

IMPLEMENTATION AGREEMENT

between

[INSERT PROJECT COMPANY NAME]
as the Seller

and

THE DEPARTMENT OF ENERGY
as the DoE

pursuant to the

**RENEWABLE ENERGY INDEPENDENT POWER PRODUCER
PROCUREMENT PROGRAMME**

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PREAMBLE:

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

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

RECITALS:

- (A) 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 [●] MW [wind / photovoltaic / concentrated solar power / small hydro / landfill gas / biomass / biogas] electricity generation facility located at [insert general location of the Facility].
- (B) The Seller has been authorised to enter into a Power Purchase Agreement ("**the PPA**") with Eskom Holdings SOC Limited as the Buyer ("**the Buyer**") following the Seller's selection by the DoE pursuant to the Renewable Energy Independent Power Producer ("**IPP**") procurement programme ("**IPP Programme**") conducted under Request for Proposals number DOE/003/13/14.
- (C) The DoE and the Seller have agreed that the Seller shall undertake the Project upon and subject to the terms and conditions of this Agreement and the PPA.

THE PARTIES AGREE as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

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

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

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

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

"**Assign**" shall have the meaning given to it in clause 15 (*Assignment*) and the term "**Assignment**" shall be construed accordingly;

"**Bi-quarterly Economic Development Performance**" has the meaning given to in it Clause 8.2 of Schedule 2 (*Economic Development Termination Points*);

"**Black Enterprise**" means a legal entity with fifty point one per cent (50.1%) or more of its equity owned by Black People and participation in its board of directors controlled by Black People;

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

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

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

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

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

"**Citizens**" means people who have obtained citizenship of the Republic of South Africa by birth, descent or naturalisation in terms of the South African Citizenship Act No. 88 of 1995;

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

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

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

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

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

"**Compensation Event**" means:

- (a) any material breach by the DoE of any of its obligations under this Agreement (save for any breach that constitutes a Government Default), to the extent in each case that the breach is not caused or contributed to by the Seller or any Contractor; or
- (b) any Responsible Authority granting a right, licence, permit or authorisation to a third party that directly affects the flow of water through any Unit or the Facility (as the case may be), to the extent that such grant materially adversely affects the ability of the Seller to perform any of its obligations or exercise any of its rights under the PPA;¹

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

¹ Paragraph (b) of the definition of "Compensation Event" is applicable to small hydro Facilities only, and must be deleted in respect of all generation technologies other than small hydro.

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

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

"**Contract Month**" means a calendar month save that:

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

"**Contract Quarter**" means the periods:

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

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

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

- (a) the first Contract Year shall commence at 00:00 hours on the first day after the SignatureEffective Date and shall end at 24:00 hours on 31 March of the following year; and
- (b) the final Contract Year shall end at 24:00 hours on the Termination Date;

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

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

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

"**Corrupt Act**" means any offence in respect of corruption or corrupt activities contemplated in the Prevention and Combating of Corrupt Activities Act No. 12 of 2004;

"**DAFF**" means the Department of Agriculture, Forestry and Fisheries;

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

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

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

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

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

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

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

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

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

~~"**Effective Date**" means the Signature Date;~~

~~"**Encumbrance**" means:~~

~~(a) any mortgage, pledge, lien, assignment or cession conferring security, hypothecation, security interest, preferential right or trust arrangement or other encumbrance securing any obligation of any person;~~

~~(b) any arrangement under which money or claims owed to, or for the benefit of, a bank or other person, may be applied against or set off against any other monies or claims owed by the relevant bank or other person, or made subject to a combination of accounts so as to effect discharge or settlement of any sum owed or payable to that bank or other person; or~~

~~(c) any other type of preferential agreement or arrangement (including any title transfer and retention arrangement), the effect of which is the creation of a security interest;~~

~~"**Encumbrance**" has the meaning given to it in the PPA;~~

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

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

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

"**ERA**" means the Electricity Regulation Act No. 4 of 2006, as amended or replaced from time to time;

"**Expected Equity Value**" means, at any date, the net present value at that date of the gross amount of any future dividends, interest and repayments of loan principal or share capital that would have been paid in respect of Equity from such date to the end of the Term, calculated in terms of clause 12.2 (*Calculations*);

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

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

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

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

"**Financial Model**" means the financial base case for the Project as reflected in the computer model attached to this Agreement on disk as Schedule 5 (*Financial Model*), which model incorporates the forecast cash flow statements of the Seller including all expenditure, revenues, taxation and financing of the Construction, Operation and Maintenance of the Facility together with the income statements and balance sheets for the Seller over the Term, and details of all assumptions, calculations and methodology used in the compilation thereof;

"**Financing Agreements**" means:

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

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

"**GAAP**" means generally accepted accounting practice in the Republic of South Africa as approved from time to time by the South African Accounting Practices Board;

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

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

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

"**Independent Expert**" has the meaning given to it in the PPA;

"**IRR**" means the real post tax internal rate of return which a holder of Equity in the Seller is, at the Signature Date, forecast in the Financial Model to achieve on its investment in Equity over the Term;

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

"**Lender**" means a bank, financial institution or other lender and its designated successors and assigns, who is a party to any of the Financing Agreements and provides financing to the Seller thereunder, provided that a lender who holds equity in the Seller shall not be considered to be acting as a "Lender" to the extent it provides the Seller with any financing, credit support or credit enhancement in its capacity as a shareholder in the Seller;

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

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

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

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

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

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

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

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

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

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

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

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

"**Project Documents**" means the contracts described in Schedule 6 (*Project Documents*) relating to the Project, each executed by the parties thereto simultaneously with this Agreement or otherwise in the Agreed Form;

"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*);

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

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

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

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

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

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

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

"Shareholders" means the holders of the Equity;

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

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

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

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

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

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

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

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

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

"**Termination Points**" means those points to be incurred by the Seller in terms of clause 13.2 (*Termination Points*) triggered by a failure on the part of the Seller to meet its Economic Development Obligations as contained in Schedule 2 (*Economic Development Obligations*);

"**Termination Thresholds**" means those thresholds referred to in Annex 9 of Schedule 2 (*Economic Weights and Scaling Factors*);

"**Total Project Cost**" means:

- (a) for the purposes of clause 2.1 (*Development Fee*), an amount equal to the aggregate of the total Debt and Equity which is, as at the Signature Date, forecast in the Financial Model to be contributed up to the Commercial Operation Date; and
- (b) for all other purposes, the total Capital Expenditure, forecast as at the Signature Date, to be incurred up to the Commercial Operation Date by the Seller in the design, construction, development, installation and/or commissioning of the Project;

"**Total Quarterly Economic Development Performance**" has the meaning given to in it Clause 8.2 of Schedule 2 (*Economic Development Termination Points*);

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

"**Unit**" has the meaning given to it in the PPA.

1.2 Interpretation

In this Agreement, unless otherwise specified:

- 1.2.1 the index and headings of clauses of this Agreement are for ease of reference only and shall be ignored in the interpretation and application of this Agreement;
- 1.2.2 words importing the singular shall include the plural and vice versa and words importing one gender shall include the other genders;
- 1.2.3 references to any Recital, clause, paragraph, Schedule or Annex are to those contained in this Agreement, and references to a part of a Schedule are to the part of the Schedule in which the reference is relevant, and all Schedules and Annexes to this Agreement are an integral part of this Agreement. If there is any conflict between the

provisions of the main body of this Agreement and the provisions of any of the Schedules or Annexes, the provisions of the main body shall prevail;

- 1.2.4 unless otherwise specified, all references to any time shall be to the time of day in Johannesburg, South Africa;
- 1.2.5 "**person**" includes a corporation, company, firm, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of any of the foregoing that is recognised by Law as the subject of rights and duties, and references to a "person" (or to a word incorporating a person) shall be construed so as to include that person's successors in title and assigns or transferees;
- 1.2.6 in computation of periods of time from a specified day to a later specified day, "from" means from and including and "until" or "to" means to and including;
- 1.2.7 "**include**", "**including**" and "**in particular**" shall not be construed as being by way of limitation, illustration or emphasis only and shall not be construed as, nor shall they take effect as, limiting the generality of any preceding words. The words "**other**" and "**otherwise**" shall not be construed so as to be limited or defined by any preceding words, where a wider construction is reasonably possible;
- 1.2.8 references to a "**Party**", the "**Seller**" or the "**DoE**" 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 DoE;
- 1.2.9 references to this "**Agreement**" or any other document shall be construed as references to this Agreement or that other document as amended, varied, novated, supplemented, or replaced from time to time, provided that, in the case of any other document, such amendment, variation, novation, supplement or replacement has received the prior written approval of the DoE;
- 1.2.10 references to legislation include any statute, by-law, regulation, rule, subordinate legislation or delegated legislation or order, and a reference to any legislation is to such legislation as amended, modified or consolidated from time to time, and to any legislation replacing it or made under it;
- 1.2.11 the terms "**hereof**", "**herein**", "**hereunder**" and similar words refer to this entire Agreement and not to any particular clause, paragraph, Part, Schedule or any other subdivision of this Agreement;
- 1.2.12 the rule of construction that, in the event of ambiguity, an agreement shall be interpreted against the Party responsible for the drafting thereof, shall not apply in the interpretation of this Agreement;
- 1.2.13 the expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate

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

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

1.3 Units of measurement

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

1.4 Rounding up

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

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

2. DEVELOPMENT FEE

~~2.4~~ The Seller will be required to pay a development fee equal to one per cent (1%) of the Total Project Cost to the Project Development Fund for ~~Alternative~~ Energy currently at the National Treasury, on or before the tenth (10th) Business Day after the Signature Date.

~~2.2~~ ~~The development fee referred to in clause 2.1 and paid by the Seller to the Project Development Fund for Alternative Energy will be used for the setting up of a Project Development Fund for Renewable Energy projects by the DoE.~~

3. TERM

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

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

3.1.2 the Expiry Date,

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

3.2 Notwithstanding anything to the contrary contained in this Agreement, this Agreement shall not terminate and shall remain in force for as long as any

payments are due, but not yet paid, by the DoE to the Seller and for as long as any obligations under clause 12 (*Compensation on Termination for Government Default*) remain unperformed.

4. PROJECT SITE

4.1 DoE's inspection rights

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

4.2 Land use authorisations

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

4.2.1 when the PPA is terminated or expires in accordance with its own terms, the purpose for which the Project Site may be used or the zoning of the Project Site is restored to the purpose of use or zoning of the Project Site that existed before the relevant authorisation or rezoning was obtained, provided that if such land use authorisation or rezoning involved the registration of one or more restrictions in respect of the title deed of the Project Site, the Seller shall not apply for, or assist in any way with, or consent to or procure through any agent or instrument, the removal of such restriction without the prior written consent of the DAFF; and

4.2.2 if the Seller becomes aware that any other person has registered or intends to register one or more restrictions in respect of the title deed of the Project Site, it shall, as soon as reasonably practicable, notify the DAFF in writing of such fact.

4.3 No improvements

The Seller shall not be entitled to Construct or procure the Construction of any addition to or any expansion of the Facility that is intended to or may or will result in increasing the Capacity of the Facility above the Achieved Capacity.

4.4 Commercial Operation Date

If the Seller becomes aware that, for any reason, the Commercial Operation Date will not be achieved by the Scheduled COD, the Seller shall, without any unreasonable delay, notify the DoE in writing of that fact and measures that it will take to mitigate such delay and of the impact of such measures on its ability to achieve the Scheduled COD, upon implementing such measures.

5. TESTING AND COMMISSIONING

- 5.1 All testing and commissioning of the Facility, including the conducting of Facility Completion and maintenance tests, shall be conducted by the Seller in accordance with the provisions of the PPA.
- 5.2 In addition to the notice requirements set out in clause 6 (*Notices*), the Seller shall notify the DoE of the times that any and all of the tests detailed in clause 5.1 are to commence not less than three (3) Business Days prior to the start of such test. The DoE shall be entitled to nominate two (2) representatives to be present at any and all of such tests, provided that, if such representatives are not present at the scheduled time, the Seller shall be entitled to proceed with the relevant test in their absence.

6. GOVERNMENT SUPPORT

- 6.1 It is recorded that the Minister of Energy has determined in terms of section 34 of the ERA that:
- 6.1.1 new generation capacity is needed to ensure the continued uninterrupted supply of electricity;
- 6.1.2 such capacity and electricity shall be made available and generated from the renewable energy power generating facilities under the IPP Programme; and
- 6.1.3 the capacity and electricity thus produced may only be sold to and must be purchased by the Buyer.
- 6.2 In order to purchase the Energy Output generated by the Facility, the Buyer will have to and has agreed to enter into the PPA with the Seller simultaneously with the signature of this Agreement. The PPA contains several obligations for payment in respect of Commercial Energy, Early Operating Energy and/or Deemed Energy.
- 6.3 The DoE agrees that if in the case of payment of the Early Operating Energy Payment, Commercial Energy Payment, Deemed Energy Payment, Use of System Charges, any payment in respect of a PPA Compensation Event or Unforeseeable Conduct or any payment contemplated in clause 29 (*Third Party Indemnity*) of the PPA ("**PPA Payment**"):
- 6.3.1 the amount is due and payable by the Buyer pursuant to the PPA and has not been paid in full by the Buyer within twenty five (25) Business Days of the Due Date;
- 6.3.2 the PPA Payment is not consequent to termination of the PPA as a result of a Seller Default or Corrupt Act;
- 6.3.3 the PPA Payment amount is not in dispute;
- 6.3.4 the Seller has delivered a demand for payment of the PPA Payment to the Buyer in accordance with the provisions of the PPA, and despite such demand, such amount is not paid; and

- 6.3.5 the amount has not, despite the diligent efforts of the Seller and/or the Lenders (which, for the avoidance of doubt, shall not require the institution of legal proceedings against the Buyer), been recovered from the Buyer within three (3) Months from the due date for such payment,

then the DoE will make payment of the PPA Payment (together with any interest accrued thereon as may be due and payable in terms of and at the rate and for the period specified in the PPA or the Direct Agreement) to the Seller and/ or Lenders within forty (40) Business Days on first written demand of the Seller or the Lenders for payment.

- 6.4 The DoE will ensure that any payment or payments made pursuant to clause 12 (*Compensation on Termination for Government Default*) shall be made promptly following promulgation of the first appropriation bill occurring after delivery by the Seller and/or the Lenders to the DoE of written demand for payment in terms of clause 12.2.3, but in any event within 180 days of such demand. All payment pursuant to this clause 6 (*Government Support*) shall be made into the banking account nominated for that purpose by the Seller and/or the Lenders.

7. EMISSION CREDITS

The Seller agrees and acknowledges that the DoE shall be entitled to amend this Agreement in order to insert a clause that governs emission credits in line with Government's policies, after such policies have been established and finalised, provided that the Seller's general economic position shall not be materially adversely affected by such amendment.

