

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 M – IMPLEMENTATION AGREEMENT



**mineral resources
& energy**

Department:
Mineral Resources and Energy
REPUBLIC OF SOUTH AFRICA

IMPLEMENTATION AGREEMENT

between

[INSERT PROJECT COMPANY NAME]

as the Seller

and

THE DEPARTMENT OF MINERAL RESOURCES AND ENERGY

as the Department

pursuant to the

RENEWABLE ENERGY INDEPENDENT POWER PRODUCER PROCUREMENT PROGRAMME

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PREAMBLE:

THIS **RENEWABLE ENERGY IPP IMPLEMENTATION AGREEMENT** (this "**Agreement**") is made by and between:

- (1) **[INSERT NAME OF SELLER (PROJECT COMPANY)]**, a limited liability company (Registration No. [●]) incorporated under the laws of South Africa and having its principal place of business at [●] in the Republic of South Africa (the "**Seller**"); and
 - (2) **THE DEPARTMENT OF MINERAL RESOURCES AND ENERGY** (the "**Department**");
- (together, the "**Parties**", and "**Party**" shall mean either of them).

RECITALS:

- (A) The Seller has been granted, and currently holds, an electricity generation licence permitting it to operate, generate and sell energy from a [●] MW [specify technology] electricity generation Facility located at [insert general location of the Facility].
- (B) The Seller has been authorised to enter into a Power Purchase Agreement ("the **PPA**") with Eskom Holdings SOC Limited (Registration No. 2002/015527/30), as the Buyer ("**the Buyer**") following the Seller's selection by the Department pursuant to the Renewable Energy Independent Power Producer ("**IPP**") procurement programme ("**IPP Programme**") conducted under Request for Proposals number **DMRE/001/2022/23**.
- (C) The Department and the Seller have agreed that the Seller shall undertake the Project upon and subject to the terms and conditions of this Agreement and the PPA.

THE PARTIES AGREE as follows:

1. Definitions and Interpretation

1.1 Definitions

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

"**Affiliate**" has the meaning given to it in the PPA;

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

"**Agreed Interest Rate**" has the meaning given to it in the PPA;

"**Ancillary Services**", has the meaning given to it in the PPA;

"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 15 (*Assignment*) and the term **"Assignment"** shall be construed accordingly;

"B-BBEE Codes" has the meaning given to it in Schedule 2 (*Economic Development Obligations*);

"Black Enterprise" has the meaning given to it in Schedule 2 (*Economic Development Obligations*);

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

"Business Day" has the meaning given to it in the PPA;

"Capacity" has the meaning given to it in the PPA;

"Capital Expenditure" has the meaning given to it in the PPA;

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

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

"Claims" has the meaning given to it in the PPA;

"Codes" has the meaning given to it in the PPA;

"Commencement of Construction Confirmation Form" has the meaning given to it in the PPA;

"Commercial Energy" has the meaning given to it in the PPA;

"Commercial Energy Payment" has the meaning given to it in the PPA;

"Commercial Operation Date" means the date determined to be the Commercial Operation Date in accordance with the PPA;

"Compensation Event" means any material breach by the Department of any of its obligations under this Agreement (save for any breach that constitutes a Government

Default), to the extent in each case that the breach is not caused or contributed to by the Seller or any Contractor;

"Conduit Shareholder" means an entity that is established for the purpose only to hold Equity in the Seller, and or equity in other entities undertaking projects similar to the Project;

"Consents" has the meaning given to it in the PPA;

"Construct" has the meaning given to it in the PPA;

"Construction Contractor" means one or more Contractors engaged by the Seller to Construct the Facility;

"Contract Month" means a calendar month save that:

- (a) the first Contract Month shall be the period from and including the Effective Date up to and including the last day of the month during which the Effective Date occurs; and
- (b) the final Contract Month shall be the period from and including the first day of the month during which the Termination Date occurs up to and including the Termination Date;

"Contract Quarter" means the periods:

- (a) 1 April to 30 June;
- (b) 1 July to 30 September;
- (c) 1 October to 31 December; and
- (d) 1 January to 31 March,

during the Term. Should the Effective Date fall within any of the periods referred to above (and not commence on 1 April, 1 July, 1 October or 1 January), then the first Contract Quarter shall commence on the Effective Date and shall be the remaining portion of the Contract Quarter in which the Effective Date falls, plus the next Contract Quarter;

"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 Effective 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" has the meaning given to it in the PPA;

"Contractor" has the meaning given to it in the PPA;

"Contractors' and Equipment Suppliers' Costs" means the reasonable costs and or losses of a Contractor or Equipment Supplier resulting directly from the early termination of its agreement with the Seller which in turn arises as a consequence of the early termination of this Agreement as a consequence of a Government Default, but only to the extent that:

- (a) such costs are incurred under agreements that have been entered into in the ordinary course of business and on an arms-length and otherwise reasonable commercial basis;
- (b) the Contractor's or Equipment Supplier's losses of profits included in such costs, shall be for a period not exceeding six (6) months and shall not exceed the amount detailed in Schedule 8 (*Details of Contractors' and Equipment Suppliers' loss of profits*); and
- (c) each of the Seller and the relevant Contractor or Equipment Supplier has used reasonable endeavours to mitigate such costs and or losses.

For the avoidance of any doubt, the Contractors' and Equipment Supplier's Costs shall exclude any costs and or losses for which any portion of the Debt or Equity has been drawn or committed and the Department shall have the right to require the relevant Contractor or Equipment Supplier to provide evidence proving any item claimed by it under this definition and to investigate and analyse such evidence;

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

"Corrupt Practice" means the offering, giving, receiving or soliciting, directly or indirectly, 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;

"DALRRD" means the Department of Agriculture, Land Reform and Rural Development;

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

"Decommissioning Costs" means the costs of decommissioning the Facility upon the termination of the PPA, whether prematurely or due to the effluxion of time or upon cessation of the Project, which costs are detailed, in respect of each Contract Year, in the Financial Model, which costs must, at a minimum, include the costs of undertaking the following, in respect of or related to the Facility:

- (a) the rehabilitation of the adverse environmental impacts of the listed or specified activities detailed in the environmental Consents;
- (b) engagement with all necessary stakeholders including but not limited to the National Energy Regulator of South Africa, Eskom, the Department of Environment Forestry and Fisheries, the local and or district municipality, the Department of Employment and Labour, South African National Roads Agency Limited and the Project Site neighbours;
- (c) rehabilitation of the impacts of the generation and dispatch of Energy Output, including polluted or extraneous water;
- (d) the responsible disposal of equipment, including solar PV panels (if applicable) and electronic waste;
- (e) securing, making safe, decommissioning, isolation and closure of the Facility and supporting infrastructure;
- (f) remediation of latent or residual environmental impacts which are presently identifiable pursuant to the Consents;

- (g) demolition and removal of buildings, structures, plant, equipment and other objects including subsurface, foundations and services;
- (h) rehabilitation of the Project Site, including capping and covering if necessary and landscaping;
- (i) consideration and management of the heritage requirements;
- (j) compliance with all Laws applicable to the decommissioning, demolition or rehabilitation process;
- (k) obtaining all necessary permits or approvals for decommissioning, demolition, remediation and rehabilitation; and;
- (l) remediation of any other negative environmental impacts;

"Decommissioning Costs Bank Guarantee" means an on demand bank guarantee issued by a financial institution that is approved by the Department, which approval should not be unreasonably withheld, of which the Department is the sole beneficiary and substantially in the form of the bank guarantee attached hereto as Schedule 10B (*Form of Decommissioning Costs Bank Guarantee*);

"Decommissioning Reserve" means one or a combination of a Rehabilitation Trust and or a Decommissioning Costs Bank Guarantee;

"Development Fee" has the meaning given to it in clause 2 (*Development Fee*);

"Direct Agreement" means the Direct Agreement entered into (or to be entered into) between the Seller, the Buyer, the Department and the Lenders (or their agent) in relation to this Agreement and the PPA, substantially in the form set out in Schedule 4 (*Direct Agreement*), as it may be amended from time to time by agreement of the parties thereto;

"Distribution Agreement" has the meaning given to it in the PPA;

"Due Date" has the meaning given to it in the PPA;

"Early Operating Period" has the meaning given to it in the PPA;

"Early Operating Energy Payment" has the meaning given to it in the PPA;

"Economic Development Performance Penalties" has the meaning given to it in Schedule 2 (*Economic Development Obligations*);

"Economic Development Matrix" has the meaning given to it in Schedule 2 (*Economic Development Obligations*);

"Effective Date" means the Signature Date;

"Encumbrance" means:

- (a) any mortgage, pledge, lien, assignment or cession conferring security, hypothecation, security interest, preferential right or trust arrangement or other encumbrance securing any obligation of any person;
- (b) any arrangement under which money or claims owed to, or for the benefit of, a bank or other person, may be applied against or set off against any other monies or claims owed by the relevant bank or other person, or made subject to a combination of accounts so as to effect discharge or settlement of any sum owed or payable to that bank or other person; or
- (c) any other type of preferential agreement or arrangement (including any title transfer and retention arrangement), the effect of which is the creation of a security interest;

"Energy" has the meaning given to it in the PPA;

"Energy Output" has the meaning given to it in the PPA;

"Environmental Laws" has the meaning given to it in the PPA;

"Equipment Supplier" has the meaning given to it in the PPA;

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

"Equity Compensation" means:

- (a) zero (0), in the situation where the aggregate of all amounts already paid by the Seller in respect of Equity up to the Termination Date (by way of dividends, other distributions, interest and principal), taking into account the actual timing of all such payments plus the Equity, provides the Shareholders with an internal rate of return equal to or greater than the IRR over the period up to the Termination Date; or
- (b) the amount calculated in accordance with paragraphs (i) to (iii) of this sub-clause (b), in the situation where the aggregate of all amounts already paid by the Seller in respect of Equity up to the Termination Date (by way of dividends, other distributions, interest and principal), taking into account the actual timing of all such payments plus the Equity, does not provide the Shareholders with an internal rate of return equal to or greater than the IRR over the period up to the Termination Date. Equity Compensation will, in this situation, be calculated as follows:
 - i. by discounting the aggregate of all projected Equity distributions (dividends, other distributions, interest and principal) in the Financial Model from the Termination Date to the Expiry Date, taking into account

the timing of all such projected Equity distributions as provided for in the Financial Model and utilising the IRR as the discount rate; and

- ii. if the amount calculated in accordance with sub-paragraph (i) provides the Shareholders with an internal rate of return that is less than the IRR, Equity Compensation will be the amount calculated in accordance with sub-paragraph (i);
- iii. if the amount calculated in accordance with sub-paragraph (i) provides the Shareholders with an internal rate of return that is greater than the IRR, Equity Compensation will be limited to that portion of the amount calculated in accordance with sub-paragraph (i) which provides the Shareholders with an internal rate of return that is equal to the IRR;

"ERA" means the Electricity Regulation Act 4 of 2006, as amended or replaced from time to time;

"Expiry Date" has the meaning given to it in the PPA;

"Facility" has the meaning given to it in the PPA;

"Facility Completion" has the meaning given to it in the PPA;

"Facility Completion Form" has the meaning given to it in the PPA;

"Financial Model" means the financial base case for the Project as reflected in the Excel-based financial model to be attached to this Agreement on an electronic storage device that can be used to store data, as provided for in Schedule 5 (*Financial Model*), which model incorporates the forecast cash flow statements of the Seller including all expenditure, revenues, taxation and financing of the Construction, Operation and Maintenance of the Facility together with the income statements and balance sheets for the Seller over the Term, and details of all assumptions, calculations and methodology used in the compilation thereof;

"Financing Agreements" means:

- (a) the agreements relating to the Debt listed in Schedule 6 (*Project Documents*) in their form as at the Effective Date and excluding all amendments thereto not approved in advance by the Department; and
- (b) any master agreement, confirmation, schedule or other agreement entered into or to be entered into to comply with the provisions of the agreements referred to in (a) in relation to the hedging of exposure to interest rate changes and foreign currency exchange rate fluctuations only;

"Force Majeure" has the meaning given to it in the PPA;

"Government" has the meaning given to it in the PPA;

"Government Default" means any one of the following events:

- (a) an expropriation or nationalisation of a material part of the Facility and/or shares of the Seller by the Buyer or any Responsible Authority; or
- (b) a failure by the Department to honour any valid and proper request by the Seller for payment under clause 6 (*Government Support*);

"Group" means the Seller and each Group Company;

"Group Company" means:

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

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

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

- (a) an engineer of not less than ten (10) 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 for the time being 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;

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

"Key Equipment" has the meaning given to it in the PPA;

"Last COD" has the meaning given to it in the PPA;

"Law" has the meaning given to it in the PPA;

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

"Material Contractors" means the Construction Contractor and Operations Contractor;

"Month" has the meaning given to it in the PPA;

"Notice of Commencement of Facility" has the meaning given to it in the PPA;

"Operate" has the meaning given to it in the PPA;

"Operating Measurement Period" has the meaning given to it in Schedule 2 (*Economic Development Obligations*);

"Operations Contractor" means one or more Contractors engaged by the Seller to Operate and Maintain the Facility;

"Ownership Element Obligations" has the meaning given to it in Schedule 2 (*Economic Development Obligations*);

"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;

"PPA" means the Power Purchase Agreement entered into between the Buyer and the Seller on or before the Signature Date;

"PPA Compensation Event" means a "Compensation Event" as defined in the PPA;

"PPA Payment" has the meaning given to it in clause 6 (*Government Support*);

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

"Project" has the meaning given to it in the PPA;

"Project Data" has the meaning given to it in the PPA;

"Project Documents" means the contracts described in Schedule 6 (*Project Documents*) relating to the Project, each executed by the parties thereto on or before the Effective Date or otherwise in the Agreed Form;

"Project Site" has the meaning given to it in the PPA;

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

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

"Reasonable and Prudent Operator" has the meaning given to it in the PPA;

"Rehabilitation Trust" means a trust with the sole object to apply its property for rehabilitation upon premature closure or decommissioning and final closure, and post closure coverage of any latent and residual environmental impacts associated with the Project to restore the Project Site to a predetermined state, or to a land use which conforms to the generally accepted principle of sustainable development, the trust deed of which is substantially in the form of Schedule 10A (*Form of Rehabilitation Trust Deed*);

"Renewable Energy" the harnessing of naturally occurring non-depletable sources of energy, including solar, wind, biomass, hydro, tidal wave, ocean current and geothermal, to produce electricity, gaseous and liquid fuels, heat or a combination of these energy types;

"Renewable Energy IPP Procurement Programme" the Department's procurement programme for Renewable Energy, under the auspices of which the sixth bid submission phase is being conducted has the meaning given to it in the PPA;

"Responsible Authority" has the meaning given to it in the PPA;

"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;

"Scheduled COD" has the meaning given to it in the PPA;

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

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

"Shareholders" means the holders of the Equity;

"Shareholding" has the meaning given to it in Schedule 2 (*Economic Development Obligations*);

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

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

"Special Loss" has the meaning given to it in the PPA;

"Success Payments" means all developers' fees, success fees, incentive fees, participation fees, premia predicated on implementation of the Project or being appointed preferred bidder in respect of the Project, and similar fees or premia paid to any person by any person, whether or not the payer or payee is a member of the consortium that formed the Seller, a developer of the Project, a Shareholder, a Contractor or a third party, as well as all monies or fees or premiums paid by way of dividend sharing, upside sharing or return sharing paid by Shareholders to any other person (regardless of who they are), or any payments of any similar nature or purpose, excluding any arranging fees, underwriting fees and participation fees payable or paid to the Lenders directly in respect of the Debt, and any success fees or arranging fees payable or paid to advisors in respect of the Project, provided such fees paid to Lenders or advisors are within the current market range of such fees;

"System" has the meaning given to it in the PPA;

"System Event" has the meaning given to it in the PPA;

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

"Term" has the meaning given to it in clause 3 (*Obligations and Reporting*), as such period of time may be amended or extended in accordance with the terms of the PPA;

"Termination Date" means the Expiry Date or the date of the earlier termination of this Agreement in accordance with clause 11 (*Termination*);

"Total Project Cost" means:

- (a) for the purposes of clause 2 (*Development Fee*), an amount equal to the aggregate of the total Debt and Equity which is, as at the Effective Date, forecast in the Financial Model to be contributed up to the Commercial Operation Date and the net present value of the aggregate of all the rentals payable in respect of any lease of Key Equipment, if applicable; and
- (b) for all other purposes, the total Capital Expenditure, forecast as at the Effective Date, to be incurred up to the Commercial Operation Date by the Seller in the

design, construction, development, installation and/or commissioning of the Project;

"Transfer Costs" means all reasonable costs incurred by the Seller arising out of the transfer to the Department (or its nominee) of the right, title and interest of the Seller in and to the Facility, the Project Site, the Consents and the Project upon termination of this Agreement, including VAT but excluding (i) any costs incurred by the Seller pursuant to clause 12.2 (*Independent Expert Calculations*) or clause 18 (*Fast Track Dispute Resolution*) or clause 19 (*Dispute Resolution*) which are allocated by the Independent Expert to the Seller; (ii) any costs in respect of legal or financial advisory services; and (iii) any tax on income, receipts, sales, transfer, property, capital gain, dividends or other similar taxes;

"Transmission Agreement" has the meaning given to it in the PPA;

"Unforeseeable Conduct" has the meaning given to it in the PPA;

"Use of System Charges" has the meaning given to it in the PPA;

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

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

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 "**Department**" 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 Department;
- 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 Department;
- 1.2.10 references to any amount shall mean that amount exclusive of VAT, unless the amount expressly includes VAT;
- 1.2.11 references to legislation include any statute, by-law, regulation, rule, subordinate legislation or delegated legislation or order, and a reference to any legislation is to such legislation as amended, modified or consolidated from time to time, and to any legislation replacing it or made under it;
- 1.2.12 the terms "**hereof**", "**herein**", "**hereunder**" and similar words refer to this entire Agreement and not to any particular clause, paragraph, Part, Schedule or any other subdivision of this Agreement;
- 1.2.13 the rule of construction that, in the event of ambiguity, an agreement shall be interpreted against the Party responsible for the drafting thereof, shall not apply in the interpretation of this Agreement;
- 1.2.14 the expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any

such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that these provisions do not expressly state this; and

- 1.2.15 if any provision in clause 1.1 (*Definitions*) is a substantive provision conferring rights or imposing obligations on either Party then, notwithstanding that such provision is contained in such clause, effect shall be given thereto as if such provision were a substantive provision in the body of this Agreement.

1.3 Units of measurement

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

1.4 Rounding up

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

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

2. Development Fee

- 2.1 The Seller will be required to pay a development fee equal to one point five percent (1.5%) of the Total Project Cost ("**Development Fee**") to the Project Development Fund for Energy currently at the National Treasury.
- 2.2 The Development Fee referred to in clause 2.1 and paid by the Seller to the National Treasury will be used for the setting up of a Project Development Fund for the projects procured under the independent power producer procurement programmes already conducted or currently being conducted or prepared by the Department, including but not limited to the Renewable Energy IPP Procurement Programme.
- 2.3 If the Seller fails to pay the Development Fee on or before the twentieth (20th) Business Day after the Effective Date, then the Seller shall be entitled to a period of twenty (20) Business Days ("**Remedy Period**") to make the necessary payment. If the Seller fails to pay the Development Fee within the Remedy Period, the Department shall be

entitled, at any time, without further notice and for as long as the Development Fee remains unpaid, to terminate this Agreement in terms of clause 11.2 (*Termination for Seller Default*).

3. Term

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

3.1.1 its termination in accordance with clause 11 (*Termination*); or

3.1.2 the Expiry Date,

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

3.2 Notwithstanding anything to the contrary contained in this Agreement, this Agreement shall not terminate and shall remain in force for as long as any payments are due, but not yet paid, by the Department to the Seller and for as long as any obligations under clause 12 (*Compensation on Termination for Government Default*) remain unperformed.

4. Project Site

4.1 Department's inspection rights

4.1.1 The Department shall have the right from time to time, on not less than forty-eight (48) hours' written notice, to designate not more than four (4) of the Department's representatives who shall be entitled to have access to the Project Site at reasonable times for the purposes of:

4.1.1.1 viewing the Facility and verifying the Seller's compliance with its obligations under this Agreement and/or the PPA;

4.1.1.2 monitoring the Facility as it is undertaken by the Seller, from time to time; and

4.1.1.3 subject to any confidentiality undertakings between the Seller and manufacturers or Equipment Suppliers of Facility equipment, examining and taking copies of any Project Data, at any time during normal business hours (at the Department's own cost),

provided that the Department shall ensure that its representatives shall comply with all Project Site health and safety precautions and standards, and any other reasonable requirements of the Seller and its Contractors, and shall not interfere with the Construction or Operation of the Facility.

4.2 Land use authorisations

If the Seller obtained a land use authorisation or secured a rezoning of the Project Site in order to undertake the Project, the Seller shall procure that:

- 4.2.1 when the PPA is terminated or expires in accordance with its own terms, the purpose for which the Project Site may be used or the zoning of the Project Site is restored to the purpose of use or zoning of the Project Site that existed before the relevant authorisation or rezoning was obtained, provided that if such land use authorisation or rezoning involved the registration of one or more restrictions in respect of the title deed of the Project Site, the Seller shall not apply for, or assist in any way with, or consent to or procure through any agent or instrument, the removal of such restriction without the prior written consent of the DALRRD; and
- 4.2.2 if the Seller becomes aware that any other person has registered or intends to register one or more restrictions in respect of the title deed of the Project Site, it shall, as soon as reasonably practicable, notify the DALRRD in writing of such fact.

4.3 No improvements

- 4.3.1 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 an increase in the installed Capacity of the Facility above the relevant Contracted Capacity once it has been determined on the relevant Commercial Operation Date.
- 4.3.2 The Seller may, after providing the Buyer with written notice of its intention to do so, replace or modify the equipment of the Facility in order to Operate the Facility in accordance with the standards of a Reasonable and Prudent Operator, but only to the extent that such modifications or replacements of equipment shall not have an adverse effect on the performance of the Facility or change the Contracted Capacity of the Facility. The Seller shall be required to provide the Department with written evidence that it has obtained any required amendments or revisions to its Consents pursuant to making such modifications or undertaking such replacements.

4.4 Commercial Operation Date

If the Seller becomes aware that, for any reason, the Commercial Operation Date will not be achieved by the Scheduled COD, the Seller shall, without any unreasonable delay, notify the Department 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 relevant Scheduled COD, upon implementing such measures.

4.5 **Contracted Capacity**

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.

4.6 **No Third Party Sales**

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

5. **Testing and Commissioning**

5.1 All testing and commissioning of the Facility, including the conducting of Facility Completion, shall be conducted by the Seller in accordance with the provisions of the PPA.

5.2 In addition to the notice requirements set out in clause 9 (*Notices*), the Seller shall notify the Department of the times that any and all of the tests detailed in clause 5.1 are to commence, not less than three (3) Business Days prior to the start of such test.

