility for Instantaneous Reserve in accordance with clause 5.4.1 of this Schedule 12 (*Ancillary Services*) but shall not issue an Ancillary Service Instruction; and

- 5.4.3.2. the Seller shall ensure that the Facility automatically provides Instantaneous Reserve when the frequency of the System reaches the Target Frequency.

5.5. Ancillary Service Instruction

- 5.5.1. The Buyer may, in accordance with the Information Exchange Code, at its discretion issue an Ancillary Service Instruction that specifies the Ancillary Services that it requires in the period of time specified in that Ancillary Service Instruction.
- 5.5.2. An Ancillary Service Instruction issued by the Buyer on any day may differ from the Ancillary Service Instruction that was anticipated, in the Ancillary Service Schedule, to be 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 Ancillary Service Schedule in advance of issuing the relevant Ancillary Service Instruction.
- 5.5.3. For the avoidance of doubt, the Buyer may not knowingly issue an Ancillary Service Instruction to the Seller or schedule a Facility for an Ancillary Service in accordance with clause 5.4 (*Ancillary Service Schedule*) of this Schedule 12 (*Ancillary Services*) which requires a Facility:
 - 5.5.3.1. to deliver Energy Output at a level which exceeds the Declared Capacity or is less than P_{min} ;
 - 5.5.3.2. to Operate in a manner contrary to the technical limits, safety and technical guidelines for the Facility and or the Project (as the case may be) which results in a breach of this Agreement;
 - 5.5.3.3. to Operate in a manner contrary to the standards of a Reasonable and Prudent Operator which results in a breach of this Agreement;
 - 5.5.3.4. to Operate in contravention of the Codes; or
 - 5.5.3.5. to Operate in a manner inconsistent with the status of the System at the time at which the Ancillary Service Instruction is to be implemented;
 - 5.5.3.6. and, if the Buyer does issue an Ancillary Service Instruction in contravention of any of the above, such Ancillary Service Instruction shall be a "**Non-Compliant Ancillary Service Instruction**".
- 5.5.4. As soon as reasonably practicable after it becomes aware of any Non-Compliant Ancillary Service Instruction, the Seller shall notify the Buyer of any limitations to the Ancillary Service Instruction necessary to ensure that the

performance of the Facility remains in compliance with this Agreement and the Codes.

- 5.5.5. The Seller shall in the case of a Capacity that has not been scheduled by the System Operator to be delivered to the System or in respect of a Capacity that would otherwise be produced under an Ancillary Service and which has not otherwise been made Available to the System or provided as Ancillary Services in terms of this Agreement (“**Unused Ancillary Service Capacity**”), make such Unused Ancillary Service Capacity available for Commercial Energy in the relevant period. The Seller shall in respect of such Unused Ancillary Service Capacity which is delivered as Commercial Energy, be paid for it as part of the Commercial Energy Payment in the relevant Billing Period

5.6. Maximum Ancillary Service Allowance

- 5.6.1. Subject to and in accordance with the terms and conditions set out in this Agreement and the Codes, the Buyer shall ensure that an Ancillary Service Instruction is issued in such a manner to ensure that:

- 5.6.1.1. in respect of Instantaneous Reserve:

5.6.1.1.1. the number of instances in which a Facility is required to respond to a Frequency Incident does not exceed the Instantaneous Reserve Maximum Instances;

5.6.1.1.2. the number of hours in which a Facility provides Instantaneous Reserve does not exceed the Instantaneous Reserve Maximum Hours; and

- 5.6.1.2. in respect of Regulating Reserve, the number of hours in which a Facility provides Regulating Reserve does not exceed the Regulating Reserve Maximum Hours.

- 5.6.2. Subject to and in accordance with the terms and conditions set out in this Agreement and the Codes, the Seller shall, in respect of Regulating Reserve:

5.6.2.1.1. ensure that the Regulating Reserve Variation Amount does not exceed the Regulation Range; and

5.6.2.1.2. determine the operational limits of the Automatic Generation Control.