8. REFINANCING

- 8.1 The Seller shall be entitled to undertake any refinancing or re-arrangement of its Debt or Equity at any time in the Term, provided that the amount and tenor of the Debt and Equity after such refinancing or re-arrangement may not increase above the amount of the Debt and Equity immediately prior to such refinancing or re-arrangements.

- 8.2 The Seller shall provide the DoE with written notice, not more than three (3) Business Days before the mechanics of such refinancing or re-arrangement are implemented, with details of:

8.2.1 the amount of the Debt at such date;

8.2.2 the amount of accrued and unpaid interest at that date;

8.2.3 the prevailing interest rate in respect of the Debt; and

8.2.4 the current situation in respect of payments due by and receivable by it under any swap or derivative contracts to which it is party, which payments are pursuant to such refinancing or re-arrangement.

- 8.3 The Seller shall provide the DoE with written notice, not more than three (3) Business Days after the mechanics of such refinancing or re-arrangement are implemented, with details of the amount of the Debt at such date and the

prevailing interest rate in respect of the Debt, as well as the features, in a reasonable amount of detail, of any swap or derivative contracts to which it is a party.

9. NOTICES

9.1 Notices and reports under the PPA

The Parties acknowledge that the Buyer has an interest in the content of this Agreement, and that the DoE similarly has an interest in the content of the PPA. The Seller shall, whenever any notice or report is delivered by it to the Buyer under the PPA, also deliver such notice or report to the DoE. The notices and reports which the Seller shall be obliged to deliver to the DoE include, but are not limited to:

- 9.1.1 any notices of the date on which a Unit or the Facility (as the case may be) is anticipated to be connected to the System for the first time, as contemplated in the PPA;
- 9.1.2 any notices of the date on which the Seller intends to undertake a Facility Completion test or a maintenance test, as contemplated in the PPA;
- 9.1.3 the Facility Completion Form to be delivered to the Buyer under the PPA;
- 9.1.4 any Notice of Commencement of Unit in terms of the PPA;
- 9.1.5 the Notice of Commencement of Facility in terms of the PPA;
- 9.1.6 all reports, estimates, data and other information concerning Project Data from the Seller to the System Operator and the Buyer;
- 9.1.7 any notice of failure by the Buyer to make payments due and payable to the Seller under the PPA, as contemplated in clause 9 (*Invoicing*) of the PPA; and
- 9.1.8 any notices delivered to the Buyer under the PPA in relation to System Events, PPA Compensation Events, Force Majeure and Unforeseeable Conduct.

9.2 Inspection and monitoring rights

The DoE shall have the right, upon giving a minimum of five (5) Business Days' prior written notice to the Seller:

- 9.2.1 subject to any confidentiality undertakings between the Seller and manufacturers or suppliers of Facility equipment, to examine and take copies of any Project Data, at any time during normal business hours (at the DoE's own cost); and
- 9.2.2 to monitor the Project as it is undertaken by the Seller, from time to time.

9.3 Ownership of Project Data

- 9.3.1 Subject to any confidentiality undertakings between the Seller and manufacturers or suppliers of Facility equipment, the DoE shall be entitled to put the Project Data in the public domain and to use the Project Data as the DoE deems appropriate.
- 9.3.2 The DoE, 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 DoE.

10. CONSEQUENCES OF A COMPENSATION EVENT

- 10.1 If, as a direct result of the occurrence of a Compensation Event:
 - 10.1.1 the Seller is unable to comply with its obligations under this Agreement; and/or
 - 10.1.2 the Seller incurs costs or loses revenue,then the Seller is entitled to apply for relief from its obligations under this Agreement and/or to claim compensation under this Agreement.
- 10.2 To obtain relief and/or claim compensation, the Seller must:
 - 10.2.1 as soon as practicable, and in any event within five (5) days after it became aware that the Compensation Event has caused or is likely to cause breach of an obligation under this Agreement and/or the Seller to incur costs or lose revenue, give to the DoE a notice of its claim for payment of compensation and/or relief from its obligations under this Agreement;
 - 10.2.2 within ten (10) days of receipt by the DoE of the notice referred to in clause 10.2.1 above, give the DoE full details of the Compensation Event and the extension of time and/or any estimated change in project costs claimed and/or the loss of revenue claimed; and
 - 10.2.3 demonstrate to the reasonable satisfaction of the DoE that:
 - 10.2.3.1 the Compensation Event was the direct cause of the time lost and/or estimated change in project costs and/or the loss of revenue claimed; and
 - 10.2.3.2 the estimated change in project costs, the loss of revenue claimed, time lost, and/or relief from the obligations under the Agreement claimed, could not reasonably be expected to be mitigated or recovered by the Seller acting in accordance with the standards of a Reasonable and Prudent Operator.
- 10.3 If the Seller has complied with its obligations under clause 10.2, then:
 - 10.3.1 in the case of an additional cost being incurred or revenue being lost by the Seller, including Capital Expenditure incurred by the Seller at any time, the DoE shall have the option to compensate the Seller for the

actual estimated change in project costs as adjusted to reflect the actual costs reasonably incurred or actual revenue lost by the Seller either:

- 10.3.1.1 in one lump-sum payment, payable within ninety (90) Business Days of its receipt of a written demand by the Seller supported by all relevant information; or
- 10.3.1.2 in equal monthly instalments for the remainder of the Term, commencing within ninety (90) Business Days of its receipt of a written demand by the Seller supported by all relevant information, provided that interest shall accrue on the full amount due and payable, at the Agreed Interest Rate, from the Due Date to, but excluding, the date of final payment; and/or
- 10.3.2 the DoE shall give the Seller such relief from its obligations under this Agreement, as is reasonable for such a Compensation Event.
- 10.4 If information is provided after the dates referred to in clause 10.2, then the Seller shall not be entitled to any extension of time, compensation, or relief from its obligations under this Agreement in respect of the period for which the information is delayed.
- 10.5 If the Parties cannot agree on the extent of any compensation or relief from the Seller's obligations under this Agreement, or the DoE disagrees that a Compensation Event has occurred (or as to its consequences), or that the Seller is entitled to any relief under this clause 10 (*Consequences of a Compensation Event*), the Parties shall resolve the matter in accordance with clause 17 (*Fast-Track Dispute Resolution*).

11. TERMINATION

11.1 No Termination

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

11.2 Termination for Seller Default

- 11.2.1 Simultaneously with termination of the PPA for a Seller Default, this Agreement shall terminate.
- 11.2.2 The DoE shall be entitled to terminate this Agreement in the circumstances contemplated in clause 13.2.6.
- 11.2.3 The Seller shall reimburse the DoE with all costs incurred by the DoE in exercising any of its rights as a result of the termination of this Agreement in terms of this clause 11.2 (*Termination for Seller Default*). The DoE shall take reasonable steps to mitigate such costs.

11.3 Termination for Government Default

- 11.3.1 On the occurrence of a Government Default, or within ninety (90) days after the Seller becomes aware of same, the Seller may serve notice on

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

11.3.2 If this Agreement is terminated for Government Default, clause 1 (*Definitions and Interpretation*), clause 6 (*Government Support*), clause 12 (*Compensation on Termination for Government Default*), clause 17 (*Fast Track Dispute Resolution*), clause 18 (*Dispute Resolution*) clause 21 (*Governing Law and Jurisdiction*), clause 22 (*Notices*) and clause 24 (*Miscellaneous*) shall remain of full force and effect until the DoE's obligations in terms of clause 6 (*Government Support*) and/or clause 12 (*Compensation on Termination for Government Default*) have been fully discharged.

11.4 Termination for Corrupt Acts

11.4.1 The Seller warrants that, in entering into this Agreement, the PPA and the Direct Agreement, it has not committed any Corrupt Act.

11.4.2 If the Seller, any Shareholder, any Contractor, any Affiliate of any one of them, or any Lender (or anyone employed by or acting on behalf of any of them) admits to or is convicted of having committed any Corrupt Act in relation to the Project or in respect of the PPA, this Agreement, the Direct Agreement or any Project Document, then the DoE shall be entitled to act in accordance with clauses 11.4.2.1 to 11.4.2.9 below:

11.4.2.1 if the Corrupt Act is committed by the Seller, any Shareholder, any director of the Seller, any director of any Shareholder, or any employee of the Seller or of any Shareholder acting under the authority of or with the knowledge of a director of the Seller or such Shareholder, as the case may be, then in any such case, the DoE may terminate this Agreement with immediate effect by giving written notice to the Seller;

11.4.2.2 if the Corrupt Act is committed by an employee of the Seller or of any Shareholder acting of his or her own accord, then in any such case, the DoE may give written notice to the Seller of termination and this Agreement will terminate, unless within thirty (30) Business Days of the Seller's receipt of such notice that employee's involvement in the Project is terminated and (if necessary) the performance of any part of the Construction, Operation and Maintenance of the Facility previously performed by him or her is performed by another person;

11.4.2.3 if the Corrupt Act is committed by a Contractor, director of a Contractor or an employee of a Contractor acting under the authority or with the knowledge of a director of that Contractor, then in any such case, the DoE may give written notice to the Seller of termination and this Agreement will terminate, unless within sixty (60) Business Days of its receipt of such notice the Seller terminates

the relevant contract and procures the performance of the relevant part of the Construction, Operation and Maintenance of the Facility by another person;

- 11.4.2.4 if the Corrupt Act is committed by an employee of a Contractor acting of his or her own accord, then the DoE may give notice to the Seller of termination and this Agreement will terminate, unless within thirty (30) Business Days of its receipt of such notice the Seller procures the termination of that employee's involvement in the Project and (if necessary) procures the performance of that part of the Construction, Operation and Maintenance of the Facility previously performed by that employee to be performed by another person;
- 11.4.2.5 if the Corrupt Act is committed by a Lender, a director of a Lender or any employee of a Lender acting under the authority or with the knowledge of a director of that Lender, then in any such case the DoE may give written notice to the Seller of termination and this Agreement will terminate, unless within eighty (80) Business Days of its receipt of such notice the Seller procures the termination of such Lender's involvement in the Project (in any capacity whatsoever including, without limitation, as Lender under the Financing Agreements) and provides the DoE with satisfactory proof that such Lender's entire participations in the Debt and in any undrawn financial commitments under the Financing Agreements have been assumed by any Qualifying Financial Institution (including any one or more of the remaining Lenders) or any of the Shareholders, whether by means of Equity contributions or otherwise;
- 11.4.2.6 if the Corrupt Act is committed by any employee of a Lender acting of his or her own accord, then the DoE may give written notice to the Seller of termination and this Agreement will terminate, unless within thirty (30) Business Days of the Seller's receipt of such notice, that employee's involvement in the Project is terminated;
- 11.4.2.7 if the Corrupt Act is committed by an Affiliate, director of an Affiliate or an employee of an Affiliate acting under the authority or with the knowledge of a director of that Affiliate, then the DoE may give notice to the Seller of termination and this Agreement will terminate, unless within thirty (30) Business Days of its receipt of such notice the Seller procures the termination of that Affiliate, director or employee's involvement in the Project and (if necessary) procures the performance of that part of the Construction, Operation and Maintenance of the Facility previously performed by that employee to be performed by another person;
- 11.4.2.8 if the Corrupt Act is committed by any other person not specified in clauses 11.4.2.1 to 11.4.2.6 above but involved in the Project as a subcontractor or supplier to any Contractor or to the Seller, then the DoE may give notice to the Seller of termination and this Agreement will terminate unless within sixty (60) Business Days the Seller procures the termination of such person's involvement in the Project and (if necessary) procures the performance of the relevant part of

the Construction, Operation and Maintenance of the Facility by another person; and

- 11.4.2.9 any notice of termination under this clause 11.4.2 (*Termination for Corrupt Acts*) shall specify:
 - 11.4.2.9.1 the nature of the Corrupt Act;
 - 11.4.2.9.2 the identity of the party or parties who has or have committed the Corrupt Act; and
 - 11.4.2.9.3 the date on which this Agreement will terminate in accordance with the applicable provisions of this clause 11.4 (*Termination for Corrupt Acts*).
- 11.4.3 Without prejudice to its other rights or remedies under this clause, the DoE shall be entitled to recover from the Seller, the greater of:
 - 11.4.3.1 the amount or value of the gift, consideration or commission which is the subject of the Corrupt Act; and
 - 11.4.3.2 any Direct Losses sustained by the DoE in consequence of any breach of this clause 11.4 (*Termination for Corrupt Acts*) by the Seller.
- 11.4.4 Nothing contained in this clause 11.4 (*Termination for Corrupt Acts*) shall prevent the Seller, Shareholder, Affiliate or Contractor from paying any proper commission or bonus to its employees within the agreed terms of their employment.
- 11.4.5 The Seller shall notify the DoE of the occurrence (and details) of any Corrupt Act promptly on the Seller becoming aware of its occurrence.

12. COMPENSATION ON TERMINATION FOR GOVERNMENT DEFAULT

- 12.1 On termination of this Agreement in terms of clause 11.3 (*Termination for Government Default*), the DoE shall:
 - 12.1.1 have the option to take over the ownership of the Facility or to nominate a third party to take over the ownership of the Facility on the following terms and conditions:
 - 12.1.1.1 the purchase price of the Facility shall be the amount calculated in terms of clause 12.1.2;
 - 12.1.1.2 the Seller shall be obliged to give warranties, as may be agreed between the Seller and the DoE or its nominee, to the DoE or its nominee in respect of the ownership and condition of the Facility;
 - 12.1.1.3 the effective date of the transfer of the Facility to the DoE or its nominee will be the date on which the purchase price of the Facility is paid in full to the Seller;

12.1.1.4 the Seller shall be obliged to transfer ownership of the Facility to the DoE or its nominee, and sign all documents required to effect such transfer on or before the effective date referred to in clause 12.1.1.3; and

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

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

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

12.1.2.1 an amount equal to the Debt;² and

12.1.2.2 the Expected Equity Value at the date of termination (taking no account of the event which gave rise to such termination or of such termination),

less, to the extent it is a positive amount, the aggregate, as at the Termination Date, of:

12.1.2.2.1 all credit balances on any bank accounts, held by or on behalf of the Seller on the Termination Date and the value of any right of the Seller or the Lenders to receive insurance proceeds or any proceeds pursuant to letters of credit and of any such proceeds actually received by them as a result of the relevant Government Default (save where such credit balances or proceeds are paid to the DoE and/or are to be applied in reinstatement) and sums due and payable from the Contractors and any other third parties;

12.1.2.2.2 all amounts payable by the Lenders (or the counter-parties to the interest rate or exchange rate hedging arrangements provided for in the Financing Agreements) to the Seller in connection with the early termination of such hedging arrangements as a result of prepayment of amounts outstanding under the Financing Agreements;

12.1.2.2.3 the realisable market value of any other assets and rights of the Seller or the Lenders in respect of the Project; provided that no

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

account shall be taken of any liabilities and obligations of the Seller arising out of:

12.1.2.2.3.1 agreements or arrangements entered into by the Seller to the extent that such agreements or arrangements were not entered into in connection with the Seller's obligations in relation to the Project; and

12.1.2.2.3.2 agreements or arrangements entered into by the Seller to the extent that such agreements or arrangements were not entered into in the ordinary course of business and on commercial arm's length terms,

provided further that, if the DoE exercises the option in terms of clause 12.1.1 and takes over ownership of the Facility and the other assets and rights referred to in clause 12.1.2.2.3 in its own right, the amounts contemplated in this clause 12.1.2.2.3 shall not be deducted from the amount payable to the Seller.