5.3 The Department shall be entitled to nominate two (2) representatives to be present at any and all of such tests, provided that, if such representatives are not present at the scheduled time, the Seller shall be entitled to proceed with the relevant test in their absence.

6. **Government Support**

6.1 It is recorded that the Minister responsible for energy has determined in terms of section 34 of the ERA that:

6.1.1 new generation capacity is needed to ensure the continued uninterrupted supply of electricity;

6.1.2 such capacity and electricity shall be made available and generated from, among others, renewable energy power generating facilities under the IPP Programme;

6.1.3 electricity produced from the new generation capacity shall be procured through one or more tendering procedures which are fair, equitable, transparent, competitive and cost-effective and which shall constitute IPP procurement programmes as contemplated in the Regulations; and

6.1.4 the capacity and electricity thus produced may only be sold to and must be purchased by the Buyer.

- 6.2 In order to purchase the Energy Output, the Buyer will have to and has agreed to enter into the PPA with the Seller simultaneously with the signature of this Agreement. The PPA contains obligations for payment by the Buyer in respect of Early Operating Energy (if applicable), Commercial Energy and Ancillary Services.
- 6.3 The Department agrees that if, in the case of payment of the Early Operating Energy Payment, Commercial Energy Payment, Use of System Charges, any payment in respect of a PPA Compensation Event, System Event or Unforeseeable Conduct Ancillary Services Payment or any payment contemplated in clause 29 (*Third Party Indemnity*) of the PPA ("**PPA Payment**"):
- 6.3.1 the amount is due and payable by the Buyer pursuant to the PPA and has not been paid in full by the Buyer within thirty (30) Business Days of the Due Date;
 - 6.3.2 the PPA Payment is not consequent to termination of the PPA as a result of a Seller Default or Sanctions or a Corrupt Practice;
 - 6.3.3 the PPA Payment amount is not in dispute;
 - 6.3.4 the Seller has delivered a demand for payment of the PPA Payment to the Buyer in accordance with the provisions of the PPA, and despite such demand, such amount is not paid; and
 - 6.3.5 the amount has not, despite the diligent efforts of the Seller and/or the Lenders (which, for the avoidance of doubt, shall not require the institution of legal proceedings against the Buyer), been recovered from the Buyer within three (3) Months from the due date for such payment,
- then the Department will make payment of the PPA Payment (together with any interest accrued thereon as may be due and payable in terms of and at the rate and for the period specified in the PPA or the Direct Agreement) to the Seller and/ or Lenders within forty (40) Business Days of first written demand of the Seller or the Lenders for payment.
- 6.4 The Department will ensure that any payment or payments made pursuant to clause 12 (*Compensation on Termination for Government Default*) shall be made promptly following promulgation of the first appropriation bill occurring after delivery by the Seller and/or the Lenders to the Department of written demand for payment in terms of clause 12.2.3, but in any event within hundred and eighty days (180) days of such demand. All payment pursuant to this clause 6 (*Government Support*) shall be made into the banking account nominated for that purpose by the Seller and/or the Lenders.

7. Emission Credits

The Seller agrees and acknowledges that the Department shall be entitled to amend this Agreement in order to insert a clause that governs emission credits in line with Government's policies, after such policies have been established and finalised taking into account the Seller's general economic position in the event that it is materially adversely or beneficially affected by such amendment.

8. Refinancing

- 8.1 The Seller shall not be entitled to undertake any refinancing of its Debt or Equity at any time during the Term unless it has obtained the prior written approval of the Department in respect of such refinancing.
- 8.2 Any refinancing request must be submitted and prepared in line with the provisions of the refinancing protocol published by the Department, as amended or updated from time to time.

9. Notices

9.1 Notices and reports under the PPA

- 9.1.1 The Parties acknowledge that the Buyer has an interest in the content of this Agreement, and that the Department similarly has an interest in the content of the PPA.
- 9.1.2 The Seller shall, whenever any notice or report is delivered by it to the Buyer under the PPA, and or the Independent Engineer under the agreement entered into between the Seller and the Independent Engineer in terms of clause 4.2 (*Independent Engineer*) of the PPA, also deliver copies of such notice or report to the Department.
- 9.1.3 The notices and reports which the Seller shall be obliged to provide to the Department include, but are not limited to:
 - 9.1.3.1 monthly progress reports 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. The Seller shall ensure that these monthly progress reports are prepared in accordance with the requirements of the PPA;
 - 9.1.3.2 any notices of the date on which the Facility is anticipated to be connected to the System for the first time, as contemplated in the PPA;

- 9.1.3.3 any notices of the date on which the Seller intends to undertake a Facility Completion test, as contemplated in the PPA;
- 9.1.3.4 the Facility Completion Form to be delivered to the Buyer under the PPA;
- 9.1.3.5 Notice of Commencement of Unit in terms of the PPA;
- 9.1.3.6 the Notice of Commencement of Facility in terms of the PPA;
- 9.1.3.7 all reports and information concerning Project Data from the Seller to the System Operator and the Buyer;
- 9.1.3.8 any notice of failure by the Buyer to make payments due and payable to the Seller under the PPA, as contemplated in clause 9 (*Invoicing*) of the PPA; and
- 9.1.3.9 any notices delivered to the Buyer under the PPA in relation to, but not limited to, System Events, PPA Compensation Events, Force Majeure and Unforeseeable Conduct.
- 9.1.4 The Seller agrees that the Department is permitted to share the reports and information it receives under this Agreement with the Buyer and that the Buyer shall have the right to rely on the information provided by the Department in determining the relief to be provided to the Seller in respect of a claim made by the Seller or a dispute that arises under any of the provisions of the PPA, it being agreed that the information permitted to be shared shall include, but is not limited to, financial information of the Seller, approvals or consents issued by the Department under this Agreement relating to refinancing, Change in Control and assignment, and information pertaining to changes in shareholding or directorships in the Seller.
- 9.1.5 The Seller indemnifies and shall hold harmless the Department against any claims, damages, losses, expenses and any other consequences arising from or in connection with the reports and information, detailed in this clause 9 (*Notices*), that the Seller provides to the Department.
- 9.1.6 The Department shall have the right to request, without cause, any information in respect of the Seller's, Contractors' or Equipment Suppliers' compliance or non-compliance with the Facility's environmental and or health and safety obligations pursuant to any Consents in respect of environmental and or health and safety matters in respect of the Project. The information requested under this clause 9.1.6 may be used by the Department for purposes of reporting as envisaged in clause 26.9 (*Public Relations and Publicity*).

9.1.7 Despite any reports that might be provided to the Department in respect of the environmental and or health and safety Consents and the Seller's, Contractors' or Equipment Suppliers' compliance or non-compliance with such Consents, the Department does not have any obligation to monitor or report such compliance or non-compliance.

9.2 **Ownership of Project Data**

9.2.1 Subject to any confidentiality undertakings between the Seller and manufacturers or Equipment Suppliers of Facility equipment, the Department shall be entitled to put the Project Data in the public domain and to use the Project Data as the Department deems appropriate.

9.2.2 The Department, the Buyer and the Seller shall have joint ownership of the Project Data, but the Seller shall not, by virtue of its ownership rights, have any rights to prevent the disclosure and use of the Project Data by the Department.

10. **Consequences of a Compensation Event**

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

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

10.1.2 the Seller incurs costs or loses revenue,

then the Seller is entitled to apply for relief from its obligations under this Agreement and/or to claim compensation under this Agreement.

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

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

10.2.2 within ten (10) days of receipt by the Department of the notice referred to in clause 10.2.1 above, give the Department 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 or the impact on its ability to comply with its obligations including, where relevant, the information referred to in Schedule 2 (*Economic Development Obligations*); and

10.2.3 demonstrate to the reasonable satisfaction of the Department that:

- 10.2.3.1 the Compensation Event was the direct cause of the time lost and/or estimated change in Project costs, the loss of revenue claimed and or inability to comply with its obligations under this Agreement; and
- 10.2.3.2 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.
- 10.3 If the Seller has complied with its obligations under clause 10.2, then:
- 10.3.1 in the case of an additional cost being incurred or revenue being lost by the Seller, including Capital Expenditure incurred by the Seller at any time, the Department shall have the option to compensate the Seller for the actual estimated change in Project costs as adjusted to reflect the actual costs reasonably incurred or actual revenue lost by the Seller, either:
- 10.3.1.1 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
- 10.3.1.2 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; and/or
- 10.3.2 the Department shall give the Seller such relief from its obligations under this Agreement, as is reasonable for such a Compensation Event. The Seller shall not be entitled to relief (including compensation) as a result of Compensation Event to the extent that it has been granted relief (including compensation) to the extent that Compensation Event rising in the PPA compensates the Buyer for consequences arising to the Buyer following a Compensation Event in terms of this Agreement.
- 10.4 If the Compensation Event has a negative impact on the Seller's ability to comply with its Economic Development Obligations, the Department shall approve such amendment(s) to the Economic Development Matrix, addressing each of the Committed Obligations, Quarterly Obligations and the Economic Development Plan, as is reasonable in relation to the extension of time granted to the Seller as a consequence of the Compensation Event, where such extension of time is granted by the Department to the Seller and provided that none of the overall Economic Development Obligations may be reduced through such amendment(s).

- 10.5 If information is provided after the dates referred to in clause 10.2, 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.
- 10.6 If the Parties cannot agree on the extent of any compensation or relief from the Seller's obligations under this Agreement, or the Department disagrees that a Compensation Event has occurred (or as to its consequences), or that the Seller is entitled to any relief or compensation under this clause 10 (*Consequences of a Compensation Event*), the Parties shall resolve the matter in accordance with clause 18 (*Fast Track Dispute Resolution*).

11. Termination

11.1 **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.

11.2 **Termination for Seller Default**

- 11.2.1 Simultaneously with termination of the PPA for a Seller Default, this Agreement shall terminate.
- 11.2.2 The Department shall be entitled to terminate this Agreement:
- 11.2.2.1 for failure by the Seller to comply with its obligations in clause 2 (*Development Fee*);
- 11.2.2.2 if the Seller fails to comply with any of its obligations under clause 14.2.2 and or 14.8 and or clause 17 (*Rehabilitation Trust and Decommissioning Cost Bank Guarantee*);
- 11.2.2.3 if any of the warranties in clause 25.1 (*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;
- 11.2.2.4 if the Seller fails to issue a Commencement of Construction Confirmation Form to the Buyer in accordance with the terms of clause 3.6.1 of the PPA within [●]¹days of the Effective Date of this Agreement;

¹ To be determined at Preferred Bidder stage, having regard to the connection arrangements with Eskom.

11.2.2.5 in accordance with the provisions of clause 11.2 (*Termination for Seller Default*) of this Agreement where, in the reconciliation of the Economic Development Performance Penalties in accordance with clause 6 (*Economic Development Performance Measurement*) of Schedule 2 (*Economic Development Obligations*), the Seller incurs Economic Development Performance Penalties, in any Contract Year, which in value are equal to or greater than fifty percent (50%) of the Construction Measurement Period or Operating Measurement Period, as the case may be, in the formula referred to in clause 6.1 (*Economic Development Performance Penalties*) of Schedule 2 (*Economic Development Obligations*).

11.2.3 The Seller shall reimburse the Department with all costs incurred by the Department in exercising any of its rights as a result of the termination of this Agreement in terms of this clause 11.2 (*Termination for Seller Default*). The Department shall take reasonable steps to mitigate such costs.

11.3 ***Termination for Government Default***

11.3.1 On the occurrence of a Government Default, or within ninety (90) days after the Seller becomes aware of same, the Seller may serve notice on the Department of the occurrence (and specifying details) of such Government Default. If the relevant Government Default has not been remedied or rectified within thirty (30) Business Days of such notice, the Seller may serve a further notice on the Department enforcing clause 12 (*Compensation on Termination for Government Default*) and terminating this Agreement, subject to clause 3.2.

11.3.2 If this Agreement is terminated for Government Default, clause 1 (*Definitions and Interpretation*), clause 6 (*Government Support*), clause 12 (*Compensation on Termination for Government Default*), clause 18 (*Fast Track Dispute Resolution*), clause 19 (*Dispute Resolution*), clause 22 (*Governing Law and Jurisdiction*), clause 24 (*Notices*) and clause 26 (*Miscellaneous*) shall remain of full force and effect until the Department's obligations in terms of clause 6 (*Government Support*) and/or clause 12 (*Compensation on Termination for Government Default*) have been fully discharged.

11.4 ***Termination for Sanctions and Corrupt Practices***

11.4.1 Warranties in regard to Sanctions

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

11.4.1.1 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:

11.4.1.1.1 is, or at any time during the five (5) years preceding the Effective Date has been included on any Sanctions List;

11.4.1.1.2 is violating or at any time during the five (5) years preceding the Effective Date has violated any applicable Sanctions; or

11.4.1.1.3 is party to or at any time during the five (5) years preceding the Effective Date has participated in any Sanctioned Transaction; and

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

11.4.2 Undertakings in regard to Sanctions and Sanctioned Transactions

The Seller hereby undertakes to the Department that it:

11.4.2.1 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;

11.4.2.2 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

11.4.2.3 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.

11.4.3 Indemnity

The Seller hereby indemnifies the Department against any loss, damage or harm suffered by the Department as a direct or indirect consequence of a breach of any of the warranties or undertakings contained in clauses 11.4.1 and 11.4.2 above.

11.4.4 Warranties in regard to Corrupt Practices

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

11.4.4.1 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:

11.4.4.1.1 has violated, or is violating, either directly or indirectly, any Anti-Bribery and Corruption Laws; or

11.4.4.1.2 is party to or has participated in any Corrupt Practice; and

11.4.4.2 each member of the Group, and each Contractor and each Lender maintains appropriate policies and procedures designed to promote compliance with applicable Anti-Bribery and Corruption Laws.

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

The Seller hereby undertakes to the Department that it:

11.4.5.1 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;

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

11.4.5.3 shall (and shall take reasonable steps 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

11.4.5.4 shall, with respect to the Lender, take reasonable steps to satisfy itself that the Lender has suitable policies and procedures in place to ensure compliance by the Lenders and their respective directors, officers, employees and agents with applicable Anti-Bribery and Corruption Laws.

11.4.6 Indemnity

Subject to clause 11.4.9, the Seller hereby indemnifies the Department against any loss, damage or harm suffered by the Department as a direct or indirect

consequence of a breach of any of the warranties or undertakings contained in clauses 11.4.4 (*Warranties in regard to Corrupt Practices*) and 11.4.5 (*Undertaking in regard to Corrupt Practices and Anti-Bribery and Corruption Laws*) above.

11.4.7 Reporting Obligations

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

11.4.7.1 of any breach of any of the provisions in clauses 11.4.1 (*Warranties in regard to Sanctions*) to 11.4.6 (*Indemnity*) above; and

11.4.7.2 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.

11.4.8 Breach and termination for Sanctions and Corrupt Practices

11.4.8.1 Subject to clause 11.4.8.2 any failure on the part of the Seller to comply with the obligations contemplated in clauses 11.4.1 (*Warranties in regard to Sanctions*) to 11.4.7 (*Reporting Obligations*) (inclusive) shall constitute a material breach of the Agreement by the Seller, and shall entitle the Department, in consultation with the Buyer, to terminate this Agreement by issuing the Seller with written notice of such termination, provided that if the breach:

11.4.8.1.1 involves conduct by a Contractor or any of its directors, officers, employees and/or agents committed without the prior knowledge of the Seller, the Department 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 the Contractor terminates the contract with the relevant Contractor in question or that employee's, director's, officer's or agent's involvement in the Project is terminated, as applicable and provides the Department with proof to the reasonable satisfaction of the Department that it has

procured the performance of the relevant part of the Construction, Operation or Maintenance of the Facility by another person; or

11.4.8.1.2 involves conduct by a Lender, or any of its directors, officers employees and/or agents committed without the prior knowledge of the Seller, the Department must, prior to termination of this 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 Department 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.

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

11.4.9 Without prejudice to its other rights or remedied under this clause 11 (*Termination*), the Department shall be entitled to recover from the Seller, the greater of:

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

11.4.9.2 any direct losses sustained by the Department in consequence of any breach of this clause 11 (*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 11.4.1 (*Warranties in regard to Sanctions*) to 11.4.7 (*Reporting Obligations*) above.

11.4.10 In the event that the Buyer has already been compensated by the Seller in terms of clauses 18.4.6 of the PPA in respect of the same Corrupt Practice, the Departments' claim in terms of this clause 11 (*Termination*) shall be reduced by an amount equal to any compensation already paid by the Seller to the Buyer in respect of the same Corrupt Practice, save in respect of any costs which are

incurred by the Department for its own account in investigating and pursuing any claim against the Seller or a Contractor or Lender in respect of clauses 11.4.1 (*Warranties in regard to Sanctions*) to 11.4.7 (*Reporting Obligations*) above.

12. Compensation on Termination for Government Default

12.1 On termination of this Agreement in terms of clause 11.3 (*Termination for Government Default*), the Department shall:

12.1.1 have the option to take over the right, title and interest in and to the Project, the Project Site and the Consents or to nominate a third party to take over the right, title and interest in and to the Project, the Project Site and the Consents on the following terms and conditions:

12.1.1.1 the purchase price of the Project shall be the amount calculated in terms of clause 12.1.2;

12.1.1.2 the Seller shall be obliged to give warranties, as may be agreed between the Seller and the Department or its nominee, to the Department or its nominee in respect of the ownership and condition of the Project;

12.1.1.3 the effective date of the transfer of the Project to the Department or its nominee will be the date on which the purchase price of the Project is paid in full to the Seller;

12.1.1.4 the Seller shall be obliged to transfer ownership of the Project and of the Project Site (if it owns the Project Site) or transfer the lease (if it leases the Project Site) to the Department or its nominee, and sign all documents required to effect such transfer on or before the effective date referred to in clause 12.1.1.3; and

12.1.1.5 such other terms and conditions that may be agreed between the Seller and the Department or its nominee,

provided that the Department shall notify the Seller in writing as to whether it intends to exercise such option within twenty (20) Business Days of the notice terminating this Agreement for Government Default in terms of clause 11.3 (*Termination for Government Default*); and

12.1.2 regardless of whether or not the Department has exercised its option in terms of clause 12.1.1, pay the Seller an amount equal to the aggregate of:

- 12.1.2.1 an amount equal to the Debt²;
 - 12.1.2.2 the Equity Compensation;
 - 12.1.2.3 the Contractors' and Equipment Suppliers' Costs;
 - 12.1.2.4 an amount equal to the redundancy payments for employees of the Seller not transferring to the Department or its nominee, that have been or will reasonably be incurred by the Seller as a direct result of the termination of this Agreement; and
 - 12.1.2.5 the Transfer Costs (if the Department exercises its option in clause 12.1.1 to take over the Facility, the Project Site, the Consents and the Project or to nominate a third party to do so),
- less, to the extent it is a positive amount, the aggregate, as at the Termination Date, of:
- 12.1.2.6 all credit balances on any bank accounts held by or on behalf of the Seller on the Termination Date and the value of any right of the Seller or the Lenders to receive any proceeds pursuant to letters of credit and bank guarantees and sums due and payable from the Contractors or the Equipment Suppliers (save to the extent that such sums are included in the calculation under clause 12.1.2.3) and any other third parties;
 - 12.1.2.7 the fair market value of any other assets and rights of the Seller (other than those transferred or to be transferred to the Department or its nominee pursuant to this Agreement) less liabilities of the Seller properly incurred in connection with this Agreement, unless such liabilities fall within clauses 12.1.2.1 to 12.1.2.4 above, provided that no account shall be taken of any liabilities and obligations of the Seller arising out of agreements or arrangements entered into by the Seller to the extent that such agreements or arrangements were not entered into in:
 - 12.1.2.7.1 connection with the Seller's obligations in relation to the Project; and
 - 12.1.2.7.2 the ordinary course of business and on commercial arm's length terms;

² In the event that all or part of the Debt is denominated in a foreign currency ("**Foreign Debt**"), this Agreement will be amended in order to provide for a mechanism for determining the amount of the Foreign Debt contemplated in this clause 12.1.2.1, based on the lower of the exchange rate prescribed by National Treasury as at Commercial Close, and the exchange rate prevailing at the Termination Date. In addition, any breakage costs due by the Seller in respect of hedging arrangements entered into in order to facilitate the servicing of principal and interest of the Foreign Debt and to protect the Seller from exchange rate fluctuations in relation to such Foreign Debt, will be specifically excluded from any termination payments to the Seller, and the definition of Financing Agreements will be amended accordingly.

12.1.2.8 if termination of this Agreement occurs after the Commercial Operation Date and if the Project is not found to be in the condition reasonably expected with due regard to the age and use of the Project and the performance expected of the Facility in accordance with the terms of the PPA, the amount determined by the Independent Expert as being required to bring the condition of the Facility to the standard expected as at the Termination Date by a Reasonable and Prudent Operator; and

12.1.2.9 any balance of a deferred refinancing gain pursuant to a refinancing approved by the Department in terms of clause 8 (*Refinancing*) of this Agreement,

provided that, if the aggregate of the amounts referred to in clauses 12.1.2.1 to 12.1.2.5 after the deductions made in clauses 12.1.2.6 to 12.1.2.9 above is less than zero (0) then, for the purposes of the calculation in this definition, the aggregate shall be deemed to be zero (0).

12.2 Independent Expert Calculations

12.2.1 If any calculation or valuation is required to be made for the purposes of determining an amount payable by the Department to the Seller pursuant to clause 12.1, the same shall be made by the Independent Expert appointed by the Parties and the Lenders or, in the absence of agreement within fifteen (15) Business Days, by the President of the South African Institute of Chartered Accountants.

12.2.2 The Seller and the Department shall ensure that the Independent Expert is appointed within fifteen (15) Business Days of delivery by the Seller of the second notice in terms of clause 11.3.1. The Independent Expert shall have fifteen (15) Business Days to calculate the amount payable by the Department to the Seller pursuant to this clause 12 (*Compensation on Termination for Government Default*).

12.2.3 Upon determination of the amount payable by the Department to the Seller pursuant to this clause 12 (*Compensation on Termination for Government Default*), the Seller shall be entitled to issue a written demand to the Department for payment of such amount.

12.2.4 In making any determination pursuant to this clause 12.2 (*Independent Expert Calculations*), the Independent Expert shall act as an expert and not an arbitrator.

13. Economic Development Obligations

- 13.1 The Seller shall comply with the requirements of Schedule 2 (*Economic Development Obligations*) and the Annexes thereto.
- 13.2 Should the Seller fail to comply with its obligations as provided for in Schedule 2 (*Economic Development Obligations*), such failure may result in an amount as provided for and determined in terms of Schedule 2 (*Economic Development Obligations*) being payable to the Department and/or in termination of this Agreement for Seller Default as provided for in clause 11.2 (*Termination for Seller Default*).

