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| Description: Drawing1 | **SC0XXX PROFORMA RENEWABLE ENERGY POWER PURCHASE AGREEMENT** | **DISTRIBUTION** |

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| Title: | **Document Title**:  **SC0XXX PROFORMA RENEWABLE ENERGY POWER PURCHASE AGREEMENT** | Document Identifier: | **240-XXXXXXX** |
|  | Alternative Reference Number: |  |
|  | Area of Applicability: | **Eskom Holdings SOC Ltd** |
|  | Functional Area: | **Distribution Legal** |
|  | Revision: | **1** |
|  | Total Pages: | **83** |
|  | Next Review Date: | **May 2028** |
|  | Disclosure Classification: | **Controlled Disclosure** |

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| **Compiled by** |  | **Supported by** |  | **Supported by** |  | **Authorized by** |  |
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**Pro Forma Renewable Energy Power Purchase Agreement**

**POWER PURCHASE AGREEMENT (PPA)**

Between

**ESKOM HOLDINGS SOC LTD**

**“The SELLER”**as defined herein

and

**[INSERT NAME]**

**“The BUYER”**

**PREAMBLE:**

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

(1) **ESKOM HOLDINGS SOC LTD**, a public company (Registration No. **2002/015527/30**) incorporated under the laws of South Africa and having its principal place of business at Megawatt Park, Maxwell Drive, Sandton (the "**Seller**") herein represented by **XXXXXXXXXX** in his capacity as **XXXXXXX Distribution**; and

(2) **[INSERT NAME]**, a limited liability company (Registration No. **[INSERT]**) incorporated under the laws of South Africa and having its principal place of business at **[INSERT]** in the Republic of South Africa (the "**Buyer**") herein represented by [**INSERT]** in his capacity as **[INSERT].**

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

**INTRODUCTION**

1. The Seller intends to operate, generate and sell energy from the power generation facility or facilities indicated in Schedule 1 (*Details of Project and Facility/Facilities*).
2. The Seller wishes to sell and the Buyer wishes to purchase Commercial Energy (as defined below) generated by one or more power generation facilities (as reflected in Schedule 1 (*Details of Project and Facility/Facilities*)), net of consumption at one or more consumption sites, on a take or pay basis, and on a non-exclusive basis, on the terms and conditions contained in this Agreement**.**
3. The Parties intend to record their agreement as to the terms and conditions governing the design, engineering, Construction, financing, insurance of, commissioning, operation and maintenance of the relevant Facility/Facilities, and the sale and purchase of Commercial Energy.
4. It is expressly understood by both Parties that entering into this Agreement in no way constitutes any obligation on them to enter into any additional power purchase agreement or to reference any of the terms of this Agreement in any future agreements between them.

**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):

**“Abandonment”** means:

1. prior to the Commercial Operation Date, the Seller ceasing to perform its obligations under this Agreement (other than as a result of a Force Majeure Event, Change in Law or Delay Event) as a consequence of which it will not be possible for the Commercial Operation Date to be achieved on or before the Last Commercial Operation Date and fails to resume performance within 20 Business Days of written notice by the Buyer; or
2. after Commercial Operation Date, the Seller's failure (which failure is not the result of a Force Majeure Event, Change in Law or Delay Event) to operate and maintain the relevant Facility/Facilities in terms of this Agreement and fails to resume operation and maintenance within 20 Business Days of written notice by the Buyer;

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

**“Agreed Interest Rate”** means the prime rate of interest (expressed as a percentage rate per annum) at which First National Bank, a division of FirstRand Bank Limited, lends on overdraft, as published by that bank from time to time, provided that in respect of any day for which no such rate is published the applicable rate shall be that prevailing in respect of the last day for which such rate was published;

**“Applicable Program”** means International Attribute Tracking Standard or other similar standard under which the Buyer may accept transfer of Facility RECs and/or other Environmental Credits in terms of this Agreement;

**‘Approved Credit Rating for South African Financial Institutions’** means (i) at least one investment grade long-term unsecured local currency debt rating by a rating agency which is at or better than ‘BBB-’ (as determined by Standard and Poor’s Rating Group or Fitch Ratings), ‘Baa3’ (as determined by Moody's Investor Services, Inc.); or (ii) long-term unsecured local currency debt rating not worse than the highest South Africa’s sovereign local currency debt rating; or (iii) South African Long-term National Scale Rating no worse than ‘zaA-’ (as determined by Standard & Poor’s) or ‘A-(zaf)’ (as determined by Fitch Ratings) or ‘A3.za’ (as determined by Moody's Investor Services, Inc.) or (iv) equivalent rating to any of the above ratings *(as determined by a rating agency approved by ESKOM)*.

**‘Approved Credit Rating for Non-South African Financial Institutions’** means (i) at least one investment grade long-term unsecured foreign currency debt rating by a rating agency which is at or better than ‘BBB-’ (as determined by Standard and Poor’s Rating Group or Fitch Ratings), ‘Baa3’ (as determined by Moody's Investor Services, Inc.); or (ii) long-term unsecured foreign currency debt rating not worse than the highest South Africa’s sovereign foreign currency debt rating; or (iii) equivalent rating to any of the above ratings *(as determined by a rating agency approved by ESKOM)*.

**‘Approved Credit Rating for South African Holding Companies’** means (i) at least one investment grade long-term unsecured local currency debt rating by a rating agency which is at or better than ‘BBB-’ (as determined by Standard & Poor’s or Fitch Ratings) or ‘Baa3’ (as determined by Moody's Investor Services, Inc); or (ii) long-term unsecured local currency debt rating not worse than the highest South Africa’s sovereign local currency debt rating; or (iii) South African long-term national scale rating no worse than ‘zaA’ (as determined by Standard & Poor’s) or ‘A-(zaf)’ (as determined by Fitch Ratings) or ‘A3.za’ (as determined by Moody's Investor Services, Inc) or (iv) equivalent rating to any of the above ratings *(as determined by a rating agency approved by ESKOM)*.

**‘Approved Credit Rating for Non-South African Holding Companies’** means (i) at least one investment grade long-term unsecured foreign currency debt rating by a rating agency which is at or better than ‘BBB-’ (as determined by Standard & Poor’s or Fitch Ratings) or ‘Baa3’ (as determined by Moody's Investor Services, Inc); or (ii) long-term unsecured foreign currency debt rating not worse than the highest South Africa’s sovereign foreign currency debt rating; or (iii) equivalent rating to any of the above ratings *(as determined by a rating agency approved by ESKOM)*.

**“Assign”** shall have the meaning given to it in clause **20** (*Assignment*) and the term "**Assignment**" shall be construed accordingly;

**“Auxiliary Consumption”** means such part of the energy as is consumed exclusively within the relevant Facility/Facilities itself for the sole purposes of generating Energy, related services and auxiliaries;

**“Baseline Volume”** means the hourly energy to be excluded from the Commercial Energy;

**“Billing Period”** means each period of one Month which falls within the Term, provided that:

(a) the first Billing Period shall commence on the Commercial Operation Date, and shall end on the last day of the Month in which the first Billing Period commenced; and

(b) the final Billing Period shall commence on the first day of the Month in which the Termination Date occurs and end on the Termination Date;

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

"**Buyer Approvals**" means all or any Consents, as applicable, which the Buyer must obtain to enable the Buyer to purchase the Commercial Energy generated by the Seller;

**“Buyer Site”** means the premises of the Buyer or its Affiliate where the Net Energy Output will be distributed being [INSERT][[1]](#footnote-2) or other sites to be nominated by the Buyer on notice to the Seller in accordance with the terms of this Agreement;

**“Capacity”** means at any time and from time to time, the capacity (expressed in MW) of each relevant Facility to generate and provide Commercial Energy to the Delivery Point(s);

**“Cash Deposit”** means a sum of money paid to the Seller by the Buyer as security.

**“Certification Authority”** means GCC under the International Attribute Tracking Standard, which is the Issuing authority under that standard, or another entity that certifies and Issues Facility RECs;

**"Change in Law"** shall have the meaning set out in Clause 13.1 hereof;

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

**“Codes”** means, as applicable, any code as published by the NERSA from time to time;

**“Commercial Energy”** means the Net Energy Output, as exported into the System which shall not exceed the Contracted Capacity in any hour or the Maximum Contract Value of this Agreement over the Term of this Agreement. For the avoidance of doubt, Commercial Energy does not include Energy sold in terms of any other agreement;

**“Commercial Energy Rate”** means the energy charged as per the contracted rate (expressed in Rands per kWh) specified in Schedule 3*(Financial Details)*;

**“Commercial Operation Date”** or **“COD”** means the date specified in the Notice of Commencement of relevant Facility/Facilities as being the Commercial Operation Date of all relevant Facility/Facilities in terms of Clause 3.2;

**"Commissioning Energy"** means the Energy actually generated and measured at the Delivery Point and delivered by the Seller to the Delivery Point during the period of testing and commissioning of the relevant Facility/Facilities prior to Commercial Operation Date;

**"Compensation Event**” means any material breach by the Buyer of any of its obligations under this Agreement or any Project Agreement, including any failure to make any payments due and payable to the Seller on the due date for payment, to the extent in each case that the breach is not caused or contributed to by the Seller or any Contractor or by Force Majeure;

**“Confidential Information”** has the meaning given to it in Clause25**;**

**“Consents”** means all consents, permits, clearances, authorisations, approvals, rulings, exemptions, registrations, filings, decisions, licences, required to be issued by or made with any Responsible Authority, including the Seller’s electricity supplier and System Operator to enable the Seller to exercise its rights and/or perform is obligations under this Agreement and the NERSA or its agent for all grid related permissions for the evacuation of the Commercial Energy in terms of the Codes;

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

**“Consumption Point(s)”** means the electrical node(s) on the System where the Consumption Site is physically connected to the system electrical equipment and where energy delivered by the Buyer is deducted from the Commercial Energy as described in Schedule 1 (*Details of Project and Facility/Facilities*);

**“Consumption Site”** means a Customer’s Electrical Installation defined in the Electricity Supply Agreement with a licensed Distributor and reflected in Schedule 1 (*Details of Project and Facility/Facilities*)**.**

**“Contracted Capacity”** means such portion of the Net Capacity of each relevant Facility as has been demarcated for the Buyer and shall be as stated in Schedule 1 (*Details of Project and Facility/Facilities*);

**“Contract Review Period”** means each consecutive period of three consecutive Months which falls within the Term, provided that:

1. the first Contract Review Period shall commence on the Commercial Operation Date, and
2. shall end on the last day of the third full Month following the Commercial Operation Date;

**“Contracted Generation Profile”** means the **Seller’s** forecast of the Net Energy Output per Month over the Term of this **Agreement** as reflected in Schedule 5 (*Generation Profiles*);

**“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:

1. the first Contract Year shall commence at 00:00 hours on the Commercial Operation Date, and shall end at 24:00 hours on 31 March of the following year; and
2. the final Contract Year shall end at 24:00 hours on the Termination Date;

**“Control”** means the power directly or indirectly to direct or cause the direction of the management and policies of a legal 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. Controlled or Controlling and other cognate terms shall be construed accordingly;

**“Curtailment”** means any decision by the System Operator to limit or reduce the Net Energy Output of the relevant Facility/Facilities, but excluding, for the avoidance of doubt, any such decision given when there is a constraint in the System due to planned or unplanned maintenance, refurbishment, modification, extension or development being carried out on or to the System;

**“Delay Event”** means a (i) Compensation Event; (ii) any action or inaction by the Buyer; and/or (iii) any System Event outside the reasonable control of Seller;

**“Delivery Point(s)”** means the physical point(s), situated on the high voltage side of the generator transformer(s) of the relevant Facility/Facilities, where the Facility/Facilities connects to the System and where the Commercial Energy is to be delivered by the **Seller** to the **Buyer** as described in Schedule 1 (*Details of Project and Facility/Facilities*);

**“Direct Loss”** means, in respect of either Party, any losses, liabilities, expenses, damages, costs and claims (including Claims) arising directly as a result of the other Party's failure to perform its obligations under this Agreement, and for the avoidance of doubt, includes, in respect of the Seller, any loss of payment which would have been due to it but for the Buyer's breach of this Agreement;

**“Distribution”** has the meaning given to it in the System Agreement;

**“Distributor”** has the meaning given to it in the Codes;

**“Due Date”** has the meaning given to it in clause 9.2 (*General principles as regards invoicing*);

**“Effective Date”** means the first Business Day following the date upon which the last of the Suspensive Conditions has been fulfilled or waived, as the case may be;

**“Electricity Accounts Guarantee”** means a guarantee initially for the amount stated therein, which (i) is issued by a financial institution or a Holding Company which (a) holds an Approved Credit Rating for South African Financial Institutions or Non-South African Financial Institutions or Approved Credit Rating for South African or Non-South African Holding Companies and (b) is registered under applicable Law to carry on the business in South Africa and (ii) constitutes an on demand, unconditional and irrevocable commitment to pay by the financial institution by which it is issued, substantially set out in Schedule 6 (*Form of Electricity Accounts Guarantee*);

**“Electricity Regulation Act”** means the Electricity Regulation Act, 2006 (Act No 4 of 2006);

**“Electricity Supply Agreement”** means the agreement entered to between Eskom and between the Buyer or its Affiliate (as applicable) for the purchase of electricity by the Buyer or its Affiliate (as applicable) from Eskom for use at the relevant Buyer Site;

**“Energy”** means energy produced, flowing or supplied by the relevant Facility/Facilities and measured in kWh;

**“Energy Payment”** means, in relation to each Billing Period, an amount (excluding VAT) that shall be due and payable by the Buyer to the Seller for the Commercial Energy delivered in that Billing Period, which payment shall be calculated with reference to the Commercial Energy Rate;

**“Environment”** has the meaning give to it in NEMA;

**“Environmental Authorisation”** means the Authorisations granted or to be granted by an Environmental Authority in respect of the Project under Environmental Law;

**“Environmental Authority”** means the Authorisations granted or to be granted by an Environmental Authority in respect of the Project under Environmental Law**;**

**“Environmental Credit”** means, without limitation, any and all environmental benefits, emissions reductions, off-sets, allowances, rebates, credits or other similar mechanisms, as the case may be, which may be attributable to the relevant Facility’s/Facilities’ environmental or renewable characteristics or attributes and regardless of when off-sets, allowances, rebate, benefits, credits or similar mechanism and/or emission reductions become recognised and available under any existing or future , or regulatory or voluntary scheme, including a REC;

**“Environmental Laws**” means all applicable South African laws, comprising: common law duties and rules, national, provincial and municipal legislation (including regulations and other subsidiary legislation) that are concerned with the protection or rehabilitation of the Environment, the use of natural resources (including land), and the maintenance of an Environment conducive to human health and well-being; directives, orders or other instructions lawfully given by an Environmental Authority; and Environmental Authorisations and exemptions issued or approved thereunder;

**“Environmental Obligations”** means any and all obligations, liabilities and/or penalties that may be imposed in terms of the Environmental Authorisation, Environmental Laws and NEMA, in relation to the construction and operation, of any the Facility/Facilities, including the requirement to make financial provision for rehabilitation of the Project Site;