12.2 Calculations

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

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

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

12.2.4 Each calculation to be made by the Independent Expert shall use the latest Financial Model prepared prior to the date of termination of this Agreement. The Seller will not alter the methodology employed in such Financial Model from that employed in the version of the Financial Model attached as Schedule 5 (*Financial Model*), without the prior written consent of the DoE, such consent not to be unreasonably withheld or delayed. In preparing any calculation for the purpose of this clause 12.2 (*Calculations*), the Independent Expert shall:

12.2.4.1 use the input parameters contained in such Financial Model, unless either Party objects to any such parameter as not properly reflecting the most likely outcome for the matter which is the subject of the input parameter concerned, in which case the Independent Expert,

acting reasonably and after having taken appropriate specialist and technical advice and considered the representations of the Parties, if any, shall be entitled to amend the input parameter concerned to reflect the most likely outcome; and

- 12.2.4.2 calculate Expected Equity Value by discounting the relevant financial projections contained in such Financial Model utilising the IRR as the discount rate.
- 12.2.5 In making any determination pursuant to this clause 12.2 (*Calculations*), the Independent Expert shall act as an expert and not an arbitrator.

13. ECONOMIC DEVELOPMENT OBLIGATIONS

13.1 General Obligations

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

13.2 Termination Points

- 13.2.1 Subject to clauses 13.2.3 and 13.2.4, the Seller shall be deemed to have incurred:
 - 13.2.1.1 half of one (1/2) Termination Point at the end of any Contract Quarter if, in respect of that Contract Quarter, the Total Quarterly Economic Development Performance determined pursuant to Schedule 2 (*Economic Development Obligations*) is less than sixty five per cent (65%); and
 - 13.2.1.2 half of one (1/2) Termination Point at the end of any Contract Quarter if, in respect of that Contract Quarter and the immediately preceding Contract Quarter, the Bi-quarterly Economic Development Performance on any of the Economic Development Sub-Elements is below the Termination Threshold set in Schedule 2 (*Economic Development Obligations*) for the specific Economic Development Sub-Element.
- 13.2.2 Not more than three (3) Termination Points shall be imposed upon the Seller at the end of any Contract Quarter.
- 13.2.3 The Seller shall, in respect of each report submitted for a Contract Quarter in which an event giving rise to a Termination Point occurs, provide the DoE with a rectification programme detailing the steps and time period it will take to rectify any event that does result in or which would entitle the award of a Termination Point. In the case where the Seller has not provided the rectification programme with the report

submitted for a Contract Quarter, it shall submit such a rectification programme within ten (10) calendar days from the expiry of the period referred to in clause 7.1.2 of Schedule 2 (*Economic Development Obligations*), or such longer period as the Parties may agree. Upon the Parties reaching agreement on the proposed rectification programme, the Seller will be exempted from incurring further Termination Points in respect of that same event provided the Seller complies with the rectification programme. Such exemption shall lapse and a new Termination Point may be incurred in the event the Seller deviates from the rectification programme, (unless the DoE agrees otherwise) or upon the expiry of the time period agreed within which the rectification programme is to be implemented.

- 13.2.4 Should the Parties not reach agreement on the proposed rectification programme, such a disagreement can be referred to dispute resolution in terms of clause 17 (*Fast Track Dispute Resolution*) for determination as to whether the proposed rectification programme will rectify the event that does result in or which will entitle the award of Termination Points and whether the time period suggested is suitable for the rectification of such event.
- 13.2.5 Any Termination Point incurred by the Seller shall lapse twelve (12) months after the date on which it was incurred.
- 13.2.6 In the event that, at any date during the Term ("**Trigger Date**"), the Seller has accumulated more than nine (9) Termination Points pursuant to this clause 13.2 (*Termination Points*) and those Termination Points have not lapsed, then the DoE shall be entitled, at any time within one (1) year following the Trigger Date, to terminate this Agreement.

14. GENERAL SELLER UNDERTAKINGS

- 14.1 As between the Parties and save as otherwise expressly provided for in this Agreement, at all times during the Term, the Seller shall exercise its rights and perform all of its obligations as provided for in this Agreement, at its sole cost and risk and in compliance with the requirements of:
- 14.1.1 applicable Laws;
 - 14.1.2 the Codes;
 - 14.1.3 the Consents;
 - 14.1.4 the terms and conditions of this Agreement;
 - 14.1.5 the terms and conditions of the Distribution Agreement or the Transmission Agreement, as applicable;
 - 14.1.6 the terms and conditions of the PPA;
 - 14.1.7 the standards of a Reasonable and Prudent Operator; and
 - 14.1.8 relevant manufacturers' guidelines and instructions.

15. ASSIGNMENT

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

16. CHANGES IN CONTROL AND BLACK EQUITY

- 16.1 For the duration of the Term, the Seller shall procure that there is no Change in Control in the Seller (or in any company of which the Seller is a subsidiary) without the prior written approval of the DoE.
- 16.2 ~~For the period commencing on the Signature Date and ending on~~ ~~Prior to the date which falls~~ ~~expiry of a period of~~ three (3) ~~Contract Y~~ years commencing ~~on~~ ~~after~~ the Commercial Operation Date, the Seller shall procure that there is no:
- 16.2.1 dilution, sale, assignment, cession, transfer, exchange, renunciation or other disposal of the whole or any part of the Equity; or
- 16.2.2 dilution, sale, assignment, cession, transfer, exchange, renunciation or other disposal of the whole or any part of the issued share capital of and/or the shareholder loans in and to a Conduit Shareholder,
- without the prior written approval of the DoE.
- 16.3 The Seller shall procure that for the duration of the Term:
- 16.3.1 subject to the Lenders' rights in respect of any security held by them (or any agent acting on their behalf, or any security company, trust or other entity holding any security in respect of the Debt for the benefit of the Lenders), there is no sale, assignment, cession, transfer, exchange, renunciation or other disposal (at any time) of the whole or any part of the Equity, which results in the Seller being in breach of its undertakings with regard to Ownership Element Obligations in Schedule 2 (*Economic Development Obligations*); and
- 16.3.2 there is no dilution in the aggregate Shareholding by Black People below the Ownership Element Obligations in Schedule 2 (*Economic Development Obligations*).

16.4 For the purpose of this clause 16 (*Changes in Control and Black Equity*), the term "subsidiary" shall have the meaning as defined in the Companies Act No. 71 of 2008.

17. FAST TRACK DISPUTE RESOLUTION

17.1 Disputes expressly referred for determination pursuant to this clause 17 (*Fast Track Dispute Resolution*) shall be determined by the relevant Independent Expert.

17.2 Within five (5) Business Days after a dispute has been referred by either Party to the appropriate Independent Expert, the Independent Expert shall require the Parties to submit in writing their respective arguments. The Independent Expert shall, in his absolute discretion, consider whether a hearing is necessary in order to resolve the dispute.

17.3 It shall be entirely within the power and competence of the Independent Expert to decide upon any matters related to the proper preparation of the dispute for hearing and in that regard the Independent Expert shall direct the Parties accordingly.

17.4 The Independent Expert shall set the date for the hearing, choose the venue (which must be a venue in South Africa) for the hearing and determine all matters regarding any aspect of the hearing. Moreover, the Independent Expert can decide whether at the hearing the Parties are to give oral evidence or confine themselves to presenting their cases in writing or by some other appropriate procedure. In this regard, the Independent Expert must be guided by considerations of fairness, the cost-effective resolution of the dispute, and the need to resolve the dispute quickly.

17.5 The Independent Expert shall provide both Parties with his written decision on the dispute, within 20 (twenty) Business Days of the referral (or such other period as the Parties may agree after the referral). The Independent Expert shall give his reasons for the award, if so requested by either Party.

17.6 The Independent Expert's costs of any referral shall be borne as the Independent Expert shall specify or, if not specified, equally by the Parties. Each Party shall bear its own costs arising out of the referral, including its legal costs and the costs and expenses of any witnesses.

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

17.8 Should the need arise for either Party to seek interim or temporary relief before the adjudication is finalised, that Party may apply to the Independent Expert to grant such interlocutory order or give the required temporary relief and the Independent Expert shall have the same power to do so as if the matter were one heard by a Judge in the High Court of South Africa, save that if by Law such power or order cannot be exercised or given by an Independent Expert then, and then only, should the Parties refer such matter to such High Court.

- 17.9 The proceedings shall be confidential and all information, data or documentation disclosed or delivered by either Party to the Independent Expert in consequence of or in connection with his appointment as Independent Expert shall be treated as confidential. Neither the Parties nor the Independent Expert shall, save as permitted by clause 20 (*Confidentiality*) of this Agreement, disclose to any person any such information, data or documentation unless the Parties otherwise agree in writing, and all such information, data or documentation shall remain the property of the Party disclosing or delivering the same and all copies shall be returned to such Party on completion of the Independent Expert's work.
- 17.10 The Independent Expert is not liable for anything done or omitted in the discharge or purported discharge of his functions as Independent Expert, unless the act or omission is grossly negligent or in bad faith. Any employee or agent of the Independent Expert is similarly protected from liability.
- 17.11 Should any Party fail to co-operate with the Independent Expert with the result that in the view of the Independent Expert such default or omission prejudices the adjudication process, then the Independent Expert can either:
- 17.11.1 give that Party written notice that unless it remedies the default or omission within a given time, it will forfeit the right to continue to participate in the adjudication; or
- 17.11.2 warn the Party in writing that its default or omission may make it liable to a punitive order of costs irrespective of whether it succeeds in the adjudication or not and such punitive award of costs may include an order of attorney and client costs or attorney and own client costs as those expressions are understood in the Uniform Rules of Court.
- 17.12 The Independent Expert shall be deemed not to be an arbitrator but shall render his decision as an expert and the provisions of the Arbitration Act No. 42 of 1965 and any other law relating to arbitration shall not apply to the Independent Expert or his determination or the procedure by which he reaches his determination. The Independent Expert's decision shall be final and binding on the Parties.

18. DISPUTE RESOLUTION

18.1 Referable Disputes

The provisions of this clause 18 (*Dispute Resolution*) shall, save where expressly provided otherwise, apply to any dispute arising in relation to or in connection with any aspect of this Agreement between the Parties.

18.2 Internal Referral

18.2.1 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:

18.2.1.1 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

18.2.1.2 if the Parties have been unable to resolve the dispute within fifteen (15) days of referral to the persons specified in clause 18.2.1.1, either Party may refer the dispute for a decision by the accounting officer or accounting authority of the DoE and the chief executive officer or equivalent officer of the Seller.

18.2.2 In attempting to resolve the dispute in accordance with the provisions of this clause 18.2 (*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.

18.2.3 Any dispute which has not been resolved by the representatives contemplated in clause 18.2.1.2 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.

18.3 **Performance to Continue**

No reference of any dispute to any resolution process in terms of this clause 18 (*Dispute Resolution*) shall relieve either Party from any liability for the due and punctual performance of its obligations under this Agreement.

18.4 **Litigation**

18.4.1 Save where any dispute has been expressly referred for determination in terms of clause 17 (*Fast Track Dispute Resolution*), if informal resolution of any dispute has failed, then the dispute may be referred to litigation in the High Courts by either Party.

18.4.2 Neither Party is limited in any proceedings before the High Court to the information, evidence or arguments used in the informal attempts to resolve the dispute.

19. **LIABILITY**

19.1 **Direct losses**

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

19.1.2 Notwithstanding anything contained to the contrary in this Agreement, neither Party shall be liable to the other Party for any Special Loss

suffered by such other Party as a result of any act or omission by the first Party.

- 19.1.3 Save as expressly provided elsewhere in this Agreement, neither Party shall be liable to the other Party for any losses, liabilities, expenses, damages, costs and claims (including Claims) suffered or claimed which arise out of, under or in connection with any alleged breach of any statutory duty or delictual act or omission or otherwise.

19.2 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.

20. CONFIDENTIALITY

20.1 Confidential Information

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

20.2 Exclusions to Confidential Information

For the purposes of this clause 20 (*Confidentiality*), the term "**Confidential Information**" shall not include information which:

- 20.2.1 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 20 (*Confidentiality*);
- 20.2.2 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 20 (*Confidentiality*);
- 20.2.3 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
- 20.2.4 is published by, or the publication of which is required by, a Responsible Authority or any court.

20.3 Permitted disclosure of Confidential Information

Notwithstanding the provisions of this clause 20 (*Confidential Information*), the Confidential Information may be disclosed:

- 20.3.1 by either Party to any Responsible Authority (where for the purposes of this clause 20.3 (*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:

- 20.3.1.1 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
- 20.3.1.2 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;
- 20.3.2 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;
- 20.3.3 by either Party as may be necessary to comply with any obligation under any applicable Law;
- 20.3.4 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
- 20.3.5 by either Party, if so agreed in writing by the Parties prior to the disclosure.

20.4 **Ownership and treatment**

- 20.4.1 Save for all Project Data, all information supplied by or on behalf of a Party shall remain the property of such Party, and this Agreement shall not operate to transfer ownership interest therein.
- 20.4.2 The Parties shall, in so far as is reasonably practicable, ensure that any copies of the Confidential Information, whether in hard copy or computerised form, shall clearly identify the Confidential Information as confidential.

21. **GOVERNING LAW AND JURISDICTION**

- 21.1 The validity, construction and performance of this Agreement shall be governed by the laws of South Africa.
- 21.2 Each Party agrees that the High Court of South Africa shall have exclusive jurisdiction to hear and decide any application, action, suit, proceeding or

dispute in connection with this Agreement, and irrevocably submits to the jurisdiction of the High Court of South Africa.

22. NOTICES

22.1 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 or facsimile to the address or number within South Africa of the Party concerned set out in clause 22.2 (*Addresses*) or such other address or number as contemplated in clause 22.4 (*Change in address*). No communication shall be effective until received by the addressee and a communication shall be deemed to have been received:

- 22.1.1 if delivered by hand during ordinary business hours, to its physical address in clause 22.2 (*Addresses*), when so delivered;
- 22.1.2 if delivered by pre-paid registered post, to its postal address in clause 22.2 (*Addresses*), seven (7) Business Days after posting, subject to proof of posting; and
- 22.1.3 if delivered by facsimile, upon sending, subject to confirmation of uninterrupted transmission on a transmission report and provided that a hard copy is promptly dispatched to the recipient in the manner provided in clauses 22.1.1 or 22.1.2 above.