- 5.6.3. Provided that the Seller has complied with clause 5.2 (*Ancillary Service Declarations*) of this Schedule 12 (*Ancillary Services*), if the Buyer issues an

Ancillary Service Instruction in excess of the Instantaneous Reserve Maximum Instances, Instantaneous Reserve Maximum Hours and or Regulating Reserve Maximum Hours and is in contravention of clause 5.6.1 of this Schedule 12 (*Ancillary Services*), then the Seller:

- 5.6.3.1. may decline to comply with the Ancillary Service Instruction or may accept and comply with the Ancillary Service Instruction; and
- 5.6.3.2. shall have no further remedy against the Buyer in respect of the Ancillary Service Instruction in this clause 5.6.3 or any other failure by the Buyer to comply with its obligation in clause 5.6.1 of this Schedule 12 (*Ancillary Services*).

5.7. Seller's Obligation to Comply with Ancillary Service Instructions

Provided that the Ancillary Service Instruction complies with the provisions of clause 5.5 (*Ancillary Service Instruction*) of this Schedule 12 (*Ancillary Services*) and is not a Non-Compliant Ancillary Service Instruction, the Seller shall ensure that Ancillary Service Compliance is achieved by the Project.

6. Tariff and other charges

6.1. Performance Factors

- 6.1.1. The Ancillary Service provided by the Seller shall be monitored and measured for the purpose of payment by the Buyer prior to the decertification of the Facility and the withdrawal of that Facility's Ancillary Service Certificate in respect of non-compliance to the relevant Ancillary Service.
- 6.1.2. Performance factors are calculated for the provision of Ancillary Service capacity (as per certification and performance monitoring standard).
- 6.1.3. Calculation for Instantaneous Reserve performance factor ("PFIR"):

Performance for all incidents will be calculated over the Ancillary Service contracted in a Billing Period as follows:

$$PF_{IR} = 100\% * \frac{\sum_{n=0}^N (pf_{IR-n})}{N}$$

Performance for each IR incident n (during the contracted period will be calculated as follows:

$$pf_{IR-n} = \text{minimum} \left(\frac{IRA_n}{IRC_h}, 1.1 \right)$$

Where:

IRA_n	=	AMS Response in MW for Ancillary Service Instruction for Instantaneous Reserve movement n
IRC_h	=	Contracted Instantaneous Reserve in MW during hour h in Billing period
n	=	Ancillary Service Instruction for Instantaneous Reserve movement during the contracted period
N	=	total number of IR incidents during the contracted period over the metering billing period
$pf_{(IR-n)}$	=	Instantaneous Reserve performance in percentage for Ancillary Service Instruction n
PF_{IR}		Average Instantaneous Reserve performance in percentage for Ancillary Service Instructions in Billing period

6.1.4 Calculation for Regulating Reserve performance factor in a metering billing period (PF_{RR})

$$PF_{RR} = RR_{AD} * RR_{FCE} * RR_{AGCP}$$

RR_{AD}	=	performance of the Actual Declared RR capacity made available based on the average declared AGC limits by the Seller
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$$RR_{AD} = \text{Min}\left(\frac{\sum_{h=1}^H (FRR_h)}{H} \times 100\%, 100\%\right)$$

$$FRR_h = \left(\frac{\sum_{c=1}^{900} (AGCHL_c - AGCLL_c)}{900} \right)$$

FRR_h	=	Average Facility regulation range in MW for hour h
$AGCHL_c$	=	AGC high limit declared by the Seller for every cycle c of 4 seconds within hour h as per the Information Exchange Code Appendix 5: Table A5-26
$AGCLL_c$	=	AGC low limit declared by the Seller for every cycle c of 4 seconds within hour h as per the Information Exchange Code Appendix 5: Table A5-26
H	=	total number of (h) hours in the metering billing period

h	=	one (1) hour within the metering billing period.
c	=	1 time step cycle of 4 seconds duration with in each hour h