**“EPC Contract”** means the contract, dated on or about the Signature Date, entered into by the Seller and the EPC Contractor for the engineering, procurement and construction of the Facility;

**“EPC Contractor”** means the entity or entities appointed by the Seller to design, procure, construct and commission the whole or any part of the Facility in accordance with the provisions of the EPC Contract concluded between them;

**“EPC Costs”** means the total amount payable by the Seller to the EPC Contractor under the EPC Contract;

**"Expert**" has the meaning given to it in Clause 22.4.1:

**“Expiry Date”** means the date falling [5/10/15/20] [(five) / (ten) / (fifteen) / (twenty)] years after the Commercial Operation Date, as may be extended or amended in accordance with the terms of this Agreement;

**“Facility”** means a generation facility or generation facilities, as the case may be, located at each relevant Project Site from which the Commercial Energy will be generated and comprising all plant, machinery and equipment, all associated buildings, structures, roads on the Project Site that are not national, provincial or municipal roads, and other appurtenances, as further described in Schedule 1 (*Details of the Project and Facility/Facilities*), together with all required interfaces to be constructed for the safe, efficient and timely operation of that facility/facilities, including all Facility Connection Works and, for the avoidance of doubt, excluding the Distribution Connection Works;

**“Facility Connection Works”** has the meaning given to it in the System Agreement;

**“Facility RECs”** means, in relation to each relevant Facility/Facilities, the amount of Issued RECs that are equivalent to the Net Energy Output;

**“Financing Agreements”** means any loan agreements, notes, indentures, security agreements, guarantees and other agreements, documents and instruments, including any hedging transactions entered into by the Seller, in connection with the third-party financing (including refinancing) of the Project Debt, as may be applicable;

**“Force Majeure”** may without limitation include any of the following:

1. any fire, explosion, tempest, flood, drought, ionising radiation, riot and civil commotion;
2. any accidental loss or damage to the construction works and/or the Facility/Facilities;
3. any blockade or embargo not attributable partially or wholly to the Seller or its employees or contractors or suppliers;
4. any delay in obtaining any Consent, provided that the affected Party has complied with all of its obligations in respect of the obtaining of such Consent;
5. any official or unofficial strike, lockout, go slow or other such labour disputes generally affecting the construction and energy industry or a significant sector of it;
6. war, civil war, armed conflicts or terrorism;
7. nuclear contamination; or
8. chemical or biological contamination of the Facility/Facilities and/or the Project Site from any of the events referred to above;
9. pandemic, epidemic or plague and any instruction, regulation, directive legislation or the like issued by a Responsible Authority in response to such acts, events or circumstances;

but only to the extent that any act, event or circumstance including the circumstances set out above:

1. is beyond the reasonable control of the Party claiming relief;

is without fault or negligence on the part of the Party claiming relief and is not the result of a breach by the Party claiming relief of any of its obligations under any contract in respect of the Project to which it is a party, including this Agreement, any System Agreement or under applicable Law;

could not have been (including by reasonable anticipation) avoided or the effects of which could not have been overcome or mitigated by the Party claiming relief, acting in accordance with the standards of a Reasonable and Prudent Operator; and

prevents, hinders or delays the Party claiming relief in its performance of all or a material part of its obligations under this Agreement;

**“GCC”** means Green Certificate Company, the entity responsible for issuing RECs that meet the requirements of the International Attribute Tracking Standard in South Africa, with address at Hardy House, Northbridge Road, Berkhamstead, Hertfordshire, HP4 1EF, United Kingdom and with United Kingdom company registration number: 03781928

**“Generation Registration”** means the registration of the operation of the relevant Facility/Facilities with NERSA by the Seller in terms of the Electricity Regulation Act;

**“Gross Capacity”** means the gross capacity of all relevant Facilities and shall be as stated in Schedule 1 (*Details of Project and Facility/Facilities*);

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

**“Invoice** **Dispute** **Notice”** has the meaning given to it in Clause 9.6.1;

**“Insolvency** **Event”** means, in respect of either Party, the occurrence of any one or more of the following events:

1. it is, or is deemed for the purposes of any applicable law to be, unable to pay its debts as they fall due or insolvent;
2. it admits its inability to pay its debts as they fall due;
3. by reason of actual or anticipated financial difficulties, it begins negotiations with any creditor for the suspension of payment or rescheduling of any of its indebtedness;
4. a moratorium is declared in respect of any of its indebtedness;
5. any step is taken with a view to a moratorium or a composition, assignment or similar arrangement with any of its creditors;
6. a meeting of its shareholders, directors or other officers is convened for the purpose of considering any resolution for, to petition for or file documents with a court or any registrar for its winding-up, administration or dissolution, or any such resolution is passed (other than in connection with a solvent re-organisation);
7. any person presents a petition, or files documents with a court or any registrar, for its winding-up, administration or dissolution, unless it is a petition for winding-up presented by a creditor which is being contested in good faith and with due diligence and is discharged or struck out within thirty (30) Days;
8. an order for its winding-up, administration or dissolution is made (other than in connection with a solvent re-organisation);
9. any liquidator, business rescue practitioner, trustee in bankruptcy, compulsory manager, receiver, administrative receiver, administrator or similar officer is appointed in respect of it or any of its assets;
10. its directors, shareholders or other officers request the appointment of, or give notice of their intention to appoint a liquidator, business rescue practitioner, trustee in bankruptcy, compulsory manager, receiver, administrative receiver, administrator or similar officer; or
11. any other analogous step or procedure is taken in any jurisdiction;

**“International Attribute Tracking Standard”** means the i-REC Standard that is governed by the International REC Standard Foundation Board, which is the legally mandated governance organ of the International REC Standard Foundation;

**“Issue** or **Issuance”** means the act of creating an electronic record of one of more Environmental Credits including but not limited to RECs, in an account held in an electronic registry;

**"Last COD"** means the date which falls [360 days][[2]](#footnote-3) after the Scheduled COD**,** as the same may be revised from time to time in accordance with the terms of this Agreement;

**“Law"** means:

(a) any constitution, statute, ordinance, treaty, decree, proclamation or subordinated legislation or other legislative measure, including all national and provincial statutes and legislation and all municipal by-laws, as well as the common law and customary law and any judgment, decision, order or rule of any court or tribunal with relevant jurisdiction, in each case having the force of law in South Africa; and

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

**“Maximum Contract Capacity”** means the Energy sold by the Seller to the Buyer for the duration of the Term, up the maximum contracted amount of [INSERT] MWh (…………………. Megawatt hours) per year, as set out in Schedule 1 (*Details of the Project and the Facility/Facilities)*;

**“Maximum Contract Value”** means **R [INSERT]** only (excluding VAT);

**“Metering Installation”** means an installation used to measure and record the delivery of the Commercial Energy at the Delivery Point(s) and Consumption Points(s) comprising an electronic main meter and if applicable an electronic check meter, including all primary equipment, which installation shall have remote access capability, in accordance with the Buyer’s remote interrogation specifications, enabling the Buyer to have real-time access to the data recorded thereby by means of an electronic communication link and shall meet any standards for such metering installations in accordance with the specifications of the Codes (including any additional requirements stipulated by the NERSA or any person nominated by the NERSA);

**“Metering Code”** means the metering code under the Grid Codes;

**“Minimum Acceptance Capacity”** means, the minimum acceptable Capacity which is equal to 80% of the Maximum Contract Capacity of the relevant Facilities measured at the Delivery Point;

**“Month”** means a period of one (1) calendar month according to the Gregorian calendar, each such period beginning at 00:00 hours on the first day of such calendar month and ending at 24:00 hours on the last day of such calendar month;

**“NEMA”** means the National Environmental Management Act 107 of 1998, as amended, including any regulations promulgated under NEMA, which may be applicable to the Project and Project Site**;**

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

**“Net Capacity”** means the Gross Capacity of a Facility/Facilities, net of Energy consumed within the Facility/Facilities as Auxiliary Consumption and shall be as stated in Schedule 1 (*Details of Project and Facility/Facilities*);

**“Net Energy Output”** means the Energy or cumulative Energy generated by a Facility/Facilities or Facilities (expressed in kWh) delivered to the Delivery Point(s) net of Energy delivered to the Consumption Points(s) or the Baseline Volume if applicable, all on an hourly basis and metered in accordance with clause 10;

**“Notice of Commencement of Facility”** means the notice in the form of Schedule 2 (*Notice of Commencement of Facility*) and that is delivered by the Seller to the Buyer in terms of clause 3;

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

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

**“Project”** means the ownership or lease of the Project Site and the ownership, construction, operation and maintenance of the relevant Facility/Facilities, it being agreed that the Energy to be supplied to the Buyer in terms of this Agreement may be sourced from one or more of the Seller’s Facilities as more fully set out in this Agreement;

**“Project Agreements”** means this Agreement, the System Agreements, [INSERT], and any other agreement designated as such by the Parties in writing, and “**Project Agreement”** shall mean any of them as the context may require;

**“Project Debt”** means at any date, all amounts due and payable by the Seller that are outstanding under the Financing Agreements in respect of the Facility/Facilities at that date, including all default interest, breakage premiums as well as all fees, costs and expenses whatsoever in connection with any hedging arrangements entered into by the Seller, less any breakage gains, and excluding any shareholder loans in each case, as may be applicable;

**“Project Site”** means the site upon which the relevant Facility/Facilities is/are to be constructed and operated as more fully described and defined in Schedule 1(*Details of the Project and Facility/Facilities*);

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

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

**“REC(s)”** means a certificate issued by GCC or a certificate, allowance, green tag, or other transferable indicators Issued and /or certified by another Certification Authority, indicating generation of a particular quantity of renewable energy;

**“Responsible Authority”** means any ministry or department, any minister, any organ of state, any official in the public administration or any other governmental or regulatory department, commission, institution, entity, service utility, board, agency, regulator, instrumentality or authority (in each case, whether national, provincial or municipal) or any court, each having jurisdiction over the matter in question within South Africa, but excluding for all purposes the Buyer;

**“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

(c) a public announcement of a Sanctions designation made by any Sanctions Authority, in each case as amended, supplemented or substituted from time to time;

**“Security”** means a Cash Deposit or Electricity Accounts Guarantee for an amount equal to the Security Amount.

**“Security Amount”** means a) initially an amount as set out in Part B of Schedule 3 (*Financial Details*) and b) thereafter an amount as varied by ESKOM on written notice to the Buyer in accordance with sub-clause 3.4.2 of this Agreement.

**“Schedule**” means any of the schedules attached to this Agreement and forming an integral part of this Agreement**;**

**"Scheduled COD"[[3]](#footnote-4)** means the date falling [18] months after the Effective Date, as that date may be extended or amended in accordance with the terms of this Agreement;

**"Scheduled Outage"** means any period in which the Facility/Facilities is scheduled for planned maintenance and which period the Seller has notified the Buyer of in advance;

**"Seller Approvals"** means any permission, permits, approval, consent, licence, authorisation, registration, grant, acknowledgement, exemption or agreement to be obtained from any Responsible Authority by the Seller (or by the owner, if applicable) and any Law to enable the Seller to undertake its obligations in respect of the Project and this Agreement, including the licenses granted or to be granted to the Seller under the Electricity Regulation Act to operate the relevant Facility/Facilities and to trade in the supply of Energy from such Facility/Facilities;

**"Seller Default"** shall have the meaning set out in Clause 14.1.1 hereof;

**“Signature Date”** means the date of signature of this Agreement by the Party signing last in time;

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

**“Special Loss”** means, in relation to either Party, any loss or damage suffered or incurred by it which does not constitute a Direct Loss, including indirect losses and consequential losses;

**“System”** means, as applicable, the distribution network of Eskom which operates at a nominal voltage of 132 kV or less. For the avoidance of doubt, this excludes municipal networks and any other private network (for an embedded Facility/Facilities);

**"System Event"** means any constraint, unavailability, interruption, breakdown, inoperability, failure of the System or disconnection of the whole or part of the Facility/Facilities from the System as a direct or indirect result of an act or omission by the System Operator or a Force Majeure Event affecting the System Operator or a Curtailment;

“**System Agreements**" means the Connection Agreement and the Distribution Agreement or any one of them as the context may require;

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

**“Taxes”** means any and all direct and indirect taxes and duties on income, profit, excess profit, additional profit, gains, capital gains, corporation, dividend, interest, financing, net worth, sales, transaction, payroll, import, export, customs, inspection, value added, consumption, supply, use, turnover, severance, stumpage, cash flow, rental, land rental, surface rental, property, stamp, withholding taxes and other taxes, duties, fees, levies, excises, rates, charges, imposts, surcharges, royalties levied by SARS or any other Government Authority;

**“Term”** has the meaning given to it in Clause 2, as such period of time may be amended, reduced or extended in accordance with the terms of this Agreement;

"**Termination Date**" means the Expiry Date or the date of the earlier termination of this Agreement arising from one or more or all of the circumstances provided for in Clause 14 hereof;

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

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

**“VAT Act”** means the Value-Added Tax Act, 1991, as amended or replaced from time to time; and

**“Week”** means a period of 7 days, beginning at 00:00 on a Monday and ending at 24:00 on the next succeeding Sunday.

* 1. **Interpretation**

In this Agreement, unless otherwise specified:

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;

words importing the singular shall include the plural and vice versa and words importing one gender shall include the other genders;

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;

unless otherwise specified, all references to any time shall be to the time of day in Johannesburg, South Africa;

"**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;

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;

"**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;

references to a "**Party**", the "**Seller**" or the "**Buyer**" shall include its successors and permitted assignees, provided that, in the case of the Seller, the relevant transfer or assignment has received the prior written approval of the Buyer;

references to this "**Agreement**" or any other document shall be construed as references to this Agreement or that other document as amended, varied, novated, supplemented, or replaced from time to time, provided that, in the case of any other document, such amendment, variation, novation, supplement or replacement has received the prior written approval of the Buyer;

references to any amount shall mean that amount exclusive of VAT, unless the amount expressly includes VAT;

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;

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;

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;

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

if any provision in clause 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. Abbreviations

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

|  |  |
| --- | --- |
| A | Amperes |
| °C | Degrees Centigrade |
| kV | Kilovolts |
| kWh | Kilowatt hours |
| m | Metres |
| MW | Megawatts |
| s | Seconds |
| V | Volts |
| W | Watts |
|  |  |

* 1. Units of measurement

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

* 1. Rounding

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

* + 1. the calculation of any sums of money owing by either Party under this Agreement shall be performed to the nearest Cent; and
    2. any other calculation shall be performed to an accuracy of three (3) decimal places, with a fourth digit, after the decimal point, having a value of five (5) or above being rounded up.