22.2 Addresses

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

22.2.1 The Seller:

Postal Address: [●]
Physical Address: [●]
Fax No.: [●]
Tel No.: [●]
Attention: [●]; and

22.2.2 The DoE:

Postal Address: Private Bag X96, Pretoria, 0001
Physical Address: 192 Visagie Street (corner Visagie Street and Paul Kruger Street), Pretoria, 0001
Fax No.: +27 12 323 5819

Tel No.: +27 12 406 7672

Attention: Mr Maduna Ngobeni.

22.3 **Domicilium citandi et executandi**

The Parties choose the physical address set out opposite their names in clause 22.2 (*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*.

22.4 **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.

23. **WARRANTIES**

23.1 **Seller warranties**

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

- 23.1.1 it is a limited liability company, duly incorporated and validly existing under the Laws and has taken all necessary actions to authorise its execution of and to fulfil its obligations under this Agreement and the Project Documents;
- 23.1.2 it has the sole purpose, object and business of undertaking the Project and selling Energy Output in terms of the PPA;
- 23.1.3 its obligations under this Agreement and its rights and obligations under the Project Documents to which it is a party are legal, valid and binding and enforceable against it, in accordance with the terms of this Agreement and such Project Documents to which it is a party;
- 23.1.4 all the Project Documents have been duly executed on proper authority and are in full force and effect as at the Signature Date, save for those Project Documents identified in Schedule 6 (*Project Documents*) that will be executed in the Agreed Form after the Signature Date on proper authority;
- 23.1.5 the execution and performance of any Project Documents do not and will not contravene any provision of the memorandum or articles of association or memorandum of incorporation of the Seller as at the Signature Date, or any order or other decision of any Responsible Authority or arbitrator that is binding on the Seller as at the Signature Date;

- 23.1.6 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;
- 23.1.7 no litigation, arbitration, investigation or administrative proceeding is in progress as at the Signature Date or, to the best of the knowledge of the Seller as at the Signature Date (having made all reasonable enquiries), threatened against it or any of the Contractors, which is likely to have a material adverse effect on the ability of the Seller to conduct the Project;
- 23.1.8 the Seller is not subject to any obligation or non-compliance which is likely to have a material adverse effect on its ability to conduct the Project;
- 23.1.9 no proceedings or any other steps have been taken or, to the best of the knowledge of the Seller (having made all reasonable enquiries), threatened for the winding-up or liquidation (whether voluntary or involuntary, provisional or final), judicial management (whether provisional or final), business rescue or deregistration of the Seller or for the appointment of a liquidator, judicial manager or similar officer over it or over any of its assets;
- 23.1.10 it has not carried out any trading or business activities since its incorporation or incurred any liabilities other than in connection with the operations of the Project (including the entering into of this Agreement and the other Project Documents);
- 23.1.11 all information disclosed by or on behalf of the Seller to the DoE at any time up to the Signature Date and, in particular, during the bid process preceding the award of this Agreement to the Seller, is true, complete and accurate in all material respects and the Seller is not aware of any material facts or circumstances not disclosed to the DoE which would, if disclosed, be likely to have an adverse effect on the DoE's decision (acting reasonably) to enter into this Agreement with the Seller; and
- 23.1.12 the copies of the executed Project Documents, which have been delivered to the DoE, are true and complete copies of such Project Documents and there are no other documents replacing or relating to any such Project Documents, which would materially affect the performance of these Project Documents.
- 23.1.13 as at the Signature Date:
- 23.1.13.1 the Seller has an authorised and issued share capital as set out in the Seller's shareholders agreement;
- 23.1.13.2 all shares in the issued share capital of the Seller are legally and beneficially owned as represented in the Seller's shareholders agreement;

- 23.1.13.3 save as provided in the Financing Agreements or the Seller's shareholders agreement, no person has the right (whether actual or contingent) to call for the issue of any share or loan capital in the Seller whether pursuant to any option or otherwise including any realisation of security;
- 23.1.13.4 save as provided in the Financing Agreements (in respect of all of the security provided by the Seller to the Lenders or their nominee) or the Seller's shareholders agreement, there are no Encumbrances over or affecting any of the Equity or the Shareholder Loans and there is no agreement or commitment to grant or create any such Encumbrance;
- 23.1.14 no person (whether the Seller, a Shareholder, Contractor or any other third person) has paid or agreed to pay any Success Payment in respect of, in connection with or pursuant to the Project, other than the Success Payments detailed in the Financial Model; and
- 23.1.15 the aggregate amount of the Success Payments paid or to be paid in respect of, in connection with or pursuant to the Project by any person (whether the Seller, a Shareholder, Contractor or any third person) are not gratuitously large when compared to the Total Project Costs.

23.2 **DoE warranties**

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

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

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 Party.

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

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 **Direct Agreement**

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

24.9 **Public Relations and Publicity**

- 24.9.1 The Seller acknowledges that certain information pertaining to the Project and the Project Data is required to be disclosed in accordance with the statutory reporting obligation of the DoE 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:
- 24.9.1.1 Parliament and its members and officers in accordance with the provisions of the Public Finance Management Act No. 1 of 1999;
- 24.9.1.2 the Auditor-General under the Public Audit Act No. 25 of 2004; and
- 24.9.1.3 persons acting in the public interest in accordance with the provisions of the Promotion of Access to Information Act No. 2 of 2000.
- 24.9.2 Subject to clause 24.9.3, neither Party shall communicate with representatives of the press, television, radio or other communications media on any matter concerning this Agreement without the prior approval of the other Party, such consent not to be unreasonably withheld.
- 24.9.3 To the extent that the DoE is obliged to disclose or publish information pursuant to clause 24.9.1, it undertakes to the Seller, if time permits, to consult with the Seller prior to any communication contemplated by this clause 24.9.3, and if time does not so permit, such consultation shall be dispensed with by the Parties.
- 24.9.4 No facilities to photograph or film in or upon the Project Sites shall be given to or permitted by the Seller unless the DoE has given prior written approval.

24.10 **Language**

This Agreement is made only in the English language. Each document referred to in this Agreement or to be delivered under it shall be in the English language.

24.11 **Costs**

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

24.12 **Severability**

If any provision of this Agreement is held by a court or other Responsible Authority to be unlawful, void or unenforceable, it shall be deemed to be deleted from this Agreement and shall be of no force and effect and this Agreement shall remain in full force and effect as if such provision had not originally been contained in this Agreement. In the event of any such deletion the Parties shall negotiate in good faith in order to agree the terms of a mutually acceptable and satisfactory alternative provision in place of the provision so deleted.

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

[NAME OF SELLER]

By: _____

Name:

Title:

Date:

DEPARTMENT OF ENERGY

By: _____

Name:

Title:

Date:

SCHEDULE 1

DETAILS OF THE PROJECT AND FACILITY

Please see the next pages

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

ECONOMIC DEVELOPMENT OBLIGATIONS

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

1. Recordal

It is recorded that:

- 1.1 the Seller having submitted a proposal in relation to Economic Development for the implementation of the Project with certain Economic Development commitments and having been appointed by the DoE, based, inter alia, on the strength of its proposal in relation to Economic Development, as the successful party to enter into this Agreement with the DoE and implement the Project and the Economic Development Obligations; and
- 1.2 the Parties wish to record the terms of the Seller commitments with regard to the Economic Development Obligations in this Schedule 2 (*Economic Development Obligations*), with the intention that they be contractually binding on the Seller.

2. Interpretation

- 2.1 In this schedule, unless the context otherwise requires, words and expressions defined in this Agreement and not redefined in this schedule shall have the same meaning when used herein.
- 2.2 The following words and phrases shall when used in this Schedule 2 (*Economic Development Obligations*) and typed in "Title Case" have the meanings assigned to them hereunder, and cognate expressions shall have corresponding meaning, namely:

"**Actual Total Quantum**" has the meaning attributed to it in paragraph 3.3 of this Schedule 2 (*Economic Development Obligations*);

"**Adjusted Recognition of Gender**" means the Adjusted Recognition for Gender calculation, determined as follows:

$$A = B/2 + C$$

where:

A is the Adjusted Recognition of Gender;

B is the percentage of Employees in the measurement category who are Black People;

C is the percentage of Employees in the measurement category who are Black Women. C is limited to a maximum of 50% of the applicable target;

"Adjusted Enterprise Development Contributions" means those Enterprise Development Contributions referred to in paragraph 3.4.14 of this Schedule 2 (*Economic Development Obligations*);

"Adjusted Socio-Economic Development Contributions" means those Socio-Economic Development Contributions referred to in paragraph 3.4.16 ~~3.4.15~~ of this Schedule 2 (*Economic Development Obligations*);

"Amended B-BBEE Codes" means the amended B-BBEE Codes of Good Practice issued under Government Gazette No. 36928 on 10 October 2013 in terms of section 9(1) of the B-BBEE Act;

"BBBEEB-BBEE" has the meaning given to it in the B-BBEE Act-Broad Based Black Economic Empowerment Act No. 53 of 2003;

"B-BBEE Act" means the Broad Based Black Economic Empowerment Act No. 53 of 2003;

"B-BBEE Codes" means the B-BBEE Codes of Good Practice issued under Government Gazette No. 29617 on 9 February 2007 in terms of section 9(1) of the B-BBEE Act;

"BBBEEB-BBEE Procurement Spend" means monetary spend on the procurement of goods and services (without double counting) from Vendors, adjusted according to BBBEEB-BBEE Recognition Levels by multiplying such spend by the corresponding percentage appearing in respect of such recognition level under the column "BBBEEB-BBEE Recognition Level" ~~in the table appearing in the definition of "BBBEE Recognition Levels"~~;

"BBBEEB-BBEE Recognition Levels" means those levels which are based on the overall performance of a Vendor, in respect of B-BBEE measured in terms of any applicable Sector Code, the B-BBEE Codes and/or the Amended B-BBEE Codes, demonstrated by the submission of a valid B-BBEE Verification Certificate; ~~means the following levels of recognition of achievement in relation to Vendors in respect of BBBEE measured in terms of the Department of Trade and Industry BBBEE Codes of Good Practice, 2007 as indicated below:~~

Economic Development Status	Qualification	BBBEE Recognition Level
Level One Contributor	≥100 points on the Generic Scorecard	135%
Level Two Contributor	≥85 but <100 on the Generic Scorecard	125%

Level Three Contributor	≥75 but <85 on the Generic Scorecard	110%
Level Four Contributor	≥65 but <75 on the Generic Scorecard	100%
Level Five Contributor	≥55 but <65 on the Generic Scorecard	80%
Level Six Contributor	≥45 but <55 on the Generic Scorecard	60%
Level Seven Contributor	≥40 but <45 on the Generic Scorecard	50%
Level Eight Contributor	≥30 but <40 on the Generic Scorecard	10%
Non-compliant Contributor	<30 on the Generic Scorecard	0%

"B-BBEE Verification Certificate" means a B-BBEE rating certificate to be issued by a South African National Accreditation System accredited verification agency, a chartered accountant registered with the South African Institute of Chartered Accountants or an auditor registered with the Independent Regulatory Board for Auditors in terms of any applicable Sector Code, the B-BBEE Codes or the Amended B-BBEE Codes, as applicable;

"**Black Women**" means women who are Black People;

"**Committed Obligations**" means the Economic Development Obligations, as stated in Annexes 2, 3, 4, 5, 6, 7 and 8;

"**Construction Measurement Period**" means the period commencing on the Signature Effective Date and ending on the day immediately preceding the Commercial Operation Date;

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

"**Distributor**" has the meaning ascribed-given to it in the PPA;

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

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

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

"Economic Development Independent Monitor" means a person appointed as such in terms of paragraph 9.1 of this Schedule 2 (*Economic Development Obligations*);

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

"Economic Development Performance Credits" or **"EDPC"** means those performance credits, as referred to in paragraph 8.1 of this Schedule 2 (*Economic Development Obligations*);

"Economic Development Performance Deductions" or **"EDPD"** means those performance deductions, as referred to in paragraph 8.1 of this Schedule 2 (*Economic Development Obligations*);

"Economic Development Matrix" means the matrix to be submitted by the Seller in terms of paragraph 7.1.1.2 in the form contained in Annex 1 (*Form of Economic Development Matrix*);

"Economic Development Plan" means the plan to be submitted by the Seller in terms of paragraph 7.1.1.1 in the form contained in Annex 11 (*Form of Economic Development Plan*);

"Economic Development Sub-Elements" has the meaning attributed to it in paragraph 3.4 of this Schedule 2 (*Economic Development Obligations*);

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

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

"Employment Equity Regulations" means the regulations promulgated in terms of the Employment Equity Act No. 55 of 1998;

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

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

- (a) Exempted Micro Enterprises or Qualifying Small Enterprises, which are 50% owned and Controlled by Black People or Black Women; or
- (b) any other enterprise that is 50% owned and Controlled by Black People or Black Women, with a ~~BBBEEB-BBEE~~ Recognition Level of between Level 1 and Level 4, as determined by and in terms of the Department of Trade and Industry Amended BBBEEB-BBEE Codes of Good Practice, 2007;

"**EPC Contractor**" means the Contractor engaged by the Seller in relation to the design, construction and commissioning of the Facility;

"**Equity Instrument**" means the instrument by which a participant holds a right of ownership in a Measured Entity;

"**Exempted Micro Enterprise**" or "**EME**" means an entity defined as such, at the time of measurement, in terms of any Sector Code, the B-BBEE Codes or the Amended B-BBEE Codes, as applicable~~an entity which, at the time of the award of a contract to it for goods and services in relation to Project Activities by a Measured Entity ("EME Relevant Contract"), has a turnover of between zero (0) and R5 million (determined without reference to the EME Relevant Contract);~~

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

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

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

~~"**Generic Scorecard**" means the scorecard as referred to in the Department of Trade and Industry BBBEE Codes of Good Practice, 2007;~~

"**Indexed**" means, in relation to an amount stipulated in this Agreement, that the amount shall be adjusted on 1 April in each calendar year starting 12 months following the base date of 1 April 2013 using the following formula:

$$P_n = P_b * (I_n/I_b)$$

where:

P_n = the relevant amount in year n;

P_b = the relevant amount stipulated in this Agreement;

I_n = Consumer Price Index as published in year n in respect of the month of December of year n-1;

I_b = 100, being the Consumer Price Index (Dec 2012 = 100) as published in respect of the month of December 2012, as rebased by Statistics South Africa (or its equivalent successor entity) from time to time;

and where:

Consumer Price Index means the weighted average consumer price index (Dec 2012 = 100) as published by Statistics South Africa (or its equivalent successor entity), which is referred to as "Headline CPI – All urban areas" in Statistical Release P0141 from time to time (or equivalent successor index);

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

"**Local Communities**" means a community or communities in the Republic of South Africa:

- (a) in one or more residential areas or villages within 50km from the Project Site; and
- (b) in the event that there are no residential areas or villages within 50km from the Project Site, in the nearest residential areas or villages to the Project Site;

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

"**Management Control**" means the effective control of the management of a Measured Entity by reference to Top Management;

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

"**NTC**" has the meaning ~~ascribed~~ given to it in the PPA;

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

"**Operations Contractor**" means a Contractor engaged by the Seller for the operations of the Facility;³

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

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

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

"**Penalty and Reward Regime**" means the Economic Development Penalty and Reward Regime referred to in paragraph 8 of this Schedule 2 (*Economic Development Obligations*);

"**Persons**" means the natural persons engaged on the various levels in the Project;

"**Person Months**" means ~~a total of 160 hours worked by an Employee~~the total number of Employees in each of the Contract Months, within the Construction Measurement Period and the Operating Measurement Period, as applicable, which are adjusted for the actual working time, compared to normal working time;

"**Preferential Procurement**" means the extent to which a Measured Entity procures goods and services from suppliers with ~~BBBEE~~BBEE Recognition Levels;

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

"**Province**" means a province as contemplated in Schedule 6 of the Constitution of the Republic of South Africa Act No. 108 of 1996;

"**Qualifying Small Enterprise**" or "**QSE**" means ~~an entity defined as such, at the time of measurement, in terms of any Sector Code, the B-BBEE Codes or the Amended B-BBEE Codes, as applicable~~an entity which, at the time of the award of a contract to it for goods and services in relation to Project Activities by a Measured Entity ("QSE Relevant

³ **Drafting Note:** The relevance of this definition and the rest of the references in this Schedule 2 (*Economic Development Obligations*) to Operations Contractor will depend on the structure proposed by the Bidder.