14. General Seller Undertakings

- 14.1 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, at its sole cost and risk and in compliance with the requirements of:
- 14.1.1 applicable Laws;
 - 14.1.2 the Codes;
 - 14.1.3 the Consents;
 - 14.1.4 the terms and conditions of this Agreement;
 - 14.1.5 the terms and conditions of the PPA;
 - 14.1.6 the terms and conditions of the Distribution Agreement or the Transmission Agreement, as applicable;
 - 14.1.7 the standards of a Reasonable and Prudent Operator; and
 - 14.1.8 relevant manufacturers' guidelines and instructions.
- 14.2 The Seller agrees and undertakes that, as between it and the Department:
- 14.2.1 it shall be solely responsible for, shall bear full responsibility for and shall discharge, all environmental and or health and safety obligations in relation to the Facility and the Project Site pursuant to and in accordance with the applicable Consents and Environmental Laws; and
 - 14.2.1.1 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;

14.2.1.2 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;

14.2.1.3 it shall be solely responsible for, shall bear full responsibility for, shall discharge all obligations and shall bear all consequences 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 (including the possibility that any of such events could lead, directly or indirectly, to a Seller Default);

14.2.2 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 Laws, in accordance with the provisions of clause 14.8 and the provisions of any applicable Laws and or the terms and conditions of any Consents; and

14.2.3 if any consequence arises pursuant to any circumstance, event or situation detailed in clause 14.2, it alone shall be liable for and bear the full responsibility of and consequences for such circumstance, event or situation, and the Department shall not bear any liability, responsibility or consequence for or of such circumstance, event or situation, including any consequential Seller Default; and

14.2.4 the Department has no obligations of any nature to monitor compliance with or to enforce the terms and conditions of any of the Consents; and

14.2.5 it indemnifies and shall hold harmless, upon demand, the Department against any claims, damages, losses, expenses and any other consequences of or arising out of the Seller's failure to comply with this clause 14.2; and

14.2.6 it indemnifies and shall hold harmless, upon demand, the Department against any claims, damages, losses, expenses and any other consequences of or arising out of any consequence arises pursuant to any circumstance, event or situation detailed in clause 14.2.

- 14.3 The provisions of clause 14.2 shall remain in full force and effect after the Termination Date.
- 14.4 The Seller shall:
- 14.4.1 provide the Department with copies of all of the Project Documents (that have been signed at the Effective Date) and all of the Financing Agreements, at the Effective Date;
 - 14.4.2 provide to the Department copies of any changes to the Financing Agreements at any time after the Effective Date, for the duration of the Term; and
 - 14.4.3 notify the Department at least fourteen (14) days prior of any changes that relate to administrative matters to any of the Financing Agreements. The Department reserves the right to request more information in order to assess any risk associated with such changes. For the avoidance of doubt, this excludes refinancing which shall be governed by clause 8 (*Refinancing*) of this Agreement.
- 14.5 In respect of those Project Documents that have not been signed by the Effective Date, the Seller shall deliver a copy of each Project Document to the Department within five (5) Business Days of the date of signature of that Project Document by the last of the parties to it, to sign it.
- 14.6 If the Seller requires any change to Schedule 6 (*Project Documents*) as a result of any replacement of any Project Document or a counterparty to any Project Document, it shall, before effecting such replacement, promptly notify the Department of the need for the replacement. The prior written consent of the Department (acting reasonably) shall be required in respect of the replacement of any of the Lenders, Contractors or an Equipment Supplier, unless such replacement Lender, Contractor or Equipment Supplier was included, in that role, in the bid response that was submitted by the Seller or on behalf of the Seller and that was the basis on which the Department entered into this Agreement with the Seller.
- 14.7 The Seller shall ensure that the Independent Engineer shall, in the exercise of its duties for the duration of the Independent Engineer Agreement, owe a duty of care to the Department and that the Department shall be entitled to receive copies of all notices, reports and any other documentation issued to the Seller by the Independent Engineer and or issued by the Seller to the Independent Engineer in terms of such agreement.

- 14.8 The Seller shall, in respect of the Decommissioning Costs, for the duration of the Term and or for the entire life of the Project (whichever shall be the latest):³
- 14.8.1 either establish a Rehabilitation Trust, of which the Department is the sole beneficiary, or provide a Decommissioning Costs Bank Guarantee, of which the Department is the sole beneficiary, or provide a combination of such trust and bank guarantee;
 - 14.8.2 notwithstanding the option selected by the Seller in clause 14.8.1 above, open a decommissioning and rehabilitation interest bearing trust account for the Project with a financial institution that is approved by the Department, which approval should not be unreasonably withheld;
 - 14.8.3 ensure that the Decommissioning Reserves accumulated over the Term will cover the Decommissioning Costs for the Project;
 - 14.8.4 ensure that the Decommissioning Reserves contain and/or provide the funds as indicated in the Seller's Financial Model;
 - 14.8.5 if the Seller issues a Decommissioning Costs Bank Guarantee in favour of the Department, which is withdrawn by the issuing financial institution in accordance with its terms, ensure that a replacement Decommissioning Costs Bank Guarantee is issued before the lapse of the withdrawn Decommissioning Costs Bank Guarantee; and
 - 14.8.6 on an annual basis (commencing from the Commercial Operation Date) deposit the amount that has been designated in the Seller's Financial Model to be used for this purpose, into the decommissioning and rehabilitation interest bearing trust account for the Project and where applicable reduce the value of the Decommissioning Costs Bank Guarantee accordingly. For the avoidance of doubt, the amount in the decommissioning and rehabilitation interest bearing trust together with the reduced value of the Decommissioning Costs Bank Guarantee should equal the Decommissioning Costs. The Seller shall provide the Department with confirmation, on an annual basis, of the amount deposited into the decommissioning and rehabilitation interest bearing trust account during that Contract Year, as well as a reconciliation statement; and

³ To be amended as applicable per Bidder.

Bidders are allowed in the RFP for purposes of the required Decommissioning Reserve to indicate whether they will use the Decommissioning Trust or the Decommissioning Bank Guarantee or a combination of the two. The wording has been drafted to anticipate a Seller using a combination of both.

If the Seller is to use either one of the two without the other, then the wording will be amended accordingly.

- 14.8.7 the proceeds of the decommissioning trust account and the Decommissioning Costs Bank Guarantee will be used for the purposes of covering all of the costs associated with the decommissioning of the Project at the end of its life.
- 14.9 If the Seller fails to comply with its obligations in clause 14.8 and or clause 17 (*Rehabilitation Trust and Decommissioning Cost Bank Guarantee*), and the Seller:
- 14.9.1 either (a) fails to submit a remedial plan to the Department within fifteen (15) Business Days of receipt of a written notice from the Department notifying the Seller that it is in breach of its obligations in terms of clause 14.8 and or clause 17 (*Rehabilitation Trust and Decommissioning Cost Bank Guarantee*) or (b), having submitted such a remedial plan timeously, the Seller fails, in that plan, to propose remedial actions and or a reasonable time within which such remedial action shall be successfully completed (a reasonable time must be reasonable in the circumstances but may not be more than sixty (60) days); or
- 14.9.2 submits a remedial plan, in which plan the Seller proposes remedial actions and a time within which such remedial action shall be successfully completed (which time is reasonable in the circumstances and is not more than sixty (60) days), but the Seller then fails to remedy completely and successfully the breach of its obligations in terms of clause 14.8 and or clause 17 (*Rehabilitation Trust and Decommissioning Cost Bank Guarantee*) within the time period specified in the remedial plan, the Department may, in its sole discretion:
- 14.9.2.1 exercise its right to terminate this Agreement in accordance with clause 11.2.2.2; and or
- 14.9.2.2 determine the appropriate remedy for the breach in order to secure the Decommissioning Costs, which may include, but is not limited to:
- 14.9.2.2.1 the replacement, by the Seller, of a Rehabilitation Trust with a Decommissioning Costs Bank Guarantee or *vice versa*; and or
- 14.9.2.2.2 the recoupment of the arrear Decommissioning Costs from the payments due to the Seller by the Buyer under the PPA by the Department entering into an agreement with the Buyer that allows for the direct payment of a portion of the monthly payments due to the Seller under the PPA, to the Department for a specified period of time as is required to recoup the arrear Decommissioning Costs.
- 14.9.3 The Seller agrees that it indemnifies and shall hold harmless, upon demand, the Department against any claims, damages, losses, expenses and any other

consequences of or arising out of the Seller's failure to comply with and or the Department exercising its rights in terms of this clause.

15. Assignment

- 15.1 The Seller may not sell, cede, delegate, assign, transfer or otherwise dispose of (collectively, "**Assign**") all or any part of its rights and/or obligations under this Agreement to a third party without the prior written approval of the Department, provided that where the Seller has financed the Project on a limited recourse basis, the Seller may Assign its rights under this Agreement for the purpose of providing security under the relevant Financing Agreements; provided further that the Seller notifies the Department in writing of any such Assignment within five (5) Business Days of such Assignment.
- 15.2 The Department shall not Assign all or any part of its rights and/or obligations under this Agreement to a third party, save with the prior written approval of the Seller (such approval not to be unreasonably withheld or delayed) or to give effect to any mandatory requirement of any Law, and provided, in both situations, that clause 6 (*Government Support*) remains of full force and effect and that all of the Department's rights and/or obligations under the Direct Agreement are assigned together with this Agreement.

16. Changes In Control And Black Equity

- 16.1 For the duration of the Term, 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) without the prior written approval of the Department.
- 16.2 For the period commencing on the Signature Date and ending on the date which falls five (5) years after the Commercial Operation Date, the Seller shall procure that there is no:
- 16.2.1 dilution, sale, assignment, cession, transfer, exchange, renunciation or other disposal of the whole or any part of the Equity; or
- 16.2.2 dilution, sale, assignment, cession, transfer, exchange, renunciation or other disposal of the whole or any part of the issued share capital of and/or the shareholder loans in and to a Conduit Shareholder,
- without the prior written approval of the Department.
- 16.3 The Seller shall procure that for the duration of the Term:
- 16.3.1 subject to the Lenders' rights in respect of any security held by them (or any agent acting on their behalf, or any security company, trust or other entity holding any security in respect of the Debt for the benefit of the Lenders), there is no sale,

assignment, cession, transfer, exchange, renunciation or other disposal (at any time) of the whole or any part of the Equity, which results in the Seller being in breach of its undertakings with regard to Ownership Element Obligations in Schedule 2 (*Economic Development Obligations*); and

16.3.2 there is no dilution in the aggregate Shareholding by Black People in the Seller below the Ownership Element Obligations in Schedule 2 (*Economic Development Obligations*).

16.4 If there is any sale, assignment, cession, transfer, exchange, renunciation or other disposal of shares in the Seller, or of shares in a Conduit Shareholder, by a Black Enterprise, Black Person or by Black People to a Recognised Acquirer (as defined in clause 16.6) then the Seller may treat the ownership of such of its shares, or of such of the shares of a Conduit Shareholder, as if that ownership is held by Black People, and all definitions and operative provisions in this Agreement that are relevant to the measurement of the Seller's Committed Obligations in Annex 4 (*Ownership Element Obligations*) shall be interpreted in order to give effect thereto.

16.5 For the avoidance of doubt, any sale, assignment, cession, transfer, exchange, renunciation or other disposal of shares in the Seller, or of shares in a Conduit Shareholder, by a Black Enterprise, Black Person or by Black People to a Recognised Acquirer in terms of clause 16.4, may not be exercised for the period commencing on the Signature Date and ending on the date which falls five (5) years after the Commercial Operation Date.

16.6 For the purposes of clause 16.4, a Recognised Acquirer is:

16.6.1 a Black Enterprise;

16.6.2 a private equity fund whose structure and ownership meets the relevant criteria for treatment as ownership by Black People in terms of the B-BBEE Codes;

16.6.3 a pension fund that is established for the benefit of Government employees or employees of state-owned entities or other statutory bodies;

16.6.4 a fund that is established or exists in terms of legislation for general public benefit; and

16.6.5 any other entity or category of entities designated as a Recognised Acquirer in writing by the Department.

16.7 For the purpose of this clause 16 (*Changes in Control and Black Equity*), the term "**subsidiary**" shall have the meaning as defined in the Companies Act 71 of 2008.

17. Rehabilitation Trust and Decommissioning Cost Bank Guarantee⁴

- 17.1 The Seller shall provide the Rehabilitation Trust deed (where applicable) to the Department substantially in the form of Schedule 10A (*Form of Rehabilitation Trust Deed*) on the Effective Date, together with proof of the registration of the Rehabilitation Trust deed, including the trust registration number duly issued by the Master of the High Court.
- 17.2 The Seller shall, on an annual basis (commencing from the Commercial Operation Date), deposit the amount that has been designated in the Seller's Financial Model to be used for decommissioning and rehabilitation of the Project Site, into the decommissioning and rehabilitation interest bearing trust account for the Project.
- 17.3 Seller shall provide the Decommissioning Cost Bank Guarantee (where applicable) to the Department duly signed by the issuing bank or financial institution acceptable to the Department.
- 17.4 The Seller shall on an annual basis, within twenty (20) Business Days from the end of a Contract Year, provide, to the satisfaction of the Department:
- 17.4.1 confirmation from the trustees of the Rehabilitation Trust that the Rehabilitation Trust is in compliance with all legislation and requirements relating to trusts;
 - 17.4.2 confirmation from the Master of the High Court that no amendments have been effected to the Rehabilitation Trust deed without prior written approval from the Department;
 - 17.4.3 a valid tax clearance certificate in respect of the Rehabilitation Trust;
 - 17.4.4 confirmation from the auditors appointed by the Rehabilitation Trust that the amount kept in the decommissioning and rehabilitation interest bearing trust account for the Project, is in accordance with the Rehabilitation Trust deed, there have not been any changes to the Trust Deed which have not been notified to and approved by the Department and that there are no adverse findings in the financial position of the Rehabilitation Trust which could result in the Rehabilitation Trust not being able to give effect to the objective for which it was established; and
 - 17.4.5 a confirmation of the issuing bank or financial institution that the Decommissioning Cost Bank Guarantee is still valid and confirmation of the Guarantee Amount.

⁴ This clause is drafted on the basis of both Rehabilitation Trust and Decommissioning Cost Guarantee being applicable. The clause will be amended according depending on the option exercised by the Bidder

- 17.5 Should the Seller fail to provide the information in clause 17.2 on or before the Due Date, the Department shall be entitled to terminate this Agreement.

18. Fast Track Dispute Resolution

- 18.1 Disputes expressly referred for determination pursuant to this clause 18 (*Fast Track Dispute Resolution*) shall be determined by the relevant Independent Expert.
- 18.2 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.
- 18.3 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.
- 18.4 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.
- 18.5 The Independent Expert shall provide both Parties with his written decision on the dispute, within 20 (twenty) 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.
- 18.6 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 18.4.
- 18.7 The Independent Expert's costs for any referral and any logistical disbursements directly related to the referral including the venue for the actual hearing and transcription services as mutually agreed in writing by both Parties with the Independent Expert, shall be borne by the Party as directed by the Independent Expert or, if not specifically directed, equally by the Parties. Each Party shall bear its own costs arising out of the referral, including its legal costs and the costs and expenses of any witnesses (irrespective of whether such costs are payable in foreign currency).

- 18.8 The Independent Expert shall act impartially and may, *mero motu*, take any steps to ascertain or verify the facts independently.
- 18.9 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.
- 18.10 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 21 (*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.
- 18.11 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.
- 18.12 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:
- 18.12.1 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
- 18.12.2 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.
- 18.13 The Independent Expert shall be deemed not to be an arbitrator but shall render his decision as an expert, and the provisions of the Arbitration Act 42 of 1965 and any other law relating to arbitration shall not apply to the Independent Expert or his determination

or the procedure by which he reaches his determination. The Independent Expert's decision shall be final and binding on the Parties.

19. Dispute Resolution

19.1 Referable Disputes

The provisions of this clause 19 (*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.

19.2 Internal Referral

19.2.1 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:

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

19.2.1.2 if the Parties have been unable to resolve the dispute within fifteen (15) days of referral to the persons specified in clause 19.2.1.1, either Party may refer the dispute for a decision by the accounting officer or accounting authority of the Department (or a person delegated by the accounting officer) and the chief executive officer or equivalent officer of the Seller.

19.2.2 In attempting to resolve the dispute in accordance with the provisions of this clause 19.2 (*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.

19.2.3 Any dispute which has not been resolved by the representatives contemplated in clause 19.2.1.2 within fifteen (15) days of the dispute being referred to them (or any longer period agreed between the Parties) shall be treated as a dispute in respect of which informal resolution has failed.

19.3 **Performance to Continue**

No referral of any dispute to any resolution process in terms of this clause 19 (*Dispute Resolution*) shall relieve either Party from any liability for the due and punctual performance of its obligations under this Agreement.

19.4 **Litigation**

- 19.4.1 Save where any dispute has been expressly referred for determination in terms of clause 18 (*Fast Track Dispute Resolution*), if informal resolution of any dispute has failed, then the dispute may be referred to litigation in a High Courts with the relevant jurisdiction as agreed in this Agreement, by either Party.
- 19.4.2 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.

20. Liability

20.1 **Direct losses**

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

20.2 **Mitigation**

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

21. Confidentiality

21.1 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.

21.2 Exclusions to Confidential Information

For the purposes of this clause 21 (*Confidentiality*), the term "**Confidential Information**" shall not include information which:

- 21.2.1 at the time of disclosure or at any time thereafter is in, or becomes part of, the public domain other than through a breach of this clause 21 (*Confidentiality*);
- 21.2.2 the Party receiving the information can prove, was already known to it, or was independently acquired or developed by it without being in breach of its obligations under this clause 21 (*Confidentiality*);
- 21.2.3 became available to the Party receiving the information from another source in a non-confidential manner otherwise than in breach of an obligation of confidentiality; or
- 21.2.4 is published by, or the publication of which is required by, a Responsible Authority or any court.

21.3 Permitted disclosure of Confidential Information

Notwithstanding the provisions of this clause 21 (*Confidentiality*), the Confidential Information may be disclosed:

- 21.3.1 by either Party to any Responsible Authority (where for the purposes of this clause 21.3 (*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:

- 21.3.1.1 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
- 21.3.1.2 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;
- 21.3.2 by the Department, for purposes of reporting, within the Government, on matters relating to the extent of compliance by the Seller with its Economic Development Obligations and the initiatives, programmes and plans implemented by the Seller in order to meet its Economic Development Obligations;
- 21.3.3 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 listed or dealt in from time to time, and the Party making the disclosure shall, if reasonably practicable prior to making the disclosure, or 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;
- 21.3.4 by either Party as may be necessary to comply with any obligation under any applicable Law;
- 21.3.5 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; or
- 21.3.6 by either Party, if so agreed in writing by the Parties prior to the disclosure.

21.4 Ownership and treatment

- 21.4.1 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.
- 21.4.2 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.

22. Governing Law and Jurisdiction

- 22.1 The validity, construct and performance of this Agreement shall be governed by the laws of South Africa.

- 22.2 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.

23. Protection of Personal Information

- 23.1 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**").
- 23.2 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.
- 23.3 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:
- 23.3.1 identify all reasonably foreseeable internal and external risks to the Personal Information in its possession or under its control;
 - 23.3.2 establish and maintain appropriate safeguards against the risks identified;
 - 23.3.3 regularly verify that the safeguards are effectively implemented; and
 - 23.3.4 ensure that the safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards.
- 23.4 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:
- 23.4.1 the transmission by the Disclosing Party to the Receiving Party in accordance with this Agreement or otherwise permitted by law;

- 23.4.2 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
- 23.4.3 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.

24. Notices

24.1 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 sent by electronic mail (E-mail) or hand-delivered to the address within South Africa of the Party concerned set out in clause 24.2 (*Addresses*) or such other address as contemplated in clause 24.4 (*Change in address*). No communication shall be effective until received by the addressee and a communication shall be deemed to have been received:

- 24.1.1 if transmitted by E-mail, when the E-mail containing the notice being reflected as a sent item in the mailbox of the transmitting Party; and
- 24.1.2 if the hard copy is promptly delivered by hand during ordinary business hours, to its physical address in clause 24.2 (*Addresses*), when so delivered.

24.2 Addresses

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

24.2.1 The Seller:

Physical Address: [●]
 E-mail Address: [●]
 Tel No.: [●]
 Attention: [●]; and

24.2.2 The Department:

Physical Address: 192 Visagie Street (corner Visagie Street and Paul Kruger Street), Pretoria, 0001
 E-mail Address: [●]
 Tel No.: [●]

Attention: Project Officer.

24.3 ***Domicilium citandi et executandi***

The Parties choose the physical address set out opposite their names in clause 24.2 (*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*.

24.4 **Change in address**

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

25. **Warranties**

25.1 **Seller warranties**

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

- 25.1.1 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;
- 25.1.2 it has the sole purpose, object and business of undertaking the Project and selling Energy Output in terms of the PPA;
- 25.1.3 it has an authorised and issued share capital as set out in the Seller's shareholders agreement;
- 25.1.4 all shares in the issued share capital of the Seller are legally and beneficially owned as represented in the Seller's shareholders agreement;
- 25.1.5 save as provided in the Financing Agreements or the Seller's shareholders agreement, (as amended from time to time with the prior written consent of the Department), no person has the right (whether actual or contingent) to call for the issue of any share or loan capital in the Seller whether pursuant to any option or otherwise including any realisation of security;
- 25.1.6 save as provided in the Financing Agreements (in respect of all of the security provided by the Seller to the Lenders or their nominee) or the Seller's shareholders

agreement, (as amended from time to time with the prior written consent of the Department), there are no Encumbrances over or affecting any of the Equity or the Shareholder Loans and there is no agreement or commitment to grant or create any such Encumbrance;

- 25.1.7 its obligations under this Agreement and its rights and obligations under the Project Documents to which it is a party are legal, valid and binding and enforceable against it, in accordance with the terms of this Agreement and such Project Documents to which it is a party;
- 25.1.8 all the Project Documents have been duly executed on proper authority and are in full force and effect as at the Signature Date, save for those Project Documents identified in Schedule 6 (*Project Documents*) that will be executed after the Signature Date on proper authority;
- 25.1.9 the execution and performance of any Project Documents to which it is a party do not and will not contravene any provision of the memorandum or articles of association or memorandum of incorporation of the Seller as at the Signature Date, or any order or other decision of any Responsible Authority or arbitrator that is binding on the Seller as at the Signature Date;
- 25.1.10 all Consents required for the conduct of the Project are in full force and effect as at the Signature Date, save for any Consents which are not required under the Laws to be obtained by the Signature Date, provided that the Seller warrants that it knows of no reason (having made all reasonable enquiries in this regard) why any such Consent will not be granted on reasonable terms by the time it is required to obtain such Consent;
- 25.1.11 no litigation, arbitration, investigation or administrative proceeding is in progress as at the Signature Date or, to the best of the knowledge of the Seller as at the Signature Date (having made all reasonable enquiries), threatened against it or any of the Contractors, which is likely to have a material adverse effect on the ability of the Seller to conduct the Project;
- 25.1.12 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;
- 25.1.13 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;

25.1.14 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 to which it is a party);

25.1.15 all information disclosed by or on behalf of the Seller to the Department at any time up to the Signature Date and, in particular, during the bid process preceding the award of this Agreement to the Seller, is true, complete and accurate in all material respects and the Seller is not aware of any material facts or circumstances not disclosed to the Department which would, if disclosed, be likely to have an adverse effect on the Department's decision (acting reasonably) to enter into this Agreement with the Seller;

25.1.16 the copies of the executed Project Documents, which have been or will be delivered to the Department, are true and complete copies of such Project Documents and there are no other documents replacing or relating to any such Project Documents, which would materially affect the performance of these Project Documents; and

25.1.17 no person (whether the Seller, a Shareholder, Contractor or any other third person) has paid or agreed to pay any Success Payment in respect of, in connection with or pursuant to the Project, other than the Success Payments detailed in the Financial Model and Schedule 7 (*List of Success Payments*).