1. TERM AND SUSPENSIVE CONDITION
   1. Subject to Clause 2.2 (Conditions Precedent), this Agreement shall be effective from the Effective Date until the earlier of:
      1. its termination in accordance with the provisions of Clause 1 (*Breach and Termination)* hereof; or
      2. the Expiry Date;

(such period, the “Term” of this Agreement)

* 1. Save for the provisions of this Clause 2, Clause 1 (*Definitions and Interpretation*), Clause 18 (*General Seller Undertakings and Obligations*), Clause 16 (*Warranties*), Clause 20 (*Assignment*), Clause 22 (*Dispute Resolution*), Clause 24 (*Third Party Indemnity*), Clause 26 (*Governing Law and Jurisdiction*), Clause 27 (*Notices*) and Clause 29 (*Miscellaneous*), which shall be of immediate force and effect from the Signature Date, this Agreement is subject to the suspensive condition that the conditions precedent enumerated in Clauses 2.3 have been unconditionally fulfilled in accordance with all the terms of Clause 2 **("Final CP Date”**).
  2. This Agreement is subject to the fulfilment of the following conditions, that:
     1. where applicable, having regard to whether the Seller has entered into any Financing Agreements, the Buyer, the Lender and the Seller have entered into the PPA Direct Agreement;
     2. the Buyer provides the Seller with the Security as required in terms of this Agreement[[4]](#footnote-5);
     3. the Seller procuring the applicable Consents, including Generation Registration, and approvals for the construction, operation and maintenance of the Facility/Facilities (save for those Authorisations that can only be obtained under Law following the Effective Date and/or following confirmation by NERSA of the Generation Registration);
     4. in relation to each of the Buyer's Sites, the Buyer has amended or procured that the relevant Affiliate has amended, the Electricity Supply Agreement to take into account any amendments which may be occasioned by this Agreement, as applicable;
     5. Financial Close, where applicable, has been achieved[[5]](#footnote-6); and
     6. the Board/Shareholder, as applicable, of the Buyer has passed resolutions required for the conclusion of this Agreement, and certified copies thereof being provided to the Seller.
  3. Notwithstanding the Suspensive Conditions, the Parties shall use all reasonable endeavours to procure the fulfilment of the Conditions as soon as possible after the Signature Date.
  4. Each Party shall be responsible at its own expense for procuring the satisfaction of those Conditions for which it is responsible.
  5. The Parties shall, by agreement in writing, be entitled to extend the date by which the Conditions are to be fulfilled or waive compliance therewith, provided that any such extension or waiver shall have been agreed upon in writing and signed by the Parties prior to the Final CP Date.
  6. Should any of the Conditions not be fulfilled prior to the Final CP Date for any reason whatsoever then the whole of this Agreement (other than Clauses mentioned in Clause 2.1 above by which the Parties shall remain bound) shall be of no force or effect and the Parties shall be restored as near as may be possible to the positions in which they would have been in had the agreement not been concluded. No Party shall have any claim against the other as a result of, or arising out of, or pursuant to the non-fulfilment of any of the Conditions, save in the circumstances where a Party has deliberately frustrated the fulfilment thereof or has breached the provisions of Clause 2.3 above.

1. Facility Development

The provisions of this Clause 3 apply to each relevant Facility or Facilities, as may be agreed by the Parties.

* 1. Construction

The Seller shall engineer, procure, construct, commission and test the Facility/Facilities in accordance with the design and equipment parameters set forth in Schedule 1 (*Details of the Project and Facility/Facilities*), and in compliance with the Grid Codes.

* 1. Commercial Operation Date

Subject to any extension which may be granted in terms of this Agreement, the Commercial Operation Date is expected to be achieved by no later than the Scheduled Commercial Operation Date.

* 1. Delays in achieving the Commercial Operation Date
     1. If a Delay Event causes any delay to the achievement by the Seller of the Commercial Operation Date by the Scheduled COD and/or the Last COD, the Scheduled COD and/or the Last COD (as applicable) shall be extended in accordance with Clause 3.3.2 below, provided that the Seller shall take reasonable steps to mitigate the effect of such delay.
     2. The Parties shall consult with one another as soon as practicable after the giving of a notice of the Delay Event, and the expected delay on the Scheduled COD and/or the Last COD. The Scheduled COD and/or the Last COD shall be adjusted taking into account the effect which the Seller reasonably demonstrates is properly attributable to such Delay Event and the ability of such Party to reschedule its activities (without material additional costs and resourcing) to minimise the overall delays to the achievement of the Commercial Operation Date. The Scheduled COD or the Last COD, shall be extended on a Day-for-Day basis for the duration of the Delay Event.
     3. If, due to a failure or delay caused by the Seller in performing its obligations under this Agreement (which is also not caused by or attributed to a Force Majeure Event or Change in Law or Delay Event), the Seller fails to achieve the Commercial Operation Date on or before the Scheduled Commercial Operation Date, then from and after the Scheduled COD, the Seller shall be obligated to pay compensation for the loss or damage caused to the Buyer by the delay, which compensation is a genuine pre-estimate of the loss or damage which the Buyer will suffer. The liquidated damages shall be an amount as set out in Schedule 7 (*Delay Liquidated Damages*), until the Commercial Operation Date is achieved, subject to a maximum amount of ZAR[10%][[6]](#footnote-7) of the EPC Costs. The liquidated damages shall be the Buyer’s sole remedy and exclusive remedy if the Seller fails to achieve the Commercial Operation Date on or before the Scheduled COD.
     4. If, prior to the Commercial Operation Date, a Force Majeure Event affecting the Seller occurs, which results in a delay that has, or is reasonably likely to have, the effect of delaying the achievement of the Commercial Operation Date, then Clause 12.4 shall apply.
  2. Buyer Security
     1. The Buyer has furnished the Seller with Security for an amount equal to the Security Amountas set out in Part B of Schedule 3 (*Financial Details*), for the performance of its obligations under this Agreement which shall be valid until the expiry of the Term.
     2. The Seller may from time to time, re-determine the Security Amount sufficient to cover the charges that the Seller determines will be payable by the Seller in accordance with clause 6 and the Seller shall notify the Buyer in writing of such re-determined Security Amount. The Buyer shall be obliged to furnish the Seller with a revised Security for the re-determined Security Amount, within 30 (thirty) days of being called upon to do so.
     3. The Buyer shall maintain the Security in full force and effect until 60 (sixty) days after the termination of this Agreement. If and whenever the Security provided by the Buyer in accordance with this clause 3.4 ceases (for any reason whatsoever) to be in full force and effect or otherwise to comply with this clause 3.4, the Buyer shall promptly upon the occurrence of such event, provide to the Seller, Security which meets the requirements of this clause 3.4.
     4. The Seller shall be entitled to make a claim under the Security in if an amount is due and payable by the Buyer pursuant to this Agreement and has not been paid in full by the Buyer on the due date for payment as set out in this Agreement, provided that should the whole or any portion of the Security be allocated by the Seller at any time, the Buyer shall be obliged forthwith to provide the Seller with a new Security which meets the requirements of this clause 3.4, within 30 (thirty) days.
     5. If the financial institution **[Holding Company]** that issued the Security cease to hold an Approved Credit Rating for South African Financial Institutions or Non-South African Financial Institutions **[Approved Credit Rating for South African or Non-South African Holding Companies]**, the Buyer must furnish the Seller with a new Security within 30 (thirty) days from the date that the Buyer became aware that the financial institution **[Holding Company]** that issued the Security has ceased to hold an Approved Credit Rating for South African Financial Institutions or Non-South African Financial Institutions **[Approved Credit Rating for South African or Non-South African Holding Companies]**.
     6. In the event of a failure by the Buyer to furnish the Seller with a new Security as required in terms of sub-clause 3.4.5 above, the Seller shall be entitled to draw the full amount payable under the Security and hold the proceeds as Security in the form of a Cash Deposit.
     7. The Cash Deposit shall bear interest, capitalised annually, at the prevailing rate as determined by the Seller from time to time.
     8. The Security shall be returned to the Buyer upon termination of this Agreement after the Seller has drawn from it any amounts due to it in terms of this Agreement.
  3. Testing and Commissioning
     1. Testing

The Seller shall be responsible for the implementation of test procedures during the construction and commissioning of the Facility/Facilities in accordance with Schedule 8 (*Standard for Interconnection of Embedded Generation*) and shall notify the Buyer in advance of all testing as provided in Schedule 8 (*Standard for Interconnection of Embedded Generation*). The Buyer shall be entitled to be present at any such testing as provided in Schedule 8 (*Standard for Interconnection of Embedded Generation*).

* + 1. Interconnection Equipment

The Seller shall at its own cost and expense design and construct the required Interconnection Facilities in accordance with Schedule 2 (*Details of Project and Facility/Facilities*), applicable Law, the standards of the Reasonable and Prudent Operator and the operating parameters and procedures set forth in the Grid Codes.

1. Facility Operation and Maintenance

The provisions of this Clause 4 shall apply to each relevant Facility as agreed between the Parties.

* 1. Seller’s Obligations
     1. Unless otherwise provided in this Agreement, at all times from the Commercial Operation Date (and during the Early Operating Period, if applicable) until the end of the Term, the Seller undertakes to operate and maintain the Facility/Facilities, at its sole cost and risk in accordance with the terms of this Agreement.
     2. The Seller must operate and maintain the Facility/Facilities in accordance with all legal requirements, including the Law, the terms of all permits and consents, and in accordance with the standards of a Reasonable and Prudent Operator so as to meet its obligations under the Agreement.  The Seller shall use commercially reasonable efforts to maintain the Facility/Facilities in good working order.
  2. Performance reporting
     1. During the period between the Commercial Operation Date and the Expiry Date, the Seller shall maintain complete and accurate data and records required to facilitate the proper administration of this Agreement and the Project. Such data and records (Project Operating Data) shall include an accurate and up-to-date log of operation, updated at least daily, in a format reasonably acceptable to the Buyer. The Project Operating Data should include, but not be limited to, the following information, with records of:
        1. for each 30 minute period in each Day, the Energy Output and the Reactive Energy Output;
        2. changes in operating status during the Day;
        3. the number of Outages in the Day, the duration of each Outage and the reason for each Outage;
        4. all irradiance, temperature and other climatic data recorded at the Project Site;
        5. all data required in terms of this Agreement;
        6. any information required to be recorded and/or reported in terms of the Authorisations; and
        7. any unusual conditions found during maintenance inspections.
     2. All Project Operating Data shall be maintained for the duration of the Term and for any additional length of time as may be required by any applicable Laws or otherwise by the Buyer.
     3. The Buyer shall be entitled, upon ten Business Day prior notice to the Seller, to access, examine and take copies of the Project Operating Data.
     4. The Seller shall submit a monthly report to the Buyer by the 15th Day of each Month which reflects such Project Operating Data and any maintenance activities during the Month immediately preceding the Month in which such report is submitted, including a schedule of actual and forecasted yield and planned maintenance activities for the next Month, and any other information reasonably requested by the Buyer.
  3. Generation Forecasts
     1. Monthly generation forecasts
        1. The Seller shall, in compliance with , where applicable, and the Information Exchange Code, provide to the Buyer and to the Network Operator in writing for each Month in the Early Operating Period and the Operating Period, by no later than 09:00 hours on the 15th Day of the preceding Month, the Seller's estimate made in good faith of the forecast level of Energy expected to be generated by the Facility/Facilities for each Day in the Month (Monthly Forecast Generation Profile). The Monthly Forecast Generation Profile will be based on historical data.
        2. If the Seller fails to provide any Monthly Forecast Generation Profile, then the Buyer shall be entitled to do or procure that another person provides it with that forecast, and it shall be entitled to recover the costs it incurs in respect of such forecast from the Seller. The Buyer shall provide the Seller with details of such costs and such evidence as is available in respect of such costs. The Buyer shall be entitled to set the amount of such costs off against the next payment due to the Seller.
     2. Weekly generation forecast
        1. The Seller shall, in compliance with the Grid Codes including the Information Exchange Code, provide to the Buyer and to the Network Operator in writing for each Week in the Early Operating Period and the Operating Period, by no later than 09:00 hours on the preceding Wednesday, the Seller's estimate made in good faith of the forecast level of Energy expected to be generated by the Facility/Facilities for each Day in the Week, (Weekly Forecast Generation Profile).
        2. If the Seller fails to provide any Weekly Forecast Generation Profile, then the Buyer shall be entitled to do or procure that another person provides it with that forecast, and it shall be entitled to recover the costs it incurs in respect of such forecast from the Seller, up to the cap of [INSERT AS AGREED]. The Buyer shall provide the Seller with details of such costs and such evidence as is available in respect of such costs. The Buyer shall be entitled to set the amount of such costs off against the next payment due to the Seller.
     3. Daily generation forecast

The Seller shall, in compliance with the Grid Codes including the Information Exchange Code, provide to the Buyer, and to the Network Operator in writing for each Day in the Early Operating Period and the Operating Period, by no later than 10:00 hours on the preceding Day, the Seller's estimate made in good faith of the forecast level of Energy expected to be generated each hour (the first such hour starting at 00:00 and ending at 00:60 minutes) in the Day (starting at 00:00 hours and ending at 24:00 hours) (Daily Forecast Generation Profile).

* + 1. Other relevant data

Where applicable, by 20:00 hours on the Day preceding the Day in respect of which the Seller has issued a Daily Forecast Generation Profile, the Seller shall submit to the Buyer, and to the Network Operator, in written form, details of any special factors which, in the good faith and reasonable opinion of the Seller, will have a material effect on the ability of a Unit or Units or the Facility/Facilities to produce Energy or provide the Energy Output on the following Day.

* 1. Operation of the Facility
     1. The Seller undertakes to:
        1. deliver Energy to the Delivery Point;
        2. at all times co-operate in good faith with the Buyer.
     2. The Seller shall develop Operating and Maintenance Procedures for the Facility/Facilities, which shall:
        1. be based on the design requirements specified in Schedule 8 (*Standard for Interconnection of Embedded Generation*);
        2. be consistent with the requirements of this Agreement, applicable Laws, the Grid Codes, manufacturer's warranties and the standard of a Reasonable and Prudent Operator; and
        3. provide comprehensive operating, maintenance and communication procedures for all operational interfaces between the Facility/Facilities and the Interconnection Facilities.
     3. The Seller shall provide the Buyer with a copy of such Operating and Maintenance Procedures no later than ten Days prior to the Scheduled COD.
     4. Nothing contained in this Agreement shall be construed as requiring the Seller to operate the Facility/Facilities, at any time, including during an emergency, in any manner inconsistent with the applicable Laws, the Grid Codes and the standards of a Reasonable and Prudent Operator.
  2. Dispatch

The Parties acknowledge that the Facility/Facilities will be self-dispatched by the Seller.