~~"Contract")", has a turnover of between R5 million and R35 million (determined without reference to the QSE Relevant Contract);~~

"**Quarterly Achievement**" means the achievements of the Seller in respect of Economic Development as more clearly stated in paragraph 8.1.3 of this Schedule 2 (*Economic Development Obligations*);

"**Quarterly Obligations**" means the levels of the Committed Obligations for each Contract Quarter, denoted in Annex 10 (*Quarterly Obligations*) of this Schedule 2 (*Economic Development Obligations*), in respect of the Economic Development Elements, determined in each case in terms of paragraph 5.2 (*Economic Development Elements*);

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

- (a) Black Enterprises based in Local Communities – 135%;
- (b) Black Enterprises based in the Province where the Project is Located – 100%;
- (c) Black Enterprises based in rest of the Republic of South Africa – 80%; and
- (d) all other – 10%;

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

- (a) Based in Local Communities – 135%;
- (b) Based in the Province where the Project is Located – 100%;
- (c) Based in rest of the Republic of South Africa – 80%; and
- (d) all other – 10%;

"**Reporting Obligations**" means the reporting obligations of the Seller and the Contractors in terms of this Schedule 2 (*Economic Development Obligations*), specifically as stated in paragraph 7 of this Schedule 2 (*Economic Development Obligations*);

"**Revenue**" means, in relation to any reporting period, all amounts paid to or received by the Seller in terms of the PPA, excluding the Use of System Charges;

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

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

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

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

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

"Socio-Economic Development" means the initiatives carried out by a Measured Entity towards broad social and economic advancement of Black People in underdeveloped communities, which includes, without limitation, initiatives focusing on education, healthcare and programme(s), infrastructure development, enterprise creation within communities, reconstruction of underdeveloped areas, community training and skills development;

"Socio-Economic Development Contributions" shall have the meaning attributed to it in paragraph 3.4.15 of this Schedule 2;

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

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

"Top Management" means Employees of a Measured Entity who are:

- (a) members of the occupation category of "Top Management" as determined using the Employment Equity Regulations enacted in terms of the Employment Equity Act; and
- (b) appointed by or on the authority of the board of directors to undertake the day-to-day management of that Measured Entity and who:

- (i) have individual responsibility for the overall management and for the financial management of that Measured Entity; and
- (ii) actively involved in developing and implementing the Measured Entity's overall strategy;

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

"Total Project Value" means during the Construction Measurement Period, the capital costs and costs of services procured for the construction of the Facility, excluding Finance Charges, land costs, ~~and mobilisation fees to the Operations Contractor~~ and the costs payable to the Distributor, NTC and/or a Contractor for the Distribution Connection Works or the Transmission Connection Works (as the case may be);

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

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

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

"Vendors" means subcontractors to the Seller, the EPC Contractor⁴ and Operations Contractor⁵, (excluding in the case of the Seller, the EPC Contractor and/or Operations Contractor themselves), and suppliers, on any tier, who supply materials and other supplies or services to the Seller and/or the EPC Contractor and/or Operations Contractor in relation to the Project Activities;

"Women" means persons of the female gender;

"Women Owned Vendors" means suppliers and subcontractors with 50% or more of their equity owned by Women; and

"Youth" for purposes of the Project, means Persons between the ages of 18 and 35 years, when entering the Project.

2.3 All references in this Schedule 2 (*Economic Development Obligations*) to any Sector Code, the ~~Department of Trade and Industry BBBEEB-BBEE~~

⁴ **Drafting Note:** Where applicable.

⁵ **Drafting Note:** Where applicable.

Codes ~~and the Amended B-BBEE Codes of Good Practice, 2007~~, are to such codes as they exist at the ~~Signature~~Effective Date.⁶

3. General Obligations

- 3.1 The Seller undertakes that, in undertaking the Project Activities, it will:
- 3.1.1 without derogating from any of the obligations contained in this Schedule 2 (*Economic Development Obligations*), carry out its obligations in relation to and comply with the Economic Development Obligations and attain or exceed the Quarterly Obligations;
 - 3.1.2 comply with its Reporting Obligations;
 - 3.1.3 bring to the DoE's attention any non-compliance with the Economic Development Obligations by the Seller, or a change in the Seller that may impact on the Economic Development Obligations and the measures that it plans to implement to rectify such non-compliance with the Economic Development Obligations;
 - 3.1.4 generally promote and encourage contracting with QSEs, EMEs and enterprises owned by Black People in addition to those mentioned in this Schedule 2 (*Economic Development Obligations*), through other outsourcing and subcontracting of the Project operations wherever possible and within the reasonable capacity of the Seller and/or the Contractors to do so;
 - 3.1.5 develop the skills of such of its Employees who are Black People, and continuously improve their responsibilities and Employment positions in the Seller and the Contractors through, inter alia, human resources training, general preference to Black People in appointing people to new Employment positions, and general career development of Black People;
 - 3.1.6 keep a record of all activities undertaken in the Project in respect of Economic Development (including, without limitation, information relating to the achievement of the Economic Development Obligations by the Seller and the Contractors to the extent relied upon by the Seller) and make such a record(s) available to the DoE, its representatives and/or the auditors and allow them access to such information on request;
 - 3.1.7 in the event of there being a delay in the performance of the Project, submit a report to the DoE indicating how the Economic Development Obligations during the delay period and in the following periods would be complied with; and

⁶~~Drafting Note: Appropriate revisions may need to be made to this Schedule 2 (Economic Development Obligations) if new or amended Codes are issued prior to the Effective Date.~~

3.1.8 not do, or cause to be done anything that can result in non-compliance with the Economic Development Obligations.

3.2 Non-compliance with the above general obligations will result in the application of the Penalty and Reward Regime, which may result in Economic Development Performance Deductions and may also result in Termination Points and/or ultimate termination of this Agreement.

3.3 "**Actual Total Quantum**", for purposes of this Schedule 2 (*Economic Development Obligations*) means, in relation to the Economic Development Obligations:

3.3.1 in respect of Job Creation: (100-SR-01 (RSA Based Employees who are Citizens), 100-SR-02 (Employees who are Black People), 100-SR-03 (Skilled Employees who are Black People) and 100-SR-04 (RSA Based Employees who are Citizens from Local Communities)) and Management Control (400-SR-01 (Black Top Management)), the actual number of Person Months;

3.3.2 in respect of Local Content (200-SR-01 (Value of Local Content Spend); Preferential Procurement (500-SR-01 (~~BBBEEB-BBEE~~ Procurement), 500-SR-02 (QSE and EME procurement) and 500-SR-03 (Women Owned Vendor Procurement)); Enterprise Development (600-SR-01 (Enterprise Development Contributions) and 600-SR-02 (Adjusted Enterprise Development Contributions)); Socio-Economic Development (700-SR-01 (Socio-Economic Development Contributions), 700-SR-02 (Adjusted Socio-Economic Development Contributions)), the actual amount spent in R and terms by a Measured Entity;

3.3.3 in respect of Ownership (300-PC-01 (Shareholding by Black People) and 300-PC-02 (Shareholding by Local Communities) 300-CC-01 (Shareholding by Black People) and 300-OM-01 (Shareholding by Black People)), the actual Shareholding in the relevant Measured Entity,

as the case may be, relevant to the measurement parameters for the Economic Development Elements, in a specific Contract Quarter in which the Economic Development Obligations are being measured or determined.

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

3.4.1 100-SR-01 – **RSA Based Employees who are Citizens.** For purposes of this definition, reference to "RSA Based Employees who are Citizens" shall mean Employees who are ordinarily resident in the Republic of South Africa and are Citizens expressed as (i) a percentage of RSA Based Employees and (ii) a quantum of their total Person Months;

- 3.4.2 100-SR-02 – **RSA Based Employees who are Black People.** For purposes of this definition, reference to "RSA Based Employees who are Black People" shall mean Employees who are ordinarily resident in the Republic of South Africa and are Black People expressed as (i) a percentage of RSA Based Employees and (ii) a quantum of their total Person Months;
- 3.4.3 100-SR-03 – **Skilled Employees who are Black People.** For purposes of this definition, reference to "Skilled Employees who are Black People" shall mean Employees who are ordinarily resident in the Republic of South Africa and are Skilled Black People expressed as (i) a percentage of the total Skilled Employees and (ii) a quantum of their total Person Months;
- 3.4.4 100-SR-04 – **RSA Based Employees who are Citizens from Local Communities.** For purposes of this definition, reference to "RSA Based Employees who are Citizens from Local Communities" shall mean Employees who are ordinarily resident in the Republic of South Africa and are Citizens and reside in Local Communities expressed as (i) a percentage of RSA Based Employees and (ii) a quantum of their total Person Months;
- 3.4.5 200-SR-01 - **Value of Local Content Spend.** For purposes of this definition, reference to "Value of Local Content Spend" shall mean the portion of Local Content as a percentage of the Total Project Value incurred;
- 3.4.6 300-PC-01, 300-CC-01 or 300-OM-01 – **Shareholding by Black People in the Seller, the EPC Contractor or Operations Contractor respectively.** For purposes of this definition, reference to "Shareholding by Black People" shall mean Shareholding in the enterprise by Black People as a percentage of the Total Shareholding in the Measured Entity;
- 3.4.7 300-PC-02 - **Shareholding by Local Communities in the Seller.** For purposes of this definition, reference to "Shareholding by Local Communities" shall mean Shareholding by Local Communities (only in respect of Economic Interest) as a percentage of the Total Shareholding (only in respect of Economic Interest) in the Measured Entity⁷;
- 3.4.8 400-SR-01 - **Black Top Management.** For purposes of this definition, reference to "Black Top Management" shall mean Black People Employed in Top Management as a percentage of the total Employees in Top Management using the Adjusted Recognition of Gender;

⁷ **Drafting Note:** The wording "(only in respect of Economic Interest)" applies only where the Local Community has no Exercisable Voting Rights in the Seller and will be deleted to the extent that the Local Community has Exercisable Voting Rights in the Seller.

- 3.4.9 500-SR-01 - **BBBEEB-BBEE Procurement**. For purposes of this definition, reference to "**BBBEEB-BBEE Procurement**" shall mean **BBBEEB-BBEE Procurement Spend** as a percentage of Total Amount of Procurement Spend;
- 3.4.10 500-SR-02 - **QSE and EME Procurement**. For purposes of this definition, reference to "QSE and EME Procurement" shall mean **BBBEEB-BBEE Procurement Spend** from Qualifying Small Enterprises or Exempted Micro Enterprises as a percentage of Total Amount of Procurement Spend;
- 3.4.11 500-SR-03 - **Women Owned Vendor Procurement**. For purposes of this definition, reference to "Women Owned Vendor Procurement" shall mean monetary spend from Women Owned Vendors as a percentage of Total Amount of Procurement Spend;
- 3.4.12 600-SR-01 - **Enterprise Development Contributions**. For purposes of this definition, reference to "Enterprise Development Contributions" shall mean the contributions made towards Enterprise Development as a percentage of the Revenue;
- 3.4.13 600-SR-02 - **Adjusted Enterprise Development Contributions**. For purposes of this definition, reference to "Adjusted Enterprise Development Contributions" shall mean the contributions made pursuant to Enterprise Development adjusted using the Recognition for Local Enterprises as a percentage of the Revenue;
- 3.4.14 700-SR-01 – **Socio-Economic Development Contributions**. For purposes of this definition, reference to "Socio-Economic Development Contributions" shall mean the contributions made pursuant to Socio-Economic Development as a percentage of the Revenue; and
- 3.4.15 700-SR-02 - **Adjusted Socio-Economic Development Contributions**. For purposes of this definition, reference to "Adjusted Socio-Economic Development Contributions" shall mean contributions made pursuant to Socio-Economic Development adjusted using the Recognition for Localness as a percentage of the Revenue.

4. Implementation and Duration

- 4.1 The Economic Development Obligations shall, where applicable, be implemented as indicated in Annex 10 (*Quarterly Obligations*) of this Schedule 2 (*Economic Development Obligations*).
- 4.2 The Seller shall, as part of its reporting in terms of this Agreement, procure that its chief executive officer reports to the DoE or the Economic Development Independent Monitor (if one is appointed) the progress made in performing the Economic Development Obligations in respect of the relevant measurement periods.

