

BIDDERS ARE NOT ALLOWED TO MARK UP THIS DOCUMENT – THIS PRO-FORMA PPA IS NON-NEGOTIABLE

POWER PURCHASE AGREEMENT (PPA)

Between

“The SELLER”

as defined herein

and

City Power Johannesburg (SOC) Ltd “The BUYER”

CONTRACT NUMBER: XXX_____

PREAMBLE:

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

(1) [INSERT **SELLER 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 "**Seller**") herein represented by [INSERT] in his capacity as [INSERT]; and

(2) **CITY POWER JOHANNESBURG (SOC) LTD**, a limited liability company (Registration No. **2000/030051/30**) incorporated under the laws of South Africa and having its principal place of business at 40 Heronmere Road, Reuven, Johannesburg (the "**Buyer**") herein represented by [INSERT] in his capacity as [INSERT].

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

INTRODUCTION

(A) The **Buyer** issued an invitation to bid (the "**Bid**") inviting proposals from certain qualifying bidders for the provision of existing incremental short term Energy to the **Buyer** in accordance with the terms hereof.

(B) In response to the **Bid**, the **Seller** has bid to make available Energy to the **Buyer** and the **Buyer** has agreed to purchase from the **Seller** Commercial Energy on the terms and conditions contained herein.

(C) The **Seller** has been, or expects shortly to be granted, and currently holds, or expects shortly to hold, an electricity generation licence permitting it to operate, generate and sell energy from a _____ power generation facility located _____.

Contract No. **XXX** _____

Power Purchase Agreement (PPA) between City Power and [INSERT]

- (D) To the extent applicable, the **Buyer** has entered into several existing electricity supply agreements with the **Seller** (with the **Seller** as customer), herein collectively referred to as “the **Main Agreement**”, in terms of which the **Buyer** supplies electricity to the **Seller**.
- (E) 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.
- (F) The **Seller** wishes to sell and the **Buyer** wishes to purchase metered deliveries of the Commercial Energy (as defined below) generated by the Facility on the terms and conditions contained in this **Agreement** (“this **Agreement**”). Accordingly, the **Parties** intend to record their agreement as to the terms and conditions governing the sale and purchase of Commercial Energy.

THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

“**Affiliate(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;

“**Assign**” shall have the meaning given to it in **clause 14** (*Assignment*) and the term “**Assignment**” shall be construed accordingly;

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

“**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;

“**Availability**” means at any time the capability of the Facility to make electrical Energy available at the Delivery Point(s);

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

- (a) the first Billing Period shall commence on the Commencement 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;

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

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

“**Codes**” means, as applicable, any code in respect of electricity distribution or transmission as published by the NERSA from time to time;

“**Commercial Energy**” means the Net Energy Output; less Energy relating to the Own Generation Profile which shall not exceed the Contracted Capacity or the maximum contract value of this **Agreement** over the Term of this **Agreement** whichever is the lesser being R **[INSERT]** –**[INSERT]** only (excluding VAT) (“Maximum Contract Value”);

“**Commercial 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;

“**Commercial Energy Rate**” means the rate applicable to all Commercial Energy, being the price as adjusted with reference to time differentiation (Time of Use), seasonal differentiation and energy delivery point.

“**Commencement Date**” or “**CD**” means the date specified in the Notice of Commencement of Facility as being the date when the Seller will start exporting energy to the Buyer’s grid network in terms of **clause 4**;

“**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 to enable the Seller to exercise its rights and/or perform its obligations under this Agreement.

“**Contracted Capacity**” means such portion of the Net Capacity of the Facility as has been demarcated for the **Buyer** and shall be as stated in **Schedule 1**;

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

the first Contract Review Period shall commence on the Commencement Date, and shall end on the last day of the third Month following CD in which the first Contract Review Period commenced;

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

“Delivery Point(s)” means the physical point(s), situated on the high voltage side of the generator transformer(s) of the Facility, where the Facility connects to the System (whether or not such point(s) is /(are) situated on or off the Project Site), and where the Commercial Energy is to be delivered by the **Seller** to the **Buyer** as described in **Schedule 1** and for the purposes of this **Agreement** means the **PGC(s)**;

“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**;

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

“Due Date” has the meaning given to it in **clause 6.2** (*General principles as regards invoicing*);

“Effective Date” has the meaning ascribed to it in clause 2.

“End User Amendment Agreements” means a collective reference to amendment agreements required to be executed in respect of all electricity supply agreements between any suppliers of electricity (whether this is the **Buyer** in that capacity, a Distributor, municipality, a municipal entity or any other licensed electricity supplier) of the one part and end-

use customers or customers who are part of the supply chain that supplies electricity to end-use customers (in either case where these end-use customers provide full or partial load to the Facility) of the other part, in order to ensure that there is no over-recovery whatsoever by the **Seller** and/or any such customers as a result of any electricity supplied to these customers flowing, whether in whole or in part, from the Facility on terms satisfactory to the Buyer;

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

“**Expiry Date**” means **[INSERT]**;

“**Facility**” means the generation facility located at the Project Site from which the Contracted Capacity 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 Project and Facility*), together with all required interfaces to be constructed for the safe, efficient and timely operation of that facility, including all Facility Connection Works and, for the avoidance of doubt, excluding the Distribution/NTC Connection Works;

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

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

- (a) any fire, explosion, tempest, flood, drought, ionising radiation, riot and civil commotion;
- (b) any accidental loss or damage to the construction works and/or the Facility;
- (c) any blockade or embargo not attributable partially or wholly to the Seller or its employees or contractors or suppliers;

- (d) 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;
- (e) 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;
- (f) war, civil war, armed conflicts or terrorism;
- (g) nuclear contamination; or
- (h) chemical or biological contamination of the Facility and/or the Project Site from any of the events referred to above; but only to the extent that any act, event or circumstance including the circumstances set out above:
 - 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**;

“**Gross Capacity**” means the gross capacity of the Facility and shall be as stated in **Schedule 1**;

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

“**Last CD**” means a date **no later than 30 months after PPA signature date** as extended in accordance with the terms of this **Agreement** provided that any extension shall not endure beyond the Expiry Date;