RR_{FCE}	=	performance based on the Facility Control Error (FCE) after AGC pulses are confirmed from Energy Management System from the System Operator
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The Facility supply error for each cycle is calculated as follows:

$$FSE_c = APO_c - (AGCSP_c + PFC_c + CE_h)$$

Where

c	=	1 time step cycle of 4 seconds duration with in each hour h
APC_c	=	Actual Power Output (MW) per cycle c with in hour h
$AGCSP_c$	=	AGC Setpoint (MW) per cycle c with in hour h ,
PFC_c	=	Primary Frequency Control as set by the seller to provide IR (MW) per cycle
CE_h	=	Calibration Error (hour)

$$CE_h = \frac{\sum_{c=1}^{900} (APO_c - (AGCSP_c + PFC_c))}{900}$$

Facility Control Error for hour h

$$FCE_h = \sum_{c=1}^{900} FSE_c$$

If $FCE_h > 1\%$ Contract Capacity* h then $RRV_h = 1$ else $RRV_h = 0$

RRV_h	=	Regulation Reserve compliance Violation for hour h with in a metering billing month
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$$RRV\% = \frac{\sum_{h=0}^n RRV_h}{n} \times 100\%$$

n	=	Total RR contracted hours in the Billing Period
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$$RR_{FCE} = 100\% - RRV\%$$

RR_{AGCP}	=	<i>performance of AGC pulses being confirmed versus the AGC pulses sent in a Billing Period</i>
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if $\left(\frac{\text{Total acknowledged AGC pulses}}{\text{Total requested AGC pulses}} \right) \geq 90\%$ $RR_{AGCP} = 100\%$,

Else $RR_{AGCP} = \left(\frac{\text{Total acknowledged AGC pulses}}{\text{Total requested AGC pulses}} \right)$

7. Invoicing, Data and Records

7.1. Operating Period Invoices

7.1.1. The Buyer shall, within three (3) Business Day of the end of a Billing Period, submit to the Seller for that Billing Period, a performance report which shall detail in respect of each Facility, whether:

7.1.1.1. Acceptable Instantaneous Reserve Performance has been achieved;

7.1.1.2. Acceptable Regulating Reserve Performance has been achieved; and

7.1.1.3. any Penalty is applicable.

7.1.2. The Seller shall, within two (2) Business Days of the end of a Billing Period, submit to the Buyer for that Billing Period an Invoice in accordance with clause 9 (*Invoicing*) of this Agreement

7.1.3. The Seller shall in relation to the Ancillary Services prepare the Invoice for the Billing Period based on the performance report provided by the Buyer in accordance with clause 7.1.1 of this Schedule 12 (*Ancillary Services*), for that Billing Period.

7.2. Data and records

7.2.1. The Seller shall maintain complete and accurate data and records required to facilitate the proper administration of this Schedule 12 and the Facility. Such data and records ("**Ancillary Services Data**") shall include an accurate and up-to-date log of Operations, updated daily, in a format reasonably acceptable

to the Buyer. The Ancillary Services Data should include, but not be limited to, the following information, with records of:

- 7.2.1.1. changes in Operating status during the day;
- 7.2.1.2. the number of Outages in the day and the duration of each Outage;
- 7.2.1.3. any unusual conditions found during Maintenance inspections specific to this Agreement and or the Seller's capability to make Available the Ancillary Services; and
- 7.2.1.4. such data to enable accurate invoicing of the Ancillary Service Payments, including:
 - 7.2.1.4.1. one (1) second interval data for Instantaneous Reserve; and
 - 7.2.1.4.2. one (1) second interval data for Regulating Reserve.
- 7.2.1.5. data for testing and monitoring in accordance with Appendix 2 (*Testing and On-going Monitoring Procedures, Acceptance Criteria and Decertification*).