25.2 **Department warranties**

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

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

25.2.2 the execution and performance of this Agreement by it has been duly authorised by all necessary action, and its obligations hereunder constitute valid, binding and enforceable obligations.

26. Miscellaneous

26.1 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.

26.2 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.

26.3 Waiver

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

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

26.3.3 No extension of time or relaxation of any of the provisions or terms of this Agreement and/or any agreement or other undertaking made or executed pursuant to or in terms of this Agreement, shall operate as an estoppel against any Party in respect of its rights under this Agreement, nor shall it operate so as to preclude such Party thereafter from exercising its rights in accordance with this Agreement.

26.4 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 or obligations upon any third parties.

26.5 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.

26.6 Entire Agreement

26.6.1 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.

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

26.7 **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.

26.8 **Direct Agreement**

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

26.9 **Public Relations and Publicity**

26.9.1 The Seller acknowledges that certain information pertaining to the Project and the Project Data is required to be disclosed or published by the Department from time to time in response to enquiries from:

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

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

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

26.9.2 Subject to clause 26.9.3, 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.

26.9.3 To the extent that the Department is obliged to disclose or publish information pursuant to clause 26.9.1, it undertakes to the Seller, if time permits, to consult with the Seller prior to any communication contemplated by this clause 26.9.3, and if time Departments not so permit, such consultation shall be dispensed with by the Parties.

26.9.4 No facilities to photograph or film in or upon the Facility Sites shall be given to or permitted by the Seller unless the Department has given prior written approval.

26.10 **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.

26.11 **Costs**

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

26.12 **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.

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

[NAME OF SELLER]

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

**DEPARTMENT OF MINERAL
RESOURCES AND ENERGY**

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

SCHEDULE 1

DETAILS OF THE PROJECT AND FACILITY OR FACILITIES

[Parts 1 and 2 of Schedule 1 of the PPA will be inserted here once finalised]

SCHEDULE 2

ECONOMIC DEVELOPMENT OBLIGATIONS

[Note to Bidders: the items in square brackets are dependent on the Economic Development Proposal of the Seller and may be amended in accordance to its Economic Development Proposal, at all times complying with the requirements as stated by the RFP.]

1. Recordal

It is recorded that:

- 1.1 the Seller has submitted a proposal with certain Economic Development commitments that will be given effect in the implementation of the Project and has been appointed by the Department, based, *inter alia*, on such Economic Development proposal; and
- 1.2 the Parties wish to record the terms of the Seller's Economic Development commitments in this Schedule 2 (*Economic Development Obligations*), with the intention that they be contractually binding on the Seller.

2. Interpretation

- 2.1 In this Schedule 2 (*Economic Development Obligations*), unless the context otherwise requires, words and expressions defined in this Agreement and not redefined in this schedule shall have the same meaning when used herein.

- 2.2 The following words and phrases shall when used in this Schedule 2 (*Economic Development Obligations*) and typed in "Title Case" have the meanings assigned to them hereunder, and similar expressions shall have corresponding meaning, namely:

"Active Participation" means the participation, by Black People who are shareholders in the Project Company, the Construction Contractor and the Operations Contractor, in Project-related activities;

"Actual Total Quantum" has the meaning attributed to it in clause 5 (*Actual Total Quantum*) of this Schedule 2 (*Economic Development Obligations*);

"B-BBEE" has the meaning given to it in the B-BBEE Act;

"B-BBEE Act" means the Broad Based Black Economic Empowerment Act 53 of 2003;

"B-BBEE Codes" means the B-BBEE Codes of Good Practice issued in terms of section 9(1) of the B-BBEE Act;

"B-BBEE Procurement Spend" means monetary spend on the procurement of goods and services (without double counting) from Vendors, adjusted according to each Vendor's B-BBEE Recognition Level by multiplying such spend by the corresponding

percentage appearing in respect of such recognition level under the column "B-BBEE Recognition Level" appearing on the Vendors B-BBEE Verification Certificate;

"B-BBEE Recognition Level" means the level at which expenditure is recognised, based on the overall performance of a Vendor in respect of B-BBEE, measured in terms of any applicable Sector Code, and/or the B-BBEE Codes and demonstrated by the submission of a valid B-BBEE Verification Certificate;

"B-BBEE Verification Certificate" means a B-BBEE rating certificate or affidavit issued in terms of a Sector Code or the B-BBEE Codes, as applicable;

"Bid Guarantee" means the guarantee provided by the Seller in response to Part A (*General Requirements, Rules and Provisions*) of the Request for Qualification and Proposals for New Generation Capacity under the Renewable Energy IPP Procurement Programme (2021), and the costs associated thereto;

"Black Enterprise" means a legal entity with fifty one percent (51%) or more of its Shareholding held and Controlled by Black People;

"Black Women" means women who are Black People;

"Black Youth" means Black People who are Youth;

"Board Director" means a person appointed to serve as a member of the board of directors of a Measured Entity, who has voting rights at that board of directors;

"Committed Obligations" means the Seller's Economic Development Obligations, as stated in Annexes 2, 3, 4, 5, 6, 7 and 8 of this Schedule 2 (*Economic Development Obligations*);

"Construct" has the meaning given to it in the PPA;

"Construction Contractor" means one or more Contractors engaged by the Seller to Construct the Facility;

"Construction Measurement Period" means the period commencing on the Effective Date, and ending on the date which falls twelve (12) months after the last day of the Contract Quarter in which the Commercial Operation Date falls;

"Distribution Connection Works" has the meaning given to it in the PPA but includes the portion of such works undertaken by the Seller in accordance with the conditions of any agreement concluded between the Seller and the Distributor for the carrying out by the Seller of such portion on a self-build or own-build basis;

"Distributor" has the meaning given to it in the PPA;

"Economic Development" means the development of specific categories of people, enterprises and communities and/or economic sectors, as provided for in this Schedule 2 (*Economic Development Obligations*) and described in the Economic Development Elements;

"Economic Development Elements" means each of the Job Creation, Local Content, Ownership, Management Control, Enterprise and Supplier Development, Skills Development and Socio-Economic Development elements of Economic Development, including where applicable the Economic Development Sub-Elements;

"Economic Development Independent Monitor" means a person appointed as such in terms of clause 12.6 of this Schedule 2 (*Economic Development Obligations*);

"Economic Development Matrix" means the matrix to be submitted by the Seller in terms of clause 3.3.2 of this Schedule 2 (*Economic Development Obligations*), in the form contained in Annex 1 (*Form of Economic Development Matrix*);

"Economic Development Obligations" means the undertakings and/or obligations in relation to each of the Economic Development Elements, including where applicable the Economic Development Sub-Elements, in the performing of Project Activities, as detailed in this Schedule 2 (*Economic Development Obligations*);

"Economic Development Performance Measurement" has the meaning attributed to it in clause 6 (*Economic Development Performance Measurement*) of this Schedule 2 (*Economic Development Obligations*);

"Economic Development Performance Penalties" or **"EDPP"** means the performance penalties referred to in clause 6.1 (*Economic Development Performance Penalties*) of this Schedule 2 (*Economic Development Obligations*);

"Economic Development Plan" means the plan to be submitted by the Seller in terms of clause 3.3.1.1 of this Schedule 2 (*Economic Development Obligations*), in the form contained in Annex 11 (*Form of Economic Development Plan*);

"Economic Development Sub-Element" has the meaning attributed to it in clause 4 (*Economic Development Elements and Sub-Elements*) of this Schedule 2 (*Economic Development Obligations*);

"Economic Interest" means a claim against an enterprise representing a return on Ownership of the enterprise similar in nature to a dividend right, measured using the Flow Through Principle;

"Economically Active Population" means people from 15 to 64 years of age who are either employed, or unemployed and seeking employment;

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

"Employment Equity Regulations" means the regulations promulgated in terms of the Employment Equity Act 55 of 1998;

"Enterprise Development" means initiatives (which include monetary and non-monetary initiatives), carried out by a Measured Entity to assist and accelerate the development and sustainability of other enterprises, including the financial and operational independence of other enterprises;

"Enterprise Development Contributions" means the monetary value of contributions towards Enterprise Development in respect of the following:

- (a) Exempted Micro Enterprises or Qualifying Small Enterprises, which have fifty one percent (51%) Shareholding and Control by Black People or Black Women; or
- (b) any other enterprise that has fifty one percent (51%) Shareholding and Control by Black People or Black Women, with a B-BBEE Recognition Level of between Level 1 and Level 4, as determined by and in terms of the B-BBEE Codes,

but excludes any initiatives or contributions carried on through, or which benefit, the entity or entities through which the Seller meets its Committed Obligations in respect of Shareholding by Local Communities in the Seller;

"Equity Instrument" means the document or instrument which serves as legally applicable evidence of the Ownership right in a Measured Entity;

"Executive Management" means members of the executive management team of a Measured Entity who report to the board of directors and who exercise executive control and management of the Measured Entity;

"Excluded Amounts" means:

- (a) Finance Charges;
- (b) land costs paid or payable by the Seller, including rental or leasing costs;
- (c) mobilisation fees of the Material Contractors;
- (d) costs paid or payable to the Distributor, NTC and or a Contractor for the Distribution Connection Works or the Transmission Connection Works (as the case may be);
- (e) Use of System Charges;

- (f) any penalties or interest arising from or attributable to the failure by the Seller to comply with any of its obligations under this Agreement or the PPA;
- (g) Development Fee;
- (h) the Preferred Bidder Fee including any costs associated with payment of such fee;
- (i) Success Payment;
- (j) Bid Guarantee including any costs associated with such guarantee;
- (k) Preferred Bidder Guarantee including any costs associated with such guarantee;
- (l) VAT;
- (m) Debt service reserve account and maintenance reserve account; and
- (n) cash and working capital;

"Exempted Micro Enterprise" or "EME" means an entity defined as such, at the time of measurement, in terms of any Sector Code or the B-BBEE Codes, as applicable;

"Exercisable Voting Rights" means a voting right attaching to an Equity Instrument of a participant measured using the Flow Through Principle, that is not subject to any limit other than limitations that may arise from financing arrangements and are imposed by lenders providing financing for such Equity Instruments;

"Finance Charges" means all amounts, whether of interest, principal, fees, expenses, charges, costs or the like, which the Seller is required to pay to any of the Lender(s) under the Financing Agreements in consideration or as a charge for financing provided by such a Lender;

"Flow Through Principle" means the measurement of Ownership in terms of which only rights held by Persons are considered for such measurement and, in respect of rights of Ownership held in a Measured Entity through a juristic person, then the rights of Ownership held by Black People in that juristic person are considered for measurement. The measurement of ownership shall have regard to every tier of ownership in a multi-tiered chain of ownership until that chain ends with a Black Person holding ownership rights;

"Indexed" and "Indexation" has the meaning given to it in the PPA;

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

"Local Communities" means a community or communities:

- (a) residing within the area of jurisdiction of the local or district municipality in which the Facility Site is located; or
- (b) residing where a Facility Site is located on the border of 2 (two) Local Municipalities, in the area of jurisdiction of both Local Municipalities;

"Local Content" means the Economic Development Element which measures the utilisation of products or goods and services which are South African products in the development, completion, implementation, operations and maintenance of the Project as part of undertaking Project Activities. These products relate to the utilisation of raw materials, manufactured parts and components, utilities and services;

"Local Production and Content" means the value of expenditure in respect of items falling within a Local Industrialisation Sector, Component or Product that constitutes local production and content;

"Local Content Spend" means the portion of the Total Project Value that is in respect of South African Products;

"Local industrialisation" means procurement by the State, or a contractor or agency appointed by it, of locally-produced goods or services for an infrastructure project or programme.

"Local industrialisation Sectors, Components and Products" means procurement of products, goods or services, as set out in Appendix 5E1 of the RFP, of locally-produced goods or services for an infrastructure project or programme.

"Management Control" means the effective control of the management of a Measured Entity by reference to Board Directors, Executive Management, and Senior Management;

"Maintain" has the meaning given to it in the PPA;

"Measured Entity" means an entity relied upon by the Seller to evidence any one or more of the Economic Development Obligations in terms of this Schedule 2 (*Economic Development Obligations*);

"NTC" has the meaning given to it in the PPA;

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

"Operate" has the meaning given to it in the PPA;

"Ownership" means the effective ownership of shares in a Measured Entity, which shall be determined with reference to Shareholding;

"Paterson Decision B and B" means the decision band defined in the "Job Evaluation, Volume I, A New Method", being a publication by TT Paterson (Business Books, 1972), generally used in the South African employment industry for the grading of occupational levels of personnel;

"People with Disabilities" for purposes of the Project means people who are considered as qualifying for protection as such in terms of the Employment Equity Act No. 55 of 1998;

"Persons" means, for the purposes of this Schedule 2 (*Economic Development Obligations*), natural persons engaged in the Project Activities, and **"Person"** shall have a corresponding meaning;

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

"Preferential Procurement" means the extent to which a Measured Entity procures goods and services from Equipment Suppliers with B-BBEE Recognition Levels;

"Preferential Procurement Regulations" means the Preferential Procurement Regulations, 2017 issued in terms of the Preferential Procurement Policy Framework Act, 5 of 2000;

"Preferred Bidder Fee" means the fee paid by the Seller upon its appointment as a Preferred Bidder as contemplated in Part A (*General Requirements, Rules and Provisions*) of the Request for Qualification and Proposals for New Generation Capacity under the Renewable Energy IPP Procurement Programme, and the costs associated thereto;

"Preferred Bidder Guarantee" means the guarantee provided by the Seller upon its appointment as a Preferred Bidder as contemplated in Part A (*General Requirements, Rules and Provisions*) of the Request for Qualification and Proposals for New Generation Capacity under the Renewable Energy IPP Procurement Programme, and the costs associated thereto;

"Project Activities" means activities related to the design, the Construction, Operation and Maintenance of the Facility, including the sale of Energy Output to the Buyer; and for purposes of the Job Creation Element, shall include the Employment of people to manage, within the Project, activities required to comply with the obligations related to Economic Development;

"Province" means a province as contemplated in Schedule 6 of the Constitution of the Republic of South Africa Act, 1996;

"Qualifying Small Enterprise" or "QSE" means an entity defined as such, at the time of measurement, in terms of any Sector Code or the B-BBEE Codes, as applicable;

"Quarterly Achievement" means the achievements of the Seller in respect of Economic Development as more clearly stated in clause 6.2 of this Schedule 2 (*Economic Development Obligations*);

"Quarterly Obligations" means the Committed Obligations for each Contract Quarter, denoted in Annex 10 (*Quarterly Obligations*) of this Schedule 2 (*Economic Development Obligations*), in respect of the Economic Development Elements and Sub-Elements, determined in accordance with clause 4 (*Economic Development Elements and Sub-Elements*) of this Schedule 2 (*Economic Development Obligations*);

"Recognition for Local Enterprises" means expenditure allocated to enterprises; adjusted for localness; in the following manner:

- (a) Black Enterprises based in Local Communities – 135%;
- (b) Black Enterprises based in the Province where the Project is Located – 100%;
- (c) Black Enterprises based in rest of the Republic of South Africa – 80%;

"Recognition for Localness" means expenditure allocated to persons and/or enterprises; adjusted for localness; in the following manner:

- (a) Based in Local Communities – 135%;
- (b) Based in the Province where the Project is Located – 100%;
- (c) Based in rest of the Republic of South Africa – 80%;

"Reporting Obligations" means the reporting obligations of the Seller and the Contractors to the Department, in terms of this Schedule 2 (*Economic Development Obligations*), specifically as stated in clauses 3.2 and 3.3 of this Schedule 2 (*Economic Development Obligations*);

"Revenue" means, in relation to any reporting period, all amounts paid to and received by the Seller in terms of the PPA, including Early Operating Energy Payments and Commercial Energy Payments, but excluding the Use of System Charges;

"RFP" means the request for qualification and proposals for new generation capacity under the sixth bid submission phase of the Renewable Energy Independent Power Producers Procurement Programme;

"RSA Based Employees" means those Employees based in the Republic of South Africa;

"Sector Code" means a code designated as such, and issued in terms of section 9(1) of the B-BBEE Act, developed by major stakeholders in a particular industry;

"Senior Management" means Employees of a Measured Entity who report directly to Executive Management and are responsible for the day-to-day management of the Measured Entity;

"Shareholding" means the Exercisable Voting Rights and Economic Interest in a Measured Entity;

"Skilled Employees" means Employees employed in Occupational Level C or higher as defined in Annex 2 of the Employment Equity Regulations, and includes skilled technical and academically qualified workers, junior management, supervisors, foremen, superintendents, which shall for purposes of this Schedule 2 (*Economic Development Obligations*) be equivalent to the Paterson Decision B and B or better;

"Skills Development" means the initiatives undertaken by a Measured Entity relating to the structured work learning component of occupational or professional learning, which enables learners and Employees who are members of the Economically Active Population who are Black People to make measurable progress towards the attainment of any one or more of the following:

- (a) a part-time or full occupational qualification registered on the National Qualification Framework;
- (b) a trade qualification leading to a listed trade, as indicated in Government Gazette No. 35625 published on 31 August 2012;
- (c) a national diploma registered on the National Qualification Framework;
- (d) registration in a professional category by a recognised professional body or statutory council;
- (e) occupations as identified by the most current version of the "*National List of Occupations in High Demand*" or "*National Scarce Skills List: Top 100 Occupations in Demand*" published by the Department of Higher Education and Training; and
- (f) work integrated learning and informal training;

"Skills Development Contributions" means the monetary contributions made by a Measured Entity towards Skills Development through the learning programmes specified

in the B-BBEE Codes, evidenced by an invoice, provided that the following principles are complied with:

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

"Skills Development Levies Act" means the Skills Development Levies Act No. 9 of 1999;

"Socio-Economic Development" means the initiatives carried out by a Measured Entity towards broad social and economic advancement of Black People in underdeveloped communities, which includes, without limitation, initiatives focusing on education, healthcare, social welfare, infrastructure development, reconstruction of underdeveloped areas, but excludes any initiatives or contributions carried on through, or which benefit, the entity or entities through which the Seller meets its Committed Obligations in respect of Shareholding by Local Communities in the Seller;

"Socio-Economic Development Contributions" means the value of monetary and non-monetary contributions towards Socio-Economic Development;

"South African Products" means the Total Project Value, excluding:

- (a) the cost of components, parts or materials, which have been or are still to be imported (whether by the Seller or Material Contractors or any of their Vendors) and which costs are inclusive of costs abroad, plus freight and other direct importation costs, such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African port of entry; and
- (b) the costs of or payments made in respect of services or service providers that are not South African tax paying persons or entities;

"Specialised Skills" means engineering and artisanal and other skills that are relevant in the renewable energy value chain;

"Supplier Development" means initiatives undertaken by a Measured Entity through the making of Supplier Development Contributions, to develop the Supply Chain;

"Supplier Development Contributions" means the value of monetary and non-monetary (to which Sellers and the Material Contractors should attribute an appropriate Rand value) contributions made by a Measured Entity for the benefit of the Supply Chain, with the objective of contributing to the development, sustainability, financial and operational independence of the Supply Chain, which are:

- (a) investments made in the Supply Chain;
- (b) loans made to the Supply Chain;
- (c) guarantees given or security provided on behalf of the Supply Chain;
- (d) credit facilities made available to the Supply Chain;
- (e) direct costs incurred by the Seller and or Material Contractors in assisting and hastening the development of the Supply Chain;
- (f) discounts given to the Supply Chain; and
- (g) the creation or development of capacity or expertise for the Supply Chain needed for the manufacture of or to produce goods or services previously not manufactured, produced or provided in South Africa;

"Supply Chain" means all Vendors participating in the Project Activities, which are Exempted Micro Enterprises or Qualifying Small Enterprises, and which are at least fifty one percent (51%) owned by Black People or fifty one percent (51%) owned by Black Women and with a B-BBEE Recognition Level of one (1) to four (4);

"Total Measured Procurement Spend" means the monetary spend on the procurement of goods and services for purposes of undertaking the Project Activities (without double counting), excluding costs of imported goods and services, taxation, salaries and wages;

"Total Project Value" means:

- (a) in respect of the Construction Measurement Period, the capital costs and costs of services procured for the Construction of the Facility, excluding any Excluded Amounts;
- (b) in respect of the Operating Measurement Period, the operational costs and costs of services procured for the operations of the Facility, excluding any Excluded Amounts;

"Total Shareholding" means the total Exercisable Voting Rights and Economic Interest in a Measured Entity;

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

"Vendors" means subcontractors on any tier to the Seller, the Material Contractors, (excluding, in the case of the Seller, the Material Contractors themselves), and the Equipment Suppliers, who supply materials and other supplies or services to the Seller and/or Material Contractors and/or Equipment Suppliers in relation to the Project Activities;

"Women" means persons of the female gender;

"Women Owned Vendors" means Equipment Suppliers and subcontractors with fifty point one percent (50.1%) or more of their equity owned by Women; and

"Youth", for purposes of the Project, means Persons between the ages of fifteen (15) and thirty five (35) years, when entering the Project.

- 2.3 All references in this Schedule 2 (*Economic Development Obligations*) to any Sector Code and the B-BBEE Codes, are to such codes as they exist at the Signature Date.

