

POWER PURCHASE AGREEMENT (PPA)

Between

[INSERT NAME]

“The SELLER”

as defined herein

and

ESKOM HOLDINGS SOC LTD

“The BUYER”

Pursuant to the Eastern Cape Small Hydro Stations (ECSHS) Project

CONTRACT NUMBER: 46000_____¹

¹ Contract Number via Eskom SAP system will be issued by first billing date

PREAMBLE:

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

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

- (2) **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 "**Buyer**") herein represented by **XXXXXXXXXX** in his capacity as **XXXXXXXX Distribution**.

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

INTRODUCTION

- (A) [One of the options below:]

The Seller has, or expects shortly to hold, electricity generation licences or registrations permitting it to operate, generate and sell energy from the power generation facility or facilities indicated in **Schedule 1** (*Details of Project and Facility*).

The Seller has purchased energy from licensed or registered power generation facilities indicated in **Schedule 1** (*Details of Project and Facility*).

- (B) 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*)), net of consumption at one or more

consumption sites, 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.

- (C) 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):

“**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;

“**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 as is consumed exclusively within the Facility 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;

“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 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** being R [INSERT] only (excluding VAT) (“Maximum Contract Value”). For the avoidance of doubt, Commercial Energy does not include Energy sold in terms of any other agreement;

“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 Energy rate (expressed in Rands per MWh) applicable in each Time-Of-Use period (for the Static Price option) or in each hour (for the Dynamic Price option) as specified in **Schedule 3** (*Commercial Energy Rate*);

“Commercial Operation Date” or **“COD”** means the date specified in the Notice of Commencement of Facility as being the Commercial Operation Date of a Facility in terms of **Clause 3**;

“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 network operator to enable the Seller to exercise its rights and/or perform its obligations under this Agreement and the NERSA/ its agent for all grid related permissions for the evacuation of the Commercial Energy in terms of the Codes;

“Consumption Point(s)” means the electrical node(s) on the Distributor or NTC 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*);

“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*).

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

“Contract Review Period” means each consecutive period of (twelve) 12 consecutive Months which falls within the Term, provided that:

the first Contract Review Period shall commence on the Commercial Operation Date, and shall end on the last day of the 12th full Month following COD;

“**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 XXX and ending at 24:00 hours on XXXX of the following year, provided that:

- (a) the first Contract Year shall commence at 00:00 hours on the Commercial Operation Date, and shall end at 24:00 hours on XXX of the following year; and
- (b) the final Contract Year shall end at 24:00 hours on the Termination Date;

“**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 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*);

“**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/NTC Connection Works**” 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 6.2** (*General principles as regards invoicing*);

“**Dynamic Price**” means the hourly Commercial Energy Price published every day by the **Buyer** as described in **Schedule 3** (*Commercial Energy Rate*);

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

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

“**Expiry Date**” means XXXX.

“**Facility**” means a generation facility located at a 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*), 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;
- (i) 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:

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** (*Details of Project and Facility*);

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

“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 **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);

“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 of SA” or **“NTCSA”** means Eskom Holdings SOC LTD acting through its Transmission Subsidiary *or successor or assignee*;

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

“Net Energy Output” means the Energy or cumulative Energy generated by a Facility 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 7**;

“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**;

“Notice of Pricing Method” means the notice in the form of Section 3 of Schedule 3 (*Commercial Energy Rate*) and that is delivered by the Seller to the Buyer in terms of clause 4;

“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 the Project and Facility*);

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

“Section 34 Department of Mineral Resources Independent Power Produce Power Purchase Agreement” or **“Section 34 DMRE IPP PPA”** means an agreement entered into between Eskom and an independent power producer as a result of a procurement programme pursuant to a Section 34 Ministerial Determination wherein the Department of Mineral Resources and Energy was the designated procurer.

