

**STANDARD FOR SHORT TERM
POWER PURCHASE PROGRAMME**

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**TITLE STANDARD FOR SHORT TERM
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FOREWORD

Recommendations for corrections, additions or deletions should be addressed to the:

Policy, Regulation and Compliance
Senior Manager
City Power Johannesburg (SOC) Ltd
P O Kiosk 38766
Booyens
2016

1. INTRODUCTION

City Power's value proposition is about providing all stakeholders with excellent service in the delivery of our product and service offering. The emergence of various alternative energy technologies in the electricity distribution landscape presents opportunities to leverage on their availability in order to realise City Power's mandate.

2. NORMATIVE REFERENCE

The following documents contain provisions that, through references in the text, constitute requirements of this standard. At the time of publication the editions indicated were valid. All standards and specifications are subject to revision and parties to agreements based on this standard are encouraged to investigate the possibility of applying the most recent editions of the documents listed below;

Reference	Description
Constitution	The Constitution of the Republic of South Africa ,1996
ISO 9001:2015	Quality Management Systems
ISO 14001:2015	Environmental Management Systems — Requirements with guidance for use
ISO 45001:2018	Occupational health and safety management systems — Requirements with guidance for use
SANS/IEC 10232_1	Transport of dangerous goods – Emergency information systems Part 1: Emergency information system for road transport
SANS/IEC 10232_3	Transport of dangerous goods – Emergency information systems Part 3: Emergency response guides
SANS/IEC 10232_4	Transport of dangerous goods – Emergency information systems part 4: Transport emergency card
SANS/ISO 11014	Safety data sheet for chemical products – Content and order of sections
(Act no 4 of 2006)	Electricity Regulation Act, Act 4 of 2006 and Electricity Regulation amendment Act, Act 28 of 2007
(Act no 85 of 1993)	Occupational Health and Safety
(Act no 8 of 2019)	Critical Infrastructure Protection Act (previously NKP act (Act 102 of 1980)

3. SCOPE

The purpose of this document is to guide Embedded Generators (EG's), Service Providers and prosumers regarding participation in the Short-Term Power Purchase Programs (STPPP). The STPPP energy sources shall include but not limited to Solar Power, Wind Energy, Hydrogen, Hydropower, Gas, Battery Energy Storage Systems (BESS) and other reliable energy systems.

- 3.1. Whilst the information contained in this standard has been prepared in good faith, it does not purport to be comprehensive or to have been independently verified. City Power does not make any representation or give any warranty whatsoever, whether express or implied, with respect to the veracity, adequacy, accuracy, reasonableness or completeness of the information contained in this standard or in any Briefing Notes issued pursuant to this standard or with respect to the information upon which this standard is based or with respect to any written or oral information or representation given or made by City Power to any Bidder or its advisers, whether given or made prior to or after the issue of this standard (collectively, the "Information").
- 3.2. City Power expressly disclaims any and all liability arising out of or in relation to the Information (including in relation to any omissions from the Information) and in respect of the use of and/or reliance on such Information by Bidders.
- 3.3. All Information contained in this standard, including financial, commercial, legal and technical information, is included in this standard for illustrative and information purposes only.
- 3.4. Each Bidder shall be solely and fully responsible for satisfying itself as to the information required to submit a Bid and to undertake the Programme in accordance with the terms of a standard. This standard does not constitute advice and should not be relied on for this purpose. In addition, it does not constitute an offer to enter into any contract with City Power whether to sell or purchase any product or to provide any service or investment, and no Information shall be deemed to form part of any contract between City Power and any party.
- 3.5. All Bidders should seek their own financial, commercial, legal and technical advice and at their own cost.
- 3.6. All references to "City Power" shall include their respective officers, directors, members, shareholders, subsidiaries, employees, contractors and agents.
- 3.7. Where there is a conflict between the terms of this document and the Power Purchase Agreement ("PPA"), then the terms of the PPA shall prevail.
- 3.8. If, subject to the terms of this document, any contract is subsequently entered into with any Bidder the terms of this standard will lapse and the only agreement between the parties will be as per the terms of the PPA entered into.
- 3.9. City Power reserves the right to amend, modify, terminate or withdraw this document (and accompanying PPA), or any part of it, or to terminate or amend any of the procedures, procurement processes or requirements detailed in this standard during the conduct of the Programme, at any time, without prior notice and without liability to compensate or reimburse

any person pursuant to such amendment, modification, withdrawal or termination. City Power in its sole discretion may reject a whole or any part of any Bid or to waive any failure to comply with the requirements set out in this standard at any time.