8. Metering and Measurements

8.1. Subject to the provisions of clause 12 (*Metering*) of this Agreement, the Main Metering Installation shall be used to provide data in respect of Regulating Reserve and Instantaneous Reserve.

8.2. 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.

8.3. Measurements

The Seller shall provide equipment to monitor and record the response of each Facility during a Frequency Incident for Instantaneous Reserve and whilst on AGC for Regulating Reserve. The Seller shall ensure that the equipment has the following characteristics:

- 8.3.1. the power output (MW) of each Facility and local frequency shall be measured at or close to the Delivery Point;

- 8.3.2. measurements of power output (MW) and frequency shall be made at intervals of one (1) second or less, and shall be time stamped to the same scale;
- 8.3.3. measurements of power output (MW) shall be accurate to within the lesser of zero point five (0.5) MW or zero point two per cent (0.2%) of the output of the Facility;
- 8.3.4. measurements of frequency shall be accurate to within zero point zero one (0.01) Hz;
- 8.3.5. for Instantaneous Reserve, the equipment shall record the power output (MW) and frequency measurements for a period of at least four (4) seconds before the Frequency Incident and at least ten (10) minutes after the commencement of the Frequency Incident;
- 8.3.6. for Regulating Reserve, the equipment shall record the power output (MW) and frequency measurements whilst on AGC;
- 8.3.7. the data and recordings shall be:
 - 8.3.7.1. made digitally, and stored in a digital format acceptable to the Buyer;
and
 - 8.3.7.2. made available to the Buyer within three (3) Business Days of a written request being made by the Buyer.

Appendix 1

Testing and On-Going Monitoring Procedures, Acceptance Criteria and Decertification

1. Testing and Monitoring Procedures subject to finalisation by the Independent Engineer

- 1.1 The Seller shall obtain the Ancillary Service Certificate from the System Operator in respect of each Ancillary Service and in respect of the Facility in accordance with the Codes and this Agreement.
- 1.2 The Seller shall submit detailed Ancillary Services testing and monitoring procedures to the Independent Engineer and finalise them with the Independent Engineer in accordance with the Independent Engineer Agreement.
- 1.3 The Seller shall ensure that the Ancillary Services testing and monitoring procedures include all requirements of the Codes in addition to the requirements detailed in this Appendix 1 (*Testing and On-going Monitoring Procedures, Acceptance Criteria and Decertification*).
- 1.4 The Seller and the Buyer acknowledge that:
 - 1.4.1 the Ancillary Services testing and monitoring procedures developed in accordance with the Independent Engineer Agreement and this Agreement shall be used for testing, performance monitoring, payment, certification, decertification, issuance of the Ancillary Service Certificates and Penalty provisions post the Commercial Operation Date.

2. Instantaneous Reserve

2.1 Standards, Procedures and Work Instructions

Subject to the Codes, and to the extent that further detail is required in addition to the Codes, the applicable sections of Appendix 2 (*Eskom Ancillary Service Procedures and Work Instructions*) Part 3 (*Certification and Performance Monitoring of Generation Reserves*) shall apply in developing the Ancillary Services testing and monitoring procedures in terms of clause 3 (*Testing and Commissioning*) of Schedule 12 (*Ancillary Services*).

2.2 Testing Period

- 2.2.1 The Instantaneous Reserve testing shall continue for a duration of one (1) month provided that two (2) or more incidents of Instantaneous Reserve Low Frequency and Instantaneous Reserve High Frequency ("**Instantaneous**

Reserve Frequency Incidents”) have occurred that test the Instantaneous Reserve capabilities of the Facility in that month.

- 2.2.2 If two (2) Instantaneous Reserve Low Frequency Incidents have not occurred in the one (1) month period in clause 2.2.1 of this Appendix 1 (*Testing and On-going Monitoring Procedures, Acceptance Criteria and Decertification*), then the Instantaneous Reserve testing shall continue until two (2) Instantaneous Reserve Frequency Incidents have occurred that test the Instantaneous Reserve capabilities of the Facility.