“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.;

“Static Price” means the Commercial Energy Price applicable to each TOU Period published annually by the **Buyer** as described in **Schedule 3** (*Commercial Energy Rate*);

“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 or 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);

“System Agreement” means the agreement entered into (or to be entered into) between Eskom as 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**, 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** or **clause 10**;

“**Time-of-use (TOU) tariff**” means a tariff with energy charges that change during different TOU Periods and seasons as defined in **Schedule 3** (*Commercial Energy Rate*);

“**TOU Period**” means the time block based on the volume of electricity demand during high, mid and low demand periods which may differ per day of the week, during a public holiday or season. The TOU Periods typically are peak, standard and off-peak periods and differ between high and low demand seasons;

“**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
kV	Kilovolts
kWh	Kilowatt hours
m	Metres
MW	Megawatts

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
- 1.5.2 any other calculation shall be performed to an accuracy of three (3) decimal places, with a fourth digit, after the decimal point, having a value of five (5) or above being rounded up.

2. TERM AND SUSPENSIVE CONDITION

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 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 4.1, Clause 10 (Breach and Termination), Clause 11 (General Seller Undertakings and Obligations), Clause 12 (Warranties), Clause 14 (Assignment), Clause 15 (Dispute Resolution), Clause 17 (Third Party Indemnity), Clause 18 (Governing Law and Jurisdiction), Clause 19 (Notices) and Clause 21 (Miscellaneous), which shall be of immediate force and effect, this Agreement is subject to the suspensive condition that the conditions precedent enumerated in Clauses 2.3 and 2.4 have been unconditionally fulfilled in accordance with all the terms of Clause 2 (the date of fulfilment of the last of such conditions precedent being the "Effective Date").

2.3 The conditions precedent referred to in Clause 2.2 are:

2.3.1 the Seller shall have secured or procured the issuance and grant of all Consents and shall have provided the Buyer with a certified true copy of the electricity generation licence or certificate of registration relating to the Facility or Facilities and as relevant any amendments or amended conditions thereto permitting it to participate in the Agreement; and

2.3.2 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 the above condition precedent has been satisfied and further that its entry into this Agreement and performance of its obligations under this Agreement will not violate or conflict with or exceed any limit imposed by (i) any applicable Law to which it is subject, (ii) its memorandum of incorporation or other applicable constitutional documents or (iii) any other agreement, instrument or undertaking binding upon it.

2.3.3 To the extent that any portion of the Energy pertaining to the Capacity of a Facility is included as the subject matter of any executed Section 34 DMRE IPP PPA, the Seller shall have secured the issuance of an external legal opinion (in a form satisfactory to the Buyer) as to South African law demonstrating that the Seller has the requisite capacity and authority to enter into this Agreement; as to the enforceability of

the Sellers obligations hereunder and confirmation that the entering into of this Agreement by the Seller does not breach any of the S34 IPP PPA project agreements (including the power purchase agreement and implementation agreement thereunder), the Seller's constitutional agreements, any associated warranties and Consents. The legal opinion must be accompanied by any required consents or approvals or other conditions flagged in the legal opinion (including if applicable any executed amendments as may be required to the S34 DMRE IPP PPA and implementation agreement thereunder). Further to the above, the Seller shall provide a copy of such legal opinion to the Department of Mineral Resources and Energy and procure consent from the DMRE and the buyer under the S34 DMRE IPP PPA for the Seller to sell any additional Energy relating to the Facility as part of its obligations under this Agreement.

- 2.4 The Seller shall be responsible at its own expense for satisfying and procuring in form and substance satisfactory to the Buyer the fulfilment of the conditions precedent referred to in Clause 2.3.1 to 2.3.3.

3. COMMERCIAL OPERATION

- 3.1 The **Seller** shall use all reasonable endeavours to synchronise, connect and/or commission the Facilities and to procure the issue of the Notice of Commencement of each 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.
- 3.2 The **Seller** shall give the **Buyer** its written Notice of Commencement of Facility prior to the Commercial Operation Date in terms of this **Agreement**.

4. COMMERCIAL ENERGY RATE

- 4.1 The **Seller** shall prior to the Effective Date, and before 1 April of each year while the **Agreement** is effective, issue a written Notice of Pricing Method to the **Buyer** stipulating whether the Commercial Energy will be sold at the Static

Price or Dynamic Price option as indicated in **Schedule 3** (*Commercial Energy Rate*) for the following Contract Year.