“**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;

“**Metering Installation**” means an installation used to measure and record the delivery of the Commercial Energy at the **PGC(s)** comprising an electronic main meter and an electronic check meter, including all primary equipment, which installation shall have remote access capability enabling the **Buyer** to 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 and any additional requirements stipulated by the NERSA and/or the **Buyer** from time to time;

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

“**National Transmission Company**” or “**NTC**” means ESKOM SOC LTD acting through its Transmission Division;

“**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 the Facility, net of Energy consumed within the Facility as Auxiliary Consumption and shall be as stated in **Schedule 1**;

“**Net Energy Output**” means the Energy or cumulative Energy generated by the Facility post CD (expressed in kWh) delivered to the Delivery Point(s) on an hourly basis and metered in accordance with **clause 7**;

“**Notice of Commencement of Facility**” means the notice in the form of **Schedule 2** (*Notice of Commencement of Facility*) and that delivered by the **Seller** to the **Buyer** in terms of **clause 4** (*CD*);

“**Own Generation Profile**” means, as applicable, cumulatively the **Seller’s** forecast Energy generation measured in kWh on an hourly basis for one or more of the following purposes:

- Auxiliary Consumption;
- Captive use by the **Seller**;
- Sale of Energy, other than to the **Buyer** pursuant to this **Agreement**;
- Cumulatively the **Seller’s** forecast Energy generation measured in kWh on an hourly basis up to a baseline of **[INSERT] MW**. For the avoidance of doubt, Commercial Energy will be measured on an hourly basis.

“**Point of Generator Connection**” or “**PGC**” means the circuit-breaker and associated ancillary equipment (instrument transformers, protection,

isolators) that connects a generator to any electrical network and the point at which the Metering Installation is located;

“Price” means the Energy rate (expressed in Rand terms and Cents per kWh)

“**Project**” means the ownership or lease of the Project Site and the ownership, construction, operation and maintenance of the Facility;

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

“**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 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;

“**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, instrumentality or authority (in each case, whether national, provincial or municipal) or any court, each having jurisdiction over the matter in question, but excluding for all purposes the **Buyer**;

“**Scheduled CD**” means the date which corresponds to the stated Scheduled CD in **Schedule 1**, as extended in accordance with the terms of this **Agreement** provided that any extension shall not endure beyond the Expiry Date;

“**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 network for the conveyance of electrical energy to which a Facility will be connected, whether the national transmission system of the NTC which operates at a nominal voltage of above 132 kV, a distribution network of any Distributor which operates at a nominal voltage of 132 kV or less; or the **Seller’s** network;

“**System Agreement**” means the agreement entered into (or to be entered into) between the Distributor or the NTC and the **Seller** in connection with the use by the **Seller** of the System;

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

“**Termination Date**” means the Expiry Date or the date of the earlier termination of this **Agreement** in accordance with **clause 2 (Term)** or **clause 11 (Breach)**;

“**TOU**” means time of use;

“**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.

1.2 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**.

1.3 Abbreviations

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

A	Amperes
°C	Degrees Centigrade
m	Metres
s	Seconds
V	Volts
W	Watts

1.4 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).

1.5 Rounding

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

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

2. TERM

2.1 Subject to Clause 2.2 (Conditions Precedent), this Agreement shall be effective from the Effective Date until the earlier of:

2.1.1 its termination in accordance with the remaining provisions of the Agreement; or

2.1.2 the Expiry Date;

(such period, the "Term" of this Agreement)

2.2 Save for the provisions of this clause 2, Clause 1 (Definitions and Interpretation), Clause 11 (Breach), Clause 12 (General Seller Undertakings and Obligations), Clause 14 (Assignment), Clause 16 (Dispute Resolution), Clause 18 (Third Party Indemnity), Clause 19 (Confidentiality), Clause 20 (Governing Law and Jurisdiction), Clause 21 (Notices), Clause 22 (Warranties) and Clause 24 (Miscellaneous), which shall be of immediate force and effect, this Agreement is subject to the suspensive condition that the conditions precedent enumerated in Clause 2.3 and 2.4 have been unconditionally fulfilled in accordance with all the terms of clause 2 (being the "Effective Date")

2.3 The conditions precedent referred to in Clause 2.2 are:

2.3.1 The Seller shall ensure that all End User Amendment Agreements have been entered into, and shall be in full force

and effect, valid and binding for the duration of the Agreement and shall have provided the Buyer with certified true copies of all such End User Amendment Agreements;

2.3.2 the Seller shall have secured the issuance and grant of all Consents and shall have provided the Buyer with a certified true copy of the electricity generation licence (if applicable) and as relevant any amended conditions thereto permitting it to participate in the Agreement; and

2.3.3 the Seller shall have provided to the Buyer a certificate signed by a duly authorised officer of the Seller stating, in a form satisfactory to the Buyer (acting reasonably), that all the above conditions precedent have been satisfied.

2.4 Subject to 2.4.1, the Seller shall be responsible at its own expense for satisfying and procuring the satisfaction of the conditions precedent referred to in Clause 2.3 by no later than the PPA signature date.

2.4.1 On written request by the Seller, the Buyer in its sole discretion may extend the date in writing for the requirement on the Seller to satisfy and procure the satisfaction of the conditions precedent enumerated in Clause 2.3.

2.4.2 The suspensive condition referred to in clause 2.3 is not capable of fictional fulfilment and may not be waived by either Party.

2.5 If the Agreement does not become unconditional on or before the PPA signature date or such extended date in accordance with clause

2.4.1 then this Agreement, save for the provisions of this clause 2, Clause 1 (Definitions and Interpretation), Clause 11 (Breach), Clause 12 (General Seller Undertakings and Obligations), Clause 14 (Assignment), Clause 16 (Dispute Resolution), Clause 18 (Third Party Indemnity), Clause 19 (Confidentiality), Clause 20 (Governing Law and Jurisdiction), Clause 21 (Notices), Clause 22 (Warranties) and Clause 24 (Miscellaneous), shall fall away and no longer be of any force or effect,

and neither Party shall have any claim against the other arising from the non-fulfilment of the suspensive condition referred to in clause 2.