2.3 **Acceptance Criteria**

- 2.3.1 An average AMS Response (expressed in MW) of at least two (2) Instantaneous Reserve Low Frequency Incidents shall be measured over the test period which shall be determined in accordance with clause 2.2 (*Testing Period*) of this Appendix 1 (*Testing and On-going Monitoring Procedures, Acceptance Criteria and Decertification*).
- 2.3.2 The Facility shall be certified and the Ancillary Service Certificate issued in respect of Instantaneous Reserve if the average AMS Response over all Instantaneous Reserve Low Frequency Incidents measured over the test period exceeds three per cent (3%) of the Facility Contracted Capacity.
- 2.3.3 The droop and the dead-band shall be set at the levels required under the Codes.
- 2.3.4 Only Frequency Incidents in which the initial frequency is:
- 2.3.4.1 in respect of an Instantaneous Reserve Low Frequency Incident, greater than or equal to forty nine point eight five (49.85) Hz and the minimum frequency is less than or equal to forty-nine-point-seven-five (49.75) Hz; and
- 2.3.4.2 in respect of an Instantaneous Reserve High Frequency Incident, less than or equal to fifty point one five (50.15) Hz and the maximum frequency is greater than or equal to fifty point two five (50.25) Hz,
- shall be used in respect of Instantaneous Reserve certification of each Facility.
- 2.3.5 If the Facility is offline or the Energy Output is near maximum so that the capacity available to pick up to reach the Facility Contracted Capacity (minus any recorded load losses) is less than three per cent (3%) of the Facility

Contracted Capacity then the Frequency Incident shall not be used for certification of a Facility in respect of Instantaneous Reserve.

- 2.3.6 If the average AMS Response over all Instantaneous Reserve Frequency Incidents counted in the test period is greater than three per cent (3%) of the Facility Contracted Capacity, then the certified Instantaneous Reserve capacity (expressed in MW) of the Facility, as detailed in the relevant Ancillary Service Certificate, shall be three per cent (3%) of the Facility Contracted Capacity.

2.4 **Performance Monitoring and Payment**

- 2.4.1 the Instantaneous Reserve Payment to the Seller is calculated in accordance with clause 4.5 of Part 3 (*Payment Mechanism*) of Schedule 1 (*Details of the Project and Facility*).

- 2.4.2 If the Instantaneous Reserve Percentage Performance is rated less than the Acceptable Instantaneous Reserve Performance over a Month, then:

- 2.4.2.1 the Seller shall investigate and report the reason to the Buyer within one (1) month; and

- 2.4.2.2 rectify the performance of the Instantaneous Reserve capabilities of the Facility within three (3) months.

2.5 **Decertification**

- 2.5.1 If the Seller

- 2.5.1.1 fails to rectify the performance of the Facility in respect of Instantaneous Reserve within three (3) months in accordance with clause 2.4 (*Performance Monitoring and Payment*) of this Appendix 1 (*Testing and On-going Monitoring Procedures, Acceptance Criteria and Decertification*); or

- 2.5.1.2 does not declare the facility available for Instantaneous Reserve for longer than three consecutive months, provided the Facility has not reached Instantaneous Reserve Maximum Instances or Instantaneous Reserve Maximum Hours,

then:

- 2.5.1.2.1 the Facility shall be decertified and its Ancillary Service Certificate withdrawn in respect of Instantaneous Reserve;
- 2.5.1.2.2 the Seller shall be liable for the Decertification Penalty for the Billing Period determined in terms of clause 5.1.2 (*Calculation of Decertification Penalty*) Schedule 1 (*Details of the Project and Facility*) Part 3 (*Energy Rates*).
- 2.5.2 Where the Facility has been decertified in terms of clause 2.5.1 above, the Seller may re-test the Facility and obtain a lower certified Instantaneous Reserve capacity (expressed in MW) provided that:
 - 2.5.2.1 the new certified Capacity is greater than three per cent (3%) of the Contracted Capacity of the Facility; and
 - 2.5.2.2 the Seller shall not be permitted to apply for a Facility to be recertified for Instantaneous Reserve more than two (2) times in each Contract Year.
- 2.5.3 Subject to clause 2.5.2.2 of this Appendix 1 (*Testing and On-going Monitoring Procedures, Acceptance Criteria and Decertification*), the Seller shall be permitted to apply to the Buyer for recertification of a Facility and issuance of a new Ancillary Service Certificate in respect of Instantaneous Reserve following decertification in clause 2.5.1 of this Appendix 1 (*Testing and On-going Monitoring Procedures, Acceptance Criteria and Decertification*), provided that the recertification of a Facility shall only be permitted if the Facility is successfully re-tested in accordance with clause 2.2 (*Testing Period*) and clause 2.3 (*Acceptance Criteria*) of this Appendix 1 (*Testing and On-going Monitoring Procedures, Acceptance Criteria and Decertification*).

3. Regulating Reserve

3.1 Standards, Procedures and Work Instructions

Subject to the Codes, and to the extent that further detail is required in addition to the Codes, the applicable sections of Appendix 2 (*Eskom Ancillary Service Procedures and Work Instructions*) Part 3 (*Certification and Performance Monitoring of Generation Reserves*) shall apply in developing the Ancillary

Services testing and monitoring procedures in terms of clause 3 (*Testing and Commissioning*) of this Schedule 12 (*Ancillary Services*).

3.2 **Acceptance Criteria**

To achieve certification and the issuance of the Ancillary Service Certificate in respect of Regulating Reserve the Seller shall successfully perform the ramp rate test, sustained response test and response delay test, as provided for below.

3.2.1 **Ramp Rate Test**

3.2.1.1 The Facility shall ramp up over the maximum available range from $P_{\min}$ to the Facility Contracted Capacity at the highest available ramp rate. This shall be followed by a ramp down over the same range. The ramps shall be performed using AGC. A period of stabilisation of no greater than twenty (20) minutes shall be permitted between the ramp up and ramp down.

3.2.1.2 The Facility shall have successfully performed the ramp rate test if the ramp rate (expressed in MW/min) is always greater than or equal to one-point-six-seven per cent (1.67%) of Facility Contracted Capacity during the ramp rate test. The Facility shall have failed the ramp rate test if the ramp rate of the Facility (expressed in MW/min) is less than one-point-six-seven per cent (1.67%) of the Facility Contracted Capacity at any time.

3.2.1.3 If the minimum ramp rate achieved during the ramp rate test is greater than one-point-six-seven per cent (1.67%) of Facility Contracted Capacity (expressed in MW/min) then:

3.2.1.3.1 the certified ramp rate shall be a value agreed between the Parties, provided that such value shall be between one-point-six-seven per cent (1.67%) of Facility Contracted Capacity (expressed in MW/min) and the minimum ramp rate achieved during the ramp rate test; or

3.2.1.3.2 if the Parties fail to reach an agreement in terms of clause 3.2.1.3.1 of this Appendix 1 (*Testing and On-going Monitoring Procedures, Acceptance Criteria and Decertification*), then the certified ramp rate shall be one-point-six-seven per cent (1.67%) of Facility Contracted Capacity (expressed in MW/min).

3.2.2 **Sustained Response Test**

3.2.2.1 The Facility shall run for six (6) or more consecutive hours and move as required by AGC for the test period.

3.2.2.2 The Facility shall have successfully performed the sustained response test if:

3.2.2.2.1 the Facility is able to remain on Regulating Reserve for three (3) consecutive hours without causing Facility instability during a testing period; and

3.2.2.2.2 the average FCE is less than one percent (1%) of Contracted Capacity for each hour for all three (3) hours.