3. Obligations and Reporting

- 3.1 The Seller undertakes that, in undertaking the Project Activities, and without derogating from any of the obligations contained in this Schedule 2 (*Economic Development Obligations*), it shall carry out its obligations in relation to and comply with the Economic Development Obligations and attain or exceed the Quarterly Obligations.
- 3.2 The Seller undertakes to submit the reports referred to in clause 3.3 of this Schedule 2 (*Economic Development Obligations*) to the Department in such form as may reasonably be required or determined by the Department.
- 3.3 The Seller's Reporting Obligations shall include, but not be limited to, the following:

- 3.3.1 to, at the end of the first Contract Quarter (for the period between the Signature Date and the end of the first Contract Year), and thereafter on 1 September of each year:
- 3.3.1.1 deliver a proposed Economic Development Plan detailing the measures that the Seller will implement in the three (3) subsequent Contract Years to achieve the Committed Obligations;
- 3.3.1.2 ensure that the Economic Development Plan shall, as a minimum, include all of the information required in and fully comply with Annex 11 (*Form of Economic Development Plan*) of this Schedule 2 (*Economic Development Obligations*). The Department shall be entitled, by no later than 31 January of the year following submission of the proposed Economic Development Plan, to suggest that the Seller considers alternative plans to those that the Seller proposes to implement to meet the Quarterly Obligations and achieve the Committed Obligations, taking into consideration, among others, the annual objectives of Government and similar initiatives in the case where similar plans are being implemented by other sellers in other projects as part of the IPP Programme, or if for any other reason the Department considers the Seller's plans to be inappropriate or ineffectual;
- 3.3.1.3 consider and take into account the Department's suggestions raised in relation to its Economic Development Plan, and any general guidelines issued by the Department in relation to Economic Development planning, and shall within twenty one (21) calendar days of receipt of any such suggestions submit a revised Economic Development Plan indicating how it has considered and taken into account the Department's comments or guidelines;
- 3.3.1.4 explicitly agree and record that nothing contained in the Economic Development Plan shall be construed to be qualifying or in any manner reducing the Economic Development Obligations, contained in the Committed Obligations. In the event of any conflict between the Economic Development Plan and any other Economic Development Obligation(s) provided for in this Schedule 2 (*Economic Development Obligations*), the provisions of this Schedule 2 (*Economic Development Obligations*) shall apply without reference to the Economic Development Plan; and
- 3.3.1.5 indicate where the Seller intends to collaborate with other Sellers in the implementation of Skills Development, Preferential Procurement, Supplier

Development, Enterprise Development and Socio-Economic Development projects;

- 3.3.2 to deliver an Economic Development Matrix, which sets out the Seller's commitments for the relevant Contract Year, as well as updated estimates of quantum values in Rand terms where applicable. The Economic Development Matrix shall, as a minimum, include all of the information required in and fully comply with Annex 1 (*Form of Economic Development Matrix*) of this Schedule 2 (*Economic Development Obligations*);
- 3.3.3 to, within twenty one (21) calendar days after the end of each Contract Quarter, deliver details of the Actual Total Quantum achieved in relation to the Economic Development Obligations, along with such supporting information and documentation as may be reasonably required by the Department from time to time to demonstrate the Actual Total Quantum achieved for the Economic Development Sub-Elements reported on;
- 3.3.4 for the period during which the Construction Measurement Period and the Operating Measurement Period overlap, report separately, on a quarterly basis, on the Actual Total Quantum achieved in respect of its Quarterly Obligations for the Construction Measurement Period, and the Actual Total Quantum achieved in respect of its Quarterly Obligations for the Operating Measurement Period, without double counting on any Actual Total Quantum pertaining to Job Creation or Preferential Procurement;
- 3.3.5 keep a record of all activities undertaken in the Project in respect of Economic Development (including, without limitation, information relating to the achievement of the Economic Development Obligations by the Seller and the Contractors to the extent relied upon by the Seller) and make such a record(s) available to the Department, its representatives and/or the auditors and allow them access to such information and records on request;
- 3.3.6 annually, within twenty one (21) days from the last day of the Contract Year provide the Department with extracts from the base case Financial Model updated with actuals as at 31 March ("**ED Information Extract**") on information relating to Economic Development, and including the cash flows of the Black Enterprises and Local Communities which are Shareholders. The ED Information Extract shall in no way replace the Financial Model for all its other purpose in terms of the PPA and this Agreement. The provisions of the PPA and this Agreement shall apply

(other than for purposes of this clause 3.3.6) in relation to the Financial Model, unaffected in any manner whatsoever by the ED Information Extract.

- 3.4 If, in respect of any Economic Development Sub-Element, in any Contract Quarter the Seller is found by the Department or the Economic Development Independent Monitor to have submitted incorrect and or misleading reporting information or documentation, which the Seller relies on for purposes of the measurement of its performance against its Committed Obligations, the Seller shall be deemed not to have complied with the relevant Economic Development Obligation or Economic Development Element or Sub-Element and shall be subject to the consequences for such non-compliance in terms of this Schedule 2 (*Economic Development Obligations*).
- 3.5 If, in respect of any Economic Development Sub-Element, in any Contract Quarter the Seller does not comply with the requirements of clauses 3.2 or 3.3, or fails to submit the information requested in these clauses, the Seller may be deemed not to have complied with the relevant Economic Development Obligation or Economic Development Element or Sub-Element and shall be subject to the consequences for such non-compliance in terms of this Schedule 2 (*Economic Development Obligations*).

4. Economic Development Elements and Sub-Elements

"**Economic Development Elements and Sub-Elements**", for purposes of this Schedule 2 (*Economic Development Obligations*), means the following elements and sub-elements, which collectively comprise the Economic Development Obligations:

- 4.1 Job Creation
- 4.1.1 The tables detailing the Committed Obligations in relation to Job Creation are annexed hereto as Annex 2 (*Job Creation Obligations*).
- 4.1.2 The Quarterly Obligations in respect of Job Creation are contained in Annex 10 (*Quarterly Obligations*). The Seller shall procure that the Quarterly Obligations referred to in Annex 10 (*Quarterly Obligations*) with regard to Job Creation, are attained or exceeded by it in the relevant periods.

Sub-Elements

- 4.1.3 100-SR-01 – **RSA Based Employees who are Citizens**. For purposes of this definition, reference to "RSA Based Employees who are Citizens" shall mean Employees who are ordinarily resident in the Republic of South Africa and are Citizens, expressed as (i) a percentage of RSA Based Employees; and (ii) a quantum of their total Person Months;

- 4.1.4 100-SR-02 – **RSA Based Employees who are Black People.** For purposes of this definition, reference to "RSA Based Employees who are Black People" shall mean Employees who are ordinarily resident in the Republic of South Africa and are Black People, expressed as (i) a percentage of RSA Based Employees; and (ii) a quantum of their total Person Months;
- 4.1.5 100-SR-03 – **RSA Based Employees who are Skilled Employees and who are Black People.** For purposes of this definition, reference to "RSA Based Employees who are Skilled Employees and who are Black People" shall mean Skilled Employees who are ordinarily resident in the Republic of South Africa and are Black People, expressed as (i) a percentage of the total Skilled Employees who are RSA Based Employees; and (ii) a quantum of their total Person Months;
- 4.1.6 100-SR-04 – **RSA Based Employees who are Black People with Specialised Skills (e.g. engineering & artisanal).** For purposes of this definition, reference to "RSA Based Employees who are Black People with Specialised Skills" shall mean Employees who are Black People ordinarily resident in the Republic of South Africa with engineering or artisanal and other skills relevant to the renewable energy value chain as (i) a percentage of the total Skilled Employees who are RSA Based Employees; and (ii) a quantum of their total Person Months;
- 4.1.7 100-SR-05 – **RSA Based Employees who are Citizens who reside in Local Communities.** For purposes of this definition, reference to "RSA Based Employees who are Citizens who reside in Local Communities" shall mean Employees who are ordinarily resident in the Republic of South Africa and are Citizens and reside in Local Communities, expressed as (i) a percentage of RSA Based Employees; and (ii) a quantum of their total Person Months;
- 4.1.8 100-SR-06 – **RSA Based Employees who are Black Youth.** For purposes of this definition, reference to "RSA Based Employees who are Black Youth" shall mean Employees who are ordinarily resident in the Republic of South Africa and are Citizens and Black Youth, expressed as (i) a percentage of RSA Based Employees; and (ii) a quantum of their total Person Months;
- 4.1.9 100-SR-07 – **RSA Based Employees who are Black Women.** For purposes of this definition, reference to "RSA Based Employees who are Black Women" shall mean Employees who are ordinarily resident in the Republic of South Africa and are Black Women, expressed as (i) a percentage of RSA Based Employees; and (ii) a quantum of their total Person Months; and

4.1.10 100-SR-08 – **RSA Based Employees who are People with Disabilities.** For purposes of this definition, reference to "RSA Based Employees who are People with Disabilities" shall mean Employees who are ordinarily resident in the Republic of South Africa and are People with Disabilities, expressed as (i) a percentage of RSA Based Employees; and (ii) a quantum of their total Person Months.

4.2 Local Content

4.2.1 The Seller undertakes to the Department that:-

4.2.1.1 it has considered the Local Industrialisation Sectors, Components and Products contained in Appendix 5E1 of the RFP, determined the Local Industrialisation Sectors, Components or Products which are applicable to the Project and confirms that all applicable Local Industrialisation Sectors, Components or Products have been recorded in Table 2.2.2 of Annex 3 for purposes of the Seller's proper compliance with the Local Industrialisation Sector Components or Products requirements; and

4.2.1.2 it will procure that the Committed Obligations in Annex 3 (*Local Content Element Obligations*) are complied with; and

4.2.1.3 failure to comply with the Local Industrialisation Sectors, Components and Products may result in::

4.2.1.3.1 the Seller being penalised up to 10% (ten percent) of the value of the Agreement; or

4.2.1.3.2 the Department disqualifying the Seller or terminating this Agreement in whole or in part; and

4.2.1.3.3 if applicable, claiming damages from the Seller.

4.2.2 The Quarterly Obligations, in respect of Local Content, are contained in Annex 10 (*Quarterly Obligations*). The Seller shall procure that the Quarterly Obligations referred to in Annex 10 (*Quarterly Obligations*) with regard to Local Content, are attained or exceeded by it in the relevant periods.

Sub-Elements

4.2.3 200-SR-01 – **Value of Local Content Spend during the Construction Measurement Period.** For purposes of this definition, reference to "Value of Local Content Spend during the Construction Measurement Period" shall mean, in the Construction Measurement Period, the portion of Local Content Spend incurred. For the sake of clarity, procurement spend on Local Industrialisation Sectors,

Components and Products can be included in the calculation of this Economic Development Sub-Element; and

- 4.2.4 200-SR-02 – **Value of Local Content Spend during the Operating Measurement Period.** For purposes of this definition, reference to "Value of Local Content Spend during the Operating Measurement Period" shall mean, in the Operating Measurement Period, the portion of Local Content Spend incurred. For the sake of clarity, procurement spend on Local Industrialisation Sectors, Components and Products can be included in the calculation of this Economic Development Sub-Element.

4.3 **Ownership**

- 4.3.1 The Seller undertakes to the Department that it will procure that the Committed Obligations in Annex 4 (*Ownership Element Obligations*) are complied with.
- 4.3.1.1 The Seller undertakes to the Department that it, and the Material Contractors, shall procure that the Control of the Seller, or the Control of the Material Contractors (as the case may be) reflects a participation by Black People of not less than the percentage of Shareholding required to be held by Black People in the Seller or the Material Contractors pursuant to the provisions of this Schedule 2 (*Economic Development Obligations*).
- 4.3.2 The Seller undertakes to the Department that it has participation by Local Communities of not less than the percentage of Shareholding required to be held by Local Communities in the Seller pursuant to the provisions of this Schedule 2 (*Economic Development Obligations*).
- 4.3.3 The Quarterly Obligations, in respect of Ownership, are contained in Annex 10 (*Quarterly Obligations*). The Seller shall procure that the Quarterly Obligations referred to in Annex 10 (*Quarterly Obligations*) with regard to Ownership, are attained or exceeded by it and its Material Contractors in the relevant periods.
- 4.3.4 The Seller undertakes to the Department that South African Entity Participation by Local Communities is not more than five percent (5%).
- 4.3.5 The Seller undertakes to the Department that Active Participation will be considered, in Project-related activities.

Sub-Elements

- 4.3.6 300-PC-01 - **Shareholding by Citizens in the Seller.** For purposes of this definition, reference to "Shareholding by Citizens in the Seller" shall mean Shareholding in the Seller by Citizens as a percentage of the Total Shareholding;

- 4.3.7 300-PC-02 – **Shareholding by Black People in the Seller.** For purposes of this definition, reference to "Shareholding by Black People in the Seller" shall mean Shareholding in the Seller by Black People as a percentage of the Total Shareholding;
- 4.3.8 300-PC-03 - **Shareholding by Local Communities in the Seller.** For purposes of this definition, reference to "Shareholding by Local Communities in the Seller" shall mean Shareholding by Local Communities through a vehicle which complies with the B-BBEE Codes as a percentage of the Total Shareholding;
- 4.3.9 300-PC-04 – **Shareholding by Black Women in the Seller.** For purposes of this definition, reference to "Shareholding by Black Women in the Seller" shall mean Shareholding in the Seller by Black Women as a percentage of the Total Shareholding;
- 4.3.10 300-CC-01 - **Shareholding by Black People in the Construction Contractor.** For purposes of this definition, reference to "Shareholding by Black People in the Construction Contractor" shall mean Shareholding in the Construction Contractor by Black People as a percentage of the Total Shareholding;
- 4.3.11 300-OM-01 - **Shareholding by Black People in the Operations Contractor.** For purposes of this definition, reference to "Shareholding by Black People in the Operations Contractor" shall mean Shareholding in the Operations Contractor by Black People as a percentage of the Total Shareholding;
- 4.3.12 300-CC-02 – **Shareholding by Black Women in the Construction Contractor.** For purposes of this definition, reference to "Shareholding by Black Women in the Construction Contractor" shall mean Shareholding in the Construction Contractor by Black Women as a percentage of the Total Shareholding;
- 4.3.13 300-OM-02 - **Shareholding by Black Women in the Operations Contractor.** For purposes of this definition, reference to "Shareholding by Black Women in the Operations Contractor" shall mean Shareholding in the Operations Contractor by Black Women as a percentage of the Total Shareholding.
- 4.4 **Management Control**
- 4.4.1 The Seller undertakes to the Department that it will procure that the Employment of Employees will comply with the Committed Obligations in relation to Board Directors, Executive Management and Senior Management in Annex 5 (*Management Control Element Obligations*).

- 4.4.2 The Quarterly Obligations, in respect of Management Control, are contained in Annex 10 (*Quarterly Obligations*). The Seller shall procure that the Quarterly Obligations referred to in Annex 10 (*Quarterly Obligations*) with regard to Management Control, are attained or exceeded in the relevant periods.

Sub-Elements

- 4.4.3 400-SR-01 - **Black People who are Board Directors.** For purposes of this definition, reference to "Black People who are Board Directors" shall mean Black People appointed to the Board of the Seller and the Material Contractors as a percentage of the total Board Directors in the Seller and the Material Contractors;
- 4.4.4 400-SR-02 - **Black People in Executive Management.** For purposes of this definition, reference to "Black People in Executive Management" shall mean Black People Employed in Executive Management in the Seller and the Material Contractors as a percentage of the total Employees in Executive Management in the Seller and the Material Contractors;
- 4.4.5 400-SR-03 - **Black People in Senior Management.** For purposes of this definition, reference to "Black People in Senior Management" shall mean Black People Employed in Senior Management in the Seller and the Material Contractors as a percentage of the total Employees in Senior Management in the Seller and the Material Contractors;
- 4.4.6 400-SR-04 - **Black Women who are Board Directors.** For purposes of this definition, reference to "Black Women who are Board Directors" shall mean Black Women appointed to the Board in the Seller and the Material Contractors as a percentage of the total Board Directors in the Seller and the Material Contractors;
- 4.4.7 400-SR-05 - **Black Women in Executive Management.** For purposes of this definition, reference to "Black Women in Executive Management" shall mean Black Women Employed in Executive Management in the Seller and the Material Contractors as a percentage of the total Employees in Executive Management in the Seller and the Material Contractors;
- 4.4.8 400-SR-06 - **Black Women in Senior Management.** For purposes of this definition, reference to "Black Women in Senior Management" shall mean Black Women Employed in Senior Management in the Seller and the Material

Contractors as a percentage of the total Employees in Senior Management in the Seller and the Material Contractors;

4.5 **Skills Development**

4.5.1 The Seller undertakes to the Department that it will procure compliance with the Committed Obligations in relation to Skills Development contained in Annex 6 (*Skills Development Element Obligations*).

4.5.2 The Quarterly Obligations, in respect of Skills Development, are contained in Annex 10 (*Quarterly Obligations*), which reflects the percentage of Revenue in the Operating Measurement Period aligned with the Committed Obligations in Annex 6 (*Skills Development Element Obligations*) for each Contract Quarter. The Seller shall procure that the Quarterly Obligations referred to in Annex 10 (*Quarterly Obligations*) are attained or exceeded by it in the relevant periods.

Sub-Element

4.5.3 500-SR-01 - **Skills Development Contributions**. For purposes of this definition, reference to "Skills Development Contributions" shall mean the contributions made towards Skills Development adjusted using the Recognition for Localness, as a percentage of the Revenue in the Operating Measurement Period.

4.5.4 500-SR-02 - **Bursaries for Black Students at Higher Education Institutions**. For purposes of this definition, reference to "Bursaries for Black Students at Higher Education Institutions" shall mean the contributions made towards Bursaries for Black Students at Higher Education Institutions adjusted using the Recognition for Localness, as a percentage of the Revenue in the Operating Measurement Period (in addition to the Skills Development Contributions made in respect of 500-SR-01 and 500-SR-03).

4.5.5 500-SR-03 - **Skills Development Contributions towards Black Disabled Employees**. For purposes of this definition, reference to "Skills Development Contribution towards Black Disabled Employees" shall mean the Skills Development Contribution allocated to Black Disabled Employees adjusted using the Recognition for Localness, as a percentage of the Revenue in the Operating Measurement Period (in addition to the Skills Development Contributions made in respect of 500-SR-01 and 500-SR-02).

4.6 Enterprise and Supplier Development

4.6.1 The Seller undertakes to the Department that it will procure compliance with the Committed Obligations in relation to the Enterprise and Supplier Development element in Annex 7 (*Enterprise and Supplier Development Element Obligations*).

4.6.2 The Quarterly Obligations, in respect of Enterprise and Supplier Development, are contained in Annex 10 (*Quarterly Obligations*). The Seller shall procure that the Quarterly Obligations referred to in Annex 10 (*Quarterly Obligations*) are attained or exceeded in the relevant periods.

Sub-Elements

4.6.3 600-SR-01 – **B-BBEE Procurement**. For purposes of this definition, reference to "B-BBEE Procurement" shall mean B-BBEE Procurement Spend as a percentage of Total Measured Procurement Spend;

4.6.4 600-SR-02 – **Black Enterprise Procurement**. For purposes of this definition, reference to "Black Enterprise Procurement" shall mean procurement spend from Black Enterprises as a percentage of Total Measured Procurement Spend;

4.6.5 600-SR-03 – **B-BBEE Procurement Spend on QSEs and EMEs**. For purposes of this definition, reference to "B-BBEE Procurement Spend on QSEs and EMEs" shall mean B-BBEE Procurement Spend from Qualifying Small Enterprises or Exempted Micro Enterprises as a percentage of Total Measured Procurement Spend;

4.6.6 600-SR-04 – **B-BBEE Procurement Spend on Black Women Owned Vendors**. For purposes of this definition, reference to "B-BBEE Procurement Spend on Black Women Owned Vendors" shall mean B-BBEE Procurement Spend from Black Women Owned Vendors as a percentage of Total Measured Procurement Spend;

4.6.7 600-SR-05 – **Supplier Development Contributions during the Construction Measurement Period**. For purposes of this definition, reference to "Supplier Development Contributions during the Construction Measurement Period" shall mean Supplier Development Contributions by the Seller and the Material Contractors during the Construction Measurement Period, as a percentage of the Total Project Value in the Construction Measurement Period;

4.6.8 600-SR-06 – **Supplier Development Contributions during the Operating Measurement Period**. For purposes of this definition, reference to "Supplier Development Contributions during the Operating Measurement Period" shall mean Supplier Development Contributions by the Seller and the Material Contractors

during the Operating Measurement Period, as a percentage of the Total Project Value in the Operating Measurement Period;

- 4.6.9 600-SR-07 – **Enterprise Development Contributions.** For purposes of this definition, reference to "Enterprise Development Contributions" shall mean Enterprise Development Contributions by the Seller adjusted using the Recognition for Local Enterprises, as a percentage of Revenue in the Operating Measurement Period.

4.7 **Socio-Economic Development**

- 4.7.1 The Seller undertakes to the Department that it will comply with the requirements pertaining to Committed Obligations in terms of the Socio-Economic Development element contained in Annex 8 (*Socio Economic Development Element Obligations*).

- 4.7.2 The Quarterly Obligations, in respect of Socio-Economic Development, are contained in Annex 10 (*Quarterly Obligations*), which reflects the percentage of Revenue in the Operating Measurement Period aligned with the Committed Obligations in Annex 8 (*Socio-Economic Development Element Obligations*) for each Contract Year. The Seller shall procure that the Quarterly Obligations referred to in Annex 10 (*Quarterly Obligations*) with regard to Socio-Economic Development, are attained or exceeded by it in the relevant periods.

Sub-Element

- 4.7.3 700-SR-01 - **Socio-Economic Development Contributions.** For purposes of this definition, reference to "Socio-Economic Development Contributions" shall mean Socio-Economic Development Contributions adjusted using the Recognition for Localness as a percentage of Revenue in the Operating Measurement Period.

5. **Actual Total Quantum**

"**Actual Total Quantum**", for purposes of this Schedule 2 (*Economic Development Obligations*) means, in relation to the Economic Development Obligations, the actual achieved quantum in relation to each Economic Development Element and Economic Development Sub-Element as set out below, and the Seller must include, in its quarterly report, details of the basis of calculation of the Actual Total Quantum achieved for each of the Economic Development Sub-Elements, as follows:

5.1 **In respect of Job Creation:**

- 5.1.1 100-SR-01 – RSA Based Employees who are Citizens, expressed in Person Months;

- 5.1.2 100-SR-02 – RSA Based Employees who are Black People, expressed in Person Months;
- 5.1.3 100-SR-03 – RSA Based Skilled Employees who are Black People, expressed in Person Months;
- 5.1.4 100-SR-04 – RSA Based Employees who are Black People with Specialized Skills, expressed in Person Months;
- 5.1.5 100-SR-05 – RSA Based Employees who are Citizens who reside in Local Communities, expressed in Person Months;
- 5.1.6 100-SR-06 – RSA Based Employees who are Black Youth, expressed in Person Months;
- 5.1.7 100-SR-07 – RSA Based Employees who are Black Women, expressed in Person Months;
- 5.1.8 100-SR-08 – RSA Based Employees who are People with Disabilities, expressed in Person Months;
- 5.1.9 Total RSA Based Employees, expressed in Person Months;
- 5.1.10 Total RSA Based Employees who are Skilled Employees, expressed in Person Months;
- 5.1.11 Total RSA Based Employees, expressed in absolute number of individual persons Employed;
- 5.1.12 Total RSA Based Employees who are Citizens, expressed in absolute number of individual persons Employed;
- 5.1.13 Total RSA Based Employees who are Black People, expressed in absolute number of individual persons Employed;
- 5.1.14 Total RSA Based Employees who are Citizens who reside in Local Communities, expressed in absolute number of individual persons Employed;
- 5.1.15 Total RSA Based Employees who are Black Youth, expressed in absolute number of individual persons Employed;
- 5.1.16 Total RSA Based Employees who are Black Women, expressed in absolute number of individual persons Employed; and
- 5.1.17 Total RSA Based Employees who are People with Disabilities, expressed in absolute number of individual persons Employed;

5.2 In respect of Local Content:

- 5.2.1 200-SR-01 – Value of Local Content Spend during the Construction Measurement Period, expressed in Rand terms;
- 5.2.2 200-SR-02 – Value of Local Content Spend during the Operating Measurement Period, expressed in Rand terms;
- 5.2.3 200-SR-03 – Value of Local Industrialisation (in this regard, Local Industrialisation Sectors, Components or Products as a percentage of the total spend in the Local Industrialisation Sectors, Components or Products), expressed in Rand terms;
- 5.2.4 Total amount of Local Content Spend, in Rand terms;
- 5.2.5 Total Project Value during the Construction Measurement Period, in Rand terms;
- 5.2.6 Total Project Value during the Operating Measurement Period, in Rand terms;
- 5.2.7 Total amount of Local Content and Production, in Rand terms;
- 5.2.8 Total spend in the Local Industrialisation Sectors, Components or Products, expressed in Rand terms.