* 1. Planned Maintenance
     1. The Seller shall undertake scheduled maintenance, upon 60 Business Days prior written notice to the Buyer, including overhauls, capital improvements and replacements of major components, of the Facility/Facilities in accordance with the maintenance schedules (each, a Facility/Facilities Maintenance Schedule) developed pursuant to this Clause 4.6.
     2. At least 60 Business Days prior to the Scheduled COD in relation to the first three Operations Years, and at least 60 Business Days prior to the commencement of each subsequent Operations Year in relation to the next three Operations Years, the Buyer shall submit to the Seller a proposed maintenance schedule for the Buyer Site (Buyer Maintenance Schedule), so as to enable the Seller to plan the proposed maintenance of the Facility/Facilities for each such Operations Year in alignment with the Buyer Maintenance Schedule.
     3. If the Buyer fails to provide the Buyer Maintenance Schedule within such period, the Buyer shall be deemed to have accepted a proposed Facility/Facilities Maintenance Schedule submitted to it by the Seller within 40 Business Days of the expiry of the aforementioned period. Any Dispute relating to the Maintenance Schedule shall be referred to an Expert for determination pursuant to Clause 22.4.
     4. Notwithstanding the foregoing, the Seller shall be entitled to order a rescheduling of a Scheduled Outage if such rescheduling is a consequence of a Force Majeure Event, Network Event or a Compensation Event Event.
     5. The Seller shall be entitled to optimise the Facility/Facilities Maintenance Schedule, and undertakes that it shall use all reasonable endeavours to minimise the downtime due to any maintenance contemplated in terms of Clause 4.6 above.
  2. Unscheduled Outages
     1. If an Unscheduled Outage occurs, the Seller shall:
        1. inform the Buyer of the Unscheduled Outage as soon as reasonably practicable after the earlier of: (i) the Seller becoming aware of the need for such Unscheduled Outage; and (ii) the occurrence of such Unscheduled Outage; and
        2. notify the Buyer of the expected extent and duration of the Unscheduled Outage.
     2. The Seller shall be responsible for any costs incurred by it in respect of or in connection with or arising from any maintenance carried out by it during such Unscheduled Outage.

1. Delivery
   1. Delivery Point
      1. The Seller shall deliver the Net Energy Output to the Buyer at the Delivery Point.
   2. Transfer of Risk and Title

Transfer of risk and title with respect to the Net Energy Output shall pass to the Buyer at the Delivery Point.

1. COMMERCIAL ENERGY RATE
   1. The Commercial Energy Rate as set out in Schedule 3 will increase on 1 April each year, calculated in the manner set out in Schedule 3 (*Financial Details*).
   2. The Seller shall prior to the Effective Date, and before 1 April of each year while the Agreement is effective, issue a written notice setting out the Commercial Energy Rate to the Buyer for the following Contract Year.
2. PURCHASE AND SALE OF ENERGY

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

* 1. the Seller shall generate and sell, and deliver to the Delivery Point, Commercial Energy to the Buyer, on a self-dispatch basis and subject to the Codes and the standards of a Reasonable and Prudent Operator.
  2. the Buyer shall make the Commercial Energy Payment for Commercial Energy, up to the Maximum Contract Value. Title in, and risk of loss of, all Commercial Energy sold to the Buyer in accordance with clause 7.1, shall pass to the Buyer at the Delivery Point(s).
  3. If the Maximum Contract Value is reached, this Agreement shall automatically terminate with immediate effect, subject to any rights accrued and obligations incurred while the Agreement was in effect.
  4. Within fifteen (15) days of the end of any Contract Review Period, the Buyer may reduce the Maximum Contract Value for the remaining Term of the Agreement if the total Commercial Energy since the Effective Date of the Contract is less than the Contracted Generation Profile for the same period. In determining the proportional reduction, the Buyer will discuss with the Seller to understand the root cause of the reduced delivery.
  5. The Buyer may, in its undisputable discretion, apply the proportional reduction of the Maximum Contract Value in any/all of the following manners:
     1. reduce the Maximum Contract Value by the value associated with the historic under-delivery of Commercial Energy relative to the Contracted Generation Period
     2. prospectively, apply the reduction (i.e. proportion of under delivery) to the Maximum Contract Value for the remainder of the Term; and
     3. accordingly adjust the Seller’s Contracted Generation Profile to match the historic Commercial Energy for the purpose of assessment during each subsequent Contract Review Period.
  6. In the reduction to the Maximum Contract Value calculated in 7.5, the Buyer shall not reduce the Maximum Contract Value:
     1. by more than 20% of the Maximum Contract Value for each Contract Review Period ending within the first twenty-four months of the Effective Date, and
     2. by more than 30% of the Maximum Contract Value for each Contract Review Period ending beyond twenty-four months after the Effective Date.
  7. Inability to use the Net Energy Output during the term[[7]](#footnote-8)
     1. If the Buyer is unable to utilise a portion of the Net Energy Output during the Term, the Buyer shall, on 90 days’ notice, notify the Seller in writing as soon as practically possible stating how much of the Net Energy Output the Buyer is unable to utilise and the duration and time during which such under-consumption of Net Energy Output will occur (Under-consumption). During the said notice period, the Buyer will use its reasonable endeavours to secure a third party buyer with a financial standing and reputation equal to or better than that of the Buyer (Third Party Buyer) to purchase the Net Energy Output that the Buyer will not utilise as soon as reasonably possible and if possible in the circumstances, before the commencement of the period of Under-consumption, on the same terms as the terms in this Agreement or on more favourable terms than those in this Agreement.
     2. If upon the expiration of the period in Clause 7.7.1 the Buyer:
        1. is unable to secure a Third Party Buyer, the Buyer will pay the Seller for the Energy that the Buyer was not able to utilise during the period of Under-consumption; or
        2. is able to secure a Third Party Buyer on the same terms or more favourable terms than those in this Agreement, the Buyer shall not be required to pay for the Net Energy Output that it does not utilise.
  8. Renewable Energy Certificates and Environmental Credits
     1. The energy generated by the Facility/Facilities will allow the Issuance of Facility RECs and, in future, the activities associated with the Facility/Facilities may result in other Environmental Credits.
     2. The Seller shall:
        1. register itself and the relevant Facility/Facilities for accreditation under the Applicable Programme and maintain the registration and or accreditation for itself and the Facility as a renewable electricity generating facility on the Applicable Programme;
        2. ensure and maintain its own and the Facility's access to the Applicable Programme; and
        3. apply for and have the Facility RECs Issued to the Facility's registry account.
  9. Ownership of the Facility RECs and Environmental Credits
     1. Seller shall transfer to Buyer, on or before [Date], all RECs generated by the Facility/ies for the duration of the Term. These RECs shall represent electricity generated from the Facility/ies. The transfer shall be conducted under the Applicable Programme. The Seller warrants that these RECs comply with all applicable regulations and standards and the Buyer shall have the right to report the ownership of the associated environmental attributes to any relevant agency or authority.

1. NON-EXCLUSIVE BASIS

Nothing contained in this Agreement shall prevent the Seller from selling Energy, Facility RECs or Environmental Credits to any third party, provided the Seller shall not violate any of its undertakings under this Agreement to sell Energy up to the Maximum Contract Capacity to the Buyer, and the Facility RECs or Environmental Credits.

1. INVOICING
   1. **Content of Invoices**
      1. The Buyer shall remotely access the Metering Installation(s) and retrieve the metering data and provide this information in a report to the Seller, which the Seller shall thereafter incorporate into a tax Invoice for payment of the Commercial Energy pursuant to this Agreement. In the event that the remote interrogation is not functional, the Seller shall, within two (2) Business Days of the end of a Billing Period, retrieve the metering data from the Metering Installation(s) and furnish same to the Buyer, which information the Buyer shall check and provide a report to the Seller, which the Seller shall thereafter incorporate into a tax Invoice for payment of the Commercial Energy pursuant to this Agreement. The Invoice shall specify:
         1. the Commercial Energy Payment (as the case may be) due to the Seller for such Billing Period setting out the calculations upon which the Commercial Energy Payment is based; and
         2. any amounts owed by the Seller to the Buyer (or vice versa).
      2. The Seller shall prepare the Invoice for the Billing Period based on the billing data obtained from the Metering Installation(s) for that Billing Period.
   2. **General principles regarding invoicing**
      1. Save as provided in the VAT Act, every payment due and payable by either Party to the other pursuant to this Agreement shall be subject to VAT.
      2. The Party who received the Invoice shall pay to the other Party (who issued the Invoice) the amount of each Invoice within 14 Days following the date of receipt of such Invoice (the “**Due Date**”).
   3. All payments due by either Party to the other under this Agreement shall be made:
      1. in Rand in immediately available funds to such bank account in South Africa as the recipient Party shall from time to time nominate; and
      2. subject to clause 19 (*Set-Off*), without deduction or withholding, whether by way of set-off or otherwise, other than as required by any Law or as expressly provided in this Agreement.
      3. If a manifest error is however evident, the Buyer shall pay an amount if agreed to by the Parties, otherwise clause 9.6 will apply.
   4. Where the Seller has overcharged the Buyer and the Buyer has paid such overcharged amount, the Seller will reimburse the Buyer by crediting the next Invoice with such overcharged amount.
   5. Where the Seller has undercharged the Buyer, the Seller shall debit the subsequent Invoice with the amount undercharged and such amounts shall be payable by the Buyer.
   6. **Billing disputes**
      1. A Party shall notify the other Party in writing if it disputes (in good faith) an Invoice (including the data or records on which the dispute is based) before the Due Date for payment thereof, which notice shall specify the amount in dispute, and provide appropriate details of the basis of the dispute. The Buyer shall pay the undisputed amount on the Due Date provided that the undisputed amount is separately invoiced.
      2. The Parties will use their reasonable endeavours to resolve the dispute as soon as practicable, and in any event within thirty days of the notice of the dispute served pursuant to clause 9.6.1. Without limiting the generality of the foregoing, where the dispute is in respect of the billing data obtained by the Seller from the Metering Installation(s), the disputing Party shall be entitled to request a test of the Metering Installation(s) in accordance with clause 10 (*Metering*).
      3. If it is agreed or determined (including as a result of a test of the Metering Installation(s) pursuant to clause  10 (*Metering*) that all or part of a disputed amount which was paid should not have been paid, then the amount of such overpayment shall be refunded within five (5) Business Days of such agreement or determination, together with interest at the Agreed Interest Rate from the date of such overpayment to, but excluding, the date of repayment.
      4. Upon resolution of the dispute being reached by the parties, the Seller shall invoice the Buyer for the agreed amount, excluding any amounts invoiced previously.
2. METERING
   1. The Seller is permitted to use the existing metering installation(s) under the Electricity Supply Agreement(s) as the Metering Installation(s) under this Agreement subject to such metering installation meeting the requirements for a Metering Installation under this Agreement and provided further that the Seller obtains all relevant consents as may be required under the Electricity Supply Agreement. If the specifications of the metering installation under the Electricity Supply Agreement do not comply with the requirements for the Metering Installation under this Agreement, the Seller shall procure the necessary improvements, upgrades and/or a new metering installation and bear the associated costs. The Metering Installation(s) shall be for the Seller’s sole cost and risk, and located at the Delivery Point(s) and Consumption Point(s), and this shall be the Metering Installation(s) for the purposes of this Agreement. The purpose of the Metering Installation(s) shall be to measure the Commercial Energy delivered by the Seller at the Delivery Point pursuant to this Agreement.
   2. If a Metering Installation is the metering installation under the Electricity Supply Agreement, the Seller shall at its sole risk and cost procure, install, test, commission, operate and maintain the Metering Installation in accordance with this Agreement and the terms of the Electricity Supply Agreement.
   3. The Buyer shall have full access to inspect all metering equipment installed for the purposes of this Agreement. In this regard,
   4. Where applicable, the Seller shall provide sufficient meter configuration and remote interrogation information to facilitate the Buyer being able to remotely interrogate the meters and retrieve the metering data;
   5. If a Facility/Facilities has a valid metering Code exemption which may negatively impact remote access to the meters, such details need to be revealed upon the conclusion of the Agreement in which event the Seller will be required to co-operate or put alternate measures in place to the satisfaction of the Buyer to enable the Buyer to obtain the required remote access to the Metering Installation. The Buyer reserves its right to contest any exemption granted; and
   6. Where applicable, the Seller shall provide commissioning and latest maintenance reports for the Metering Installation at the request of the Buyer.
   7. If the Metering Installation is not the metering installation under the Electricity Supply Agreement:
   8. the Metering Installation will be sealed at all times and such sealing or removal thereof shall be done in the presence of the Buyer or its nominated agent(s). If the Metering Installation is sealed, the Buyer shall have the right to inspect and either accept the sealed meter or request the Seller to re-seal the meters in the presence of the Buyer’s nominated agent.
   9. the Metering Installation(s) shall be tested by the Seller as often as may be necessary but in any event within thirty days of the Buyer’s written request for such test and the Buyer shall have the right to be represented at the conduct of any such test.
   10. the Seller shall promptly provide the Buyer with a test report including all supporting metering data and records, if so requested by the Buyer in writing. The Seller shall promptly and in full answer any questions of the Buyer concerning such test report.
   11. The Buyer shall be responsible for interrogating and retrieving data from the Metering Installation(s) for the purpose of compiling a report to the Seller, which the Seller shall thereafter incorporate into an Invoice for payment of the Commercial Energy delivered. In the event that the remote interrogation is not functional, the Seller shall, within two Business Days of the end of a Billing Period, retrieve the metering data from the Metering Installation and furnish same to the Buyer for this purpose.
   12. No Party shall interfere in any manner whatsoever with the proper functioning of the Metering Installation(s) save in the presence of duly authorised representatives of both Parties.
   13. Neither Party shall re-locate the Metering Installation(s) without the prior written approval of the other Party.
   14. In the event of an upgrade being required to the existing metering installation to comply with the requirements for the Metering Installation under this Agreement, the Seller shall be responsible for such an upgrade and the associated costs.
3. System Event
   1. If a Network Event prevents the Buyer from consuming the Net Energy Output, the Buyer shall still be required to pay the Seller for the Net Energy Output metered and delivered at the Delivery Point.
   2. If a Network Event prevents the Seller from delivering the Net Energy Output to the Delivery Point, for a period in any given year that falls below, or equals, 300 hours in aggregate (the AGUP Period) and in circumstances where the Facility/Facilities would otherwise have been available and able to generate and deliver the Net Energy Output but for the Network Event, then the Seller shall not be entitled to any relief of whatsoever nature from the Buyer as a result of such a Network Event.
   3. If a Network Event prevents the Seller from delivering the Net Energy Output to the Network Operator (at the Delivery Point), for a period in any given year that exceeds 300 hours and in circumstances where the Facility/Facilities would otherwise have been available and able to generate and deliver the Net Energy Output but for the Network Event, the sole relief available to the Seller shall, subject to Clause 11.4, be to receive Deemed Energy Payments from the Buyer for the Net Energy Output that was available for delivery to the Network Operator (at the Delivery Point), but not delivered due to the particular Network Event. The Deemed Energy Payments to be made by the Buyer under this Clause 11.3 shall only be made for a period of 90 Days in aggregate after the expiry of the AGUP Period and if the Network Event persists for longer than 90 days in aggregate, then such Network Event shall be deemed to be a Prolonged Force Majeure Event and Clause 12.6 shall apply.
   4. The Seller shall use its reasonable endeavours to obtain compensation from the Network Operator for a Network Event that prevents the Seller from delivering metered Net Energy Output to the Network Operator (at the Delivery Point). If the Seller has received compensation from the Network Operator, the Buyer shall be relieved from its obligation to make Deemed Energy Payments under Clause 11.3 above. If the compensation is made by the Network Operator to the Buyer, Deemed Energy Payments shall become payable by the Buyer to the Seller for the volumes that have been rebated to the Buyer by the Network Operator as a result of the impact of a Network Event on the Seller's ability to deliver Energy.
   5. If the circumstances set out in Clause 11.3 above occur:
      1. the Seller shall promptly provide the Buyer with a written notice detailing the circumstances set out in Clause 11.3;
      2. the Seller shall notify the Buyer in writing within seven Days of delivering or receiving the notice from the Buyer that it intends to claim the applicable relief for such Network Event as set out in Clause 11.3;
      3. the Buyer and the Seller shall consult with each other as soon as practicable after the giving of the notice as provided in Clause 11.5.2 to agree on the Deemed Energy Payment payable; and
      4. if the Buyer and the Seller are unable to agree within a period of 10 Business Days from the date of the notice provided in Clause 11.5.2, then the Dispute shall be referred to an Expert for determination in accordance with Clause 22.4 (Expert Determination).
4. **CONSEQUENCES OF FORCE MAJEURE**
   1. If either Party is rendered wholly or in part unable to perform its obligations hereunder because of a Force Majeure Event (affected Party), then from the date the affected Party gives written notice of the Force Majeure Event until the Force Majeure Event ceases to prevent that performance the affected Party shall be excused from the performance affected by the Force Majeure Event, provided that:
      1. the Party affected by the Force Majeure shall give the other Party prompt written notice, describing the particulars of the event, a general description of the obligations likely to be affected, an estimate of the likely duration of the Force Majeure Event and a statement of the actions to be taken in order to comply with the affected Party's obligations under this Clause 12 ;
      2. the suspension of performance shall be of no greater scope and of no longer duration than is required to remedy the effect of the Force Majeure; and
      3. no payment obligations of either Party shall be excused by the Force Majeure Event.
   2. The affected Party shall make all reasonable efforts to prevent and reduce to a minimum and mitigate the effect of any delay occasioned by any Force Majeure Event, including by taking out and maintaining insurance over the Force Majeure Events that are insurable and any recourse to alternate sources of services, equipment and materials.
   3. In the event that the Seller receives compensation, in the form of insurance proceeds or otherwise, for any loss for which it is entitled to relief in terms of this Clause, it shall promptly inform the Buyer and the compensation already received by the Seller shall be taken into account in determining and or extending the Term under Clause 12.4.2 and 12.5.
   4. Effects of a Force Majeure Event on Commercial Operation Date