3. PROJECT SITE AND CONSTRUCTION

3.1 Project Site

The **Seller** shall obtain and maintain the peaceful use and possession of the Project Site and such associated rights as may be necessary for the purposes of undertaking and implementing the Project for the duration of the Term. The **Seller** shall acquire such other land and/or rights in respect of land as it requires in order to perform its obligations under this **Agreement** and all such land and rights shall be deemed to form part of the Project Site and shall be at the sole risk of the **Seller** and subject to applicable Laws. Details of the Project Site, including a single line diagram setting out the transmission/ distribution lines and substation, interconnection facility, and significant ancillary facilities including the facilities at the Delivery Point(s), is included in **Schedule 1 Part 2 (Single Line Diagram)**.

3.2 Risk and liability

The **Seller** shall be fully responsible for the suitability of the Project Site, for the conduct of the Project and for the condition of the Project Site, including but not limited to its climatic, hydrological, hydro-geological, ecological, environmental, geotechnical, geological, paleontological and archaeological conditions (including the discovery of any heritage resources as defined in the National Heritage Resources Act, 1999), the adequacy of the road and rail links to the Project Site and the availability of adequate supplies of utilities. The **Seller** shall assume all risks and liabilities associated with the Project Site, regardless of when or how arising and the **Seller** shall not be relieved from any of its obligations under this **Agreement** or be entitled to any extension of time or financial compensation by reason of the unsuitability of the Project Site for whatever reason.

3.3 Buyer's inspection rights

The **Buyer** shall have the right from time to time, on not less than forty-eight (48) hours' written notice, to designate not more than four (4) of the **Buyer's** representatives who shall be entitled to have access to the Project Site at reasonable times for the purposes of viewing the Facility and verifying the **Seller's** compliance with its obligations under this **Agreement**; provided that the **Buyer** shall ensure that its representatives shall comply with all Project Site health and safety rules, precautions and standards, and any other reasonable requirements of the **Seller** and its contractors, and shall not interfere with the construction or operation of the Facility.

Notwithstanding any review or inspection of, or recommendation in respect of, design, plan or report, concerning the Project on the part of the **Buyer** or its representatives, the **Seller** shall be solely responsible for all aspects of the activities connected to the Project. The **Seller** shall not be obliged to assume any obligation to implement or address any comments or recommendations of the **Buyer** arising from the **Buyer's** review or inspection as aforesaid, except that the **Seller** may (in its sole discretion and at its sole risk) take such comments and recommendations into consideration whether with or without incurring any additional costs or resultant delays in relation to the Project.

3.4 No use of electricity from the System

The **Parties** record and agree that this **Agreement** does not permit the supply of electrical energy to the **Seller** by the **Buyer** or from the System. The **Parties** record and agree that the connection of the Facility to the System for purposes of drawing electrical energy from the System for any purpose shall be pursuant to a separate agreement entered into between the **Seller** and the Distributor or the NTC as the case may be.

4. COMMENCEMENT DATE [CD]

- 4.1 The **Seller** shall use all reasonable endeavours to synchronise, connect and/or commission the Facility and to procure the issue of the Notice of

Contract No. XXX
Power Purchase Agreement (PPA) between City Power and **[INSERT]**

Commencement of Facility at its own cost and in accordance with this **Agreement**, all relevant Laws, the Codes, the System Agreement and the standards of a Reasonable and Prudent Operator, so as to achieve the CD by the SCD and no later than the Last CD.

- 4.2 The **Seller** shall give the **Buyer** its written Notice of Commencement of Facility prior to the CD subject to the stipulated CD in such Notice of Commencement of Facility not being a date before the SCD.
- 4.3 If the CD is not achieved by the Last CD, then the Commercial Operation Date shall not have occurred and the **Buyer** shall be entitled to terminate this **Agreement** on written notice to the **Seller** which notice will have the effect of terminating this **Agreement** with immediate effect.
- 4.4 If the Facility has not reached its CD operation in accordance with the terms of this **Agreement** by the Scheduled CD the Maximum Contract Value shall at the **Buyer's** discretion be proportionately reduced equal to each day of delay for the Term of this **Agreement**. The amount to be deducted in terms of this **clause 4.4** from remaining Maximum Contract Value will be based on the accepted Energy rates relative to the TOU Periods weighed against that portion of the Energy per the Contracted Generation Profile that was not produced in the delay period (i.e. the period from the Scheduled CD to CD).

5. SALE OF ENERGY

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

- 5.1 the **Seller** shall generate and sell all the Commercial Energy to the **Buyer**, as per the Seller's generation schedule at the Delivery Point(s), and subject to the Codes and the standards of a Reasonable and Prudent Operator;
- 5.2 the **Buyer** shall pay the Commercial Energy Payment for the Commercial Energy delivered by the **Seller** to the Delivery Point(s); and title in, and risk of loss of, all Commercial Energy sold to the **Buyer** in accordance with **clause 5.1**, shall pass to the **Buyer** at the Delivery Point(s).
- 5.3 The **Seller** shall not make available any part of the Contracted Capacity to, or sell any relatable Energy to, any person other than the **Buyer** without the **Buyer's** prior written consent.

6. INVOICING

6.1 Content of Invoices

- 6.1.1 The **Seller** shall, within two (2) Business Days of the end of a Billing Period, retrieve the metering data and furnish same to the **Buyer** which the **Buyer** shall confirm in a report to the **Seller** and which the **Seller** shall thereafter incorporate into a tax Invoice for payment of the Commercial Energy pursuant to this **Agreement**. The Invoice shall specify:
- 6.1.1.1 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
- 6.1.1.2 any amounts owed by the **Seller** to the **Buyer** (or vice versa).
- 6.1.2 The **Seller** shall prepare the Invoice for the Billing Period based on the billing data obtained by it from the Metering Installation(s) for that Billing Period.

6.2 General principles as regards invoicing

Contract No. **XXX** _____
Power Purchase Agreement (PPA) between City Power and **[INSERT]**

6.2.1 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.