5. Economic Development Elements

- 5.1 The Economic Development requirements to be met by the Seller and its Contractors in the Construction Measurement Period and the Operating Measurement Period are contained in this Schedule 2 (*Economic Development Obligations*).
- 5.2 Quarterly Obligations will:
- 5.2.1 in the case of Job Creation, be the percentage and quantum values for each Contract Quarter as expressed in Annex 10 (*Quarterly Obligations*) of this Schedule 2 (*Economic Development Obligations*); and
- 5.2.2 in the case of Economic Development Elements other than Job Creation ("**Other ED Elements**"), be the percentage as expressed in Annex 10 (*Quarterly Obligations*) of this Schedule 2 (*Economic Development Obligations*). The quantum values indicated in Annex 10 (*Quarterly Obligations*) in respect of these Other ED Elements are only indicative of the extent of projected quantum achievement, based on the Seller's forecasts.
- 5.3 The Seller will:
- 5.3.1 be measured for compliance with the Economic Development Sub-Elements;
- 5.3.2 have Economic Development Performance Deductions levied in terms of paragraph 8.1 of this Schedule 2 (*Economic Development Obligations*) for not meeting its Quarterly Obligations in a Contract Quarter;
- 5.3.3 be subject to termination based on Termination Points as contemplated in clause 13.2 (*Termination Points*);
- 5.3.4 be monitored for compliance with the Quarterly Obligations; and
- 5.3.5 be awarded Economic Development Performance Credits in terms of paragraph 8.1 of this Schedule 2 (*Economic Development Obligations*) for exceeding its Quarterly Obligations in a Contract Quarter.
- 5.4 The Economic Development Performance Deductions and Economic Development Performance Credits will be reconciled in terms of paragraph 8.1.4 of this Schedule 2 (*Economic Development Obligations*).

5.5 Economic Development in the Early Operating Period

- 5.5.1 Sellers who deliver Early Operating Energy to the Buyer will be entitled to undertake initiatives in the Early Operating Period in respect of Enterprise Development and Socio-Economic Development Elements.**
- 5.5.2 The DoE shall recognise any contributions to Enterprise Development and Socio-Economic Development made by the Seller in the Early Operating Period as part of the contributions in the first**

Contract Quarter of the Operating Measurement Period.

5.5.3 In order for the Department to recognise such contributions, the Seller shall:

5.5.3.1 notify the Department of its intention to undertake Enterprise Development and/or Socio-Economic Development initiatives in the Early Operating Period prior to the commencement of such period;

5.5.3.2 submit reports on the progress made in respect of contributions made in relation to Enterprise Development and/or Socio-Economic Development in the Early Operating Period. These reports are to be submitted in addition to the Economic Development quarterly reports due in the Construction Measurement Period, together with such Construction Measurement Period Economic Development quarterly reports; and

5.5.3.3 submit, as part of the first Contract Quarter of the Operating Measurement Period, details of any contributions made to Enterprise Development and/or Socio-Economic Development in the Early Operating Period, which shall consolidate all of the progress reports submitted in respect of the Early Operating Period.

6. Seller's Undertakings⁸

The Seller undertakes to attain or exceed the following levels of achievement in respect of the Economic Development Obligations:

6.1 Job Creation

6.1.1 The Seller undertakes to the DoE that the Employment of Employees will comply with the Committed Obligations in Annex 2 (*Job Creation Obligations*).

6.1.2 The tables detailing the Committed Obligations in relation to Job Creation are annexed hereto as Annex 2 (*Job Creation Obligations*).

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

⁸ Drafting Note: the obligations of the Seller contained in this section of Schedule 2 will be guided by the RFP Proposal submitted by the Seller.

6.2 Local Content

6.2.1 The Seller undertakes to the DoE that it will procure that the ~~Committed Value of Local Content Spend will comply with its~~ Obligations in Annex 3 (*Local Content Element Obligations*) are complied with.

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

6.3 Ownership

6.3.1 The Seller undertakes to the DoE that it will procure that the Committed Obligations in Annex 4 (*Ownership Element Obligations*) are complied with.

6.3.2 The Seller undertakes to the DoE that it, and the Contractors, shall procure that the Control of the Seller, or the Control of the Contractors (as the case may be) reflects a participation by Black People and/or Black Enterprises of not less than the percentage of Shareholding required to be held by Black People in the Seller or the Contractors pursuant to the provisions of this Schedule 2 (*Economic Development Obligations*).

6.3.3 The Quarterly Obligations, in respect of Ownership, are contained in Annex 10 (*Quarterly Obligations*). The Seller shall procure that the Quarterly Obligations referred to in Annex 10 (*Quarterly Obligations*) with regard to Ownership, are attained or exceeded by it and its Contractors in the relevant periods.

6.4 Management Control

6.4.1 The Seller undertakes to the DoE that it will procure that the Employment of Employees will comply with the Committed Obligations in relation to Top Management in Annex 5 (*Management Control Element Obligations*).

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

6.5 Preferential Procurement

6.5.1 The Seller undertakes to the DoE that it will procure compliance with the Committed Obligations in relation to the Preferential Procurement element in Annex 6 (*Preferential Procurement Element Obligations*).

6.5.2 The Quarterly Obligations, in respect of Preferential Procurement, are contained in Annex 10 (*Quarterly Obligations*). The Seller shall procure that the Quarterly Obligations referred to in Annex 10 (*Quarterly Obligations*) are attained or exceeded in the relevant periods.

6.5.3 Impact of B-BBEE Codes and Amended B-BBEE Codes on the Committed Obligations in relation to Preferential Procurement

6.5.3.1 The Parties anticipate that the introduction of the Amended B-BBEE Codes may have an impact on the interpretation of the Committed Obligations in relation to Preferential Procurement.

6.5.3.2 The Parties therefore wish to regulate how Preferential Procurement will be recognised during the Term.

6.5.3.3 In order to demonstrate compliance with the Preferential Procurement Sub-Elements which utilise B-BBEE Recognition Levels to measure compliance, the Seller's contribution thereto will be recognised based on the valid B-BBEE Verification Certificate submitted in respect of the relevant Vendor, whether that verification certificate is issued in terms of a Sector Code, the B-BBEE Codes or the Amended B-BBEE Codes.

6.6 Enterprise Development

6.6.1 The Seller undertakes to the DoE that it will procure compliance with the Committed Obligations in relation to Enterprise Development contained in Annex 7 (*Enterprise Development Element Obligations*).

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

6.7 Socio-Economic Development

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

6.7.2 The Quarterly Obligations, in respect of Socio-Economic Development, are contained in Annex 10 (*Quarterly Obligations*). The Seller shall procure that the Quarterly Obligations referred to in Annex 10 (*Quarterly Obligations*) with regard to Socio-Economic Development, are attained or exceeded by it in the relevant periods.

7. Reporting Obligations of the Seller and its Contractors

- 7.1 The Seller undertakes to submit reports in such form as may reasonably be required by the DoE, to the DoE. The Seller's obligation to the DoE shall include but not be limited to the following:
- 7.1.1 to, at the end of the first Contract Month (for the period between the Signature Date and the end of the first Contract Year), and thereafter at the beginning of each subsequent Contract Year:
- 7.1.1.1 deliver an Economic Development Plan detailing the measures that the Seller will implement in that Contract Year and subsequent Contract Years to achieve the Committed Obligations. The Economic Development Plan shall as a minimum include all of the information required in and fully comply with Annex 11 (*Form of Economic Development Plan*); and
- 7.1.1.2 deliver an Economic Development Matrix in relation to the Seller's commitments for the relevant Contract Year. The Economic Development Matrix shall as a minimum include all of the information required in and fully comply with Annex 1 (*Form of Economic Development Matrix*);
- 7.1.2 to, within fifteen (15) calendar days after the end of each Contract Quarter, deliver details of the Actual Total Quantum in relation to Economic Development Obligations.
- 7.2 For the avoidance of doubt:
- 7.2.1 the reports of the Seller must include the performance of all the Economic Development Obligations including those in respect of which the Seller relies on its Contractors to achieve; and
- 7.2.2 the Parties explicitly agree and record that nothing contained in the Economic Development Plan shall be construed to be qualifying or in any manner reducing the Economic Development Obligations, contained in the Committed Obligations. In the event of any conflict between the Economic Development Plan and any other Economic Development Obligation(s) contained in this Schedule 2 (*Economic Development Obligations*), then the provisions of this Schedule 2 (*Economic Development Obligations*) shall apply without reference to the Economic Development Plan.
- 7.3 The Seller must, in addition to the Actual Total Quantum in relation to the Economic Development Obligations referred to in paragraph 7.1.2, include as part of their report details of the Actual Total Quantum for each of the Economic Development Elements as follows:
- 7.3.1 In respect of Job Creation:
- 7.3.1.1 100-SR-01 – RSA Based Employees who are Citizens, expressed in Person Months;

- 7.3.1.2 100-SR-02 – RSA Based Employees who are Black People, expressed in Person Months;
- 7.3.1.3 100-SR-03 – Skilled Employees who are Black People, expressed in Person Months;
- 7.3.1.4 100-SR-04 – RSA Based Employees who are Citizens from Local Communities, expressed in Person Months;
- 7.3.1.5 Total RSA Based Employees, expressed in Person Months;
- 7.3.1.6 Total RSA Based Employees who are Skilled Employees, expressed in Person Months; and
- 7.3.1.7 indicate, in Person Months, the number of Employees who are People with Disabilities, Women and Youth, if any.

- 7.3.2 In respect of Local Content:
 - 200-SR-01 – Value of Local Content Spend, expressed in R and terms ~~and a declaration in relation to Local Content as may be required by the Department.~~
- 7.3.3 In respect of Ownership:
 - 7.3.3.1 300-PC-01, 300-CC-01 or 300-OM-01 – Shareholding by Black People, expressed as a percentage of the Total Shareholding in the Measured Entity; and
 - 7.3.3.2 300-PC-02 - Shareholding by Local Communities, expressed as a percentage of the Total Shareholding in the Measured Entity.
- 7.3.4 In respect of Management Control:
 - 400-SR-02 - Black Top Management, expressed in Person Months.
- 7.3.5 In respect of Preferential Procurement:
 - 7.3.5.1 500-SR-01 - BBBEEB-BBEE Procurement, expressed in R and terms;
 - 7.3.5.2 500-SR-02 - QSE and EME Procurement, expressed in R and terms;
 - 7.3.5.3 500-SR-03- Women Owned Vendor Procurement, expressed in R and terms; and
 - 7.3.5.4 indicating in R and terms, goods and services procured from enterprises owned by People with Disabilities, Women and Youth, if any.
- 7.3.6 In respect of Enterprise Development:

- 7.3.6.1 600-SR-01 - Enterprise Development Contributions, expressed in ~~€~~R and terms; and
- 7.3.6.2 600-SR-02 - Adjusted Enterprise Development Contributions, expressed in ~~€~~R and terms.
- 7.3.7 In respect of Socio-Economic Development:
 - 7.3.7.1 700-SR-01 - Socio-Economic Development Contributions, expressed in ~~€~~R and terms; and
 - 7.3.7.2 700-SR-02 - Adjusted Socio-Economic Development Contributions, expressed in ~~€~~R and terms.
- 7.4 The DoE shall in respect of the Economic Development Plan delivered to it in terms of paragraph 7.1.1.1 above be entitled to suggest that the Seller considers alternative plans to those that the Seller proposes to implement to meet the Quarterly Obligations and achieve the Committed Obligations in respect of Socio Economic Development ("**Socio-Economic Development Plan**"), in the case where similar plans are being or will be implemented by other sellers in other projects as part of the IPP Programme. The DoE shall provide such comments within twenty (20) Business Days of receipt of the Economic Development Plans. The Seller shall consider and take into account the DoE's suggestions raised in relation to its Socio-Economic Development Plan and shall within twenty (20) Business Days submit a revised Economic Development Plan indicating how it has considered and taken into account the DoE's comments in relation to the Socio-Economic Development Plan.

8. Economic Development Performance Measurement

8.1 Economic Development Performance Credits and Deductions

- 8.1.1 The following formulae will be applied to determine the Economic Development Performance Credits ("**EDPC**") that the DoE may award the Seller, or Economic Development Performance Deductions ("**EDPD**") that the DoE may levy on the Seller depending on the performance of the Seller and its Contractors in exceeding, meeting, or failing to meet the Economic Development Obligations as specified in Annex 2 - Annex 8:⁹

$$Performance\ Valuation\ in\ the\ Construction\ Measurement\ Period = P * \sum_{i=1}^{123} W_i * SF_i$$

$$Performance\ Valuation\ in\ the\ Operating\ Measurement\ Period = P * \sum_{i=1}^{15} W_i * SF_i$$

⁹ **Drafting Note:** Bidders must note that their obligations are to be expressed in percentage terms as contained in the Annexes 2 to 8 (Committed Obligations).

where

- 8.1.1.1 $P_{\text{Construction Measurement Period}} = R [^{***}]^{10}$
- 8.1.1.2 $P_{\text{Operating Measurement Period}} = R [^{***}]^{11} \text{ Indexed}$
- 8.1.1.3 $i =$ the specific Economic Development Sub-Element
- 8.1.1.4 $W_i =$ Weight of Economic Development Sub-Element i extracted from Table 9.1 in Annex 9 (*Economic Development Weights and Scaling Factors*)
- 8.1.1.5 $SF_i =$ Scaling Factor extracted from Table 9.2 in Annex 9 (*Economic Development Weights and Scaling Factors*) based on the performance in respect of each Economic Development Sub-Element in the relevant Contract Quarter ("**QEP**"), where QEP is determined as follows:
- 8.1.1.5.1 in the case of Job Creation, it shall be as indicated in paragraph 8.1.3.1 of this Schedule 2 (*Economic Development Obligations*) for each of the Job Creation Economic Development Sub-Elements; and
- 8.1.1.5.2 in the case of all other Economic Development Sub-Elements, it shall be in terms of the following formula:
- $$QEP_i = \frac{\text{Quarterly Achievement in the Contract Quarter}}{\text{Quarterly Obligation in the Contract Quarter}}$$
- 8.1.2 If the Performance Valuation results in a positive value, it is an EDPD, and if the Performance Valuation results in a negative value, it is an EDPC.
- 8.1.3 QEP in respect of Job Creation and Quarterly Achievement in respect of each other Economic Development Sub-Element shall be determined as follows:

¹⁰ **Drafting Note:** amount to be extracted from the financial model of the Bidder, determined based on 5% of the costs of the design, construction and commissioning of the Facility in the average Contract Quarter and will be fixed prior to Signature Date, on a date to be notified by the DoE to the Preferred Bidders.

¹¹ **Drafting Note:** this amount is to be based on 2% of the Bidder's forecast revenue averaged to a single quarter to be extracted from the financial model of the Bidder and will be fixed prior to the Signature Date on a date notified by the DoE to the Preferred Bidders.