4. TECHNICAL SCHEDULES

Technical Schedules as tabulated in Annexure D shall be completed as part of the bid for the use of the Bid Committee to determine the preferred bidder.

5. DEFINITIONS AND INTERPRETATION

The following words and expressions, when used with initial capital letters in this standard or its annexure, shall have the meanings given below. Capitalised terms used in this standard and not defined below shall have the meanings given to them in the PPA.

Term	Definition
Bid	means a proposal in response to and in accordance with this standard. If a Bidder proposes more than one Facility for participation in the Programme, the Bidder must submit a separate Bid for each such Facility and Bid Submission shall have a corresponding meaning.
Bidder	means any Person who submits a Bid in accordance with the terms of this standard.
Buyer	means City Power in its capacity as such under the PPA.
Capacity	shall have the meaning given to it in the PPA
Code	shall have the meaning given to it in the PPA
Commencement Date or CD	shall have the meaning given to it in the PPA.
Commercial Energy	shall have the meaning given to it in the PPA.

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Commercial Energy Rate	shall have the meaning given to it in the PPA.
Consents	shall have the meaning given to it in the PPA.
Contracted Capacity	shall have the meaning given to it in the PPA.
Contracted Generation Profile	means in relation to each Facility, its forecasted generation relatable to the contracted portion of the Net Energy Output per Month in each Contract Year over the Operating Period.
Delivery Point	shall have the meaning given to it in the PPA.
Distributor	shall have the meaning given to it in the South African Distribution Code in force from time to time.
Energy	shall have the meaning given to it in the PPA.
ERA	means the Electricity Regulation Act, 2006.
City Power	means City Power Johannesburg (SOC) Ltd
Facility	shall have the meaning given to it in the PPA.
Maintain	shall have the meaning given to it in the PPA.

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Maximum Contract Value	shall have the meaning given to it in the PPA.
Metering Installation	shall have the meaning given to it in the PPA.
NERSA	means the National Energy Regulator as established by section 3 of the National Energy Regulator Act, 2004.
Net Energy Output	shall have the meaning given to it in the PPA.
Person	means a single person or legal entity or a consortium of persons or a joint venture and includes any individual, company, corporation, enterprise, partnership, firm, trust, body corporate, government, governmental body, authority, agency or instrumentality, an unincorporated body of persons or an association.
Power Purchase Agreement or PPA	means the power purchase agreement to be entered into between City Power and each Preferred Bidder, as Seller, on the terms and conditions of the Pro-Forma PPA attached as Annexure C hereof (as amended in accordance with this STANDARD) in relation to each Facility which the Preferred Bidder has successfully bid in.
Price/Rate	means the rate as proposed by the Bidder in the Bid Information Schedule.
Preferred Bidder	means any Bidder selected as such by City Power in accordance with the terms of this STANDARD to enter into a PPA (as applicable) with City Power, but only in relation to those of its Bid's that have been deemed successful by City Power pursuant to the evaluation process in this STANDARD.
Programme	means the Short-Term Power Purchase Programme as described in this in this document
Project	shall have the meaning given to it in the PPA.

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RSA or South Africa	means the Republic of South Africa.
Scheduled Commencement Date or SCD	shall have the meaning given to it in the PPA.
Seller	shall have the meaning given to it in the PPA being (a) where the Preferred Bidder is a single person or legal entity, the Preferred Bidder itself or (b) where the Preferred Bidder is a consortium or a joint venture, a limited liability company to be specially incorporated by the Preferred Bidder in accordance with the company Laws of the Republic of South Africa, for the purpose of entering into and implementing the PPA.
System	shall have the meaning given to it in the PPA.
System Agreements	shall have the meaning given to it in the PPA.
Term	shall have the meaning given to it in the PPA.