- 6.2.2** The **Party** who received the Invoice shall pay to the other **Party** (who issued the Invoice) the amount of each Invoice within thirty (30) Days of receipt of such Invoice (the "**Due Date**").
- 6.2.3** All payments due by either **Party** to the other under this **Agreement** shall be made:
- 6.2.3.1** in Rand in immediately available funds to such bank account in South Africa as the recipient **Party** shall from time to time nominate; and
- 6.2.3.2** subject to **clause 13 (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**.
- 6.2.4** If a manifest error is however evident, the **Buyer** shall pay an amount equal to the average of the accounts rendered for the preceding Month, or otherwise as agreed to by the **Parties**.
- 6.2.5** 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.
- 6.2.6** 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**.

6.3 Billing disputes

- 6.3.1** A **Party** shall notify the other **Party** in writing if it disputes (in good faith) an Invoice (including the data or records on which the dispute is based) before the Due Date for payment thereof, which notice shall specify the amount in dispute, and provide appropriate details of the basis of the dispute. The disputing **Party** shall pay the undisputed portion of the Invoice on the Due Date.

- 6.3.2 The **Parties** will use their reasonable endeavours to resolve the dispute as soon as practicable, and in any event within thirty (30) days of the notice of the dispute served pursuant to **clause 6.3.1**. 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 7 (Metering)**.
- 6.3.3 If it is agreed or determined (including as a result of a test of the Metering Installation(s) pursuant to **clause 7 (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.

7. METERING

- 7.1 The Metering Installation as installed by the **Seller** at its sole cost, at the Delivery Point(s), shall be the Metering Installation(s) for the purposes of this **Agreement**.
- 7.2 The purpose of the Metering Installation shall be to measure the Commercial Energy delivered by the **Seller** at the Delivery Point pursuant to this **Agreement**.
- 7.3 The **Buyer** may at its sole cost procure, install, test, commission, operate and maintain check metering installation(s) at the Delivery Point(s).
- 7.4 The **Seller** shall enable the process for the **Buyer** to install, test, commission, operate and maintain the check metering installation(s) at the Delivery Point(s).
- 7.5 The **Buyer** shall have full access to inspect all metering equipment installed for the purposes of this **Agreement**. In this regard,

- 7.5.1 The Seller shall provide meter configuration details including the remote access information for site and installation verification purposes;
- 7.5.2 If the Seller 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 access to the Metering Installation. The Buyer reserves its right to contest any exemption granted; and
- 7.5.3 The Seller shall provide commissioning and latest maintenance reports for the Metering Installation at the request of the Buyer.
- 7.6 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. 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.
- 7.7 The **Seller** shall be responsible for interrogating and retrieving data from the Metering Installation(s) for invoicing purposes.
- 7.8 The Metering Installation(s) shall be tested by the **Seller** as often as may be necessary but in any event within 30 (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.
- 7.9 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.

7.10 The **Seller** shall not, interfere in any manner whatsoever with the proper functioning of the Metering Installation(s) save in the course of an inspection, testing, maintenance or agreed adjustment in the presence of duly authorised representatives of both **Parties**.

7.11 Neither **Party** shall re-locate the Metering Installation(s) without the prior written approval of the other **Party**.

8. GENERATION FORECASTING AND DECLARATION OF PLANT AVAILABILITY

8.1 Daily Generation Forecast

8.1.1 The **Seller** shall provide the **Buyer** in writing for each day during this **Agreement**, in the format attached hereto as **Schedule 5 Part 3 (Daily)**, by no later than 09:00 am on the preceding day, its forecast level of generation of the Commercial Energy for each hour (starting at 00:00 and ending at 24:00 on the hour every hour) in the day.

8.1.2 In the event that the **Seller** fails to provide its forecast for any day, then the last daily forecast provided by the **Seller** in accordance with **clause 8.1.1** shall be deemed to be the daily forecast for such day.

8.2 Weekly Generation Forecast

8.2.1 The **Seller** shall provide the **Buyer** in writing for each Week during this **Agreement**, in the format attached hereto as **Schedule 5 Part 3 (Weekly)**, by no later than 09:00 am on the preceding Friday, its forecast level of generation of the Commercial Energy for each hour (starting at 00:00 on the Monday and ending at 24:00 on the Sunday) in the Week.

8.2.2 In the event that the **Seller** fails to provide its forecast for any Week, then the last weekly forecast provided by the **Seller** in accordance with **clause 8.2.1** shall be deemed to be the weekly forecast for such Week.

8.3 The **Seller** and the **Buyer** agree that respectively the operational and emergency contact personnel for the purposes of this **Agreement** for any forecasting, demand or supply and other operational issues will be the representatives set out in **Schedule 4** hereto.

9. UTILITIES AND CONSUMABLES

- 9.1 At all times during the Term, the **Seller** shall be responsible for securing all supplies of electricity, water, sanitation, telecommunications, waste disposal services and all other utilities required for the construction, maintenance and operation of the Project.
- 9.2 The **Seller** shall be solely responsible for obtaining, stockpiling (if applicable) and transporting all supplies of consumables necessary to comply with its obligations under this **Agreement**.

10. FORCE MAJEURE

- 10.1 Subject to **clause 10.2.2**, the **Party** claiming relief shall be relieved from liability under this **Agreement** to the extent that, by reason of the Force Majeure event, it is not able to perform all or a material part of its obligations under this **Agreement**.
- 10.2 Where a **Party** is (or claims to be) affected (“the Affected **Party**”) by an event of Force Majeure:
- 10.2.1 it shall take all reasonable steps to mitigate the consequences of such an event upon the performance of its obligations under this **Agreement** and to resume performance of its obligations affected by the event of Force Majeure as soon as practicable, and shall use all reasonable endeavours to remedy its failure to perform; and
- 10.2.2** it shall not be relieved from liability under this **Agreement** to the extent that it is not able to perform, or has not in fact performed, its obligations under this **Agreement** due to its failure to comply with its obligations under **clause 10.2.1**
- 10.3 The **Party** claiming relief shall serve written notice on the other **Party** within five (5) Business Days of it becoming aware of the relevant event of Force Majeure. Such initial notice shall give sufficient details to identify the particular event claimed to be an event of Force Majeure.