- 4.2 The **Buyer** shall publish a static price schedule before 15 March of each year which will become applicable on 1 April of that year. The **Buyer** shall communicate this schedule to the **Seller** on or before 15 March of each year. The static price schedule shall replace the Static Price indicated in **Schedule 3** (*Commercial Energy Rate*).

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, 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;
- 5.2 the **Buyer** shall make the Commercial Energy Payment for Commercial Energy, up to the Maximum Contracted Value. 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 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.
- 5.4 Within fifteen 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.
- 5.5 The Buyer may, in its undisputable discretion, apply the proportional reduction of the Maximum Contract Value in any/all of the following manners:

- 5.5.1 reduce the Maximum Contract Value by the value associated with the historic under-delivery of Commercial Energy relative to the Contracted Generation Period
 - 5.5.2 prospectively, apply the reduction (i.e. proportion of under delivery) to the Maximum Contract Value for the remainder of the Term; and
 - 5.5.3 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.
- 5.6 In the reduction to the Maximum Contract Value calculated in 5.5, the **Buyer** shall not reduce the Maximum Contract Value:
- 5.6.1 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
 - 5.6.2 By more than 30% of the Maximum Contract Value for each Contract Review Period ending beyond twenty-four months after the Effective Date.
- 5.7 The **Seller** must deliver all the Commercial Energy to the Buyer and shall not sell any portion of the Commercial Energy to any person other than the **Buyer**.

6. INVOICING

6.1 Content of Invoices

- 6.1.1 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:

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 from the Metering Installation(s) for that Billing Period.

6.2 **General principles as regards invoicing**

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 sixty 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 if agreed to by the **Parties**, otherwise clause 6.3.1 will apply.
- 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 **Buyer** shall pay the undisputed amount on the Due Date provided that the undisputed amount is separately invoiced.
- 6.3.2 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 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.

6.3.4 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.

7. METERING

7.1 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**.

7.2 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**.

7.3 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.

7.4 The **Buyer** shall have full access to inspect all metering equipment installed for the purposes of this **Agreement**. In this regard,

7.4.1 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;

- 7.4.2 If a Facility 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
- 7.4.3 Where applicable, the **Seller** shall provide commissioning and latest maintenance reports for the Metering Installation at the request of the **Buyer**.
- 7.5 If the Metering Installation is not the metering installation under the Electricity Supply Agreement:
- 7.5.1 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.
- 7.5.2 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.
- 7.5.3 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.
- 7.6 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.

- 7.7 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**.
- 7.8 Neither **Party** shall re-locate the Metering Installation(s) without the prior written approval of the other **Party**.
- 7.9 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.

8. GENERATION FORECASTING

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** (*Generation Profiles*) Part 2 (Forecasting Format), 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 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** (*Representatives*) hereto.

9. FORCE MAJEURE

- 9.1 Subject to clause 9.2.2, 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**.
- 9.2 Where a **Party** is (or claims to be) affected (“the Affected **Party**”) by an event of Force Majeure:
- 9.2.1 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
- 9.2.2 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 9.2.1.
- 9.3 The **Party** claiming relief shall serve written notice on the other **Party** within five 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.
- 9.4 A subsequent written notice shall be served by the **Party** claiming relief on the other **Party** within a further fifteen Business Days which shall contain such relevant information relating to the failure to perform or delay in performing as is available, including at least the effect of the event of Force Majeure on the ability of the **Party** to perform, the action being taken in accordance with Clause 9.2.1, 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.
- 9.5 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.

- 9.6 If, following the issue of any notice referred to in Clause 9.4, 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.
- 9.7 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**.
- 9.8 If the event of Force Majeure subsists for more than ninety consecutive Days, either **Party** shall have the right to terminate this **Agreement** after having given the other **Party** fourteen days' written notice.
- 9.9 The **Buyer**, if not the Affected Party, may in addition, on fourteen days' written notice reduce the Maximum Contract Value for the remaining Term of this **Agreement**. The amount by which the Maximum Contract Value may be reduced 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.