5.3 In respect of Ownership:

- 5.3.1 300-PC-01 – Shareholding by Citizens in the Seller, expressed as a percentage of the Total Shareholding in the Measured Entity;
- 5.3.2 300-PC-02, 300-CC-01, and 300-OM-01 – Shareholding by Black People in the Seller and the Material Contractors, expressed as a percentage of the Total Shareholding in the Measured Entity; and
- 5.3.3 300-PC-03 - Shareholding by Local Communities in the Seller through a structure which complies with the B-BBEE Codes, expressed as a percentage of the Total Shareholding in the Measured Entity;
- 5.3.4 300-PC-04, 300-CC-02 and 300-OM-02 – Shareholding by Black Women in the Seller and in the Material Contractors, expressed as a percentage of the Total Shareholding in the Measured Entity.

5.4 In respect of Management Control:

- 5.4.1 400-SR-01 - Black People who are Board Directors in each of the Seller, the Construction Contractor and the Operations Contractor, expressed in Person Months;

- 5.4.2 400-SR-02 - Black People in Executive Management in each of the Seller, the Construction Contractor and the Operations Contractor, expressed in Person Months;
- 5.4.3 400-SR-03 - Black People in Senior Management in each of the Seller, the Construction Contractor and the Operations Contractor, expressed in Person Months;
- 5.4.4 400-SR-04 - Black Women who are Board Directors in each of the Seller, the Construction Contractor and the Operations Contractor, expressed in Person Months;
- 5.4.5 400-SR-05 - Black Women in Executive Management in each of the Seller, the Construction Contractor and the Operations Contractor, expressed in Person Months; and
- 5.4.6 400-SR-06 – Black Women who are in Senior Management in each of the Seller, the Construction Contractor and the Operations Contractor, expressed in Person Months.
- 5.5 **In respect of Skills Development:**
 - 5.5.1 500-SR-01 - Skills Development Contributions, expressed in Rand terms;
 - 5.5.2 500-SR-02 - Bursaries for Black Students at Higher Education Institutions, expressed in Rand terms; and
 - 5.5.3 500-SR-03 - Skills Development Contribution towards Black Disabled Employees, expressed in Rand terms.
- 5.6 **In respect of Enterprise and Supplier Development:**
 - 5.6.1 600-SR-01 - B-BBEE Procurement, expressed in Rand terms;
 - 5.6.2 600-SR-02 – Black Enterprise Procurement, expressed in Rand terms;
 - 5.6.3 600-SR-03 – B-BBEE Procurement Spend on QSEs and EMEs, expressed in Rand terms;
 - 5.6.4 600-SR-04 – B-BBEE Procurement Spend on Black Women Owned Vendors, expressed in Rand terms;
 - 5.6.5 600-SR-05 - Supplier Development Contributions during the Construction Measurement Period, expressed in Rand Terms;
 - 5.6.6 600-SR-06 – Supplier Development Contributions during the Operating Measurement Period, expressed in Rand terms;

- 5.6.7 600-SR-07 – Enterprise Development Contributions, expressed in Rand terms;
- 5.6.8 Total Measured Procurement Spend, expressed in Rand Terms; and
- 5.6.9 the value of all goods and services procured from enterprises at least fifty point one percent (50.1%) owned and controlled by People with Disabilities, Black Women and Black Youth, and enterprises based in the Province in which the Project is located, if any, in Rand terms.

5.7 **In respect of Socio-Economic Development:**

- 5.7.1 700-SR-01 - Socio-Economic Development Contributions, expressed in Rand terms.

6. **Economic Development Performance Measurement**

6.1 **Economic Development Performance Penalties**

- 6.1.1 The following formulae will be applied to determine the Economic Development Performance Penalties ("EDPP") that the Department may levy on the Seller depending on the performance of the Seller and the Material Contractors in exceeding, meeting, or failing to meet the Economic Development Obligations as specified in Annex 2 - Annex 8⁵:

$$\text{Performance Valuation in the Construction Measurement Period} = P * \sum_{i=1}^{26} W_i * SF_i$$

$$\text{Performance Valuation in the Operating Measurement Period} = P * \sum_{i=1}^{31} W_i * SF_i$$

where:

- 6.1.1.1 in the Construction Measurement Period $P = R [***]^6$
- 6.1.1.2 in the Operating Measurement Period $P = R [***]^7$ Indexed
- 6.1.1.3 $i =$ the specific Economic Development Sub-Element

⁵ **Drafting Note:** Bidders must note that their obligations are to be expressed in percentage terms as contained in the Annexes 2 to 8 (Committed Obligations).

⁶ **Drafting Note:** amount to be extracted from the financial model of the Bidder, determined based on 5% of the costs of the design, construction and commissioning of the Facility in the average Contract Quarter and will be fixed prior to Signature Date, on a date to be notified by the Department to the Preferred Bidders.

⁷ **Drafting Note:** this amount is to be based on 2% of the Bidder's forecast revenue averaged to a single quarter to be extracted from the financial model of the Bidder and will be fixed prior to the Signature Date on a date notified by the Department to the Preferred Bidders.

6.1.1.4 W_i = Weight of Economic Development Sub-Element i extracted from Table 9.1 in Annex 9 (*Economic Development Weights and Scaling Factors*)

6.1.1.5 SF_i = Scaling Factor extracted from Table 9.2 in Annex 9 (*Economic Development Weights and Scaling Factors*) based on the performance in respect of each Economic Development Sub-Element in the relevant Contract Quarter ("**QEP**"), where QEP is determined as follows:

6.1.1.5.1 in the case of Job Creation, it shall be as indicated in clause 6.2.1 of this Schedule 2 (*Economic Development Obligations*) for each of the Job Creation Economic Development Sub-Elements; and

6.1.1.5.2 in the case of all other Economic Development Sub-Elements, it shall be in terms of the following formula:

$$QEP_i = \frac{\text{Quarterly Achievement in the Contract Quarter}}{\text{Quarterly Obligation in the Contract Quarter}}$$

6.1.2 If the Performance Valuation results in a positive value, it is an EDPP.

6.2 QEP in respect of Job Creation and Quarterly Achievement in respect of each other Economic Development Sub-Element shall be determined as follows:

6.2.1 in respect of Job Creation:

6.2.1.1 **100-SR-01: RSA Based Employees who are Citizens**

$$QEP = \left(\frac{\text{Quarterly Achievement in the Contract Quarter \% 100 - SR - 01}}{\text{Quarterly Obligation in the Contract Quarter \% 100 - SR - 01}} \right) * 0.33 \\ + \left(\frac{\sum_{j=1}^n \text{Actual RSA Based Employees who are Citizens in Person Months}}{\sum_{j=1}^n \text{Quarterly Obligation in the Contract Quarter of RSA Based Employees who are Citizens in Person Months}} \right) * 0.67$$

where:

Quarterly Achievement in the Contract Quarter % 100 – SR – 01

$$= \left(\frac{\sum_{j=1}^n \text{RSA Based Employees who are Citizens in Person Months}}{\sum_{j=1}^n \text{RSA Based Employees in Person Months}} \right)$$

j = Contract Month

n = Number of Contract Months in the Contract Quarter

6.2.1.2 **100-SR-02: RSA Based Employees who are Black People**

$$\begin{aligned}
 & \text{QEP} \\
 &= \left(\frac{\text{Quarterly Achievement in the Contract Quarter \% 100 – SR – 02}}{\text{Quarterly Obligation in the Contract Quarter \% 100 – SR – 02}} \right) * 0.33 \\
 &+ \left(\frac{\sum_{j=1}^n \text{Actual RSA Based Employees who are Black People in Person Months}}{\sum_{j=1}^n \text{Quarterly Obligation in the Contract Quarter of RSA Based Employees who are Black People in Person Months}} \right) * 0.67
 \end{aligned}$$

where:

Quarterly Achievement in the Contract Quarter % 100 – SR – 02

$$= \left(\frac{\sum_{j=1}^n \text{RSA Based Employees who are Black People in Person Months}}{\sum_{j=1}^n \text{RSA Based Employees in Person Months}} \right)$$

j = Contract Month

n = Number of Contract Months in the Contract Quarter

6.2.1.3 **100-SR-03: RSA Based Skilled Employees who are Black People**

$$\begin{aligned}
 & \text{QEP} = \left(\frac{\text{Quarterly Achievement in the Contract Quarter \% 100 – SR – 03}}{\text{Quarterly Obligation in the Contract Quarter \% 100 – SR – 03}} \right) * 0.33 \\
 &+ \left(\frac{\sum_{j=1}^n \text{Actual RSA Based Skilled Employees who are Black People in Person Months}}{\sum_{j=1}^n \text{Quarterly Obligation in the Contract Quarter of RSA Based Skilled Employees who are Black People in Person Months}} \right) \\
 & \quad * 0.67
 \end{aligned}$$

where:

Quarterly Achievement in the Contract Quarter % 100 – SR – 03

$$= \left(\frac{\sum_{j=1}^n \text{RSA Based Skilled Employees who are Black People in Person Months}}{\sum_{j=1}^n \text{RSA Based Skilled Employees in Person Months}} \right)$$

j = Contract Month

n = Number of Contract Months in the Contract Quarter

6.2.1.4 **100-SR-04: RSA Based Employees who are who are Black People with Specialized Skills**

$$\text{QEP} = \left(\frac{\text{Quarterly Achievement in the Contract Quarter \% 100 – SR – 04}}{\text{Quarterly Obligation in the Contract Quarter \% 100 – SR – 04}} \right) * 0.33 +$$

$$\left(\frac{\sum_{j=1}^n \text{Actual Employees who are Black People with Specialized Skills in Person Months}}{\sum_{j=1}^n \text{Quarterly Obligation in the Contract Quarter of Employees who are Black People with Specialized Skills in Person Months}} \right) * 0.67$$

where:

Quarterly Achievement in the Contract Quarter % 100 – SR – 04

$$= \left(\frac{\sum_{j=1}^n \text{Employees who are Black People with Specialized Skills in Person Months}}{\sum_{j=1}^n \text{RSA Based Employees in Person Months}} \right)$$

j = Contract Month

n = Number of Contract Months in the Contract Quarter

6.2.1.5 100-SR-05: RSA Based Employees who are Citizens who reside in Local Communities

$$QEP = \left(\frac{\text{Quarterly Achievement in the Contract Quarter \% 100 – SR – 05}}{\text{Quarterly Obligation in the Contract Quarter \%100 – SR – 05}} \right) * 0.33 +$$

$$\left(\frac{\sum_{j=1}^n \text{Actual Employees who are Citizens who reside in Local Communities in Person Months}}{\sum_{j=1}^n \text{Quarterly Obligation in the Contract Quarter of Employees who are Citizens who reside in Local Communities in Person Months}} \right) * 0.67$$

where:

Quarterly Achievement in the Contract Quarter % 100 – SR – 05

$$= \left(\frac{\sum_{j=1}^n \text{Employees who reside in Local Communities who are Citizens in Person Months}}{\sum_{j=1}^n \text{RSA Based Employees in Person Months}} \right)$$

j = Contract Month

n = Number of Contract Months in the Contract Quarter

6.2.1.6 100-SR-06: RSA Based Employees who are Black Youth

$$QEP = \left(\frac{\text{Quarterly Achievement in the Contract Quarter \% 100 – SR – 06}}{\text{Quarterly Obligation in the Contract Quarter \%100 – SR – 06}} \right) * 0.33 +$$

$$\left(\frac{\sum_{j=1}^n \text{Actual Employees who are RSA Based Employees who are Black Youth in Person Months}}{\sum_{j=1}^n \text{Quarterly Obligation in the Contract Quarter of Employees who are RSA Based Employees who are Black Youth in Person Months}} \right) * 0.67$$

where:

Quarterly Achievement in the Contract Quarter % 100 – SR – 06

$$= \left(\frac{\sum_{j=1}^n \text{RSA Based Employees who are Black Youth in Person Months}}{\sum_{j=1}^n \text{RSA Based Employees in Person Months}} \right)$$

j = Contract Month

n = Number of Contract Months in the Contract Quarter

6.2.1.7

100-SR-07: RSA Based Employees who are Black Women

$$\text{QEP} = \left(\frac{\text{Quarterly Achievement in the Contract Quarter \% 100 – SR – 07}}{\text{Quarterly Obligation in the Contract Quarter \%100 – SR – 07}} \right) * 0.33 +$$

$$\left(\frac{\sum_{j=1}^n \text{Actual RSA Based Employees who are Black Women in Person Months}}{\sum_{j=1}^n \text{Quarterly Obligation in the Contract Quarter of Employees who are RSA Based Employees who are Black Women in Person Months}} \right) * 0.67$$

where:

Quarterly Achievement in the Contract Quarter % 100 – SR – 07

$$= \left(\frac{\sum_{j=1}^n \text{RSA Based Employees who are Black Women in Person Months}}{\sum_{j=1}^n \text{RSA Based Employees in Person Months}} \right)$$

j = Contract Month

n = Number of Contract Months in the Contract Quarter

6.2.1.8

100-SR-08: RSA Based Employees who are People with Disabilities

$$\text{QEP} = \left(\frac{\text{Quarterly Achievement in the Contract Quarter \% 100 – SR – 08}}{\text{Quarterly Obligation in the Contract Quarter \%100 – SR – 08}} \right) * 0.33 +$$

$$\left(\frac{\sum_{j=1}^n \text{Actual Employees who are RSA Based Employees who are Disabled in Person Months}}{\sum_{j=1}^n \text{Quarterly Obligation in the Contract Quarter of Employees who are RSA Based Employees who are Disabled in Person Months}} \right) * 0.67$$

where:

Quarterly Achievement in the Contract Quarter % 100 – SR – 08

$$= \left(\frac{\sum_{j=1}^n \text{Employees from RSA Based Employees who are Disabled in Person Months}}{\sum_{j=1}^n \text{RSA Based Employees in Person Months}} \right)$$

j = Contract Month

n = Number of Contract Months in the Contract Quarter

6.2.2

in respect of all the other Economic Development Sub-Elements:

6.2.2.1 200-SR-01: Value of Local Content Spend during the Construction Measurement Period

$$\text{Quarterly Achievement} = \frac{\sum_{j=1}^n \text{Actual Local Content Spend}}{\sum_{j=1}^n \text{Portion of Total Project Value incurred}}$$

where:

j = Contract Month

n= Number of Contract Months in the Contract Quarter

6.2.2.2 200-SR-02: Value of Local Content Spend during the Operating Measurement Period

$$\text{Quarterly Achievement} = \frac{\sum_{j=1}^n \text{Actual Local Content Spend}}{\sum_{j=1}^n \text{Portion of Total Project Value incurred}}$$

where:

j = Contract Month

n= Number of Contract Months in the Contract Quarter

6.2.2.3 300-PC-01: Shareholding by Citizens in the Seller

$$\text{Quarterly Achievement} = \frac{\sum_{j=1}^n \text{Shareholding by Citizens in the Seller}}{n}$$

where:

j = Contract Month

n= Number of Contract Months in the Contract Quarter

6.2.2.4 300-PC-02: Shareholding by Black People in the Seller

$$\text{Quarterly Achievement} = \frac{\sum_{j=1}^n \text{Shareholding by Black People in the Seller}}{n}$$

where:

j = Contract Month

n= Number of Contract Months in the Contract Quarter

6.2.2.5 300-PC-03: Shareholding by Local Communities in the Seller

$$\text{Quarterly Achievement} = \frac{\sum_{j=1}^n \text{Shareholding by Local Communities in the Seller}}{n}$$

where:

j = Contract Month

n= Number of Contract Months in the Contract Quarter

6.2.2.6 **300-PC-04: Shareholding by Black Women in the Seller**

$$\text{Quarterly Achievement} = \frac{\sum_{j=1}^n \text{Shareholding by Black Women in the Seller}}{n}$$

where:

j = Contract Month

n= Number of Contract Months in the Contract Quarter

6.2.2.7 **300-CC-01: Shareholding by Black People in the Construction Contractor**

$$\text{Quarterly Achievement} = \frac{\sum_{j=1}^n \text{Shareholding by Black People in the Construction Contractor}}{n}$$

where:

j = Contract Month

n= Number of Contract Months in the Contract Quarter

6.2.2.8 **300-OM-01: Shareholding by Black People in the Operations Contractor**

$$\text{Quarterly Achievement} = \frac{\sum_{j=1}^n \text{Shareholding by Black People in the Operations Contractor}}{n}$$

where:

j = Contract Month

n= Number of Contract Months in the Contract Quarter

6.2.2.9 **300-CC-02: Shareholding by Black Women in the Construction Contractor**

$$\text{Quarterly Achievement} = \frac{\sum_{j=1}^n \text{Shareholding by Black Women in the Construction Contractor}}{n}$$

where:

j = Contract Month

n= Number of Contract Months in the Contract Quarter

6.2.2.10 **300-OM-02: Shareholding by Black Women in the Operations Contractor**

$$\text{Quarterly Achievement} = \frac{\sum_{j=1}^n \text{Shareholding by Black Women in the Operations Contractor}}{n}$$

where:

j = Contract Month

n= Number of Contract Months in the Contract Quarter

6.2.2.11 400-SR-01: Black People who are Board Directors

$$\text{Quarterly Achievement} = \frac{\sum_{j=1}^n \text{Black People who are Board Directors in Person} - \text{Months}}{\sum_{j=1}^n \text{Total Board Directors in Person} - \text{Months}}$$

where:

j = Contract Month

n= Number of Contract Months in the Contract Quarter

6.2.2.12 400-SR-02: Black People in Executive Management

Quarterly Achievement

$$= \frac{\sum_{j=1}^n \text{Black People in Executive Management in Person} - \text{Months}}{\sum_{j=1}^n \text{Total Employees in Executive Management in Person} - \text{Months}}$$

where:

j = Contract Month

n = Number of Contract Months in the Contract Quarter

6.2.2.13 400-SR-03: Black People in Senior Management

$$\text{Quarterly Achievement} = \frac{\sum_{j=1}^n \text{Black People in Senior Management in Person} - \text{Months}}{\sum_{j=1}^n \text{Total Employees in Senior Management in Person} - \text{Months}}$$

where:

j = Contract Month

n = Number of Contract Months in the Contract Quarter

6.2.2.14 400-SR-04: Black Women who are Board Directors

$$\text{Quarterly Achievement} = \frac{\sum_{j=1}^n \text{Black Women who are Board Directors in Person} - \text{Months}}{\sum_{j=1}^n \text{Total Board Directors in Person} - \text{Months}}$$

where:

j = Contract Month

n= Number of Contract Months in the Contract Quarter

6.2.2.15 400-SR-05: Black Women in Executive Management

Quarterly Achievement

$$= \frac{\sum_{j=1}^n \text{Black Women in Executive Management in Person} - \text{Months}}{\sum_{j=1}^n \text{Total Employees in Executive Management in Person} - \text{Months}}$$

where:

j = Contract Month

n= Number of Contract Months in the Contract Quarter

6.2.2.16 400-SR-06: Black Women in Senior Management

$$\text{Quarterly Achievement} = \frac{\sum_{j=1}^n \text{Black Women in Senior Management in Person – Months}}{\sum_{j=1}^n \text{Total Employees in Senior Management in Person – Months}}$$

where:

j = Contract Month

n= Number of Contract Months in the Contract Quarter

6.2.2.17 500-SR-01: Skills Development Contribution

Quarterly Achievement

$$= \frac{\sum_{j=1}^n \text{Actual Skills Development Contributions adjusted for Localness}}{\sum_{j=1}^n \text{Total Revenue}}$$

where:

j = Contract Month

n= Number of Contract Months in the Contract Quarter

6.2.2.18 500-SR-02: Bursaries for Black Students at Higher Education Institutions

Quarterly Achievement

$$= \frac{\sum_{j=1}^n \text{Actual Contributions for Black Student Bursaries adjusted for Localness}}{\sum_{j=1}^n \text{Total Revenue}}$$

where:

j = Contract Month

n= Number of Contract Months in the Contract Quarter

6.2.2.19 500-SR-03: Skills Development Contribution towards Black Disabled Employees

Quarterly Achievement

$$= \frac{\sum_{j=1}^n \text{Actual Skills Development Contribution towards Black Disabled Employees adjusted for Localness}}{\sum_{j=1}^n \text{Total Revenue}}$$

where:

j = Contract Month

6.2.2.20 **600-SR-01: B-BBEE Procurement**

$$\text{Quarterly Achievement} = \frac{\sum_{j=1}^n \text{Actual B – BBEE Procurement Spend}}{\sum_{j=1}^n \text{Total Measured Procurement Spend}}$$

where:

j = Contract Month

n= Number of Contract Months in the Contract Quarter

6.2.2.21 **600-SR-02 – Black Enterprise Procurement**

$$\text{Quarterly Achievement} = \frac{\sum_{j=1}^n \text{Actual Procurement spend on Black Enterprises}}{\sum_{j=1}^n \text{Total Measured Procurement Spend}}$$

where:

j = Contract Month

n= Number of Contract Months in the Contract Quarter

6.2.2.22 **600-SR-03: B-BBEE Procurement Spend on QSEs and EMEs**

$$\text{Quarterly Achievement} = \frac{\sum_{j=1}^n \text{Actual B – BBEE Procurement Spend on QSEs and EMEs}}{\sum_{j=1}^n \text{Total Measured Procurement Spend}}$$

where:

j = Contract Month

n= Number of Contract Months in the Contract Quarter

6.2.2.23 **600-SR-04: B-BBEE Procurement Spend on Black Women Owned Vendors**

Quarterly Achievement

$$= \frac{\sum_{j=1}^n \text{Actual B – BBEE Procurement Spend on Women Owned Vendors}}{\sum_{j=1}^n \text{Total Measured Procurement Spend}}$$

where:

j = Contract Month

n= Number of Contract Months in the Contract Quarter

6.2.2.24 **600-SR-05: Supplier Development Contributions during the Construction Measurement Period**

Quarterly Achievement

$$= \frac{\sum_{j=1}^n \text{Actual Supplier Development Spend}}{\sum_{j=1}^n \text{Total Project Value during the Construction Measurement Period}}$$

where:

j = Contract Month

n= Number of Contract Months in the Contract Quarter

6.2.2.25

600-SR-06: Supplier Development Contributions during the Operating Measurement Period

Quarterly Achievement

$$= \frac{\sum_{j=1}^n \text{Actual Supplier Development Spend}}{\sum_{j=1}^n \text{Total Project Value during Operation Measurement Period}}$$

where:

j = Contract Month

n= Number of Contract Months in the Contract Quarter

6.2.2.26

600-SR-07: Enterprise Development Contributions

Quarterly Achievement

$$= \frac{\sum_{j=1}^n \text{Actual Enterprise Development Contributions adjusted for Localness}}{\sum_{j=1}^n \text{Total Revenue}}$$

where:

j = Contract Month

n= Number of Contract Months in the Contract Quarter

6.2.2.27

700-SR-01: Socio-Economic Development Contributions

Quarterly Achievement

$$= \frac{\sum_{j=1}^n \text{Socio – Actual Economic Development Contributions adjusted for Localness}}{\sum_{j=1}^n \text{Total Revenue}}$$

where:

j = Contract Month

n = Number of Contract Months in the Contract Quarter

6.3

The Economic Development Performance Measurement calculation as contemplated in the formulae in clauses 6.1.1 and 6.2 will result in a positive value or a negative value.