3.2.2.3 If the Facility fails the sustained response test, then the test may be repeated, provided that up to three (3) attempts are permitted and the Seller shall rectify any problems before repeating a test.

3.2.3 **Response Delay Test**

3.2.3.1 The Seller shall:

3.2.3.1.1 ensure that the plot taken during the ramp rate test in clause 3.2.1 (*Ramp Rate Test*) of this Appendix 1 (*Testing and On-going Monitoring Procedures, Acceptance Criteria and Decertification*) shows both the curve of requested movement over the time period and the curve of the actual sent-out of the Facility under test, superimposed on the same axes; and

3.2.3.1.2 measure the time delay in seconds between the curves in clause 3.2.3.1 of this Appendix 1 (*Testing and On-going Monitoring Procedures, Acceptance Criteria and Decertification*).

3.2.3.2 The Facility shall have successfully performed the response delay test if the time delay in clause 3.2.3.1.2 of this Appendix 1 (*Testing and On-going Monitoring Procedures, Acceptance Criteria and Decertification*) does not exceed twelve (12) seconds.

3.3 Performance Monitoring and Payment

- 3.3.1 The Seller shall ensure that a Facility providing Regulating Reserve is close to the set-point required by the AGC controller, including any Primary Frequency Control requirements.
- 3.3.2 The performance of a Facility is measured by calculating how close the power output (expressed in MW) of the Facility at the Delivery Point is to the set-point required by the AGC controller (“set-point”), including Primary Frequency Control and Instantaneous Reserve.
- 3.3.3 The Seller shall not be impacted in the calculation of the Performance Factor in relation to calibration errors in the generation output and set-point values sent from the Facility to the AGC software module.
- 3.3.4 A calibration error is calculated, which assumes a perfect response from the Facility and is the average error between contracted set-point plus Primary Frequency Control and actual generation for each hour in accordance with the following formula:

$$CE_h = \frac{\sum_{c=1}^{900}(APO_c)}{900} - \frac{\sum_{c=1}^{900}(AGCSP_c + PFC_c)}{900}$$

c	=	1 time step cycle of 4 seconds duration with in each hour h
APO_c	=	Actual Power Output (MW) per cycle c with in hour h
$AGCSP_c$	=	AGC Setpoint (MW) per cycle c with in hour h,
PFC_c	=	Primary Frequency Control as set by the seller to provide IR (MW) per cycle
CE_h	=	Calibration Error (hour)

- 3.3.5 The AGC setpoint is then corrected with this calibration error for every AGC Cycle measured. This, together with the required Primary Frequency Control, gives a final Facility supply contract for each cycle (FSC_c)

where:

$$FSC_c = AGCSP_c + PFC_c + CE_h$$

AGCSP _c	=	AGC Setpoint (MW) per cycle c with in hour h,
PFC _c	=	Primary Frequency Control as set by the seller to provide IR (MW) per cycle
CE _h	=	Calibration Error (hour)

$$CE_h = \frac{\sum_{c=1}^{900} (APO_c - (AGCSP_c + PFC_c))}{900}$$

3.3.6 Actual generation less the Facility supply contract will give a Facility supply error every AGC cycle (FSE_c) where:

$$FSE_c = APO_c - FSC_c$$

Where:

c	=	1 time step cycle of 4 seconds duration with in each
APO _c	=	Actual Power Output (MW) per cycle c with in hour h

3.3.7 The absolute integral of the Facility supply error_{cycle} for the hour is then a measure of the performance of the Facility, giving a FCE in MWh as follows:

$$FCE_h = \sum_{c=1}^{900} FSE_c$$

Where:

FCE _h	=	Facility Control Error for hour h
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3.3.8 The performance of each Facility is monitored and performance measured if the Facility was on AGC for greater than three per cent (3%) of the hours in the Month, as follows:

3.3.8.1 the number of hours in Regulating Reserve over the Month is calculated together with the number of hours the Facility is in Regulating Reserve in which the FCE is greater than one percent (1%) of Contracted Capacity for each hour; and

- 3.3.8.2 the percentage of hours in Regulating Reserve with the FCE greater than one percent (1%) of Contracted Capacity for each hour equals the number of hours with FCE greater than one percent (1%) of Contracted Capacity for each hour divided by the number of hours in Regulating Reserve.
- 3.3.8.3 RR_{FCE} , being the performance based on the Facility Control Error (FCE) after AGC pulses are confirmed from Energy Management System from the System Operator, is determined using the formulae in 6.1.4
- 3.3.8.4 RR_{AD} , being the performance of the Actual Declared RR capacity made available based on the average declared AGC limits by the Seller is determined using the formulae in 6.1.4
- 3.3.8.5 RR_{AGCP} , being the performance of AGC pulses being confirmed versus the AGC pulses sent in a billing period is determined using the formulae in 6.1.4.
- 3.3.9 The Regulating Reserve Percentage Performance in respect of Regulating Reserve shall be calculated according to the following formula:

Regulating Reserve Percentage Performance =

$$RR_{AD} * RR_{FCE} * RR_{AGCP}$$

- 3.3.10 The Regulating Reserve Payment to the Seller is calculated in accordance with the performance factor in clause 6.1.4 and clause 5 of Part 3 (Payment Mechanism) of Schedule 1 (Details of the Project and Facility);
- 3.3.11 If the Regulating Reserve Percentage Performance is less than the Acceptable Regulating Reserve Performance in a Month, then
- 3.3.11.1 the Seller shall investigate and report the reason to the Buyer within one (1) month; and
- 3.3.11.2 rectify the performance of the Regulating Reserve capabilities of the Facility within three (3) months

3.4 Decertification

3.4.1 if the Seller:

3.4.1.1 fails to rectify the performance of the Facility in respect of Regulating Reserve within three (3) months in accordance with clause 3.3 (*Performance Monitoring and Payment*) of this Appendix 1 (*Testing and On-going Monitoring Procedures, Acceptance Criteria and Decertification*); or

3.4.1.2 does not declare the facility available for Regulating Reserve for longer than three consecutive months, provided the Facility has not reached Regulating Reserve Maximum Hours;

then:

3.4.1.3 the Facility shall be decertified and the Ancillary Service Certificate withdrawn in respect of Regulating Reserve; and

3.4.1.4 the Seller shall be liable for the Decertification Penalty for the Billing Period determined in terms of clause 5.1.2 (*Calculation of Decertification Penalty*) Schedule 1 (*Details of the Project and Facility*) Part 3 (*Energy Rates*).

3.4.2 The Seller is entitled to re-test and request a lower certified ramp rate (expressed in MW/min) and provided that:

3.4.2.1 the new certified ramp rate is greater than one-point-six-seven per cent (1.67%) of Facility Contracted Capacity (expressed MW/min); and

3.4.2.2 the Seller shall not be permitted to lower the certified ramp rate more than one (1) time in each Contract Year.

3.4.3 The Seller shall be permitted to apply to the Buyer for recertification and issuance of the Ancillary Service Certificate in respect of Regulating Reserve for a Facility following decertification in clause 3.4.1 of this Appendix 1 (*Testing and On-going Monitoring Procedures, Acceptance Criteria and Decertification*), provided that:

3.4.3.1 the recertification and issuance of the Ancillary Service Certificate in respect of Regulating Reserve for a Facility shall only be permitted if the Facility is successfully retested in accordance with clause 3.2

(Acceptance Criteria) of this Appendix 1 (Testing and On-going Monitoring Procedures, Acceptance Criteria and Decertification); and

3.4.3.2

the Seller may apply for not more than one (1) retest in each Month.

Appendix 2

Eskom Ancillary Service Procedures and Work Instructions