10. BREACH AND TERMINATION

- 10.1 If any **Party** should breach any of the material provisions of this **Agreement** and fail to remedy such breach within 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 relief appropriate under the circumstances, in any court of competent jurisdiction.
- 10.2 The termination of this Agreement for any reason in accordance with its terms shall not affect any rights accrued and obligations incurred up to the date of such termination.
- 10.3 A **Party** terminates this Agreement, for the purposes of this clause 10, by giving the other **Party** written notice of such termination.

11. GENERAL SELLER UNDERTAKINGS AND OBLIGATIONS

- 11.1 The Buyer shall not have any liability towards decommissioning or maintenance of any Facility, or insurance coverage, and the Seller's employees, agents or contractor operation of any Facility in compliance with all safety and health legal requirements or the cost thereof.
- 11.2 The Buyer shall not be liable for any injuries to or illness suffered by any person in relation to any Facility.
- 11.3 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 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.
- 11.4 The Seller shall ensure that all System Agreements and any agreements required for the construction, operation and maintenance of each 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 COD and thereafter for the duration of this **Agreement**.
- 11.5 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.
- 11.6 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, at its sole cost and risk and in compliance with the requirements of:

- 11.6.1 applicable Laws;
- 11.6.2 the terms and conditions of this Agreement
- 11.6.3 the Codes;
- 11.6.4 the System Agreements;
- 11.6.5 the Electricity Supply Agreement;
- 11.6.6 the Consents;
- 11.6.7 the standards of a Reasonable and Prudent Operator; and
- 11.6.8 relevant manufacturers' guidelines and instructions.

11.7 The **Seller** has fully considered the Capacity of each Facility 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

11.8 A valid electricity supply agreement has been concluded with a licensed Distributor for electricity supplied to each Consumption Site and shall remain in full force and effect, valid and binding for the duration of the **Agreement**.

12. WARRANTIES

12.1 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:

12.1.1 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**;

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

- 12.1.3 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** 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;
- 12.1.4 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;
- 12.1.5 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;
- 12.1.6 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.

12.2 **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:

- 12.2.1 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

12.2.2 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.

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 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** can 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 part of

restructuring the electricity supply industry in South Africa, or is required to give effect to any mandatory requirement of Law.

15. DISPUTE RESOLUTION

15.1 Referable Disputes

The provisions of this Clause 15 (*Dispute Resolution*) shall apply to any dispute arising from this **Agreement**.

15.2 Internal Referral

15.2.1 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:

15.2.1.1 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

15.2.1.2 if the **Parties** have been unable to resolve the dispute within fifteen days of referral to the persons specified in Clause **15.2.1.1**, 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**.

15.2.2 In attempting to resolve the dispute in accordance with the provisions of this **Clause 15.2** (*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.

15.2.3 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.

15.3 Performance to Continue

No reference of any dispute to any resolution process in terms of this Clause 15 (*Dispute Resolution*) shall relieve either **Party** from any liability for the due and punctual performance of its obligations under this **Agreement**.

15.4 Dispute Resolution

15.4.1 If informal resolution of any dispute has failed, then either **Party** can refer it to arbitration.

15.4.2 The arbitrator shall be appointed by the **Parties** within ten days of informal resolution failing, otherwise either Party may request the Arbitration Foundation of South Africa ("AFSA") to nominate one.

15.4.3 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.

15.4.4 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.

15.4.5 The arbitration shall be conducted in the English language in the metropolitan municipality closest to the Facility, in South Africa.

- 15.4.6 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.
- 15.4.7 This clause is severable from the rest of this **Agreement** and shall therefore remain in effect even if this **Agreement** is terminated.
- 15.4.8 The decision of the arbitrator shall be final and binding on the **Parties** hereto.

16. LIABILITY

16.1 Direct losses

- 16.1.1 Any claim for damages against any **Party** in terms of this **Agreement**, such damages shall be limited to proven Direct Losses only.
- 16.1.2 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.
- 16.1.3 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**.
- 16.1.4 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.

16.2 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**.

17. THIRD PARTY INDEMNITY

17.1 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.²

18. GOVERNING LAW AND JURISDICTION

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

18.2 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 15**.