8.1.3.1 in respect of Job Creation:

8.1.3.1.1 **100-SR-01: RSA Based Employees who are Citizens**

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

where

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

j = Contract Month

n = Number of Contract Months in the Contract Quarter

8.1.3.1.2 **100-SR-02: RSA Based Employees who are Black People**

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

where

$$\text{Quarterly Achievement in the Contract Quarter \% 100 - SR - 02} = \left(\frac{\sum_{j=1}^n \text{RSA Based Employees who are Black People in Person - Months}}{\sum_{j=1}^n \text{RSA Based Employees in Person - Months}} \right)$$

j = Contract Month

n = Number of Contract Months in the Contract Quarter

8.1.3.1.3 **100-SR-03: Skilled Employees who are Black People**

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

where

$$\text{Quarterly Achievement in the Contract Quarter \% 100 - SR - 03} = \left(\frac{\sum_{j=1}^n \text{Skilled Employees who are Black People in Person - Months}}{\sum_{j=1}^n \text{Skilled Employees in Person - Months}} \right)$$

j = Contract Month

n = Number of Contract Months in the Contract Quarter

8.1.3.1.4 100-SR-04: RSA Based Employees who are Citizens from Local Communities

$$\text{QEP} = \left(\frac{\text{Quarterly Achievement in the Contract Quarter \% 100 - SR - 04}}{\text{Quarterly Obligation in the Contract Quarter \% 100 - SR - 04}} \right) * 0.33 + \left(\frac{\sum_{j=1}^n \text{Actual Employees who are Citizens from Local Communities in Person - Months}}{\sum_{j=1}^n \text{Quarterly Obligation in the Contract Quarter of Employees who are Citizens from Local Communities in Person - Months}} \right) * 0.67$$

where

$$\text{Quarterly Achievement in the Contract Quarter \% 100 - SR - 04} = \left(\frac{\sum_{j=1}^n \text{Employees from Local Communities who are Citizens in Person - Months}}{\sum_{j=1}^n \text{RSA Based Employees in Person - Months}} \right)$$

j = Contract Month

n = Number of Contract Months in the Contract Quarter

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

8.1.3.2.1 200-SR-01: Value of Local Content Spend

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

where

j = Contract Month

n = Number of Contract Months in the Contract Quarter

~~8.1.3.2.2 200-SR-02: Local Manufacture of Key Components and/or Equipment~~

~~$$\text{Quarterly Achievement} = \left(\frac{\sum_{j=1}^n \text{Local Manufacture of Key Components and / or Equipment}}{n} \right)$$~~

where

~~j = Contract Month~~

~~n = Number of Contract Months in the Contract Quarter~~

~~8.1.3.2.38.1.3.2.2~~ **300-PC-01: Shareholding by Black People in the Seller**

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

where

j = Contract Month

n = Number of Contract Months in the Contract Quarter

~~8.1.3.2.48.1.3.2.3~~ **300-PC-02: Shareholding by Local Communities in the Seller**

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

where

j = Contract Month

n = Number of Contract Months in the Contract Quarter

~~8.1.3.2.58.1.3.2.4~~ **300-CC-01: Shareholding by Black People in the EPC Contractor**

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

where

j = Contract Month

n = Number of Contract Months in the Contract Quarter

8.1.3.2.68.1.3.2.5 **300-OM-01: Shareholding by Black People in the Operations Contractor**

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

where

j = Contract Month

n= Number of Contract Months in the Contract Quarter

8.1.3.2.78.1.3.2.6 **400-SR-01: Black Top Management**

$$\text{Quarterly Achievement} = \frac{\sum_{j=1}^n \text{Black People in Top Management Adjusted for Recognition of Gender in Person – Months}}{\sum_{j=1}^n \text{Total Employees in Top Management in Person – Months}}$$

where

j = Contract Month

n= Number of Contract Months in the Contract Quarter

8.1.3.2.88.1.3.2.7 **500-SR-01: ~~BBBEEB~~-BBEE Procurement**

$$\text{Quarterly Achievement} = \frac{\sum_{j=1}^n \text{Actual BBBEE Procurement Spend}}{\sum_{j=1}^n \text{Total Procurement Spend}}$$

8.1.3.2.98.1.3.2.8 **500-SR-02: QSE and EME Procurement**

$$\text{Quarterly Achievement} = \frac{\sum_{j=1}^n \text{Actual QSE and EME Procurement Spend}}{\sum_{j=1}^n \text{Total Procurement Spend}}$$

where

j = Contract Month

n= Number of Contract Months in the Contract Quarter

~~8.1.3.2.10~~8.1.3.2.9 **500-SR-03: Women Owned Vendor Procurement**

$$\text{Quarterly Achievement} = \frac{\sum_{j=1}^n \text{Actual Women Vendor Procurement Spend}}{\sum_{j=1}^n \text{Total Procurement Spend}}$$

where

j = Contract Month

n= Number of Contract Months in the Contract Quarter

~~8.1.3.2.11~~8.1.3.2.10 **600-SR-01: Enterprise Development Contribution**

$$\text{Quarterly Achievement} = \frac{\sum_{j=1}^n \text{Enterprise Development Contributions}}{\sum_{j=1}^n \text{Revenue}}$$

where

j = Contract Month

n= Number of Contract Months in the Contract Quarter

~~8.1.3.2.12~~8.1.3.2.11 **600-SR-02: Adjusted Enterprise Development Contribution**

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

where

j = Contract Month

n= Number of Contract Months in the Contract Quarter

~~8.1.3.2.138.1.3.2.12~~ **700-SR-01: Socio-Economic Development Contribution**

$$\text{Quarterly Achievement} = \frac{\sum_{j=1}^n \text{Socio - Economic Development Contributions}}{\sum_{j=1}^n \text{Revenue}}$$

~~8.1.3.2.148.1.3.2.13~~ **700-SR-02: Adjusted Socio-Economic Development Contribution**

$$\text{Quarterly Achievement} = \frac{\sum_{j=1}^n \text{Socio - Economic Development Contributions adjusted for Localness}}{\sum_{j=1}^n \text{Revenue}}$$

where

j = Contract Month

n = Number of Contract Months in the Contract Quarter

8.1.4 The Economic Development Performance Deductions and Economic Development Performance Credits will be reconciled at the end of the Construction Measurement Period and during the Operating Measurement Period at the end of each Contract Year by adding the outcome of the determination of the Economic Development Performance Deductions and Economic Development Performance Credits for each Contract Quarter in the Construction Measurement Period and thereafter each Contract Quarter in the Operating Measurement Period during the Contract Year, and:

8.1.4.1 should the reconciliation of the Economic Development Performance Deductions and Economic Development Performance Credits at the end of the Construction Measurement Period or the relevant Contract Year yield a negative amount, no amounts will be due and payable to the DoE by the Seller; and

8.1.4.2 should the reconciliation of the Economic Development Performance Deductions and Economic Development Performance Credits at the end of the Construction Measurement Period or at the relevant Contract Year yield a positive amount, such amount will be due and payable to the DoE, which shall be due and payable to the DoE by the Seller within fifteen (15) Business Days of demand of such payment by the DoE to the Seller.

8.2 Economic Development Termination Points

8.2.1 In terms of clause 13.2 (*Termination Points*) of this Agreement, the Total Quarterly Economic Development Performance (“**TQP**”) of the

Seller needs to be calculated to determine the Termination Point(s) incurred in respect of a specific Contract Quarter. The TQP is determined as follows:¹²

$$\text{Total Quarterly ED Performance} = \sum_{i=1}^{15} W_i * QEP_i$$

8.2.2 The application of the TQP formula is described in paragraph 8.2.1 of this Schedule 2 (*Economic Development Obligations*).

8.2.3 In terms of clause 13.2 (*Termination Points*) of this Agreement, a Bi-quarterly Economic Development Performance (“**BQEP**”) needs to be calculated to determine for each of the respective Economic Development Sub-Elements, the Termination Point(s) applicable to the Seller in the current and previous Contract Quarter. The BQEP is determined as follows:

$$BQEP_i = \frac{Bi - \text{quarterly Achievement in the two Contract Quarters}}{Bi - \text{quarterly Obligations in the two Contract Quarters}}$$

8.2.4 The:

8.2.4.1 Bi-quarterly Achievement in the two Contract Quarters-BQEP is determined for each of the Economic Development Sub-Elements as the sum of in a similar manner as the QEP, which is described in paragraph 8.1.1.5 of this Schedule 2 (*Economic Development Obligations*), for the two Contract Quarters and "n" is the number of Contract Months in the current and immediately preceding Contract Quarters; and

8.2.4.2 Bi-quarterly Obligations in the two Contract Quarters is determined for each of the Economic Development Sub-Elements as the sum of the Quarterly Obligations for the two Contract Quarters.

9. DoE Economic Development Verification

9.1 The DoE shall have the entitlement from time to time, in its sole discretion, to appoint a person or persons as Economic Development Independent Monitor(s) to carry out the functions referred to in paragraph 9.3 below. The costs of such appointment shall be borne by the DoE.

9.2 The appointment of the Economic Development Independent Monitor is in the sole discretion of the DoE, and he may be appointed at any time during the existence of the Project.

¹² Because there are twelve Economic Development Sub-Elements which are applicable during the Construction Measurement Period, the TQP will be measured, in respect of Contract Quarters falling in the Construction Measurement Period, on the basis of a sum of twelve rather than fifteen.

- 9.3 The Economic Development Independent Monitor may, subject to the terms of his appointment, *inter alia*:
- 9.3.1 review the Seller and its Contractors' records including any monitoring or audits conducted by the Seller and its Contractors, to verify compliance with the requirements of Schedule 2 (Economic Development Obligations); and
- 9.3.2 prepare reports in relation to any of the review or monitoring carried out by it in terms of its functions pursuant to the provisions of this Schedule 2 (*Economic Development Obligations*).
- 9.4 The Seller and its Contractors shall:
- 9.4.1 monitor, audit, and record in an auditable manner, its own implementation and compliance with Schedule 2 (*Economic Development Obligations*);
- 9.4.2 provide the Economic Development Independent Monitor with such information as the Economic Development Independent Monitor reasonably requests concerning the implementation by the Seller and its Contractors of Schedule 2 (*Economic Development Obligations*);
- 9.4.3 invite the DoE who shall be entitled to be represented by the Economic Development Independent Monitor to all meetings at which material issues in relation to the implementation by the Seller and its Contractors of Schedule 2 (*Economic Development Obligations*) are to be discussed; and
- 9.4.4 take account of the opinions expressed by the Economic Development Independent Monitor.

10. **Access to Information**

The Seller and its Contractors will allow the DoE access to all the information that is not considered commercially sensitive on which the quarterly Economic Development achievements of the Seller and the Contractors were based. The Seller and its Contractors will allow the Economic Development Independent Monitor appointed by the DoE access to all the information on which the quarterly Economic Development achievements of the Seller and the Contractors were based after receiving a duly completed confidentiality statement from the Economic Development Independent Monitor.

Form of Economic Development Matrix

Please see the next page

Job Creation Element Obligations

1. Committed Obligations

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

TABLE 2.1A – Percentage of Committed Obligations with regard to Job Creation¹³

SUB-ELEMENT(S)		COMMITTED OBLIGATIONS (JOB CREATION OBLIGATIONS)
No.	Description	
100-SR-01	RSA Based Employees who are Citizens	<i>[80%]</i>
100-SR-02	RSA Based Employees who are Black People	<i>[50%]</i>
100-SR-03	Skilled Employees who are Black People	<i>[30%]</i>
100-SR-04	RSA Based Employees who are Citizens from Local Communities	<i>[20%]</i>

- 1.2 For purposes of Table 2.1A above, reference to Committed Obligations (Job Creation Obligations) shall refer to the Seller's undertaking and commitment in respect of each of the Construction Measurement Period and the Operating Measurement Period that:
- 1.2.1 *[80%]* of the Employees employed for purposes of the Project will be RSA Based Employees who are Citizens;
- 1.2.2 *[50%]* of the Employees employed for purposes of the Project will be RSA Based Employees who are Black People;
- 1.2.3 *[30%]* of the Skilled Employees employed for purposes of the Project will be Black People; and
- 1.2.4 *[20%]* of the Employees employed for purposes of the Project will be RSA Based Employees who are Citizens from Local Communities.

¹³ **Drafting Note:** These obligations are to be based on the Bidder's proposal denoting the commitments made by the Bidder with regard to Job Creation. The numbers in [squared brackets] will be changed to align with the Bidder's proposal which must, at all times, comply with the minimum requirements as stated in the RFP.

TABLE 2.1B – Quantum of Committed Obligations with regard to Job Creation

100 Job Creation – Quantum		Construction Measurement Period		Operating Measurement Period	
Description					
100-SR-01	RSA Based Employees who are Citizens	[•] Person Months	[80%]	[•] Person Months	[80%]
100-SR-02	RSA Based Employees who are Black People	[•] Person Months	[50%]	[•] Person Months	[50%]
100 – SR 03	Skilled Employees who are Black People	[•] Person Months	[30%]	[•] Person Months	[30%]
100 – SR 04	Jobs Created for Local Communities	[•] Person Months	[20%]	[•] Person Months	[20%]

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

Local Content Element Obligations

1. Committed Obligations

- 1.1 The Committed Obligations with regard to the Local Content Obligations are provided in Table 2.2 below.

TABLE 2.2 – Committed Obligations with regard to Local Content¹⁴

SUB-ELEMENT(S)		COMMITTED OBLIGATIONS (LOCAL CONTENT OBLIGATIONS)
No.	Description	
200-SR-01	Value of Local Content Spend	<i>[18%]</i>

- 1.2 For purposes of Table 2.2 above, reference to Committed Obligations (Local Content Obligations) shall refer to the Seller's undertaking and commitment that the Seller and its Contractors shall during the Construction Measurement Period ensure that the Value of Local Content Spend is not less than *[18%]* in relation to the Project.

2. All claims made in respect of Local Content must be capable of independent verification.

¹⁴ **Drafting Note:** These obligations are to be based on the Bidder's proposal denoting the commitments made by the Bidder with regard to Local Content. The numbers in [squared brackets] will be changed to align with the Bidder's proposal which must, at all times, comply with the requirements as stated in the RFP.

Ownership Element Obligations

1. Committed Obligations

- 1.1 The Committed Obligations with regard to the Ownership Element Obligations are provided in Tables 2.3.1, 2.3.2 and 2.3.3 below.¹⁵

TABLE 2.3.1 – Seller

SUB-ELEMENT(S)		COMMITTED OBLIGATIONS (OWNERSHIP OBLIGATIONS)
No.	Description	
300-PC-01	Shareholding by Black People	[30%]
	Exercisable Voting Rights by Black People	[30%]
	Economic Interest by Black People	[30%]
300-PC-02	Shareholding by Local Communities	[5%]
	Exercisable Voting Rights by Local Communities	[5%] ¹⁶
	Economic Interest by Local Communities	[5%]

TABLE 2.3.2 – EPC Contractor

SUB-ELEMENT(S)		COMMITTED OBLIGATIONS (OWNERSHIP OBLIGATIONS)
No.	Description	
300-CC-01	Shareholding by Black People	[20%]
	Exercisable Voting Rights by Black People	[20%]
	Economic Interest by Black People	[20%]

TABLE 2.3.3 – Operations Contractor

¹⁵ **Drafting Note:** These obligations are to be based on the Bidder's proposal denoting the commitments made by the Bidder with regard to Ownership. The numbers in [squared brackets] will be changed to align with the Bidder's proposal which must, at all times, comply with the requirements as stated in the RFP.