If a Force Majeure Event occurs prior to the Commercial Operation Date which results in material damage to or loss of the Facility/Facilities or a delay that has, or is reasonably likely to have, the effect of delaying the achievement of the Commercial Operation Date:

* + 1. the Parties shall consult with one another as soon as practicable after the giving of a notice as provided in Clause 12.1.1, and the Scheduled COD (or the Last COD, in the event of the occurrence of a Force Majeure Event during the period between the Scheduled COD and the Last COD) shall be extended taking into account the effect which the affected Party reasonably demonstrates is properly attributable to such Force Majeure Event and the ability of such Party to reschedule its activities (without material additional costs and resourcing) to minimise the overall delays to the Commercial Operation Date;
    2. the Expiry Date shall be extended to such date as shall place the Seller in the same overall economic position (after taking into account any other relief and compensation to which the Seller may be entitled pursuant to any other provisions of this Agreement for the acts, events or circumstances constituting Force Majeure) as the Seller would have been in, but for the Force Majeure Event; and
    3. if the Parties are unable to agree upon the adjustment to the Scheduled COD, the Last COD and/or the Expiry Date (as applicable) within a period of 14 Days from the date the notice referred to in Clause 12.1.1 is received, then:
       1. the Dispute shall be referred to an Expert for determination of the adjustment to the Scheduled COD (or the Last COD, in the event of the occurrence of a Force Majeure Event during the period between the Scheduled COD and the Last COD) pursuant to Clause 22.4;  and
       2. until such time as an adjustment to the Scheduled COD has been made, the Scheduled COD (or the Last COD, in the event of the occurrence of a Force Majeure Event during the period between the Scheduled COD and the Last COD) shall be extended on a Day-for-Day basis for the duration of the Force Majeure Event.
  1. Effects of a Force Majeure Event after Commercial Operation Date
     1. If a Force Majeure Event occurs after the Commercial Operation Date which results in damage to or loss of the Facility/Facilities or affects the ability of the Seller to generate or deliver Net Energy Output:
     2. the Parties shall consult with one another as soon as practicable after the giving of a notice as provided in Clause 12.1.1 to agree on the effects of the Force Majeure Event and the appropriate extension of the Term as shall place the Seller in the same overall economic position (after taking into account any other relief and compensation to which the Seller may be entitled pursuant to any other provisions of this Agreement for the acts, events or circumstances constituting Force Majeure) as the Seller would have been in, but for the Force Majeure Event; and
     3. if the Parties are unable to agree upon the adjustment to the Term within a period of ten Business Days from the date the notice referred to in Clause 12.1.1 is received, then:
        1. the Dispute shall be referred to an Expert for determination of the adjustment to the Term; and
        2. until such time as an adjustment to the Term has been made, the Term shall be extended on a Day-for-Day basis for the duration of the Force Majeure Event.
  2. Right to Terminate for Force Majeure
     1. If a Force Majeure Event occurs which prevents a Party from substantially performing its obligations under this Agreement for a period exceeding 180 consecutive Days (Prolonged Force Majeure), then either Party may terminate this Agreement by giving the other Party 30 Days' written notice (FM Termination Notice). The Termination Date shall be the date on which such 30 Days expires.
     2. Following the expiry of the Prolonged Force Majeure referred to in Clause 12.6.1 above, either Party is entitled to request the other Party, by way of written notice, to advise the other Party as to whether or not that Party intends to exercise its right to terminate this Agreement in terms of Clause 12.6.1 and the Party receiving such written notice shall be obliged to respond, in writing, within 5 Days of such request.
     3. The affected Party is entitled, within 20 Days of (i) the expiry of the Prolonged Force Majeure or (ii) the date of receiving the FM Termination Notice from the non-affected Party, if applicable (or such longer period as agreed to in writing between the Parties), to submit a proposal to the non-affected Party (supported by documentation reasonably required in order for the non-affected Party to assess the proposal including a level 3 Gantt chart) detailing the following (FM Proposal):
        1. the affected Party’s reasonable estimate of the period of time, from the date of acceptance of the FM Proposal, that it will take to overcome and remove the adverse consequences of such Prolonged Force Majeure on its performance under the Agreement (which period may not exceed 12 months) (Suspension Period); and
        2. the steps which the affected Party has taken to date and intends to take, or will take, in order to overcome and remove the adverse consequences of such Prolonged Force Majeure on its performance under the Agreement within the Suspension Period.
     4. Within 10 Days of receipt of the FM Proposal, the non-affected Party shall, acting reasonably and having considered the FM Proposal and all supporting documentation, respond with approval or disapproval (giving justifiable reasons) of the FM Proposal. If the non-affected Party fails to so respond, it shall be deemed to have approved the FM Proposal. The non-affected Party shall only be entitled to disapprove of the FM Proposal to the extent that the affected Party has failed to reasonably demonstrate that the steps taken, or that it intends to take or that will be taken, are reasonably likely to overcome and remove the adverse consequences of such Prolonged FM and enable the affected Party to resume performance of its obligations under the Agreement by the end of the proposed Suspension Period. For the purpose of this Clause where the affected Party is the Seller, the Buyer shall only be entitled to disapprove of the FM Proposal, acting reasonably, in circumstances where the Seller has failed to reasonably demonstrate that;
        1. the duration of the proposed Suspension Period is reasonable and required to overcome and remove the adverse consequences of such Prolonged Force Majeure; or
        2. at the end of the proposed Suspension Period, the Seller will be able to:

deliver Energy to the Delivery Point,

the Capacity of the Facility/Facilities will be equal to the Contracted Capacity; and

meet the Minimum Acceptance Capacity.

* + 1. If the non-affected Party disapproves of the FM Proposal, the affected Party is entitled, within 10 Days after the receipt of the written notice by the non-affected Party in terms of Clause 12.6.4 to refer the matter to an Expert for determination in accordance with Clause 22.4. The FM Termination Notice shall be suspended until such time as the Expert makes a determination in accordance with Clause 22.4.
    2. If at the end of the Suspension Period (i) the Force Majeure Event has not ceased, and (ii) the FM Proposal, in the opinion of the non-affected Party, did not overcome the effects of the Force Majeure Event, then the non-affected Party may terminate this Agreement by giving 30 Days' notice to the affected Party.
    3. Any Dispute arising from this Clause 12.6 shall be referred to an Expert for determination.

1. **CHANGE IN LAW****[[8]](#footnote-9)**
   1. Change in Law definition

The occurrence of any of the following events after the Signature Date:

* + 1. the introduction, adoption, enactment or promulgation of any new applicable Law by any Government Authority or any change in the interpretation or application of any applicable Law, save for any of the aforementioned resulting in an increase in taxes of general application which does not discriminate against any Party or against the Party and other parties undertaking projects similar to the Project;
    2. the change or repeal of any applicable Law, save for any of the aforementioned resulting in an increase in taxes of general application which does not discriminate against any Party or against the Party and other parties undertaking projects similar to the Project;
    3. the introduction, adoption, or change of any Authorisation or any material condition in connection with the issuance, renewal or modification of any Authorisation;
    4. any change to the terms and conditions or to the interpretation or application of any Authorisation or addition of new terms and conditions after granting said Authorisation; or
    5. the revocation, repeal or cessation of effectiveness of any Authorisation prior to the expiration date of such Authorisation, provided that the relevant Party is in compliance with the material requirements and conditions established therein or if any Authorisation was granted for a limited period its non‑renewal (or its renewal in terms or subject to conditions less favourable to the relevant Party), provided that such Party has observed all the requirements applicable to the grant of that renewal, and the occurrence of the event:
       1. renders it unlawful to give effect to this Agreement; or
       2. has a material adverse financial impact on the Project or materially and adversely affects the overall balance of reward, liability and risk agreed to by the Parties in the Agreement; and
       3. is an event in respect of which any Party is not entitled to any other relief pursuant to any other provisions of this Agreement or any other agreement concluded with the other Party; and
       4. could not reasonably have been foreseen by any person in the position of any Party on or before the Signature Date or if it could reasonably have been foreseen, the impact on the Project could not reasonably have been foreseen.
  1. Notice for Change in Law
     1. If a Change in Law occurs, either Party shall give the other prompt written notice, describing the particulars of the Change in Law, a general description of the obligations likely to be affected and a statement of the actions to be taken in order to comply with that Party's obligations under the Agreement.
     2. Each Party shall use all reasonable endeavours to minimise and mitigate the effects of any Change in Law.
  2. Consequence of Change in Law[[9]](#footnote-10)
     1. If, after the Signature Date, a Change in Law occurs which results in the arrangements under this Agreement being unenforceable or unlawful and or which results in impossibility of performance of either Party of a material term of this Agreement under this Agreement, then either Party shall be entitled to terminate this Agreement by notice to the other. Neither Party shall be liable to make any termination payment if this Agreement is terminated pursuant to the provisions of this Clause.
     2. If, after the Signature Date, there is a Change in Law which will (or will reasonably be expected to):
        1. result in Increased Costs or Lost Revenue that materially affects the overall economic position of a Party (including any impact on the design, specifications, performance standards or other characteristics of the Facility/Facilities), then such Increased Costs or Lost Revenue will necessitate in a change to the Commercial Energy Rate;
        2. changes the overall balance of reward, liability and risk agreed to by the Buyer in this Agreement,

the Parties shall meet within ten Business Days' of the Party providing the written notice set out in Clause 13.2 to the other of the Change in Law, the Parties shall meet to discuss the amendments required to this Agreement or relief to be provided by the Seller to preserve the overall economic position of the Seller and the overall balance of liability and risk agreed to by the Parties in this Agreement, provided that in the event that the Parties are unable to agree such relief and/or amendments to this Agreement within 15 Business Days, either Party may refer the Dispute to an Expert for determination in accordance with Clause 22.4 (Experts' Determination). Subject to Clause 13.3.3, the Experts Determination shall be final and binding on the Parties.

* + 1. The Buyer is only entitled to reject the Experts Determination on the basis that the adjustment to the Commercial Energy Rate would result in the Buyer’s overall economic position being materially affected (Buyer Rejection) and terminate this Agreement by giving the Seller 30 Days' written notice.
    2. The Termination Date shall be the date on which such 30 Days expires. In the event of a termination due to a Buyer Rejection, the Parties agree that for a period of 12 Months following the Termination Date due to a Buyer Rejection, the Parties shall use their reasonable commercial endeavours to procure contractual arrangements with a Third Party Offtaker on terms that are equal or are more favourable than the terms of this Agreement for the sale and purchase of the Energy (including any associated Environmental Credits (if applicable) and to conclude all of the legal agreement necessary for the Seller to commence the delivery and supply of Energy to the Third Party Offtaker.
    3. Without prejudice to any claims, rights or obligations of the Parties that accrued prior to the date of termination, the Buyer will have no further liability to the Seller arising as a result of a termination in accordance with Clause 13.3.1 other than the payment of 12 Months of forecast revenue calculated in accordance with Clause 13.3.4. If the Seller enters into the necessary legal agreements with the Third Party Offtaker prior to the expiry of the 12 Month period referred to in Clause 13.3.4, any amount paid by the Third Party Offtaker to the Seller for Energy delivered during such 12 Month period, shall be paid by the Seller to the Buyer provided that the amount payable by the Seller under this Clause 13.3.4 shall never exceed the amount paid by the Buyer under Clause 13.3.4. Any amount payable in terms of this Clause 13.3.4 shall be paid to the Buyer within 60 Days of the expiry of the 12 Month period referred to in Clause 13.3.4.
    4. The provisions of this Clause 13.3 shall survive termination of this Agreement.

1. **TERMINATION**

Remedies available to a Party under this Agreement or at Law are cumulative, save where and to the extent that this Agreement expressly provides a remedy in respect of or in consequence of any breach of this Agreement, such remedy shall (to the extent such remedy has been fulfilled and unless expressly provided otherwise in this Agreement) be the Parties' sole and exclusive remedy in respect of the relevant breach. The exercise of the right of a Party to terminate this Agreement does not preclude such Party from exercising other remedies that are available to such Party under this Agreement or, subject to this Agreement, otherwise available at Law.