- 10.4 A subsequent written notice shall be served by the **Party** claiming relief on the other **Party** within a further fifteen (15) Business Days which shall contain such relevant information relating to the failure to perform (or delay in performing) as is available, including (without limitation) the effect of the event of Force Majeure on the ability of the **Party** to perform, the action being taken in accordance with **clause 10.2.1**, the date of the occurrence of the event of Force Majeure and an estimate of the period of time required to overcome it (and/or its effects).
- 10.5 The **Party** claiming relief shall notify the other as soon as the consequences of the event of Force Majeure have ceased and when performance of its affected obligations can be resumed.
- 10.6 If, following the issue of any notice referred to in **clause 10.4**, the **Party** claiming relief receives or becomes aware of any further information relating to the event of Force Majeure (and/or any failure to perform), it shall submit such further information to the other **Party** as soon as reasonably possible.
- 10.7 The **Party** claiming relief shall have the burden of proving both the existence of any Force Majeure event and the effect (both as to nature and extent) which any such Force Majeure event has on its performance in terms of this **Agreement**.
- 10.8 If the Affected **Party's** performance of all or a material part of its obligations under this **Agreement** is prevented, hindered or delayed by a Force Majeure event occurring prior to the CD, then, provided that the Affected **Party** has complied with the requirements of this **clause 10**, the time limits for the performance of those obligations shall be extended, and the scheduled dates for the affected milestones correspondingly amended, by a period equal to the period by which its performance is prevented, hindered or delayed by such Force Majeure event, but only to the extent that any extension period shall not have the effect of extending the Term of this **Agreement** beyond the Expiry Date, in which event, this **Agreement** will be deemed to be terminated with effect from the Expiry Date.

10.9 If the Affected **Party's** performance of all or a material part of its obligations under this **Agreement** is prevented, hindered or delayed by Force Majeure occurring after the CD, then, provided that the Affected **Party** has complied with the requirements of this **clause 10**, it shall not be liable for any failure to perform an obligation under this **Agreement** as a consequence of such event.

10.10 If the event of Force Majeure subsists for more than 90 (ninety) consecutive Days, the non-Affected **Party** shall have the right to terminate this **Agreement** after having given the other **Party** fourteen (14) days written notice, or alternatively the **Buyer** (to the extent the Affected **Party** is the **Seller**) may on fourteen (14) days written notice reduce the Maximum Contract Value for the remaining Term of this **Agreement**. The amount to be deducted in terms of this **clause 10.10** from remaining Maximum Contract Value will be based on the accepted Energy rates relative to the TOU Periods weighed against that portion of the Energy per the Contracted Generation Profile that was not produced in the period of the Force Majeure event.

11. BREACH

If any **Party** should breach any of the provisions of this **Agreement** and fail to remedy such breach within 7 (seven) Business Days from date of a written notice to do so, then the **Party** not in breach shall be entitled to invoke all remedies available to it in law including, but not limited to, termination of this **Agreement**, the institution of urgent proceedings as well as any other way of relief appropriate under the circumstances, in any court of competent jurisdiction, in the event of breach or threatened breach of this **Agreement** and/or an action for damages.

12. GENERAL SELLER UNDERTAKINGS AND OBLIGATIONS

12.1 All End User Amendment Agreements shall have been entered into, and shall be in full force and effect, valid and binding for the duration of this **Agreement**. The Seller shall procure that any future electricity supply

agreements will contain a provision that will enable the electricity supplier to invoice the end-use customer with reference to the metered consumption of Energy from the Facility as well as the electricity supply point. (Corresponding amendments may also be required upstream between the electricity supplier and its suppliers).

12.2 The Seller will be responsible for the decommissioning of the Facility if applicable in compliance with the requirements of its environmental licence, Consents and the Law.

12.3 The System Agreements and any agreements required for the Construction, Operation and Maintenance of the Facility 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 **CD** and thereafter for the duration of this **Agreement**.

12.4 The **Seller** shall have secured the issuance and grant of all Consents required to allow the **Seller** to fulfil its obligations in terms of this **Agreement**.

12.5 Accordingly, as between the **Parties** and save as otherwise expressly provided for in this **Agreement**, at all times during the Term, the **Seller** shall exercise its rights and perform all of its obligations as provided for in this **Agreement**, including to the extent applicable the construction, operation and maintenance of the Facility, at its sole cost and risk and in compliance with the requirements of:

12.5.1 applicable Laws;

12.5.2 the Codes;

12.5.3 the System Agreements;

12.5.4 the Consents;

12.5.5 the terms and conditions of this **Agreement**;

12.5.6 the standards of a Reasonable and Prudent Operator; and

12.5.7 relevant manufacturers' guidelines and instructions.

12.6 In establishing the Own Generation Profile the Seller has fully considered against the Capacity of the Facility any City Power or other third party programmes; this includes without limitation, any participation in other power purchase arrangements, demand side management initiatives and third party or own use. The Seller will not receive additional benefit for the same energy by participating in the Agreement; and

12.7 A valid electricity supply agreement (where applicable) has been concluded with the Seller's electricity supplier for electricity consumed by the Seller and shall remain in full force and effect, valid and binding for the duration of the Agreement.

13. SET-OFF

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

14. ASSIGNMENT

14.1 Save as provided in **clause 14.2**, 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**.

14.2 Notwithstanding **14.1**, the **Buyer** shall Assign all or some of its rights and obligations under this **Agreement**

14.2.1 To an Affiliate without the prior consent of the **Seller**; or

14.2.2 To a third party as part of and pursuant to:

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

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

provided that, in each case, such dissolution, restructuring, amalgamation, reorganisation, analogous event or transfer is at the instruction of the Government of the Republic of South Africa and/or the NERSA and/or any other Responsible Authority, or is required to give effect to any mandatory requirement of Law.

15. CONTRACTORS

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

16. DISPUTE RESOLUTION

16.1 Referable Disputes

The provisions of this **clause 16** (*Dispute Resolution*) shall apply to any dispute arising in relation to or in connection with any aspect of this **Agreement** between the **Parties**.