¹⁶ **Drafting Note:** This will be applicable only where the Seller is structured in such a way that the Local Community's shareholding in the Seller includes Exercisable Voting Rights.

SUB-ELEMENT(S)		COMMITTED OBLIGATIONS (OWNERSHIP OBLIGATIONS)
No.	Description	
300- OM-01	Shareholding by Black People	<i>[20%]</i>
	Exercisable Voting Rights by Black People	<i>[20%]</i>
	Economic Interest by Black People	<i>[20%]</i>

- 1.2 For purposes of the above Tables 2.3.1, 2.3.2 and 2.3.3, reference to Committed Obligations (Ownership Obligations) shall refer to the Seller's undertaking and commitment that:
- 1.2.1 *[30%]* of the Shareholding in the Seller will be held by Black People;
- 1.2.2 *[5%]* of the Shareholding in the Seller will be held by Local Communities;
- 1.2.3 *[20%]* of the Shareholding in the EPC Contractor will held by Black People; and
- 1.2.4 *[20%]* of the Shareholding in the Operations Contractor will be held by Black People.

Management Control Element Obligations

1. Committed Obligations

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

TABLE 2.4 – Committed Obligations with regard to Management Control¹⁷

SUB-ELEMENT(S)		COMMITTED OBLIGATIONS (MANAGEMENT CONTROL OBLIGATIONS)
No.	Description	
400-SR-01	Black Top Management	<i>[40%]</i>

- 1.2 For purposes of Table 2.4 above, reference to Committed Obligations (Management Control Obligations) shall refer to the Seller's undertaking and commitment that *[40%]* of Top Management is comprised of Black People, determined using the Adjusted Recognition of Gender.

¹⁷ **Drafting Note:** These obligations are to be based on the Bidder's proposal denoting the commitments made by the Bidder with regard to Management Control. The numbers in [squared brackets] will be changed to align with the Bidder's proposal which must, at all times, comply with the requirements as stated in the RFP.

Preferential Procurement Element Obligations

1. Committed Obligations

- 1.1 The Committed Obligations with regard to Preferential Procurement Obligations are provided in Table 2.5 below.

TABLE 2.5 – Committed Obligations with regard to Preferential Procurement¹⁸

SUB-ELEMENT(S)		COMMITTED OBLIGATIONS (PREFERENTIAL PROCUREMENT OBLIGATIONS)
No.	Description	
500-SR-01	BBBEEB-BBEE Procurement	[60.00%]
500-SR-02	QSE and EME Procurement	[10.00%]
500-SR-03	Women Owned Vendor Procurement	[5.00%]

- 1.2 For purposes of Table 2.5 above, reference to Committed Obligations (Preferential Procurement Obligations) shall refer to the Seller's undertaking and commitment that it shall comply in respect of the Project Activities (including those of the Contractors) with the preferential procurement levels, as set out below:

- 1.2.1 ~~BBBEEB-BBEE~~ Procurement Spend shall not be less than [60%] of the Total Amount of Procurement Spend;
- 1.2.2 ~~BBBEEB-BBEE~~ Procurement Spend from Qualifying Small Enterprises or Exempted Micro Enterprises shall not be less than [10%] of the Total Amount of Procurement Spend; and
- 1.2.3 monetary spend from Women Owned Vendors shall not be less than [5%] of the Total Amount of Procurement Spend.

¹⁸ **Drafting Note:** These obligations are to be based on the Bidder's proposal denoting the commitments made by the Bidder with regard to Preferential Procurement. The numbers in [squared brackets] will be changed to align with the Bidder's proposal which must, at all times, comply with the requirements as stated in the RFP.

Enterprise Development Element Obligations

1. Committed Obligations

- 1.1 The Committed Obligations with regard to the Enterprise Development Obligations are provided in Table 2.6 below.

TABLE 2.6 – Committed Obligations with regard to Enterprise Development¹⁹

SUB-ELEMENT(S)		COMMITTED OBLIGATIONS (ENTERPRISE DEVELOPMENT OBLIGATIONS)
No.	Description	
600-SR-01	Enterprise Development Contributions	<i>[0.6%]</i> of Revenue
600-SR-02	Adjusted Enterprise Development Contributions	<i>[0.6%]</i> of Revenue

- 1.2 For purposes of Table 2.6 above, reference to Committed Obligations (Enterprise Development Obligations) shall refer to the Seller's undertaking and commitment that:
- 1.2.1 *[0.6%]* of the Revenue shall be spent on Enterprise Development Contributions; and
- 1.2.2 *[0.6%]* of the Revenue shall be spent on Adjusted Enterprise Development Contributions.

¹⁹ **Drafting Note:** These obligations are to be based on the Bidder's proposal denoting the commitments made by the Bidder with regard to Enterprise Development. The numbers in [squared brackets] will be changed to align with the Bidder's proposal which must, at all times, comply with the requirements as stated in the RFP.

Socio Economic Development Element Obligations

1. Committed Obligations

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

TABLE 2.7 – Committed Obligations with regard to Socio-Economic Development²⁰

SUB-ELEMENT(S)		COMMITTED OBLIGATIONS (SOCIO-ECONOMIC DEVELOPMENT OBLIGATIONS)
No.	Description	
700-SR-01	Socio-Economic Development Contributions	<i>[1.5%]</i> of Revenue
700-SR-02	Adjusted Socio-Economic Development Contributions	<i>[1.5%]</i> of Revenue

- 1.2 For purposes of Table 2.7 above, reference to Committed Obligations (Socio-Economic Development Obligations) shall refer to the Seller's undertaking and commitment that:
- 1.2.1 *[1.5%]* of the Revenue shall be spent on Socio-Economic Development Contributions; and
- 1.2.2 *[1.5%]* of the Revenue shall be spent on Adjusted Socio-Economic Development Contributions.

²⁰ **Drafting Note:** These obligations are to be based on the Bidder's proposal denoting the commitments made by the Bidder with regard to Socio-Economic Development. The numbers in [squared brackets] will be changed to align with the Bidder's proposal which must, at all times, comply with the requirements as stated in the RFP.

Economic Development Weights and Scaling Factors

TABLE 9.1: Economic Development Weights

ED ELEMENT	DESCRIPTION	WEIGHT DURING CONSTRUCTION MEASUREMENT PERIOD (W)	WEIGHT DURING OPERATING MEASUREMENT PERIOD (W)	TERMINATION THRESHOLD
100 Job Creation		31%	38%	
100-SR-01	RSA Based Employees who are Citizens	6%	8%	70%
100-SR-02	RSA Based Employees who are Black People	7.5%	8%	70%
100-SR-03	Skilled Employees who are Black People	7.5%	9%	70%
100-SR-04	RSA Based Employees who are Citizens from Local Communities	10%	13%	70%
<u>200-SR-01 – Value of Local Content Spend</u>		<u>32%</u>	<u>N/A</u>	<u>70%</u>
200-SR-01	Value of Local Content Spend	32%	N/A	50%
300 Ownership		19%	16%	
300-PC-01	Shareholding by Black People in the Seller	7.5%	6%	70%
300-PC-02	Shareholding by Local Communities in the Seller	8.5%	7%	70%
300-CC-01	Shareholding by Black People in the EPC	3%	N/A	70%

ED ELEMENT	DESCRIPTION	WEIGHT DURING CONSTRUCTION MEASUREMENT PERIOD (W)	WEIGHT DURING OPERATING MEASUREMENT PERIOD (W)	TERMINATION THRESHOLD
	Contractor			
300-OM-01	Shareholding by Black People in the Operations Contractor	N/A	3%	70%
400-SR-01	- Black Top Management	6%	7%	50%
500 Preferential Procurement		12%	12%	
500-SR-01	BBBEEB -BBEE Procurement	6%	6%	50%
500-SR-02	QSEs and EMEs Procurement	3%	3%	50%
500-SR-03	Women Owned Vendor Procurement	3%	3%	50%
600 Enterprise Development Contributions		N/A	7%	
600-SR-01	Enterprise Development Contributions	N/A	4%	50%
600-SR-02	Adjusted Enterprise Development Contributions	N/A	3%	50%
700 Socio-Economic Development contributions		N/A	20%	
700-SR-01	Socio-Economic Development contributions	N/A	13%	50%
700-SR-02	Adjusted Socio-Economic Development contributions	N/A	7%	50%

TABLE 9.2: Economic Development Scaling Factors

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

Quarterly Obligations

Drafting Note: The format of the Quarterly Obligations is provided in the below table. The number of quarters to be included will be determined by the duration of the particular project.

[BIDDER TO INSERT THE FOLLOWING DETAILS:

1. BIDDER NAME;
2. PROJECT NAME; AND
3. TECHNOLOGY OF BIDDER’S PROJECT.]

ECONOMIC DEVELOPMENT ELEMENT	DESCRIPTION	CONTRACT QUARTER 1			CONTRACT QUARTER 2			CONTRACT QUARTER 3		
		Quantum	Unit	Quarterly Obligation	Quantum	Unit	Quarterly Obligation	Quantum	Unit	Quarterly Obligation
100 Job Creation										
100-SR-01	RSA Based Employees who are Citizens	[8.0]	Person Months	[50.0%]	[8.0]	Person Months	[50.0%]	[8.0]	Person Months	[50.0%]
100-SR-02	RSA Based Employees who are	[8.0]	Person	[50.0%]	[8.0]	Person	[50.0%]	[8.0]	Perso	[50.0%]

ECONOMIC DEVELOPMENT ELEMENT	DESCRIPTION	CONTRACT QUARTER 1			CONTRACT QUARTER 2			CONTRACT QUARTER 3		
		Quantum	Unit	Quarterly Obligation	Quantum	Unit	Quarterly Obligation	Quantum	Unit	Quarterly Obligation
	Black People		Months			Months			n Months	
100-SR-03	Skilled Employees who are Black People	[8.0]	Person Months	[50.0%]	[8.0]	Person Months	[50.0%]	[8.0]	Person Months	[50.0%]
100-SR-04	Jobs created for Local Communities	[8.0]	Person Months	[50.0%]	[8.0]	Person Months	[50.0%]	[8.0]	Person Months	[50.0%]
200-SR-01 – Value of Local Content Spend		[8.0]	Rand	[50.0%]	[8.0]	Rand	[50.0%]	[8.0]	Rand	[50.0%]
200-SR-01	Value of Local Content Spend	[8.0]	Rand	[50.0%]	[8.0]	Rand	[50.0%]	[8.0]	Rand	[50.0%]
200-SR-02	Local Manufacture of Key Components and/or Equipment	[8.0]	Rand	[8.0]	[8.0]	Rand	[8.0]	[8.0]	Rand	[8.0]
300 Ownership										
300-PC-01	Shareholding by Black People in the Seller	N/A	N/A	[50.0%]	N/A	N/A	[50.0%]	N/A	N/A	[50.0%]
300-PC-02	Shareholding by Local Communities in the Seller	N/A	N/A	[50.0%]	N/A	N/A	[50.0%]	N/A	N/A	[50.0%]
300-CC-01	Shareholding by Black People in the EPC Contractor	N/A	N/A	[50.0%]	N/A	N/A	[50.0%]	N/A	N/A	[50.0%]
300-OM-01	Shareholding by Black people in the Operations Contractor	N/A	N/A	[50.0%]	N/A	N/A	[50.0%]	N/A	N/A	[50.0%]

ECONOMIC DEVELOPMENT ELEMENT	DESCRIPTION	CONTRACT QUARTER 1			CONTRACT QUARTER 2			CONTRACT QUARTER 3		
		Quantum	Unit	Quarterly Obligation	Quantum	Unit	Quarterly Obligation	Quantum	Unit	Quarterly Obligation
400-SR-01 - Black Top Management		[8.0]	Person Months	[50.0%]	[8.0]	Person Months	[50.0%]	[8.0]	Person Months	[50.0%]
500 Preferential Procurement										
500-SR-01	BBBEEB-BBEE Procurement	[8.0]	Rand	[50.0%]	[8.0]	Rand	[50.0%]	[8.0]	Rand	[50.0%]
500-SR-02	QSEs and EMEs Procurement	[8.0]	Rand	[50.0%]	[8.0]	Rand	[50.0%]	[8.0]	Rand	[50.0%]
500-SR-03	Women Owned Vendor Procurement	[8.0]	Rand	[50.0%]	[8.0]	Rand	[50.0%]	[8.0]	Rand	[50.0%]
600 Enterprise Development Contributions										
600-SR-01	Enterprise Development Contributions	[8.0]	Rand	[50.0%]	[8.0]	Rand	[50.0%]	[8.0]	Rand	[50.0%]
600-SR-02	Adjusted Enterprise Development Contributions	[8.0]	Rand	[50.0%]	[8.0]	Rand	[50.0%]	[8.0]	Rand	[50.0%]
700 Socio-Economic Development contributions										
700-SR-01	Socio-Economic Development contributions	[8.0]	Rand	[50.0%]	[8.0]	Rand	[50.0%]	[8.0]	Rand	[50.0%]
700-SR-02	Adjusted Socio-Economic Development contributions	[8.0]	Rand	[50.0%]	[8.0]	Rand	[50.0%]	[8.0]	Rand	[50.0%]

Form of Economic Development Plan

Please see the next pages

COMPLETION MILESTONES

Please see the next pages

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

DIRECT AGREEMENT

Please see the form of Direct Agreement on the next pages

SCHEDULE 5

FINANCIAL MODEL

Please see the Financial Model on the disc attached below

PROJECT DOCUMENTS

1. Financing Agreements

[To be completed nearer to the **SignatureEffective** Date. Seller to insert titles of:

- any common terms agreement and facility agreement, common facility agreement or loan agreements;
- any agreements in relation to the hedging of exposure to interest rate changes and foreign currency exchange rate fluctuations.

Fee Letters, Inter-creditor Agreements, Direct Agreements, Sponsor and other support agreements and security documents will not be listed in this table]

Agreement Title	Parties	Date

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

Agreement Title	Parties	Date
Memorandum of Incorporation		

3. Contracts

Agreement Title	Parties	Date

4. Lease Agreements

Agreement Title	Parties	Date

5. Grid Connection Agreements

[Preferred Bidder to insert titles of the budget quote, the Distribution Agreement or Transmission Agreement, as applicable, any direct agreement concluded in respect of the connection arrangements, and, if applicable, the Self-Build Agreement.]

<u>Agreement Title</u>	<u>Parties</u>	<u>Date</u>