- 6.4 The Economic Development Performance Measurement will be calculated by adding the positive and negative results of each such calculation for each Contract Quarter in the Construction Measurement Period, and for each Contract Quarter in a Contract Year of the Operating Measurement Period.
- 6.5 The Economic Development Performance Measurement, calculated in the manner described in clause 6.4 above, will be reconciled:
- 6.5.1 as at the end of the Construction Measurement Period, within a reasonable period after the applicable reports have been submitted by the Seller. For purposes of the reconciliation, the Seller shall be entitled to count any amounts actually spent by the Seller in relation to Construction activities that were carried out during the Construction Measurement Period, but which are paid after the last day of the Construction Measurement Period, as Actual Total Quantum in the final Contract Quarter of the Construction Measurement Period; and
- 6.5.2 in the Operating Measurement Period, as at the end of every Contract Year, within a reasonable period after the applicable reports have been submitted by the Seller.
- 6.6 Should the reconciliation of the Economic Development Performance Measurement as at the dates stipulated in clauses 6.5.1 and 6.5.2 above yield a negative amount, no amounts will be due and payable to the Department by the Seller.
- 6.7 Should the reconciliation of the Economic Development Performance Measurement as at the dates stipulated in clauses 6.5.1 and 6.5.2 above yield a positive amount, such amount will be payable to Department, by the Seller, as Economic Development Performance Penalties.
- 6.8 The Department shall issue a notification to the Seller within a reasonable period after the dates stipulated in clauses 6.5.1 and 6.5.2 above, indicating the net amount, if any, of Economic Development Performance Penalties for which the Seller is liable in respect of the relevant period.
- 6.9 A notification as referred to in clause 6.8 above shall be *prima facie* proof of the matters to which it relates and any Economic Development Performance Penalties referred to in such notification shall immediately accrue in accordance with the provisions of this Schedule 2 (*Economic Development Obligations*) and shall be due and payable to the Department by the Seller within fifteen (15) Business Days of demand by the Department to the Seller.

- 6.10 If the Seller disputes any of the amounts set out in the notification:
- 6.10.1 the dispute shall be resolved in accordance with clause 18 (*Fast-Track Dispute Resolution*), provided that the Seller refers the dispute to be resolved within ten (10) Business Days from receipt of the notification contemplated in clause 6.8; and
- 6.10.2 if, pursuant to referral in terms of that clause, it is determined that an Economic Development Performance Penalty as contained in the notification was incorrectly imposed or calculated by the Department, the Department shall to the extent that the Seller has paid such Economic Development Performance Penalty, pay such amount to the Seller within twenty (20) Business Days of the determination made pursuant to such dispute resolution process.
- 6.11 If the Seller fails to pay the Economic Development Performance Penalty on or before the due date for payment as contemplated in clause 6.9 above or, if disputed, as determined in accordance with the dispute resolution process contemplated in clause 18 (*Fast Track Dispute Resolution*), within a period of ten (10) Business Days from notification in clause 6.8 or the determination in accordance with the dispute resolution process contemplated in clause 18 (*Fast Track Dispute Resolution*), the Department shall have the right to terminate this Agreement in accordance with clause 11.2 (*Termination for Seller Default*).

7. Economic Development in the Early Operating Period

- 7.1 If the Seller delivers Energy to the Buyer during the Early Operating Period, it will be entitled to undertake initiatives in the Early Operating Period in respect of Enterprise Development, Skills Development and Socio-Economic Development.
- 7.2 The Department shall recognise any contributions to Enterprise Development, Skills Development and Socio-Economic Development made by the Seller in the Early Operating Period as achievements in the first Contract Quarter of the Operating Measurement Period.
- 7.3 In order for the Department to recognise such contributions, the Seller shall:
- 7.3.1 notify the Department of its intention to undertake Enterprise Development, Skills Development and/or Socio-Economic Development initiatives in the Early Operating Period prior to the commencement of such period;
- 7.3.2 submit reports on the progress made in respect of contributions made in relation to Enterprise Development, Skills Development and/or Socio-Economic Development in the Early Operating Period. These reports are to be submitted in addition to the Economic Development quarterly reports due in the Construction

Measurement Period, together with such Construction Measurement Period Economic Development quarterly reports; and

- 7.3.3 include in the report on the first Contract Quarter of the Operating Measurement Period, details of any contributions made to Enterprise Development, Skills Development and/or Socio-Economic Development in the Early Operating Period, which report shall consolidate all of the progress reports submitted in respect of the Early Operating Period.

8. Accumulation of Enterprise Development and Socio-Economic Development Contributions

- 8.1 It shall be permissible for the Seller to accumulate funds for purposes of making Enterprise Development Contributions and or Socio-Economic Development Contributions, and for the accumulated funds to be treated as Enterprise Development Contributions or Socio-Economic Development Contributions upon payment thereof into the account referred to below, subject to the following:

- 8.1.1 the Seller must submit a detailed Enterprise Development or Socio-Economic Development proposal to the Department for its approval, specifying the particular Enterprise Development or Socio-Economic Development initiatives for which it wishes to accumulate such funds, the estimated cost of the proposed Enterprise Development or Socio-Economic Development initiatives and for what period the funds need to be accumulated in order to be able to implement the Enterprise Development or Socio-Economic Development initiatives at a planned future date or period;
- 8.1.2 before such proposal is approved by the Department, the Seller must satisfy the Department that there are appropriate governance arrangements in place to ensure that the accumulated funds are protected, including an undertaking that the Seller will deposit the funds approved as Enterprise Development or Socio-Economic Development Contributions into a separate ring-fenced interest-bearing escrow account in each applicable Contract Quarter, and will submit proof of payment on a quarterly basis to the Department with its quarterly Economic Development report, as well as comprehensive bank account statements upon request and annual confirmation of the accumulated funds having been subjected to an audit process;
- 8.1.3 the Seller must submit proof of disbursement of the accumulated funds at the approved date of disbursement and to the approved beneficiaries, to the Department;

- 8.1.4 the Seller must provide progress and status reports on implementation of the approved Enterprise Development or Socio-Economic Development initiative at the Department's request; and
- 8.1.5 failure to make payment of the funds approved for accumulation as Enterprise Development or Socio-Economic Development Contributions into the account described above in any Contract Quarter, will invalidate the Department's consent to the accumulation of such funds as Enterprise Development or Socio-Economic Development Contributions.

9. Recognition of Enterprise Development, Socio-Economic Development and Skills Development Contributions in the Construction Measurement Period

- 9.1 The Seller's Socio-Economic Development, Enterprise Development and Skills Development Contributions made during the Construction Measurement Period will be recognised by the Department, in acknowledgement of the potential benefit to communities flowing from such Socio-Economic Development initiatives.
- 9.2 The Department will recognise expenditure in respect of Enterprise Development Contributions, Socio-Economic Development and Skills Development Contributions referred to in clause 9.1, during the Construction Measurement Period within the following framework:
 - 9.2.1 The Seller must identify, with reference to the relevant Contract Quarters in the Operating Measurement Period:
 - 9.2.1.1 the Enterprise Development Contributions, Socio Economic Development and Skills Development Contributions that they would like to bring forward to be made during the Construction Measurement Period; and
 - 9.2.1.2 the Enterprise Development, Socio Economic Development and Skills Development initiatives in respect of which the expenditure is planned to be incurred.
 - 9.2.2 The Department will measure and recognise the expenditure in question in the corresponding Contract Quarter in the Operating Measurement Period, taking into account the Committed Obligation and the total expenditure (being a combination of what is actually spent in the relevant Contract Quarter in the Operating Measurement Period, and what was spent in the Construction Measurement Period).

- 9.3 In order for the Department to recognise such expenditure, the Seller shall make a written request to the Department to have the obligations brought forward to the Construction Measurement Period and shall include, in such written request, the following:
- 9.3.1 a statement that the Seller would like to bring forward the relevant Enterprise Development Contributions, Socio-Economic Development Contributions and Skills Development Contributions from the Operating Measurement Period to the Construction Measurement Period;
 - 9.3.2 identification of the Contract Quarter(s) in the Operating Measurement Period during which the Enterprise Development Contributions, Socio Economic Development Contributions and Skills Development Contributions would in the ordinary course have been spent, and the Contract Quarters in the Construction Measurement Period to which the Seller intends to incur the expenditure; and
 - 9.3.3 identification of the Enterprise Development, Socio Economic Development and Skills Development initiatives in respect of which the Enterprise Development Contributions, Socio Economic Development Contributions and Skills Development Contributions will be spent, during the Construction Measurement Period.
- 9.4 The Department shall, upon considering the written notification submitted by the Seller in accordance with clause 9.3, indicate by written communication its acceptance or otherwise of the request.

10. Funding Contributions for Public Benefit Initiatives

- 10.1 The Department may, from time to time during the Operating Measurement Period, direct the Seller to utilise up to fifty percent (50%) of its Skills Development Contributions, Enterprise Development Contributions and or its Socio-Economic Development Contributions in respect of each Contract Quarter for purposes of contributing to the funding required to implement specified initiatives, projects or programmes for the public benefit ("**Public Benefit Initiatives**"), provided that:
- 10.1.1 any such Public Benefit Initiatives are designed to contribute to Skills Development, Enterprise Development and or Socio-Economic Development, as the case may be;
 - 10.1.2 making financial contributions to any such Public Benefit Initiatives would be lawful on the part of the Seller, and would not cause the Seller to breach a pre-existing binding contractual obligation in respect of Skills Development, Enterprise Development and or Socio-Economic Development;

- 10.1.3 before directing a Seller to make any such Skills Development Contribution, Enterprise Development Contribution and or Socio-Economic Development Contribution to a Public Benefit Initiative, the Department shall issue a provisional directive to the Seller in writing, which provisional directive must contain sufficient detail about the nature, purpose, beneficiaries, administrators or project managers, relevant stakeholders, governance arrangements and the funding needs of the proposed Public Benefit Initiative, for the Seller to be able to do such due diligence on the Public Benefit Initiative as is required to properly assess (a) the lawfulness thereof; (b) whether the making of such financial contributions will adversely affect the Seller's financial position; and (c) the impact of making such financial contributions on any pre-existing obligations or commitments of the Seller, in respect of Skills Development, Enterprise Development and or Socio-Economic Development;
- 10.1.4 any such provisional directive by the Department must be issued within a reasonable period, having regard to all relevant factors including the process of finalisation of a directive, prior to the first day of a Contract Quarter in which any such directed Enterprise Development Contribution and or Socio-Economic Development Contribution is expected to be made by the Seller;
- 10.1.5 the Seller will be entitled, at any time within ten (10) Business Days (or such longer period as the Parties may agree) of the date of receipt of a provisional directive as contemplated in clause 10.1.3 of this Schedule 2 (*Economic Development Obligations*), to raise any concerns or objections regarding the contents of the provisional directive, in writing in response to the Department, and the Department must consider and take into account any such representations, before deciding whether and on what terms to issue a final directive in regard to the Public Benefit Initiative in question;
- 10.1.6 a final directive, reflecting the terms and conditions agreed with the Seller, must be issued by the Department within a reasonable period prior to the first day of a Contract Quarter in which any such directed Skills Development Contribution, Enterprise Development Contribution and or Socio-Economic Development Contribution must be made by the Seller; and
- 10.1.7 all Skills Development Contributions, Enterprise Development Contributions and or Socio-Economic Development Contributions made pursuant to a directive issued in accordance with this clause 10 of Schedule 2 (*Economic Development Obligations*) shall be considered, for purposes of monitoring and enforcement of

this Agreement, to be Skills Development Contributions based in Local Communities, Enterprise Development Contributions based in Local Communities, and or Socio-Economic Development Contributions made in respect of Local Communities, as the case may be.

- 10.2 In the event of a dispute arising in connection with a directive issued by the Department in terms of this clause 10 of this Schedule 2 (*Economic Development Obligations*), either Party may refer the matter to dispute resolution in terms of clause 18 (*Fast Track Dispute Resolution*).

11. Recognition of Administration Costs on Enterprise Development, Socio-Economic Development and Skills Development

- 11.1 The Department will recognise certain administration costs incurred by the Seller as part of its Enterprise Development Contributions or Socio-Economic Development Contributions or Skills Development Contributions, as detailed in clauses 11.2 and 11.3 below.

- 11.2 Administration costs are costs incurred by the Seller:

- 11.2.1 in respect of the maintenance of Enterprise Development, Socio-Economic Development and Skills Development initiatives, limited to that portion of salaries and wages attributable to Employee time spent in, and other expenses directly related to, the promotion and implementation of such initiatives; and/or

- 11.2.2 to pay suitably qualified and experienced third parties who undertake Enterprise Development, Socio-Economic Development and Skills Development initiatives on the Seller's behalf.

- 11.3 The Department will not recognise such administration costs, should they exceed ten percent (10%) of the Committed Obligations related to Enterprise Development, Socio-Economic Development or Skills Development.

- 11.4 The Seller recognises that the Department similarly incurs costs associated with contract management, monitoring, evaluation and the general administration of the IPP Programme and as such agrees to pay five percent (5%) of the Committed Obligations in respect of each of Skills Development, Enterprise Development and Socio-Economic Development to the Department, on a Quarterly basis, into the Project Development Fund for Energy currently at the National Treasury, or as directed by the Department, within twenty (20) Business Days after the end of each Contract Quarter. Such payments will be recognised as Skills Development Contributions, Enterprise Development Contributions and Socio-Economic Development Contributions, as applicable.

12. Department Economic Development Verification

- 12.1 The Seller and its Material Contractors shall:
- 12.1.1 monitor, audit, and record in an auditable manner, its own implementation and compliance with this Schedule 2 (*Economic Development Obligations*); and
 - 12.1.2 report to the Department, immediately, or as soon as practically possible thereafter, any aspect or event that may adversely affect the ability of the Seller to achieve its Economic Development Obligations under this Schedule 2 (*Economic Development Obligations*) and will provide to the Department a detailed report of steps taken to mitigate such inability to achieve any of the Economic Development Obligations.
- 12.2 Failure to report such adverse circumstances to the Department will result in the application of the Economic Development Performance Penalties contemplated under clause 6 of this Schedule 2.
- 12.3 The Seller shall at its own cost appoint an independent auditor to, on an annual basis in respect of each Contract Year:
- 12.3.1 review the Seller's and its Material Contractors' records including any records relating to any Economic Development monitoring or audits conducted by the Seller and its Material Contractors, for purposes of verification of all claims made by the Seller as to compliance with its Economic Development Obligations; and
 - 12.3.2 prepare a report on the basis of its review, detailing its findings on the extent to which the Seller has met its obligations as set out in this Schedule 2 (*Economic Development Obligations*) and in particular the extent to which the Seller's achievements in respect of its Economic Development Obligations, as detailed in its quarterly Economic Development reports, accurately reflect or exceed its actual achievements, based on the Seller's and Contractors' records pertaining thereto and provided by the Seller and Contractors to such independent auditor; and
 - 12.3.3 submit such report to the Department within 6 (six) months after the end of the applicable Contract Year.
- 12.4 The information detailed in the annual audit report must be detailed in a manner that facilitates the calculation by the Department of any Economic Development Performance Penalties as contemplated in clause 6 of this Schedule 2; and to this end must include confirmation by the auditor, in a form satisfactory to the Department, of the Seller's achievements in respect of each Economic Development Sub-Element in the applicable measurement period.

- 12.5 The services to be provided by the independent auditor must be performed in accordance with appropriate professional standards, to be notified to the Seller by the Department from time to time.
- 12.6 Notwithstanding the provisions of clauses 12.2 to 12.4 above, the Department shall have the entitlement from time to time, in its sole discretion, to appoint a person or persons as Economic Development Independent Monitor(s) to carry out a separate audit of the Seller's performance in respect of its Economic Development Obligations, for purposes of compliance monitoring or in the event that the Department disputes the findings of the independent auditor appointed by the Seller. The costs of such appointment shall be borne by the Department.
- 12.7 The appointment of the Economic Development Independent Monitor is in the sole discretion of the Department, and he may be appointed at any time during the existence of the Project.
- 12.8 The Economic Development Independent Monitor may, subject to the terms of his appointment, *inter alia*:
- 12.8.1 review the Seller's and its Material Contractors' records including any monitoring or audits conducted by the Seller and its Material Contractors, to verify compliance with the requirements of Schedule 2 (*Economic Development Obligations*); and
- 12.8.2 prepare reports in relation to any of the review or monitoring carried out by it in terms of its functions pursuant to the provisions of this Schedule 2 (*Economic Development Obligations*).
- 12.9 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.
- 12.10 Upon receipt by the Department of the applicable annual audit reports as contemplated in clauses 12.3.2 and or 12.8.2 of this Schedule 2 (*Economic Development Obligations*), the Department shall confirm any Economic Development Performance Penalties incurred by the Seller for the applicable period.

13. Access to Information

- 13.1 The Seller and its Material Contractors and Vendors (where applicable) will:
- 13.1.1 provide the Economic Development Independent Monitor with such information and documentation as the Economic Development Independent Monitor

reasonably requests concerning the implementation by the Seller and its Material Contractors of this Schedule 2 (*Economic Development Obligations*); and

- 13.1.2 allow the Department and the Economic Development Independent Monitor access to all the information and documentation on which the quarterly Economic Development achievements of the Seller and the Contractors were based, provided that the Economic Development Independent Monitor shall be subject to the same confidentiality obligations as apply to the Department in terms of this Agreement.
- 13.2 In the event of any failure or refusal by the Seller or any Material Contractor (or their sub-contractors) to allow the Department or the Seller's appointed independent auditor, or the Department's appointed Economic Development Independent Monitor access to all the information, records and documentation on which the Economic Development achievements of the Seller are based, the Department shall be entitled to treat the affected Economic Development achievements as not having been met, for the purposes of calculation of Economic Development Performance Penalties.
- 13.3 In such circumstances, the Department shall also be entitled to pass on a reasonable proportion (having regard to the extent of non-availability of information or documentation) of the costs payable to the Economic Development Independent Monitor to perform its functions in relation to the Project, to the Seller for its account. Any such costs must be paid by the Seller within twenty (20) Business Days of the date of a written demand from the Department.

14. Issuance of Economic Development Monitoring Notes

The Department may, from time to time, issue monitoring notes ("**ED Monitoring Notes**"), which are intended to provide the Department's views on the interpretation of aspects of Economic Development and/or to provide guidance on issues related to Economic Development. The ED Monitoring Notes shall be binding on Sellers in the implementation of their Economic Development Obligations.

FORM OF ECONOMIC DEVELOPMENT MATRIX

Please see the next page

JOB CREATION ELEMENT OBLIGATIONS**1. Committed Obligations - Construction Measurement Period**

- 1.1 The Committed Obligations with regard to the Job Creation Obligations are provided in Tables 2.1(A) and 2.1(C) below.

TABLE 2.1(A) – Percentage of Committed Obligations with regard to Job Creation

SUB-ELEMENT(S)		COMMITTED OBLIGATIONS (JOB CREATION OBLIGATIONS)
No.	Description	
100-SR-01	RSA Based Employees who are Citizens	[***%]
100-SR-02	RSA Based Employees who are Black People	[***%]
100-SR-03	RSA Based Employees who are Skilled Employees and who are Black People	[***%]
100-SR-04	RSA Based Employees who are Black People with Specialized Skills	[***%]
100-SR-05	RSA Based Employees who are Citizens who reside in Local Communities	[***%]
100-SR-06	RSA Based Employees who are Black Youth	[***%]
100-SR-07	RSA Based Employees who are Black Women	[***%]
100-SR-08	RSA Based Employees who are People with Disabilities	[***%]

- 1.2 For purposes of Table 2.1(A) above, reference to Committed Obligations (Job Creation Obligations) shall refer to the Seller's undertaking and commitment in respect of the Construction Measurement Period that:

- 1.2.1 [***%] of the Employees employed for purposes of the Project will be RSA Based Employees who are Citizens;
- 1.2.2 [***%] of the Employees employed for purposes of the Project will be RSA Based Employees who are Black People;
- 1.2.3 [***%] of the Employees employed for purposes of the Project will be RSA Based Employees who are Skilled Employees and who are Black People;

- 1.2.4 [***%] of the Employees employed for purposes of the Project will be RSA Based Employees who are Black People with Specialized Skills;
- 1.2.5 [***%] of the Employees employed for purposes of the Project will be RSA Based Employees who are Citizens who reside in Local Communities;
- 1.2.6 [***%] of the Employees employed for purposes of the Project will be RSA Based Employees who are Black Youth;
- 1.2.7 [***%] of the Employees employed for purposes of the Project will be RSA Based Employees who are Black Women; and
- 1.2.8 [***%] of the Employees employed for purposes of the Project will be RSA Based Employees who are People with Disabilities.

2. Committed Obligations – Operating Measurement Period

- 2.1 The Committed Obligations with regard to the Job Creation Obligations are provided in Tables 2.1(B) and 2.1(C) below.