6. REQUIREMENTS FOR SHORT TERM POWER PURCHASE PROGRAMME

6.1. Programme Size and Schedule

- 6.1.1. The objective of the Programme is to obtain additional short-term energy, including Battery Energy Storage System. The Programme targets the procurement of un-utilized power. City Power is offering a Time of Use tariff to encourage power generation during critical hours of the day when the system requires it. City Power has limited funds and has placed an overall contract value for this Programme. City Power reserves the right at any time to place an overall limit on the number of MW procured under this Programme.
- 6.1.2. City Power is offering a 36-month Power Purchase Agreement (PPA) starting from the PPA signature date. Upon the expiry of the PPA, City Power should be given the first choice of refusal to continue purchasing the available energy.

The Scheduled Commencement Date (SCD) submitted by Bidders must be no later than 24 months from the date of PPA signature. The CD should not be later than 30 months from the date of PPA signature. In this regard Bidders must as part of their due diligence before submitting a Bid investigate whether NERSA is required to issue any additional or supplementary approvals for the conclusion of a PPA under this Programme notwithstanding that the Facility may have an existing generation license and ensure that all other consents or approvals required to commercially generate energy under the PPA in compliance with the Codes and Laws are procured timeously; this includes without limitation arrangements involving connection to the system and End User Amendment Agreements.

6.2. Contracted Capacity, baselines and generation profiles

- 6.2.1. Each Facility must be located within the borders of South Africa and the capacity to be made available as the Contracted Capacity under the PPA cannot be less than 1MW.

For planning purposes, the bidder should provide the following:

- 6.2.1.1. Any available capacity equal to or above 1MW available for the 36-month period starting on the bid in SCD will be considered.
- 6.2.2. Under the PPA if all the conditions are met, the Seller shall sell, and the Buyer shall purchase, all available energy in excess of baseline profile with effect from the Commencement Date, save to the extent that their respective performances are relieved under the terms of the PPA.
- 6.2.3. Performance against Contracted Generation Profile
- 6.2.3.1. Performance against Contracted Generation Profile will be measured using City Power metering infrastructure.
- 6.2.3.2. There are no performance adjustments against the price if the plant does not perform optimally relative to the bid in Contracted Generation Profiles as forecasted.

6.3. Price

6.3.1. Price (R/kWh) will be determined by competitive bidding based on energy generation technology. In price determination, consideration may also be given to time differentiation (Time of Use), seasonal differentiation and energy delivery point.

6.3.2. In bidding and calculating the price:

6.3.2.1. The Bidder must take into account all costs including any duties, taxes and levies applicable to the tendered price (except VAT), payable by successful bidder,

6.3.2.2. Show Value-Added Tax (VAT) separately as an addition to the tendered total price.

6.3.2.3. Bidders are to propose a price to be paid in R/kWh. Bidders to complete the Bid Information Schedule.

6.3.3. Prices are fixed in South African Rand (ZAR) for the duration of the term of the PPA and not subject to adjustment except as provided for in this standard and the PPA.

6.4. Contractual arrangements

6.4.1. The Preferred Bidder will be required to enter into a PPA for each of its Bids for which it has been appointed as Preferred Bidder using a bespoke pro-forma PPA attached hereto.

6.4.2. The terms and conditions of the PPA will be broadly the same for each Facility.

6.4.3. City Power undertakes to negotiate in good faith any adjustments to the PPA that are site specific.

6.4.4. The Bidder is reminded that under no circumstances will City Power accept more risk than that currently allocated to it under the PPA.

6.4.5. The PPA contains numerous blank spaces in its Schedules where commercial and technical data are to be determined through this standard Process. As Bidders will be prescribing their own solutions as part of the Programme, the Bidders must submit this data in the requisite Bid Forms but use the Schedules as a guide only.

6.4.6. The operational structure of the PPA is primarily as follows:

6.4.6.1. Any applicable Condition Precedents to the PPA must be fulfilled before the terms of the PPA can be effective and enforceable.

6.4.6.2. After the PPA becomes effective, the Bidder must notify the Buyer of the actual CD for the purposes of generating Commercial Energy in accordance with the terms of the PPA in the prescribed form of the Notice of Commencement which is attached as a Schedule to the PPA.