* 1. Events of Default
     1. Seller Events of Default

Except where it occurs as the sole consequence of a Compensation Event, Network Event, Change in Law or a Force Majeure Event, each of the following events shall be a Seller Event of Default, which, if not remedied within the time permitted in this Clause (if any) shall give rise to the right on the part of the Buyer to terminate this Agreement (subject to the PPA Direct Agreement, where applicable):

* + - 1. NERSA lawfully withdraws, revokes or cancels the Generation Registration due to the Seller's act or omission;
      2. in a Measurement Period, the Seller fails to achieve the Minimum Acceptance Capacity;
      3. an Insolvency Event occurs in respect of the Seller;
      4. the Seller is convicted of a breach of an Anti-Corruption Law;
      5. the Abandonment of the Project, either at Construction phase or operation and maintenance phase;
      6. the Seller fails to achieve the Commercial Operation Date by the Scheduled COD and/or the Last COD (as may be extended in terms of the Agreement), it being acknowledged that the failure of the Seller to achieve any of the dates set out in this Agreement (other than the Commercial Operation Date) shall not be considered a breach of a material obligation under this Clause;
      7. the Facility/Facilities fail(s) to achieve the Minimum Acceptance Capacity by the Last COD or subject to Clause 3.3.1 and other than in accordance with Clause 14.3, the Commercial Operation Date is not achieved by the Last COD;
      8. a breach by the Seller of any material obligations (other than any breach referred of subclauses14.1.1.1 to 14.1.1.8 of this Clause 14.1.1 which is not remedied within 60 Business Days after notice from the Buyer to the Seller stating that such a breach has occurred, identifying the breach in question in reasonable detail, and demanding remedy thereof.
    1. Buyer Events of Default

Each of the following shall (to the extent not caused solely by a Seller Event of Default Change in Law or a Force Majeure Event) be a Buyer Event of Default which, if not remedied within the time permitted shall give rise to the right on the part of the Seller to terminate this Agreement:

* + - 1. any failure to comply with the provisions of sub-clauses 3.4.2, 3.4.3, 3.4.4 or 3.4.5 of this Agreement;
      2. an Insolvency Event occurs in respect of the Buyer or the Guarantor;
      3. any assignment, cession and/or delegation by the Buyer of any of its rights or obligations under this Agreement, except as expressly permitted in terms of this Agreement;
      4. in the performance of any aspect of this Agreement the Buyer is convicted of a breach of an Anti-Corruption Law;
      5. NERSA lawfully withdraws, revokes or cancels the Generation Registration due to the Buyer's acts or omissions, if any;
      6. the Buyer terminates or causes (directly or indirectly) the Electricity Supply Agreement to be terminated; and/or
      7. a breach by the Buyer of any material obligations (other than any breach referred of subclauses 14.1.2.1 to 14.1.2.6 of this Clause 14.1.2 which is not remedied within 60 Business Days after notice from the Seller to the Buyer stating that such a breach has occurred, identifying the breach in question in reasonable detail, and demanding remedy thereof.
  1. Consequences for Events of Default
     1. Termination for Seller Event of Default
        1. The Seller shall notify the Buyer of the occurrence, and details, of any Seller Event of Default promptly on the Seller becoming aware of its occurrence.
        2. On the occurrence of a Seller Event of Default, or within a reasonable time after the Buyer becomes aware of the same, the Buyer may:
           1. where the Seller Event of Default is the default detailed in Clauses 14.1.1.2, 14.1.1.4, 14.1.1.7 serve a notice on the Seller terminating this Agreement with immediate effect, in which case the Termination Date shall be the date on which notice is deemed to have been given to the Seller in accordance with Clause 27.1; and
           2. for any other Seller Event of Default, while the same is subsisting, serve notice of default on the Seller requiring the Seller to remedy the Seller Event of Default referred to in such notice of default (if the same is continuing) within 30 Business Days of such notice of default being delivered. If the Seller Event of Default is not remedied within such period, the Buyer may serve a further notice on the Seller terminating this Agreement with immediate effect, in which case the Termination Date shall be the date on which notice is deemed to have been given to the Seller in accordance with Clause 27.1.
           3. on termination of the Agreement for a Seller Event of Default, the Buyer shall be entitled to claim direct damages from the Seller.
     2. Termination for Buyer Event of Default
        1. The Buyer shall notify the Seller of the occurrence, and details, of any Buyer Event of Default promptly on the Buyer becoming aware of its occurrence.
        2. On the occurrence of a Buyer Event of Default, or within a reasonable time after the Seller becomes aware of the same, the Seller may:
           1. where the Buyer Event of Default is the default detailed in Clauses 14.1.2.1, 14.1.2.2, 14.1.2.4, 14.1.2.5 and/or 14.1.2.6 serve a notice on the Buyer terminating this Agreement with immediate effect, in which case the Termination Date shall be the date on which notice is deemed to have been given to the Buyer in accordance with Clause 27.1;
           2. for any other Buyer Event of Default, while the same is subsisting, serve notice of default on the Buyer requiring the Buyer to remedy the Buyer Event of Default referred to in such notice of default (if the same is continuing) within 30 Days of such notice of default being delivered. If the Buyer Event of Default is not remedied within such period, the Seller may serve a further notice on the Buyer terminating this Agreement with immediate effect, in which case the Termination Date shall be the date on which notice is deemed to have been given to the Buyer in accordance with Clause 27.1.
  2. Termination upon Force Majeure and Prolonged Delay Event

Subject to Clause 12.6, if a Force Majeure Event occurs which prevents a Party from substantially performing its obligations under this Agreement for a period exceeding 180 consecutive Days then either Party may terminate this Agreement by giving the affected Party 30 Days' written notice. The Termination Date shall be the date on which such 30 Days expires.

* 1. Sanctions
     1. If, at any time after the Signature Date a Party (directly or indirectly) becomes a Restricted Party (being the affected Party), then the affected Party shall promptly notify the other Party providing reasonable and accurate details of the relevant circumstances and, to the extent that the relevant circumstances are capable of remedy, furnish the other Party with a remedy plan, in which it will provide details of how it intends to remedy the situation so as to cease being a Restricted Party, which plans shall include the time it will take it to implement such a plan, which period shall not exceed 90 Business Days (or to the extent that a shorter period is required by law, such shorter period).
     2. If the affected Party is unable to cease being a Restricted Party within the 90 Business Days referred to in Clause 14.4.1, the other Party may, at its election terminate this Agreement by giving the affected Party 30 Days' written notice or to the extent a shorter period is required by law, the shorter notice period.
     3. To the extent that a Party becomes a Restricted Party as a result of intentional conduct on its part (or an Affiliate) that resulted in a breach of Sanctions, then the exercise of termination rights under this Clause shall be treated as a termination on a fault basis and the provisions relating to Seller Default or Buyer Default as the case may be shall apply.
     4. To the extent that a Party becomes a Restricted Party in the circumstances contemplated in Clause 14.4.2 of the definition of Restricted Party or to the extent that a Party becomes a Restricted Party which is not as a result of intentional conduct on its part (or an Affiliate) that resulted in a breach of Sanctions, then the exercise of termination rights under this Clause shall be treated as termination on a no-fault basis.
  2. Termination for Convenience
     1. The Buyer shall be entitled to terminate this Agreement for convenience on written notice to the Seller of not less than 60 (sixty) days.
     2. The Buyer will be liable for the Commercial Energy Rate in respect of the Contracted Capacity for the remainder of the Term.
     3. The amount thereof will be quantified, upon receipt of notice of termination of this Agreement and shall be due and payable within 14 days upon receipt of the Invoice.

1. **THIRD-PARTY SALES** 
   1. Third Party Sales: Buyer Default

The Buyer agrees that in the event of a Buyer Event of Default and the Buyer is unable to accept and/or pay for the Net Energy Output, in addition to but without prejudice to the Seller's right to terminate the Agreement in terms of Clause 14.2.2, the Seller shall be entitled to sell the Net Energy Output to a third party.

1. WARRANTIES
   1. **Seller** **warranties**

The Seller represents and warrants to the Buyer as on the Signature Date and on each day thereafter during the Term and further indemnifies the Buyer for any Claim resulting from a breach of warranty, that:

* + 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;
    2. its obligations under this Agreement are legal, valid and binding and enforceable against it, in accordance with the terms of this Agreement;
    3. the execution and performance of this Agreement does not and will not contravene any provision of the memorandum or articles of association or memorandum of incorporation of the Seller or any term of any other agreement the Seller is a party to as at the Effective Date, or any order or other decision of any Responsible Authority or arbitrator that is binding on the Seller as at the Effective Date;
    4. the Seller will not through the execution and performance of this Agreement receive any additional financial benefit for the same energy that is being incentivised under any other programme and warrants that no part of the Commercial Energy under this Agreement is contracted under any other agreement;
    5. 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;
    6. 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.
  1. **Buyer warranties**

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

* + 1. it is duly incorporated under the laws of South Africa and has the right, power and authority to enter into his Agreement and to perform its obligations hereunder;
    2. the execution and performance of this Agreement by it has been duly authorised by all necessary corporate action, and its obligations hereunder constitute valid, binding and enforceable obligations;
    3. it has not at any time during the five (5) years preceding the Effective Date been or is targeted under any Sanctions or is included in the Sanctions List;
    4. is party to or has at any time during the five (5) years preceding the Effective Date participated in any Sanctioned Transaction;
    5. shall not (and shall procure that no member of the Group and each Contractor) at any time participate in a Sanctioned Transaction in any manner or contravene any Sanctions,
    6. shall take reasonable steps to ensure that appropriate controls and safeguards are in place, designed to prevent the Seller (and any member of the Group or a Contractor) from being or becoming involved in a Sanctioned Transaction, or from contravening any Sanctions;
    7. will maintain in effect and enforce policies and procedures designed to promote compliance, in all material respects, by the Seller, each Group Company, each Contractor, and their respective directors, officers, employees and agents with applicable Sanctions.
  1. **Indemnity**

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

1. PROJECT INSURANCE
   1. Insurances and information
      1. The Seller shall, in accordance with this clause 17 (Project Insurance), obtain and maintain in effect, at its own cost and expense, such insurance coverage as is required by:
         1. any Laws; and
         2. the standards of a Reasonable and Prudent Operator.
      2. The Seller shall take reasonable steps to ensure that its Contractors obtain and maintain in effect at all times such insurance cover as is appropriate for a Reasonable and Prudent Operator.
      3. The Seller undertakes to provide the Buyer with any information the Buyer may require in order to determine the Seller's compliance or not with this clause 17 (Project Insurance).
      4. The Seller shall solely bear the cost and risk of any under-insurance or failure to comply with this clause 17 (Project Insurance).
   2. Application of insurance proceeds
      1. Unless the Buyer (acting reasonably) otherwise agrees in writing, the Seller shall apply all proceeds of any insurance claim made due to loss or damage to the Project or any part of the Facility/Facilities (other than claims under any loss of revenue policies) towards reinstatement, reconstruction, replacement, repair or renewal of such loss or damage in the first instance
2. GENERAL SELLER UNDERTAKINGS AND OBLIGATIONS
   1. The Buyer shall not have any liability towards decommissioning or maintenance of any Facility/Facilities, or insurance coverage, and the Seller’s employees, agents or contractor operation of any Facility/Facilities in compliance with all safety and health legal requirements or the cost thereof.
   2. The Buyer shall not be liable for any injuries to or illness suffered by any person in relation to any Facility/Facilities.
   3. The Seller indemnifies the Buyer (and its Affiliates and its and their respective directors, officers, employees and agents) against any Losses, including any Losses which arise after the Termination or Expiry Date, which the Buyer or any of its Affiliates and its and their respective directors, officers, employees and agents may incur or sustain and which arises pursuant to the conduct of each Facility/Facilities by or on behalf of the Seller and which are not attributable to any breach of this Agreement by the Buyer which is not attributable to the Seller or its Contractors.
   4. The Seller shall ensure that all System Agreements and any agreements required for the construction, operation and maintenance of each Facility/Facilities as may be required in order for the Seller to fulfil its obligations under this Agreement, shall have been entered into, and shall be in full force and effect, valid and binding from the COD and thereafter for the duration of this Agreement.
   5. The Seller shall ensure that all Consents required to allow the Seller to fulfil its obligations in terms of this Agreement are and remain intact for the duration of the Term.
   6. At all times during the Term, the Seller shall exercise its rights and perform all of its obligations as provided for in this Agreement, including to the extent applicable the operation and maintenance of the Facility/Facilities, at its sole cost and risk and in compliance with the requirements of:
      1. applicable Laws;
      2. the terms and conditions of this Agreement
      3. the Codes;
      4. the System Agreements;
      5. the Electricity Supply Agreement;
      6. the Consents;
      7. the standards of a Reasonable and Prudent Operator; and
      8. relevant manufacturers' guidelines and instructions.
   7. The Seller has fully considered the Capacity of each Facility/Facilities against any Eskom or other third-party programmes or own use options. The Seller will not receive additional benefit for the same energy by participating in this Agreement; and
3. SET-OFF

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

1. ASSIGNMENT
   1. Save as provided in Clause  20.2 neither Party may sell, cede, delegate, assign, transfer or otherwise dispose of (collectively, "Assign") all or any part of its rights and/or obligations hereunder to a third party without the prior written approval of the other Party.
   2. Notwithstanding, the Buyer can Assign all or some of its rights and obligations under this Agreement
      1. To an Affiliate without the prior consent of the Seller; or
      2. To a third party as part of and pursuant to:
      3. the dissolution, restructuring, amalgamation or reorganisation of the Buyer or its businesses, or the occurrence of an analogous event; or
      4. the transfer of all or a material part of the Buyer's business, property, assets and/or undertaking to one or more third parties and/or successor entities;

provided that, in each case, such dissolution, restructuring, amalgamation, reorganisation, analogous event or transfer is part of restructuring the electricity supply industry in South Africa, or is required to give effect to any mandatory requirement of Law.

1. CONTRACTORS

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

1. DISPUTE RESOLUTION
   1. **Referable** **Disputes**

The provisions of this Clause 22 (*Dispute Resolution*) shall apply to any dispute arising from this **Agreement**.

* 1. **Internal** **Referral**
     1. The Parties shall in the case of a dispute first attempt in good faith to come to an agreement in relation to the disputed matter, in accordance with the following informal process:
     2. all disputes shall first be referred to a meeting of the liaison officers or other designated executives from each Party, who must have sufficient authority to resolve it and if necessary with consultation back to their respective organisations; and
     3. if the Parties have been unable to resolve the dispute within fifteen days of referral to the persons specified in Clause **22.2.2**, either Party may refer the dispute for a decision by the accounting officer or accounting authority of the Buyer and the chief executive officer or equivalent officer of the Seller.
     4. In attempting to resolve the dispute in accordance with the provisions of this Clause **22.2** (*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.
     5. Any dispute which has not been resolved informally within fifteen 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.
  2. **Performance** **to** **Continue**

No reference of any dispute to any resolution process in terms of this clause 22 (*Dispute Resolution*) shall relieve either Party from any liability for the due and punctual performance of its obligations under this Agreement.

* 1. Expert Determination
     1. Where a Dispute arises between the Parties under any Clause that provides for determination by reference to an Expert, either Party may refer the Dispute for determination by an independent expert agreed upon by the Parties. A Party requiring the determination of a Dispute by an Expert must first give the other Party written notice of the request for such determination. Upon provision of such request, the other Party cannot seek to commence arbitration in respect of those proceedings other than in accordance with Clause 22.4.11.
     2. The Expert shall be selected by agreement of the Parties within five Business Days of provision of the notice requesting the submission of the Dispute to an Expert. The Expert shall be independent and impartial and shall not be a representative, employee or hired contractor, nor a former representative, employee or contractor hired by either of the Parties. If the Parties are unable to reach an agreement on an Expert within such five Business Day period, then the Parties must request:
        1. the then Chairperson of the Legal Practice Council (for disputes involving legal matters or interpretation);
        2. the then President of the Engineering Council of South Africa (for disputes involving construction or engineering issues); or
        3. the then President of the South African Institute of Chartered Accountants (for disputes involving financial, economic or accounting issues in which case the person must have sufficient commercial, financial or economic experience),

to appoint the Independent Expert. To the extent that the Parties cannot agree on the nature of the dispute, the dispute will be deemed to be a dispute involving a construction or engineering issue and the President of the Engineering Council of South Africa shall be requested to appoint the Independent Expert.