² If Seller is different to owner of plant indemnity to be amended for claims against Owner
Contract No. 46000 _____
Power Purchase Agreement (PPA) between Eskom and [INSERT]

19. NOTICES

19.1 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 19.2 (Addresses)** or such other address or number as contemplated in **Clause 19.4 (Change in address)**. No communication shall be effective until received by the addressee and a communication shall be deemed to have been received:

- 19.1.1 if delivered by hand during ordinary business hours, to its physical address in **Clause 19.2 (Addresses)**, when so delivered;
- 19.1.2 if delivered by pre-paid registered post, to its postal address in **Clause 19.2 (Addresses)**, seven (7) Business Days after posting, subject to proof of posting; and
- 19.1.3 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).

19.2 Addresses

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

19.2.1	The Seller :
Postal Address:	[INSERT]
Physical Address:	[INSERT]
Email address:	[INSERT]
Tel No.:	[INSERT]
Attention:	[INSERT]

Contract No. 46000 _____
Power Purchase Agreement (PPA) between Eskom and [INSERT]

19.2.2 The **Buyer:** *[Insert DET details]*

[Postal Address: PO Box XXX, South Africa

Physical Address: Eskom Holdings SOC Ltd, ,XXXXX South Africa

Email Address: DET Manager

Tel No.: +27 XXXX

Attention: Distribution Energy Trader (DET)

19.3 Domicilium citandi et executandi

The **Parties** choose the physical address set out opposite their names in **Clause 19.2 (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*.

19.4 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**.

20. REPRESENTATIVES

20.1 Buyer's Representative

20.1.1 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 (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.

20.1.2 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.

20.1.3 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.

20.2 **Seller's Representative**

20.2.1 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 (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.

20.2.2 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.

21. MISCELLANEOUS

21.1 **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.

21.2 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**.

21.3 Waiver

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

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

21.3.3 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**.

21.4 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.

21.5 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.

21.6 Entire Agreement

21.6.1 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.

21.6.2 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**.

21.7 **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**.

21.8 **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.

21.9 **Costs**

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

21.10 **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. _____

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

Date: _____

Name: XXXXXXXXXXXXXXXX

Title: XXXXXXX Distribution

DULY AUTHORISED

As Witnesses:

1. _____

2. _____

DETAILS OF THE PROJECT AND FACILITY

Part 1

Generating Facility

Preferred Name of Facility: [There are 4 Hydro stations: 1. Colleywobbles or Mbashe 2. First Falls 3. Second Falls 4.Ncora]

Gross Capacity: [Mbashe is 42MW; First Falls is 6 MW; Second Falls is 11MW; and Ncora is 2,4MW]

Net Capacity: [Mbashe is 42MW; First Falls is 6 MW; Second Falls is 11MW; and Ncora is 2,4MW]

Contracted Capacity: **[61,4 MW]**

Baseline Volume: **[INSERT]**

Generating Technology: [High Pressure water flow from catchment river via tunnels through Francis type Hydro turbine generators]

Type of Fuel: **[Water]**

Location: [Ncora near Cala . Mbashe near Willowvale and First and Second Falls close to Mthatha]

GPS coordinates: [

Mbashe – 32 00 37 S & 28 34 47 E

Ncora - 31 46 43 S & 27 49 09 E

First Falls – 31 35 60 s & 28 49 12 E

Second Falls – 31 41 16.8 S & 28 53 01.5 E

]

Contract No. 46000 _____
Power Purchase Agreement (PPA) between Eskom and [INSERT]

Network to which the Generating Facility will be connected and nearest substation:

[INSERT].

Maximum Export Capacity:

[INSERT]

Name of licensed Electricity Supplier:

[INSERT]

Electricity Account Number: [INSERT]

Delivery Point:

[Delivery points are all into the Eastern Cape Distribution network - Ncora into Colweni substation – First and Second Falls into Zimbani substation and Mbashe into Tylara substation]

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*) hereto (Single Line Diagram)

Consumption Site

Location:

[INSERT]

GPS coordinates:

[INSERT]

Network to which the Consumption Site will be connected and nearest substation:

[INSERT].