16.2 Internal Referral

- 16.2.1 If a dispute arises in relation to any aspect of this **Agreement**, the **Parties** shall attempt in good faith to come to an agreement in relation to the disputed matter, in accordance with the following informal process:
- 16.2.1.1 all disputes shall first be referred to a meeting of the liaison officers or other designated executives from each **Party** who are actively involved in the Project, and have sufficient authority to be able (if necessary with consultation back to their respective organisations) to resolve it; and
- 16.2.1.2 if the **Parties** have been unable to resolve the dispute within fifteen (15) days of referral to the persons specified in **clause 16.2.1.1**, 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**.
- 16.2.2 In attempting to resolve the dispute in accordance with the provisions of this **clause 16.2** (*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.
- 16.2.3 Any dispute which has not been resolved by the representatives contemplated in **clause 16.2.1.2** within fifteen (15) days of the dispute being referred to them (or any longer period agreed between the **Parties**) shall be treated as a dispute in respect of which informal resolution has failed.

16.3 Performance to Continue

No reference of any dispute to any resolution process in terms of this **clause 16** (*Dispute Resolution*) shall relieve either **Party** from any liability for the due and punctual performance of its obligations under this **Agreement**.

16.4 Dispute Resolution

- 16.4.1 If informal resolution of any dispute has failed, then any **Party** to such dispute may require that such dispute shall be referred to arbitration.
- 16.4.2 The arbitrator shall be appointed by the **Parties**, and failing agreement, shall be nominated by Arbitration Foundation of South Africa ('AFSA').
- 16.4.3 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.
- 16.4.4 The arbitrator shall be entitled to investigate or cause to be investigated any matter, fact or thing which he considers necessary or desirable in connection with any matter referred to him for decision, to decide the matters submitted to him according to what he considers just and equitable in all the circumstances, having regard to the purpose of this **Agreement** and make such award, as he in his discretion may deem fit and appropriate.
- 16.4.5 The arbitration shall be held as expeditiously as possible after such arbitration is demanded, with a view to such arbitration

being completed within 20 (twenty) Business Days after such arbitration has been so demanded.

16.4.6 This clause is severable from the rest of this **Agreement** and shall therefore remain in effect even if this **Agreement** is terminated.

16.4.7 The **Parties** hereby confirm that they shall abide by the terms of any arbitral award, the terms of which shall be final and binding on the **Parties** hereto.

17. LIABILITY

17.1 Direct losses

17.1.1 Should any **Party** have a claim for damages against any other **Party** in terms of this **Agreement**, such damages shall be limited to payment of proven Direct Losses only.

17.1.2 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.

17.1.3 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**.

17.1.4 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.

17.2 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**.

18. THIRD PARTY INDEMNITY

18.1 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.³

19. CONFIDENTIALITY

19.1 Confidential Information

Subject to the remaining provisions of this **clause 19 and 24.8**, 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

² If Seller is different to owner of plant indemnity to be amended for claims against Owner

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.

19.2 Exclusions to Confidential Information

For the purposes of this **clause 19** (*Confidentiality*), the term "**Confidential Information**" shall not include information which:

- 19.2.1 at the time of disclosure or at any time thereafter is in, or becomes part of, the public domain other than through a breach of this **clause 19** (*Confidentiality*);
- 19.2.2 the **Party** receiving the information can prove was already known to it, or was independently acquired or developed by it without being in breach of its obligations under this **clause 19** (*Confidentiality*);
- 19.2.3 became available to the **Party** receiving the information from another source in a non-confidential manner otherwise than in breach of an obligation of confidentiality; or
- 19.2.4 is published by, or the publication of which is required by, a Responsible Authority or any court.

19.3 Permitted disclosure of Confidential Information

Notwithstanding the provisions of **clause 19.1** (*Confidential Information*), the Confidential Information may be disclosed:

- 19.3.1 by either **Party** to any Responsible Authority (where for the purposes of this **clause 19.3** (*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:

- 19.3.1.1 such **Party** notifies the recipient at or about the time of such disclosure that the information is confidential and should not be disclosed by the recipient to third parties; and
- 19.3.1.2 such **Party** shall be responsible for ensuring that the recipient keeps the Confidential Information confidential and shall accordingly be responsible for any failure of the recipient to do so;
- 19.3.2 by either **Party** as may be required by the regulations of any recognised securities exchange upon which the share capital of the **Party** (or any shareholder (direct or indirect) in the **Party**) is or is proposed to be from time to time listed or dealt in, and the **Party** making the disclosure shall, if reasonably practicable prior to making the disclosure, and in any event as soon as reasonably practicable thereafter, supply the other **Party** with a copy of such disclosure or statement and details of the persons to whom the Confidential Information is to be, or has been, disclosed;
- 19.3.3 by either **Party** as may be necessary to comply with any obligation under any applicable Law;
- 19.3.4 by the **Buyer** to the Distributor as may be necessary to enable the Distributor to operate the Distribution 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 Distribution System), provided that:
 - 19.3.4.1 only Confidential Information which is necessary for such purpose is disclosed by the **Buyer** to the Distributor; and

- 19.3.4.2 the **Buyer** notifies the recipient at or about the time of such disclosure that the information is confidential and should not be disclosed by the recipient to third parties;
- 19.3.5 by either **Party** if required by any court, any arbitrator or administrative tribunal or an expert in the course of proceedings before it to which the disclosing **Party** is a party; or
- 19.3.6 by either **Party**, if so agreed in writing by the **Parties** prior to the disclosure.

19.4 Ownership and treatment

- 19.4.1 Subject to **19.4.2**, all information supplied by or on behalf of a **Party** shall remain the property of such **Party**, and this **Agreement** shall not operate to transfer ownership interest therein.
- 19.4.2 The Seller shall maintain complete and accurate data and records required to facilitate the proper administration of this Agreement and the Project. Such data and records ("**Project Data**") shall include an accurate and up-to-date log of Operations, updated daily, in a format reasonably acceptable to the Buyer. All Project Data shall be maintained for the duration of the Term and for any additional length of time as may be required by any applicable Laws or otherwise by any Responsible Authority. The Buyer and the Seller shall have joint ownership of the Project Data, but the Seller shall not, by virtue of its ownership rights, have any rights to prevent the disclosure and use of the Project Data by the Buyer. The Buyer shall be entitled to put the Project Data in the public domain and to use the Project Data as the Buyer deems appropriate.