* + 1. The Expert's appointment commences upon the provision to the Parties of a written acceptance of such appointment from the Expert and if such acceptance is provided at different times to the Parties, the time at which it was first provided to a Party.
    2. The Party seeking that the Dispute be determined by an Expert shall provide to the Expert as well as to the other Party within five Business Days of the appointment of the Expert, certain written materials comprising:
       1. a description of the Dispute;
       2. a statement of that Party's position; and
       3. a copy of the records that support that Party's position,

and within five Business Days of the date on which the initiating Party has provided the documents described in the preceding sentence, the receiving Party may provide to the Expert and the other Party:

* + - * 1. a description of the Dispute;
        2. a statement of that Party's position;  and
        3. copies of any records that support that Party's position. In addition to the material which has been supplied to the Expert by the initiating Party, the Expert should also take into account all information which has been provided by the receiving Party within such period of ten Business Days and, at the Expert's discretion, any additional information subsequently submitted by either Party.
    1. Each Party will provide (or procure that others provide) the Expert with such assistance and documents as the Expert reasonably requires for the purpose of reaching a decision.
    2. The Expert may give each of the Parties the opportunity of making oral and/or written representations to him on the matter in Dispute.
    3. All matters concerning the process and result of the determination by the Expert shall be kept confidential among the Parties and the Expert.
    4. The Expert shall act as an expert and not as an arbitrator and, for the avoidance of doubt; the legislation relating to commercial arbitration does not apply to such proceedings.
    5. Following expiry of the five Business Day period set out in Clause 22.4.4 during which the receiving Party may make submissions, the Expert shall provide a decision in writing within 20 Business Days (or such other period as the Parties may agree after the referral), unless the Expert reasonably determines that additional time is required in order to give adequate consideration to the issues raised. In such case, the Expert shall state in writing his reason for believing that additional time is required and shall specify the additional period required, which period shall not exceed 20 Business Days.
    6. The Expert shall give copies of his decision and the reasons for his decision in writing to each of the Parties.
    7. If the Expert fails to give his decision pursuant to Clause 22.4.9 within the period specified therein, either Party may by notice to the other require that the Dispute is decided by reference to arbitration pursuant to Clause 22.5, whereupon the Expert shall be instructed not to consider the matter further.
    8. Save in the event of manifest error or fraud and the circumstances in Clause 13.3.1, the decision of the Expert regarding a Dispute shall be binding on the Parties unless either Party refers the Dispute to arbitration in accordance with Clause 22.5 within 15 Business Days of the decision of the Expert.
    9. Each Party shall bear the fees, costs and expenses for the Expert equally, as well as expenses incurred by such Party in preparing materials to be provided or presented to the Expert, and in making presentations to the Expert.
    10. All proceedings before the Expert shall be conducted in the English language.
  1. **Arbitration**
     1. If informal resolution of any dispute has failed, then either Party can refer it to arbitration.
     2. The arbitrator shall be appointed by the Parties within ten(10) days of informal resolution failing, otherwise either Party may request the Arbitration Foundation of South Africa (“AFSA”) to nominate one.
     3. The arbitration shall be held in accordance with the Rules of AFSA, or if AFSA shall not be in existence, in accordance with the formalities and procedures settled by the arbitrator, which shall be in an informal and summary manner, that is, it shall not be necessary to observe or carry out either the usual formalities or procedure or the strict rules of evidence, and the arbitration shall be otherwise subject to the provisions of the Arbitration Act 1965.
     4. The arbitrator shall be entitled to investigate or cause to be investigated any matter, fact or thing which the arbitrator considers necessary or desirable in connection with any matter referred to the arbitrator for decision, to decide the matters submitted to them according to what the arbitrator considers just and equitable in all the circumstances, having regard to the purpose of this Agreement and make such award, as the arbitrator in his or her discretion may deem fit and appropriate.
     5. The arbitration shall be conducted in the English language in the metropolitan municipality closest to the Facility/Facilities, in South Africa.
     6. The arbitration shall be held as expeditiously as possible after such arbitration is demanded, provided that if a period of six months has lapsed from the date of the last step taken to the date of the subsequent step taken to finalise the arbitration, either party may proceed with the arbitration with the other party *in absentia* and the arbitrator can give a judgement in the absence of the party not participating.
     7. This clause is severable from the rest of this Agreement and shall therefore remain in effect even if this Agreement is terminated.
     8. The decision of the arbitrator shall be final and binding on the Parties hereto.

1. LIABILITY
   1. **Direct losses**
      1. Any claim for damages against any Party in terms of this Agreement, such damages shall be limited to proven Direct Losses only.
      2. 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.
      3. 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.
      4. 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.
   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.

1. THIRD PARTY INDEMNITY

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

1. CONFIDENTIALITY AND PROTECTION OF PERSONAL INFORMATION
   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.

* 1. **Exclusions to Confidential Information**

For the purposes of this clause 25 (*Confidentiality*), the term "Confidential Information" shall not include information which:

* + 1. constitutes Project Data;
    2. at the time of disclosure or at any time thereafter is in, or becomes part of, the public domain other than through a breach of this clause 25 (*Confidentiality and Protection of Personal Information*);
    3. the Party receiving the information can prove was already known to it, or was independently acquired or developed by it without being in breach of its obligations under this clause 25 (*Confidentiality)*;
    4. became available to the Party receiving the information from another source in a non-confidential manner otherwise than in breach of an obligation of confidentiality; or
    5. is published by, or the publication of which is required by, a Responsible Authority or any court.
  1. **Permitted disclosure of Confidential Information**

Notwithstanding the provisions of clause 25 (*Confidentiality and Protection of Personal Information*), the Confidential Information may be disclosed:

* + 1. by either Party to any Responsible Authority (where for the purposes of this clause 25.3 (*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:
    2. 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
    3. 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;
    4. by either Party as may be required by the regulations of any recognised securities exchange upon which the share capital of the Party (or any shareholder (direct or indirect) in the Party) is or is proposed to be from time to time listed or dealt in, and the Party making the disclosure shall, if reasonably practicable prior to making the disclosure, and in any event as soon as reasonably practicable thereafter, supply the other Party with a copy of such disclosure or statement and details of the persons to whom the Confidential Information is to be, or has been, disclosed;
    5. by either Party as may be necessary to comply with any obligation under any applicable Law;
    6. by the Buyer to the Distributor, as may be necessary to enable the Distributor to operate the System and carry out its obligations in relation thereto as a Reasonable and Prudent Operator (including in relation to the application by any person for connection to the System), provided that:
    7. only Confidential Information which is necessary for such purpose is disclosed by the Buyer to the Distributor; and
    8. the Buyer notifies the recipient at or about the time of such disclosure that the information is confidential and should not be disclosed by the recipient to third parties.
    9. 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;
    10. by the Buyer as may be necessary to the Department, the DFFE, the National Treasury of the Government, and the Department of Public Enterprises of the Government; or
    11. by either Party, if so agreed in writing by the Parties prior to the disclosure.

1. GOVERNING LAW AND JURISDICTION
   1. The validity, construction and performance of this Agreement shall be governed by the laws of South Africa.
   2. The Parties hereby submit to the jurisdiction of the High Court of South Africa (Gauteng Local Division, Johannesburg) for the purposes of any proceedings for urgent relief arising out of or in connection with this Agreement and for the purposes of enforcing any award made by an arbitrator under Clause 22.
2. NOTICES
   1. **Methods of delivery**

Unless otherwise provided in this Agreement, all notices, requests, statements and other communications required or permitted between the Parties by this Agreement shall be in writing and either hand-delivered or sent by pre-paid registered post, email or to the address or email within South Africa of the Party concerned set out in Clause 27.2 (*Addresses*) or such other address or number as contemplated in Clause 27.4 (*Change in address*). No communication shall be effective until received by the addressee and a communication shall be deemed to have been received:

* + 1. if delivered by hand during ordinary business hours, to its physical address in Clause 27.2 (*Addresses*), when so delivered;
    2. if delivered by pre-paid registered post, to its postal address in Clause 27.2 (*Addresses*), seven (7) Business Days after posting, subject to proof of posting; and
    3. if delivered by email, upon receipt by the sender of a return email from the recipient in which the sender’s communication is acknowledged (it being the responsibility of the sender to obtain such acknowledgement).
  1. **Addresses**

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

* + 1. The Seller:

Postal Address: **[INSERT]**

Physical Address: **[INSERT]**

Email address: **[INSERT]**

Tel No.: **[INSERT]**

Attention: **[INSERT]**

* + 1. The Buyer: [*Replace with DET details where needed]*

Postal Address: **[INSERT]**

Physical Address: **[INSERT]**

Email address: **[INSERT]**

Tel No.: **[INSERT]**

Attention: **[INSERT]**

* 1. ***Domicilium citandi et executandi***

The Parties choose the physical address set out opposite their names in Clause 27.2 (*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*.

* 1. **Change in address**

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

1. REPRESENTATIVES
   1. **Buyer's Representative**
      1. The Buyer shall appoint from the Signature Date until the Expiry Date an individual (the “Buyer’s Representative”) whose identity shall be as notified to the Seller to act as the Buyer’s duly authorised representative for all purposes connected with this Agreement under Schedule 4 *(Representatives)*. The Buyer shall notify the Seller in writing forthwith upon the replacement at any time of the Buyer’s Representative and such replacement shall not be effective until notice has been given.
      2. The Buyer’s Representative may delegate any of his functions from time to time to a person or persons the identity of whom shall be notified to the Seller and references in this Agreement to the Buyer’s Representative shall be construed to include such persons.
      3. Any notice, instruction or information required to be given by or made to the Buyer shall only be valid if given by or delivered to the Buyer’s Representative.
   2. **Seller's Representative**
      1. The Seller shall appoint from the Signature Date until the Expiry Date, an individual (the “Seller’s Representative”) whose identity shall be notified to the Buyer to act as the Seller’s duly authorized representative for all purposes connected with this Agreement under Schedule 4 *(Representatives)*. The Seller shall notify the Buyer in writing forthwith upon the replacement at any time of the Seller’s Representative and such replacement shall not be effective until such notice has been given.
      2. Any notice, instruction or information required to be given by or made to the Seller shall only be valid if given by or delivered to the Seller’s Representative.
2. MISCELLANEOUS
   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.

* 1. **No amendment or variation**

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

* 1. **Waiver**
     1. The failure of any Party to exercise any contractual right or remedy shall not constitute a waiver thereof.
     2. No waiver shall be effective unless it is communicated in writing to the other Party.
     3. No waiver of any right or remedy arising from a breach of contract shall constitute a waiver of any right or remedy arising from any other breach of this Agreement.
  2. **Third Parties**

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

* 1. **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.

* 1. **Entire Agreement**
     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.
     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.
  2. **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.

* 1. **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.

* 1. **Costs**

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

* 1. **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.

SIGNED for and on behalf of **[INSERT]** by the signatory below who warrants that s/he is duly authorised.

Date: \_ \_ \_ \_ \_ \_ \_ \_ \_ \_ \_ \_ \_ \_ \_ \_ \_ \_ \_ \_ \_

\_ \_ \_ \_ \_ \_ \_ \_ \_ \_ \_ \_ \_ \_ \_ \_ \_ \_ \_ \_ \_ \_\_\_\_

**Name:** **[INSERT]**

**Title:** **[INSERT]**

DULY AUTHORISED

As Witnesses:

1. \_ \_ \_ \_ \_ \_ \_ \_ \_ \_ \_ \_ \_ \_ \_ \_ \_ \_
2. \_ \_ \_ \_ \_ \_ \_ \_ \_ \_ \_ \_ \_ \_ \_ \_ \_ \_

SIGNED for and on behalf of **ESKOM** **HOLDINGS SOC LTD** by the signatory below who warrants that s/he is duly authorised.

Date: \_ \_ \_ \_ \_ \_ \_ \_ \_ \_ \_ \_ \_ \_ \_ \_ \_ \_

\_ \_ \_ \_ \_ \_ \_ \_ \_ \_ \_ \_ \_ \_ \_ \_ \_ \_ \_ \_ \_ \_

**Name: XXXXXXXXXXXXXXX**

**Title: XXXXXXX Distribution**

DULY AUTHORISED

As Witnesses:

1. \_ \_ \_ \_ \_ \_ \_ \_ \_ \_ \_ \_ \_ \_ \_ \_ \_ \_
2. \_ \_ \_ \_ \_ \_ \_ \_ \_ \_ \_ \_ \_ \_ \_ \_ \_ \_

SCHEDULE 1

DETAILS OF THE PROJECT AND FACILITY/FACILITIES

Part 1

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Generating Facility/Facilities** | | | | | |
| Preferred name of Facility | **[INSERT]** | **[INSERT]** | | **[INSERT]** | **[INSERT]** |
| Gross Capacity | **[INSERT]** | **[INSERT]** | | **[INSERT]** | **[INSERT]** |
| Net Capacity | **[INSERT]** | **[INSERT]** | | **[INSERT]** | **[INSERT]** |
| Baseline Volume | **[INSERT]** | **[INSERT]** | | **[INSERT]** | **[INSERT]** |
| Generating Technology | **[INSERT]** | **[INSERT]** | | **[INSERT]** | **[INSERT]** |
| Type of Fuel | **[INSERT]** | **[INSERT]** | | **[INSERT]** | **[INSERT]** |
| Location | **[INSERT]** | **[INSERT]** | | **[INSERT]** | **[INSERT]** |
| GPS Coordinates | **[INSERT]** | **[INSERT]** | | **[INSERT]** | **[INSERT]** |
| Network to which the Generating Facility/Facilities will be connected and nearest substation | **[INSERT]** | **[INSERT]** | | **[INSERT]** | **[INSERT]** |
| Maximum Export Capacity | **[INSERT]** | **[INSERT]** | | **[INSERT]** | **[INSERT]** |
| Name of licensed Electricity Supplier | **[INSERT]** | **[INSERT]** | | **[INSERT]** | **[INSERT]** |
| Electricity Account Number | **[INSERT]** | **[INSERT]** | | **[INSERT]** | **[INSERT]** |
| Delivery Point | **[INSERT]** | **[INSERT]** | | **[INSERT]** | **[INSERT]** |
| Maximum Contract Capacity | | |  | | |
| Degradation | | | Solar panels shall have a minimum yield degradation warranty of twenty-five years, with maximum warranted degradation being […]% in year one and […]% per annum thereafter | | |

The physical point where the commercial energy is to be delivered by the Seller to the Buyer as described in Annex 1 to Schedule 1 (*Details of Project and Facility/Facilities*) hereto (Single Line Diagram)

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Consumption Site(s)** | | | | |
| Location | **[INSERT]** | **[INSERT]** | **[INSERT]** | **[INSERT]** |
| GPS Coordinates | **[INSERT]** | **[INSERT]** | **[INSERT]** | **[INSERT]** |
| Network to which the Consumption Site will be connected and nearest substation | **[INSERT]** | **[INSERT]** | **[INSERT]** | **[INSERT]** |
| Name of licensed Electricity Supplier | **[INSERT]** | **[INSERT]** | **[INSERT]** | **[INSERT]** |
| Electricity Account Number | **[INSERT]** | **[INSERT]** | **[INSERT]** | **[INSERT]** |
| Distributor | **[INSERT]** | **[INSERT]** | **[INSERT]** | **[INSERT]** |
| Consumption Point | **[INSERT]** | **[INSERT]** | **[INSERT]** | **[INSERT]** |

The physical point from which the commercial energy is to be offset as described in Annex 1 to Schedule 1 (*Details of Project and Facility/Facilities*) hereto (Single Line Diagram)

SCHEDULE 1

Part 2

Single Line Diagram

***[Seller to provide a single line diagram of the Facility/Facilities, in high resolution, with the following clearly labelled (if necessary for clearer presentation, the diagram may be broken down and presented on several pages):***

* ***Ownership boundaries;***
* ***operational boundaries;***
* ***Delivery Point or Consumption Point; and***
* ***Substation.***
* ***Metering Layout.*** 
  + [Seller to provide a detailed diagram of the layout of the Metering Installation, clearly indicating the main meter and if applicable the check meter.]