Name of licensed Electricity Supplier:

[INSERT]

Electricity Account Number: [INSERT]

Distributor or NTC:

[INSERT]

Consumption Point:

[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*) hereto (Single Line Diagram)

Single Line Diagram

[Seller to provide a single line diagram of the Facility, 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.]

NOTICE OF COMMENCEMENT OF FACILITY

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

[Date]

Eskom Holdings SOC Limited
Megawatt Park
Maxwell Drive
Sunninghill
South Africa

Email to:

Attention:

Notice of Commencement of Facility

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 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 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 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 as the NTC or the Distributor has provided written confirmation certifying that the Facility 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 as the NTC or Distributor is attached hereto.

Yours faithfully,

[NAME OF SELLER]

Representative of the Seller

Commercial Energy Rate

1. Static Price

- a. The Static Price applicable to 31 March 2024 is defined for each TOU Period as below:

Commercial Energy Rate (R/MWh), excl VAT	High Season	Low Season
Peak		
Standard		
Offpeak		

The Static Price offer shall be adjusted on 1 April in each Calendar Year starting on 1 April 2024.

- b. TOU Periods:

The Peak, Standard and Off-peak periods for the High Demand (June to August) and Low Demand (September to May) seasons are defined below:

Hour	High Demand Season			Low Demand Season		
	Weekday	Saturday	Sunday	Weekday	Saturday	Sunday
0	3	3	3	3	3	3
1	3	3	3	3	3	3
2	3	3	3	3	3	3
3	3	3	3	3	3	3
4	3	3	3	3	3	3
5	3	3	3	3	3	3
6	1	3	3	2	3	3
7	1	2	3	1	2	3
8	2	2	3	1	2	3
9	2	2	3	2	2	3
10	2	2	3	2	2	3
11	2	2	3	2	2	3
12	2	3	3	2	3	3

13	2	3	3	2	3	3
14	2	3	3	2	3	3
15	2	3	3	2	3	3
16	2	3	3	2	3	3
17	1	2	2	2	3	3
18	1	2	2	1	2	2
19	1	3	3	1	2	2
20	2	3	3	1	3	3
21	2	3	3	2	3	3
22	3	3	3	3	3	3
23	3	3	3	3	3	3

1	Peak
2	Standard
3	off-peak

c. Public Holidays:

The following public holidays will be treated as a Sunday: New Year’s Day, Good Friday, Family Day, Christmas Day and Day of Goodwill. All other public holidays will be treated as a Saturday unless it falls on a Sunday in which case it will be treated as a Sunday.

2. Dynamic Price

The Seller shall by 14h00 of each day publish a schedule of hourly prices (in R/MWh, excl VAT) for the following day. This schedule of prices shall be based on the day-ahead schedule and prices governed by the internal Eskom Dynamic Energy Market.

The schedule shall be published on the Eskom website and communicated to the Buyer using the Seller’s representative’s email.

3. Notice of Pricing Method

NOTICE OF PRICING METHOD

*[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 Pricing Method

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 Pricing Method 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 nominate the **[Static / Dynamic (select one)]** option for Commercial Energy Price as per **Schedule 3** (*Commercial Energy Rate*) effective on **[insert date]**.

Yours faithfully,

[NAME OF SELLER]

Representative of the Seller

Contract No. 46000_____
Power Purchase Agreement (PPA) between Eskom and [INSERT]

SCHEDULE 4:

REPRESENTATIVES

Buyer's Representative in terms of this Agreement:

Name:

Tel (w):

Tel (c):

Fax:

Email:

A copy to be sent to the following representatives:

Buyer's contact details for forecasting:

Name:

Tel (w):

Tel (c):

Fax:

E-mail:

Buyer's operational contact details:

Name: Tel (w):

Tel (c):

Fax:

E-mail:

Seller's Representative is:

Name:

Tel (w):

Tel (c):

Fax:

E-Mail:

Seller's emergency contact details:

Name:

Tel (w):

Tel (c):

Fax:

E-Mail:

SCHEDULE 5:

GENERATION PROFILES

Part 1: 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	

Part 2: Forecasting Format

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	