20. GOVERNING LAW AND JURISDICTION

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

20.2 The **Parties** hereby submit to the jurisdiction of the High Court of South Africa (Witwatersrand Local Division) 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 16**.

21. NOTICES

21.1 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 21.2 (Addresses)** or such other address or number as contemplated in **clause 21.4 (Change in address)**. No communication shall be effective until received by the addressee and a communication shall be deemed to have been received:

21.1.1 if delivered by hand during ordinary business hours, to its physical address in **clause 21.2 (Addresses)**, when so delivered;

21.1.2 if delivered by pre-paid registered post, to its postal address in **clause 21.2 (Addresses)**, seven (7) Business Days after posting, subject to proof of posting;

21.1.3 if delivered by email, upon receipt by the sender of a return email from the recipient in which the sender's communication is acknowledged (it being the responsibility of the sender to obtain such acknowledgement); and

21.2 Addresses

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

21.2.1 The **Seller**:

Postal Address: [INSERT]

Physical Address: [INSERT]

Email address: [INSERT]

Tel No.: [INSERT]

Attention: [INSERT]

The **Buyer**:

Postal Address: PO Box 38766, Booysens, 2016,
South Africa

Physical Address: City Power Johannesburg (SOC) Ltd,
40 Heronmere Road, Reuven,
Johannesburg, South Africa

Email Address: mbaepi@citypower.co.za

Tel No.: +27 11 490 7679

Attention: Senior Manager, Strategic Energy
Projects, Energy Management

21.3 Domicilium citandi et executandi

The **Parties** choose the physical address set out opposite their names in **clause 21.2 (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*.

21.4 Change in address

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

22. WARRANTIES

22.1 Seller warranties

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

22.1.1 it is a limited liability company, duly incorporated and validly existing under the Laws and has taken all necessary actions to authorise its execution of and to fulfil its obligations under this **Agreement** and other agreements necessary for the implementation of the Project to which it is a party;

22.1.2 its obligations under this **Agreement** are legal, valid and binding and enforceable against it, in accordance with the terms of this **Agreement**;

22.1.3 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** 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;

22.1.4 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;

22.1.5 no litigation, arbitration, investigation or administrative proceeding is in progress as at the Signature Date or, to the best of the knowledge of the **Seller** as at the Signature Date (having made all reasonable enquiries), threatened against it or any of its contractors, which is likely to have a material adverse effect on the ability of the **Seller** to conduct the Project;

22.1.6 the **Seller** is not subject to any obligation or non-compliance which is likely to have a material adverse effect on its ability to conduct the Project;

22.1.7 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.

22.2 Buyer warranties

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

- 22.2.1 it is duly incorporated under the laws of South Africa and has the right, power and authority to enter into this **Agreement** and to perform its obligations hereunder; and
- 22.2.2 the execution and performance of this **Agreement** by it has been duly authorised by all necessary corporate action, and its obligations hereunder constitute valid, binding and enforceable obligations.

23. REPRESENTATIVES

23.1 Buyer's Representative

- 23.1.1 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. 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.
- 23.1.2 The **Buyer's** Representative may delegate any of his functions from time to time to a person or persons the identity of whom shall be notified to the **Seller** and references in this **Agreement** to the **Buyer's** Representative shall be construed to include such persons.
- 23.1.3 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.

23.2 Seller's Representative

- 23.2.1 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**. 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.

23.2.2 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.

24. MISCELLANEOUS

24.1 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.

24.2 No amendment or variation

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

24.3 Waiver

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

24.3.2 No waiver shall be effective unless it is communicated in writing to the other **Parties**.

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

24.4 Third Parties

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

24.5 Counterparts

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

24.6 Entire Agreement

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

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

24.7 Further assurances

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

24.8 Public Relations and Publicity

24.8.1 The **Seller** acknowledges that certain information pertaining to the Project is required to be disclosed by the **Buyer** and the Buyer may be required to publish information about the performance of the **Seller** and/or any other information as it may be required to publish from time to time in response to enquiries from:

- 24.8.1.1 NERSA;
 - 24.8.1.2 Parliament and its members and officers;
 - 24.8.1.3 the Auditor-General under the Public Audit Act, 2004; and
 - 24.8.1.4 persons acting in the public interest in accordance with the provisions of the Promotion of Access to Information Act, 2002.
- 24.8.2 The Seller shall not communicate with representatives of the press, television, radio or other communications media on any matter concerning this **Agreement** without the prior approval of the **Buyer**, such consent not to be unreasonably withheld.
- 24.8.3 To the extent that the **Buyer** is obliged to disclose or publish information pursuant to **clause 24.8.1 or 24.8.2**, it undertakes to the **Seller**, if time permits, to consult with the **Seller** prior to any communication contemplated by this **clause 24.8.3**, and if time does not so permit, such consultation shall be dispensed with by the **Parties**.
- 24.8.4 No facilities to photograph or film in or upon the Project Sites shall be given to or permitted by the **Seller** unless the **Buyer** has given prior written approval.

24.9 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.

24.10 Costs

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

24.11 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 he is duly authorised.

Date: _____

Name: [INSERT]

Title: [INSERT]

DULY AUTHORISED

As Witnesses:

1. _____

2. _____

Contract No. **XXX**_____

Power Purchase Agreement (PPA) between City Power and **[INSERT]**

SIGNED for and on behalf of **CITY POWER JOHANNESBURG (SOC) LTD** by the signatory below who warrants that he is duly authorised.