SCHEDULE 2

NOTICE OF COMMENCEMENT OF FACILITY/FACILITIES

***[****on the letterhead of the* ***Seller]***

***[****Date****]***

Eskom Holdings SOC Limited

Megawatt Park

Maxwell Drive

Sunninghill

South Africa

CC copy to Fax No.: +27 (86) 665 9108

Or

Email to:

Attention:

**Notice of Commencement of Facility/Facilities**

Dear Sir/Madam

We refer to the power purchase agreement (the "**PPA**") dated ***[●]*** the Agreement between Eskom Holdings SOC Limited (the "**Buyer**") and ourselves, ***[●]*** (the "**Seller**").

This notice ("**Notice**") is the Notice of Commencement of Facility/Facilities referred to in the above mentioned Agreement. Unless otherwise defined herein, capitalised terms used in this Notice shall have the meanings assigned to them in the above entered Agreement.

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

1. The Facility/Facilities is ready to commence commercial operation (“COD”) under the Agreement and to deliver Commercial Energy to the **Buyer**, and the Commercial Operation Date shall be ***[insert date and time]***.
2. We have obtained all of the Consents and licencing as required for the **Seller** to meet its obligations in terms of the Agreement, all of which remain in full force and effect, and we know of no reason why any such Consent may be withdrawn or terminated.
3. The Facility/Facilities is compliant with the Codes.
4. NERSA or the person nominated by NERSA for such purpose has issued to the Seller a notification of the Seller’s compliance with the Codes, and such notification is attached hereto.
5. The following exemption(s) have been granted by a Responsible Authority and confirmation of such exemption(s) are attached hereto: [Seller to list exemptions below]
6. Eskom has provided written confirmation certifying that the Facility/Facilities may be connected to the System for the purposes of delivering Commercial Energy, and such confirmation is attached hereto.
7. We have concluded the necessary agreements required for the Seller to fulfil its obligations under the PPA and as may be required at COD in compliance with all Laws (including the arrangements pertaining to connection and use of the System) which shall remain in full force and effect, valid and binding for the duration of the PPA.
8. The Metering Installation has been procured, installed, tested and successfully commissioned in accordance with the NERSA’s minimum testing standards, the Codes as well as all metering requirements as set out in the PPA, the Electricity Supply Agreement and the System Agreements, and such confirmation from Eskom is attached hereto.

Yours faithfully,

***[*NAME OF SELLER*]***

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Representative of the Seller**

SCHEDULE 3

FINANCIAL DETAILS

1. **COMMERCIAL ENERGY RATE**

|  |  |  |
| --- | --- | --- |
| **Table 1** | | |
| 1.1 | Commercial Energy Rate | **[●]** [insert rate] |

1. **GUARANTEES**

|  |  |
| --- | --- |
| **GUARANTEES** | **Amount** |
| Security Amount | R 0,00 |

*[****Drafting note:*** *Guarantee amounts to include VAT]*

1. **COMMERCIAL ENERGY RATE ESCALATION**

The Commercial Energy Rate Escalation Date is 1 April, with the first escalation taking place on 1 April [2026].

The escalated Commercial Energy Rate shall be calculated as follows:

Escalation % = (E x CPI%) + (N x NERSA%)

Where:

* E = Proportion of Energy component (88%)
* N = Proportion of Network component (12%)
* CPI% = CPI increase percentage
* NERSA% = NERSA increase percentage

Note:

1. Consumer Price Index (CPI%) shall, for the purposes of this Agreement, mean the weighted average CPI, as published by Statistics South Africa, referred to as the Headline - CPI. The CPI used for the escalation to the energy portion will be in respect of the preceding calendar year.
2. NERSA % shall, for the purposes of this Agreement, mean the average percentage increase that NERSA has approved for Non-Local Authority Supplies to be implemented in April of each year.

**SCHEDULE 4**

**REPRESENTATIVES**

1. **BUYER’S** **REPRESENTATIVE IN TERMS OF THIS AGREEMENT:**

Name:

Tel (w):

Tel (c):

Fax:

Email:

A copy to be sent to the following representatives:

**A.1** Buyer’s contact details for forecasting:

Name:

Tel (w):

Tel (c):

Fax:

E-mail:

**A.2** Buyer’s operational contact details:

Name: Tel (w):

Tel (c):

Fax:

E-mail:

1. **SELLER’S REPRESENTATIVE IN TERMS OF THIS AGREEMENT:**

Name:

Tel (w):

Tel (c):

Fax:

E-Mail:

**B.1** Seller’s emergency contact details:

Name:

Tel (w):

Tel (c):

Fax:

E-Mail:

**SCHEDULE 5**

**GENERATION PROFILES**

**A. CONTRACTED GENERATION PROFILE**

Forecast of Contracted Generation Profile (MWh / month) from Effective Date to Expiry Date

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Month | Expected energy (MWh) | Month | Expected energy (MWh) | Month | Expected energy (MWh) |
| Month 1 |  | Month 13 |  | Month 25 |  |
| Month 2 |  | Month 14 |  | Month 26 |  |
| Month 3 |  | Month 15 |  | Month 27 |  |
| Month 4 |  | Month 16 |  | Month 28 |  |
| Month 5 |  | Month 17 |  | Month 29 |  |
| Month 6 |  | Month 18 |  | Month 30 |  |
| Month 7 |  | Month 19 |  | Month 31 |  |
| Month 8 |  | Month 20 |  | Month 32 |  |
| Month 9 |  | Month 21 |  | Month 33 |  |
| Month 10 |  | Month 22 |  | Month 34 |  |
| Month 11 |  | Month 23 |  | Month 35 |  |
| Month 12 |  | Month 24 |  | Month 36 |  |

**B. FORECASTINGFORMAT**

**Daily Generation Forecast Template**

|  |  |
| --- | --- |
| **DATE:** | |
| **TIME**  **(hour beginning)** | **CAPACITY** |
| **00:00** |  |
| **01:00** |  |
| **02:00** |  |
| **03:00** |  |
| **03:00** |  |
| **04:00** |  |
| **05:00** |  |
| **06:00** |  |
| **07:00** |  |
| **08:00** |  |
| **09:00** |  |
| **10:00** |  |
| **11:00** |  |
| **12:00** |  |
| **13:00** |  |
| **14:00** |  |
| **15:00** |  |
| **16:00** |  |
| **17:00** |  |
| **18:00** |  |
| **19:00** |  |
| **20:00** |  |
| **21:00** |  |
| **22:00** |  |
| **23:00** |  |

**SCHEDULE 6**

**FORM OF BANK GUARANTEE**

**[LETTERHEAD OF BANK/FINANCIAL INSTITUTION]**

**ELECTRICITY ACCOUNT GUARANTEE**

To: **ESKOM HOLDINGS SOC LTD**

**LETTER OF GUARANTEE NUMBER \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ FOR THE SUM OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (THE ‘GUARANTEED AMOUNT’) ISSUED ON BEHALF OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [*INSERT FULL NAME AND REGISTRATION NUMBER OF CUSTOMER*] (HEREIN REFERRED TO AS THE ‘CUSTOMER’)**

**Eskom Reference / Account Number \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

1. We, the undersigned \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **[*INSERT FULL NAME*]** and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **[*INSERT FULL NAME*]** in our respective capacities as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **[*INSERT CAPACITY*]** and \_\_\_\_\_\_\_\_\_\_\_ **[*INSERT CAPACITY*]** of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, registration number \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **[*INSERT FULL NAME AND REGISTRATION NUMBER OF BANK/FINANCIAL INSTITUTION*]** (“the Bank/Financial Institution”), duly authorised thereto, herewith provide the Bank’s/Financial Institution’s undertaking to pay Eskom Holdings SOC Ltd, registration number 2002/015527/30 (“Eskom”) an amount not exceeding the Guaranteed Amount on receipt of a written demand/s for payment from Eskom stating that the amount of the demand is due and payable by the Customer to Eskom in terms of the Power Purchase Agreement concluded or to be concluded between Eskom and the Customer (the ‘Agreement’).
2. The Bank’s/Financial Institution’s liability under this guarantee is principal in nature and is not accessory or subject to any other agreement or the Agreement.
3. The Bank’s/Financial Institution’s liability will not be reduced, limited or affected by any alteration of the terms of the Agreement, or any other agreement made between the Customer and Eskom, or the Customer going into business rescue, or adopting or implementing any business rescue plan as contemplated in chapter 6 of the Companies Act 71 of 2008.
4. The Bank/Financial Institution will pay on written demand from time to time, made by Eskom, which demand must be signed by an Eskom official who is authorised and delegated to sign it. The demand must state the amount due and payable and the Bank/Financial Institution will not determine the validity of the demand, the correctness of the amount demanded, or become party to any claim or dispute of any nature which any party may allege. The Bank/Financial Institution will not be entitled or obliged to verify the authority and/or delegation of the Eskom official.
5. The guarantee is neither negotiable nor transferable, is restricted to the payment of a sum of money only and is limited to payment in aggregate of the Guaranteed Amount.
6. The Bank/Financial Institution reserves the right to withdraw from this guarantee on giving 3 (three) calendar months’ written notice (“the Notice Period”) to Eskom of its intention to do so.
7. This guarantee will thus expire upon expiry of the Notice Period and will then be of no further effect, whether returned to the Bank/Financial Institution or not. Any claim which arises after the expiry of the Notice Period will be invalid, unenforceable and will not be entertained by the Bank/Financial Institution. However, any claims which arose or amounts which became due under this guarantee while valid, including during the Notice Period, may still be submitted for a period of 3 (three) calendar months after expiry of the Notice Period.
8. The cancellation, or any change to the terms and/or conditions, of this guarantee, must first be agreed to in writing by Eskom, the Customer and the Bank/Financial Institution.
9. If the Bank/Financial Institution should exercise its option to withdraw from the guarantee per paragraph 6 above, this will not be viewed as a cancellation or change of the guarantee for the purposes of paragraph 8.
10. The Guaranteed Amount will be paid free of exchange, set-off, deduction or counterclaim or any withholding, in immediately available funds, into a bank account nominated by Eskom in writing. This guarantee will be of no further effect once the aggregate payments made under this guarantee are equal to the Guaranteed Amount.
11. The original guarantee, if still available, must be returned to the Bank/Financial Institution once it is of no further effect.
12. Eskom will be able to submit claims on a copy of this guarantee if the original cannot be found, if it provides to the Bank/Financial Institution, to the Bank’s/Financial Institution’s satisfaction:
    1. an indemnity, validly issued in terms of Eskom’s corporate governance procedures prevailing at the time, the Public Finance Management Act 1 of 1999 (if applicable), or any other applicable legislation prevailing at the time, signed by an Eskom official who is authorised and delegated to sign it, limited specifically and only as to any payment made on the lost original guarantee, and not exceeding an amount equal to the Guaranteed Amount; and
    2. an affidavit, signed by an Eskom official who is authorised and delegated to depose to such an affidavit, that the original guarantee cannot be found. The Bank/Financial Institution will not be entitled or obliged to verify the authority and/or delegation of the Eskom official.
13. Eskom chooses the following addresses for communication in connection with this guarantee:

Physical Address: Megawatt Park

Maxwell Drive

Sunninghill Ext. 3

2199

Sandton

Postal Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

e-Mail address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

To be marked for the attention of: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **[*Insert only POST DESCRIPTION of Recipient*]**.

1. The Bank/Financial Institution chooses the following addresses for all purposes in connection with this guarantee:

Physical Address:

Postal Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

e-Mail address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

To be marked for the attention of: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **[*Insert only POST DESCRIPTION of Recipient*]**.

1. This guarantee will be governed by South African Law and is subject to the jurisdiction of South African Courts.
2. Where written and/or signed notification is required in terms of this guarantee, the terms “writing” and “signed” or their analogous forms, will be construed as excluding sections 12 and 13 of the Electronic Communication and Transaction Act 25 of 2002 or any replacement of amendment thereof, save that such notification, whatever its title, may be scanned after manual signature and then sent electronically.

Signed at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**FOR AND ON BEHALF OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [*INSERT FULL NAME AND REGISTRATION NUMBER OF BANK/FINANCIAL INSTITUTION*]**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

As witnesses:

1. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 2. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SCHEDULE 7**

**DELAY LIQUIDATED DAMAGES**

The delay liquidated damages shall be calculated by computing the difference between (i) the price paid by the Buyer for the Wholesale Electricity Pricing System (WEPS) tariff purchased from Eskom in the period of delay (including all ancillary and demand charges) and (ii) the price in terms of the Electricity Supply Agreement for the Net Energy Output which the Seller would have been supplying in the same period; minus (iii) the price (based on the Tariff) that would have been paid for the Net Energy Output which the Seller would otherwise have been supplying in the same period. The total amount of the delay liquidated damages incurred shall not exceed 10% of the EPC Cost.

**SCHEDULE 8**

**STANDARD FOR INTERCONNECTION OF EMBEDDED GENERATION**

Attached separately

1. Insert as agreed [↑](#footnote-ref-2)
2. To be confirmed [↑](#footnote-ref-3)
3. To be confirmed [↑](#footnote-ref-4)
4. Amend as applicable [↑](#footnote-ref-5)
5. Amend as applicable [↑](#footnote-ref-6)
6. To confirm [↑](#footnote-ref-7)
7. Eskom to consider and advise [↑](#footnote-ref-8)
8. Amend as applicable [↑](#footnote-ref-9)
9. Amend as applicable [↑](#footnote-ref-10)