TABLE 2.1(B) – Percentage of Committed Obligations with regard to Job Creation

SUB-ELEMENT(S)		COMMITTED OBLIGATIONS (JOB CREATION OBLIGATIONS)
No.	Description	
100-SR-01	RSA Based Employees who are Citizens	[***%]
100-SR-02	RSA Based Employees who are Black People	[***%]
100-SR-03	RSA Based Employees who are Skilled Employees and who are Black People	[***%]
100-SR-04	RSA Based Employees who are Black People with Specialized Skills	[***%]
100-SR-05	RSA Based Employees who are Citizens who reside in Local Communities	[***%]
100-SR-06	RSA Based Employees who are Black Youth	[***%]
100-SR-07	RSA Based Employees who are Black Women	[***%]
100-SR-08	RSA Based Employees who are People with Disabilities	[***%]

- 2.2 For purposes of Table 2.1(B) above, reference to Committed Obligations (Job Creation Obligations) shall refer to the Seller's undertaking and commitment in respect of the Operating Measurement Period that:

- 2.2.1 [***%] of the Employees employed for purposes of the Project will be RSA Based Employees who are Citizens;
- 2.2.2 [***%] of the Employees employed for purposes of the Project will be RSA Based Employees who are Black People;
- 2.2.3 [***%] of the Employees employed for purposes of the Project will be RSA Based Employees who are Skilled Employees and who are Black People;
- 2.2.4 [***%] of the Employees employed for purposes of the Project will be RSA Based Employees who are Black People with Specialized Skills;
- 2.2.5 [***%] of the Employees employed for purposes of the Project will be RSA Based Employees who are Citizens who reside in Local Communities;
- 2.2.6 [***%] of the Employees employed for purposes of the Project will be RSA Based Employees who are Black Youth; and
- 2.2.7 [***%] of the Employees employed for purposes of the Project will be RSA Based Employees who are Black Women; and
- 2.2.8 [***%] of the Employees employed for purposes of the Project will be RSA Based Employees who are People with Disabilities.

TABLE 2.1(C) – Quantum of Committed Obligations with regard to Job Creation

100 Job Creation – Quantum		Construction Measurement Period		Operating Measurement Period	
Description					
100-SR-01	RSA Based Employees who are Citizens	[●] Person Months	[***0%]	[●] Person Months	[***0%]
100-SR-02	RSA Based Employees who are Black People	[●] Person Months	[***0%]	[●] Person Months	[***0%]
100 – SR 03	RSA-Based Skilled Employees who are Black People	[●] Person Months	[***0%]	[●] Person Months	[***0%]
100 – SR 04	RSA Based Employees who are Black People with Specialized Skills	[●] Person Months	[***0%]	[●] Person Months	[***0%]
100 – SR 05	RSA Based Employees who are Citizens who reside in Local Communities	[●] Person Months	[***0%]	[●] Person Months	[***0%]
100-SR-06	RSA Based Employees who are Black Youth	[●] Person Months	[***0%]	[●] Person Months	[***0%]
100-SR-07	RSA Based Employees who are Black Women	[●] Person Months	[***0%]	[●] Person Months	[***0%]
100-SR-08	RSA Based Employees who are People with Disabilities	[●] Person Months	[***0%]	[●] Person Months	[***0%]

2.3 For purposes of Table 2.1(C) above, reference to Committed Obligations (Job Creation Obligations) shall refer to the Seller's undertaking, in respect of each of the Construction Measurement Period and the Operating Measurement Period, as to the number of people that will be employed, expressed in Person Months.

LOCAL CONTENT ELEMENT OBLIGATIONS

1. Committed Obligations

- 1.1 The Committed Obligations with regard to the Local Content Obligations are provided in Table 2.2.1 below.

TABLE 2.2.1 – Committed Obligations with regard to Local Content

SUB-ELEMENT(S)		COMMITTED OBLIGATIONS (LOCAL CONTENT OBLIGATIONS)
No.	Description	
200-SR-01	Value of Local Content Spend during the Construction Measurement Period	[***%]
200-SR-02	Value of Local Content Spend during the Operating Measurement Period	[***%]

- 1.2 The Committed Obligations with regard to Local Industrialisation Local Content Obligations are provided in Table 2.2.2 below.

TABLE 2.2.2 – Committed Obligations with regard to Local Industrialisation Local Content

SUB-ELEMENT(S)		COMMITTED OBLIGATIONS (LOCAL CONTENT OBLIGATIONS)
No.	Description	
[insert code of Local Industrialisation Sector, Component or Product]	[insert description of Local Industrialisation Sector, Component or Product]	[***%]

- 1.3 For purposes of Tables 2.2.1 and 2.2.2 above, reference to Committed Obligations (*Local Content Obligations and Local Industrialisation Local Content Obligations*) shall refer to the Seller's undertaking and commitment that the Seller, its Contractors and Vendors shall ensure that:

- 1.3.1 the aggregated Value of Local Content Spend in relation to the Project is:
- 1.3.1.1 not less than 40% during the Construction Measurement Period;
- 1.3.1.2 not less than 40% during the Operating Measurement Period; and

- 1.3.2 there is compliance with Local Industrialisation Sectors, Components and Products in the undertaking of Project Activities.
- 1.4 All claims made in respect of Local Content must be capable of independent verification.

OWNERSHIP ELEMENT OBLIGATIONS

1. Committed Obligations

- 1.1 The Committed Obligations with regard to the Ownership Element Obligations are provided in Tables 2.3.1, 2.3.2 and 2.3.3 below.

TABLE 2.3.1 – Seller

SUB-ELEMENT(S)		COMMITTED OBLIGATIONS (OWNERSHIP OBLIGATIONS) ⁸
No.	Description	
300-PC-01	Shareholding by Citizens in the Seller	[***%]
	Exercisable Voting Rights by Black People	[***%]
	Economic Interest by Black People	[***%]
300-PC-02	Shareholding by Black People in the Seller	[***%]
	Exercisable Voting Rights by Black People	[***%]
	Economic Interest by Black People	[***%]
300-PC-03	Shareholding by Local Communities in the Seller	[***%]
	Exercisable Voting Rights by Local Communities	[***%]
	Economic Interest by Local Communities	[***%]
300-PC-04	Shareholding by Black Women in the Seller	[***%]
	Exercisable Voting Rights by Black Women in the Seller	[***%]
	Economic Interest by Black Women in the Seller	[***%]

⁸ Bidder to provide their committed obligations with regards to the Exercisable Voting Rights and Economic Interest in the sub-elements below.

TABLE 2.3.2 – Construction Contractor

SUB-ELEMENT(S)		COMMITTED OBLIGATIONS (OWNERSHIP OBLIGATIONS)
No.	Description	
300-CC-01	Shareholding by Black People in the Construction Contractor	[***%]
	Exercisable Voting Rights by Black People	[***%]
	Economic Interest by Black People	[***%]
300-CC-02	Shareholding by Black Women in the Construction Contractor	[***%]
	Exercisable Voting Rights by Black Women	[***%]
	Economic Interest by Black Women	[***%]

TABLE 2.3.3 – Operations Contractor

SUB-ELEMENT(S)		COMMITTED OBLIGATIONS (OWNERSHIP OBLIGATIONS)
No.	Description	
300-OM-01	Shareholding by Black People in the Operations Contractor	[***%]
	Exercisable Voting Rights by Black People	[***%]
	Economic Interest by Black People	[***%]
300-OM-02	Shareholding by Black Women in the Operations Contractor	[***%]
	Exercisable Voting Rights by Black Women	[***%]
	Economic Interest by Black Women	[***%]

1.2 For purposes of the above Tables 2.3.1, 2.3.2 and 2.3.3, reference to Committed Obligations (Ownership Obligations) shall refer to the Seller's undertaking and commitment that:

1.2.1 [***%] of the Shareholding in the Seller will be held by Citizens;

- 1.2.2 [***0%] of the Shareholding in the Seller will be held by Black People;
- 1.2.3 [***0%] of the Shareholding in the Seller will be held by Local Communities;
- 1.2.4 [***0%] of the Shareholding in the Seller will be held by Black Women;
- 1.2.5 [***0%] of the Shareholding in the Construction Contractor will held by Black People;
- 1.2.6 [***0%] of the Shareholding in the Construction Contractor will held by Black Women;
- 1.2.7 [***0%] of the Shareholding in the Operations Contractor will held by Black People; and
- 1.2.8 [***0%] of the Shareholding in the Operations Contractor will be held by Black Women.

MANAGEMENT CONTROL ELEMENT OBLIGATIONS**1. Committed Obligations – Construction Measurement Period**

- 1.1 The Committed Obligations with regard to the Management Control Obligations are provided in Table 2.4(A) below.

TABLE 2.4(A) – Committed Obligations with regard to Management Control

SUB-ELEMENT(S)		COMMITTED OBLIGATIONS (MANAGEMENT CONTROL OBLIGATIONS)
No.	Description	
400-SR-01	Black Board Directors	[***0%]
400-SR-02	Black Executive Management	[***0%]
400-SR-03	Black Senior Management	[***0%]
400-SR-04	Black Women Board Directors	[***0%]
400-SR-05	Black Women Executive Management	[***0%]
400-SR-06	Black Women Senior Management	[***0%]

- 1.2 For purposes of Table 2.4(A) above, reference to Committed Obligations (Management Control Obligations) shall refer to the Seller's and Material Contractors' undertaking and commitment in respect of the Construction Measurement Period, that:
- 1.2.1 [***0%] of Board Directors (in the Seller and the Construction Contractor) is comprised of Black People;
- 1.2.2 [***0%] of Executive Management (in the Seller and the Construction Contractor) is comprised of Black People;
- 1.2.3 [***0%] of Senior Management (in the Seller and the Construction Contractor) is comprised of Black People;
- 1.2.4 [***0%] of Board Directors (in the Seller and the Construction Contractor) is comprised of Black Women;
- 1.2.5 [***0%] of Executive Management (in the Seller and the Construction Contractor) is comprised of Black Women; and
- 1.2.6 [***0%] of Senior Management (in the Seller and the Construction Contractor) is comprised of Black Women.

2. Committed Obligations – Operating Measurement Period

2.1 The Committed Obligations with regard to the Management Control Obligations are provided in Table 2.4(B) below.

TABLE 2.4(B) – Committed Obligations with regard to Management Control

SUB-ELEMENT(S)		COMMITTED OBLIGATIONS (MANAGEMENT CONTROL OBLIGATIONS)
No.	Description	
400-SR-01	Black Board Directors	[***%]
400-SR-02	Black Executive Management	[***%]
400-SR-03	Black Senior Management	[***%]
400-SR-04	Black Women Board Directors	[***%]
400-SR-05	Black Women Executive Management	[***%]
400-SR-06	Black Women Senior Management	[***%]

2.2 For purposes of Table 2.4(B) above, reference to Committed Obligations (Management Control Obligations) shall refer to the Seller's and Material Contractors' undertaking and commitment in respect of the Operating Measurement Period, that:

- 2.2.1 [***%] of Board Directors (in the Seller and the Operations Contractor) is comprised of Black People;
- 2.2.2 [***%] of Executive Management (in the Seller and the Operations Contractor) is comprised of Black People;
- 2.2.3 [***%] of Senior Management (in the Seller and the Operations Contractor) is comprised of Black People;
- 2.2.4 [***%] of Board Directors (in the Seller and the Operations Contractor) is comprised of Black Women;
- 2.2.5 [***%] of Executive Management (in the Seller and the Operations Contractor) is comprised of Black Women; and
- 2.2.6 [***%] of Senior Management (in the Seller and the Operations Contractor) is comprised of Black Women.

SKILLS DEVELOPMENT ELEMENT OBLIGATIONS**1. Committed Obligations**

- 1.1 The Committed Obligations with regard to the Skills Development Obligations are provided in Table 2.5 below.

TABLE 2.5 – Committed Obligations with regard to Skills Development

SUB-ELEMENT(S)		COMMITTED OBLIGATIONS (SKILLS DEVELOPMENT OBLIGATIONS)
No.	Description	
500-SR-01	Skills Development Contributions	[***0%] of Revenue
500-SR-02	Bursaries for Black Students at Higher Education Institutions	[***0%] of Revenue
500-SR-03	Skills Development Contribution towards Black Disabled Employees	[***0%] of Revenue

- 1.2 For purposes of Table 2.5 above, reference to Committed Obligations (Skills Development Obligations) shall refer to the Seller's undertaking and commitment, that;
- 1.2.1 [***0%] of the Revenue shall be spent on Skills Development Contributions;
- 1.2.2 [***0%] of the Revenue shall be spent on Bursaries for Black Students at Higher Education Institutions; and
- 1.2.3 [***0%] of the Revenue shall be spent on Skills Development Contribution towards Black Disabled Employees.

ENTERPRISE AND SUPPLIER DEVELOPMENT ELEMENT OBLIGATIONS**1. Committed Obligations – Construction Measurement Period**

- 1.1 The Committed Obligations with regard to Enterprise and Supplier Development Obligations are provided in Table 2.6(A) below.

TABLE 2.6(A) – Committed Obligations with regard to Enterprise and Supplier Development

SUB-ELEMENT(S)		COMMITTED OBLIGATIONS (ENTERPRISE AND SUPPLIER DEVELOPMENT OBLIGATIONS)
No.	Description	
600-SR-01	B-BBEE Procurement	[***%]
600-SR-02	Black Enterprise Procurement	[***%]
600-SR-03	B-BBEE Procurement Spend on QSE's and EME's	[***%]
600-SR-04	B-BBEE Procurement Spend on Black Women Owned Vendors	[***%]
600-SR-05	Supplier Development Contributions during the Construction Measurement Period	[***%]

- 1.2 For purposes of Table 2.6(A) above, reference to Committed Obligations (Enterprise and Supplier Development Obligations) shall refer to the Seller's undertaking and commitment, in respect of the Construction Measurement Period, to comply in respect of the Project Activities (including those of the Contractors where applicable) with the Committed Obligations, as set out below:

- 1.2.1 B-BBEE Procurement Spend shall not be less than [***%] of the Total Measured Procurement Spend;
- 1.2.2 Black Enterprise Procurement Spend shall not be less than [***%] of the Total Measured Procurement Spend;
- 1.2.3 B-BBEE Procurement Spend on Qualifying Small Enterprises or Exempted Micro Enterprises shall not be less than [***%] of the Total Measured Procurement Spend;
- 1.2.4 B-BBEE Procurement Spend from Black Women Owned Vendors shall not be less than 3% of the Total Measured Procurement Spend; and

- 1.2.5 0.1% of the Total Project Value during the Construction Measurement Period shall be spent on Supplier Development Contributions.

2. Committed Obligations – Operating Measurement Period

- 2.1 The Committed Obligations with regard to Enterprise and Supplier Development Obligations are provided in Table 2.6(B) below.

TABLE 2.6(B) – Committed Obligations with regard to Enterprise and Supplier Development

SUB-ELEMENT(S)		COMMITTED OBLIGATIONS (ENTERPRISE AND SUPPLIER DEVELOPMENT OBLIGATIONS)
No.	Description	
600-SR-01	B-BBEE Procurement	[***%]
600-SR-02	Black Enterprise Procurement	[***%]
600-SR-03	B-BBEE Procurement Spend on QSE's and EME's	[***%]
600-SR-04	B-BBEE Procurement Spend on Black Women Owned Vendors	[***%]
600-SR-06	Supplier Development Contributions during the Operating Measurement Period	[***%]
600-SR-07	Enterprise Development Contributions	[***%]

- 2.2 For purposes of Table 2.6(B) above, reference to Committed Obligations (Enterprise and Supplier Development Obligations) shall refer to the Seller's undertaking and commitment, in respect of the Operating Measurement Period, to comply in respect of the Project Activities (including those of the Contractors) with the Committed Obligations, as set out below:

- 2.2.1 B-BBEE Procurement Spend shall not be less than [***%] of the Total Measured Procurement Spend;
- 2.2.2 Black Enterprise Procurement Spend shall not be less than [***%] of the Total Measured Procurement Spend;
- 2.2.3 B-BBEE Procurement Spend on Qualifying Small Enterprises or Exempted Micro Enterprises shall not be less than [***%] of the Total Measured Procurement Spend;

- 2.2.4 B-BBEE Procurement Spend on Black Women Owned Vendors shall not be less than [***0%] of the Total Measured Procurement Spend;
- 2.2.5 [***0%] of the Total Project Value during the Operating Measurement Period shall be spent on Supplier Development Contributions; and
- 2.2.6 [***0%] of the Revenue shall be spent on Enterprise Development Contributions.

SOCIO ECONOMIC DEVELOPMENT ELEMENT OBLIGATIONS**1. Committed Obligations**

- 1.1 The Committed Obligations with regard to the Socio-Economic Development Obligations are provided in Table 2.7 below.

TABLE 2.7 – Committed Obligations with regard to Socio-Economic Development

SUB-ELEMENT(S)		COMMITTED OBLIGATIONS (SOCIO-ECONOMIC DEVELOPMENT OBLIGATIONS)
No.	Description	
700-SR-01	Socio-Economic Development Contributions	[***%] of Revenue

- 1.2 For purposes of Table 2.7 above, reference to Committed Obligations (Socio-Economic Development Obligations) shall refer to the Seller's undertaking and commitment that [***%] of the Revenue shall be spent on Socio-Economic Development Contributions.

ECONOMIC DEVELOPMENT WEIGHTS AND SCALING FACTORS**TABLE 9.1: Economic Development Weights**

ED ELEMENT	DESCRIPTION	WEIGHT DURING CONSTRUCTION MEASUREMENT PERIOD (W)	WEIGHT DURING OPERATING MEASUREMENT PERIOD (W)
100 Job Creation		23%	20%
100-SR-01	RSA Based Employees who are Citizens	4%	3%
100-SR-02	RSA Based Employees who are Black People	4%	4%
100-SR-03	RSA-Based Skilled Employees who are Black People	2%	1.5%
100-SR-04	RSA Based Employees who are Black People with Specialized Skills	2%	1.5%
100-SR-05	RSA Based Employees who are Citizens who reside in Local Communities	5%	4%
100-SR-06	RSA Based Employees who are Black Youth	2%	2%
100-SR-07	RSA Based Employees who are Black Women	2%	2%
100-SR-08	RSA Based Employees who are People with Disabilities	2%	2%
200 Local Content		26%	18%
200-SR-01	Value of Local Content Spend during the Construction Measurement Period	26%	N/A
200-SR-02	Value of Local Content Spend during the Operating Measurement Period	N/A	18%
300 Ownership		20%	16%
300-PC-01	Shareholding by Citizens in the Seller	2%	1%
300-PC-02	Shareholding by Black People in the Seller	3.5%	3%

ED ELEMENT	DESCRIPTION	WEIGHT DURING CONSTRUCTION MEASUREMENT PERIOD (W)	WEIGHT DURING OPERATING MEASUREMENT PERIOD (W)
300-PC-03	Shareholding by Local Communities in the Seller	5%	4%
300-PC-04	Shareholding by Black Women in the Seller	3.5%	3%
300-CC-01	Shareholding by Black People in the Construction Contractor	3.6%	N/A
300-OM-01	Shareholding by Black People in the Operations Contractor	N/A	3%
300-CC-02	Shareholding by Black Women in the Construction Contractor	2,4%	N/A
300-OM-02	Shareholding by Black Women in the Operations Contractor	N/A	2%
400 Management Control		6%	7%
400-SR-01	Black People who are Board Directors	1%	1,17%
400-SR-02	Black People in Executive Management	1%	1,17%
400-SR-03	Black People in Senior Management	1%	1,17%
400-SR-04	Black Women who are Board Directors	1%	1,17%
400-SR-05	Black Women in Executive Management	1%	1,17%
400-SR-06	Black Women in Senior Management	1%	1,17%
500 Skills Development		N/A	6%
500-SR-01	Skills Development Contributions	N/A	3.00%
500-SR-02	Bursaries for Black Students at Higher Education Institutions	N/A	2.00%
500-SR-03	Skills Development Contribution towards Black Disabled Employees	N/A	1.00%
600 Supplier and Enterprise Development		25%	23%
600-SR-01	B-BBEE Procurement	8%	7%

ED ELEMENT	DESCRIPTION	WEIGHT DURING CONSTRUCTION MEASUREMENT PERIOD (W)	WEIGHT DURING OPERATING MEASUREMENT PERIOD (W)
600-SR-02	Black Enterprise Procurement	6%	5%
600-SR-03	B-BBEE Procurement Spend on QSEs and EMEs	6%	4%
600-SR-04	B-BBEE Procurement Spend on Black Women Owned Vendors	4%	3%
600-SR-05	Supplier Development Contributions during Construction Measurement Period	1%	N/A
600-SR-06	Supplier Development Contributions during Operating Measurement Period	N/A	1%
600-SR-07	Enterprise Development Contributions	N/A	3%
700 Socio-Economic Development		N/A	10%
700-SR-01	Socio-Economic Development Contributions	N/A	10%

TABLE 9.2: Economic Development Scaling Factors

LEVEL OF PERFORMANCE	SCALING FACTOR
Less than 75%	1.50
Equal or more than 75%, but less than 85%	1.00
Equal or more than 85%, but less than 90%	0.70
Equal or more than 90%, but less than 95%	0.35
Equal or more than 95%, but less than 105%	0
Equal or more than 105%, but less than 110%	(0.35)
Equal or more than 110%, but less than 115%	(0.70)
Equal or more than 115%, but less than 125%	(1.00)
Equal or more than 125%	(1.50)

QUARTERLY OBLIGATIONS

Please see the next pages

ANNEX 11

FORM OF ECONOMIC DEVELOPMENT PLAN

Please see the next pages

SCHEDULE 3

COMPLETION MILESTONES

Please see the next pages

SCHEDULE 4

DIRECT AGREEMENT

Please see the form of Direct Agreement on the next pages

SCHEDULE 5

FINANCIAL MODEL

Please see the Financial Model attached on the electronic storage device.

SCHEDULE 6

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];
- 1.10 Power Purchase Agreement.

2. Part B:

- 2.1 Financing Agreements
- 2.2 [To be completed nearer to the Signature Date. Seller to insert titles of:
- 2.3 any common terms agreement and facility agreement, common facility agreement or loan agreements;
- 2.4 any agreements in relation to the hedging of exposure to interest rate changes and foreign currency exchange rate fluctuations.
- 2.2 Fee Letters, Inter-creditor Agreements, Direct Agreements, Sponsor and other support agreements and security documents will not be listed in this table]

Agreement Title	Parties	Date

3. Seller's shareholders' agreement and Memorandum of Incorporation

Agreement Title	Parties	Date
Memorandum of Incorporation		

4. Contracts

Agreement Title	Parties	Date

5. Lease Agreements

Agreement Title	Parties	Date

SCHEDULE 7

LIST OF SUCCESS PAYMENTS

Success Payment (incl. name of recipient)	Amount	Rationale	Cash Flow Impact	Cell Reference in Financial Model
1.				
etc.				

SCHEDULE 8

DETAILS OF CONTRACTORS' AND EQUIPMENT SUPPLIERS' LOSS OF PROFITS

No.	Name of Contractor or Equipment Supplier	Loss of profits - Months 1 to 6					

SCHEDULE 9

FORM OF DECOMMISSIONING COSTS BANK GUARANTEE

SCHEDULE 10

FORM OF REHABILITATION TRUST DEED