Date: _____

Name: [INSERT]

Title: [INSERT]

DULY AUTHORISED

As Witnesses:

1. _____

2. _____

Contract No. **XXX**_____

Power Purchase Agreement (PPA) between City Power and **[INSERT]**

DETAILS OF THE PROJECT AND FACILITY

Part 1

Facility

SCHEDULE 1

DETAILS OF THE PROJECT AND FACILITY

Part 1

Facility

Gross Capacity: [INSERT]

Net Capacity: [INSERT]

Contracted Capacity: [INSERT]

Generating Technology: [INSERT]Type

of Fuel: [INSERT]

Location: [INSERT]

GPS coordinates: [INSERT]

System to which the Source Facility will be connected and nearest substation:[INSERT].

Name of licensed Electricity Supplier: [INSERT]

Contract No. XXX_____

Power Purchase Agreement (PPA) between City Power and [INSERT]

SCHEDULE 1

DETAILS OF THE PROJECT AND FACILITY

Part 1 contd

Electricity Account Number: [INSERT]

Scheduled CD: [INSERT].

Distributor or NTC: [INSERT]

Point of Delivery: [INSERT]

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 hereto (Single Line Diagram)

Contract No. **XXX**_____

Power Purchase Agreement (PPA) between City Power and [INSERT]

Single Line Diagram

NOTICE OF COMMENCEMENT OF FACILITY

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

[Date]

City Power SOC Ltd
40 Heronmere Road
Reuven
Johannesburg

CC copy to Fax No.: +27(0) 11 490 7590

Or

Email to:

Attention:

Notice of Commencement of Facility

Dear Sir/Madam

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

This notice ("**Notice**") is the Notice of Commencement of Facility 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 is ready to export energy to the Buyer (“CD”) under the Agreement and to deliver Commercial Energy to the **Buyer**, and the Commencement 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 is compliant with the Codes.
4. We have concluded the necessary agreements required for the Seller to fulfil its obligations under the PPA and as may be required at CD 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.
5. The End User Amendment Agreements to all electricity supply agreements between any suppliers of electricity (whether this is the Buyer in that capacity, a municipality, a municipal entity or any other licensed electricity supplier) of the one part, and end-use customers or customers who are part of the supply chain that supplies electricity to end-use customers (in either case where these end-use customers provide full or partial load to the Facility) of the other part, which ensure that there is no over-recovery whatsoever by the Seller and/or any such customers as a result of any electricity supplies to these customers flowing, whether in whole or in part, from the Facility, are in full force and effect and remain valid and binding for the duration of the Agreement.
6. 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 any additional Buyer requirements as set out in the PPA and the System Agreements.

Yours faithfully,

[NAME OF SELLER]

Representative of the Seller

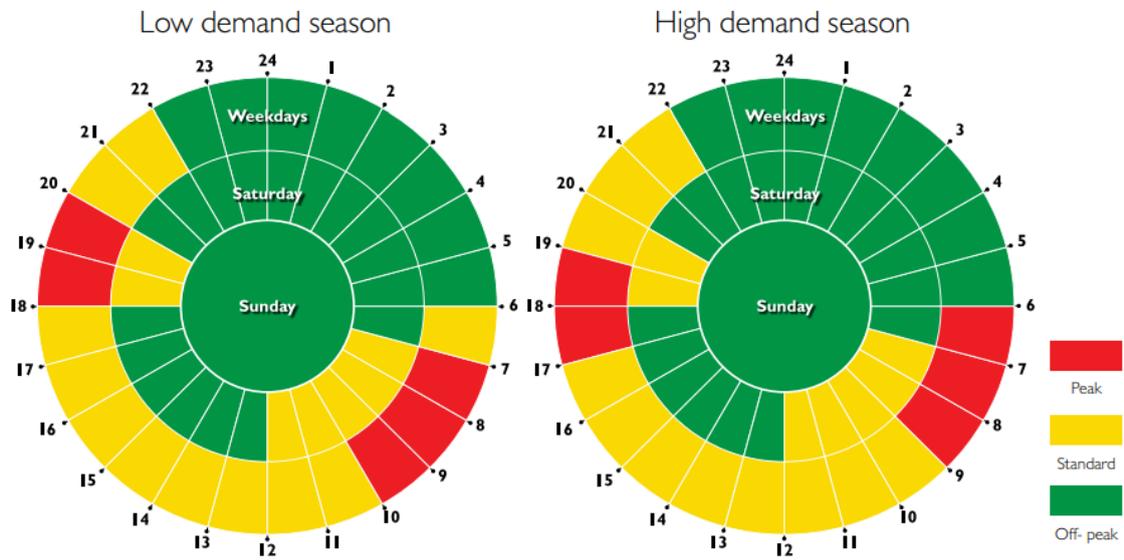
Contract No. **XXX**_____

Power Purchase Agreement (PPA) between City Power and **[INSERT]**

Commercial Energy Rate

1. Peak Price = R [INSERT] / kWh
2. Standard Price = R [INSERT] / kWh
3. Off-peak Price = R [INSERT] / kWh

4. TOU Periods



SCHEDULE 4

Buyer's Representative in terms of this Agreement to the Buyer:

Tel (w):

Tel (c):

Fax:

Email:

A copy to be sent to the following representatives:

Buyer's contact details for forecasting:

Ms Joyce Makoti

Tel (w): 011

Tel (c):

Fax:

E-mail: jmakoti@citypower.co.za

Buyer's operational contact details:

Tel (w):

Tel (c):

Seller's Representative is:

Tel (w): Tel (c):

Fax: E-Mail:

Buyer's emergency contact details:

Tel (w):

Tel (c):

Fax:

E-mail

Seller's emergency contact details:

Tel (w):

Tel (c):

Fax:

E-Mail:

Contract No. **XXX** _____
Power Purchase Agreement (PPA) between City Power and [INSERT]

Part 3: Forecasting Format

Daily:

<i>DATE:</i>	
<i>TIME (hour beginning)</i>	<i>CAPACITY</i>
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	

Contract No. **XXX** _____
Power Purchase Agreement (PPA) between City Power and [INSERT]

15:00	
16:00	
17:00	
18:00	
19:00	
20:00	
21:00	
22:00	
23:00	

Weekly: *Repeated for a weekly forecast, as per the daily format*