6.4.6.3. Once CD commences in terms of the PPA, the terms of the PPA will regulate the duration of the PPA until the earlier of termination in accordance with the PPA or the Expiry Date.

6.4.6.4. The Expiry Date is determined as a date which is stipulated in the PPA. The Expiry Date is not extended for any extensions to the SCD or any delays in achieving CD.

6.4.6.5. If the CD is not achieved by the date stipulated in the PPA then the Commercial Operation Date shall not have occurred, and City Power is entitled to terminate the PPA.

6.4.7. In the case of conflict between descriptions in this Section and elsewhere in this standard and such draft PPA, the latter shall prevail.

6.5. Facilities

- 6.5.1. Bidders may propose any number of Facilities as described in this standard. A separate PPA will be concluded for the supply of energy from each Facility for which a Preferred Bidder has successfully tendered in terms of this standard.
- 6.5.2. However, Bidders may not aggregate separate facilities in their response to this standard.
- 6.5.3. Where the Bidder is obtaining energy from a third party to submit a bid under this Programme then it shall procure that the owner of the Facility complies with the terms of the PPA.

6.6. Codes and System Agreements

- 6.6.1. The Bidder is responsible for ensuring that the facility is adequately connected to the interconnected system including the nearest point of connection to the System (Transmission or Distribution connection or embedded in a connected customer system) to enable the delivery of output to the interconnected system.
- 6.6.2. The Bidder shall comply with all applicable Laws in relation to such application and connection including the applicable Codes including all applicable municipal by-laws.
- 6.6.3. Bidders are required to comply with the connection and use-of-system requirements as specified by City Power, as applicable, to enable the Seller to fully perform its obligations under the PPA and the applicable Codes.
- 6.6.4. The Bidder must provide written confirmation demonstrating and stating that its Project is able to comply with the applicable Codes prior to Scheduled CD. Any deviation from the Code requirements should be clearly stated in the Bid Response. If it has been agreed that the Bidder will be exempt from some or all of the compliance requirements normally necessary for this type and size of connection, then the Bidder must provide signed confirmation of the exemption by the relevant authority e.g. NERSA.

6.7. Electricity Supplier Arrangements

- 6.7.1. It is the Bidders responsibility to ensure that a valid Electricity Supply Agreement (ESA) where applicable with their electricity supplier (City Power, Eskom or Municipality or other third-party distributor), for electricity consumed by the Bidder is in place.
- 6.7.2. If the Facility is not physically connected to the System but is embedded in a non- City Power network, it is still the Bidders responsibility to ensure that the relevant System Agreements including as relevant the End User Amendment Agreements are concluded. The supplier of electricity must further give written consent with regard to timeously concluding any required End User Amendment Agreements to make provision for the reconciliation of accounts relating to the energy to be procured under the PPA.

6.8. Operations and Maintenance

- 6.8.1. Bidders will be responsible for securing all Operation and Maintenance requirements of the Facilities they propose.
- 6.8.2. Under the PPA, the Bidder shall be responsible for Operating and Maintaining the Facility in conformity with all applicable Laws and Consents and so as to comply with its obligations under the PPA and all Operating and Maintenance risk in respect of the Facility will be for the Seller.
- 6.8.3. Although the Bidder may subcontract its Operating and Maintenance requirements for each Facility to reputable operating contractor(s), it shall notwithstanding such subcontracting as the Seller retain all such risk under the PPA.

6.9. Metering

- 6.9.1. The seller shall be responsible to install the Metering Installation which shall comply with the City Power Metering standards.
- 6.9.2. The Metering Installation shall be used for billing purposes under the PPA and the Seller or its nominated representative shall be responsible for data retrieval from the Metering Installation for invoicing purposes.
- 6.9.3. The Seller or its nominated representative shall be responsible for procuring, installing, testing, commissioning, operating and maintaining the Metering Installation. The Metering Installation will be sealed at all times.
- 6.9.4. The seller shall provide the buyer or its nominated representative meter data when requested. Data retrieved by the seller may/will be used to validate the invoice or metering data provided. In this regard
 - 6.9.4.1. The seller shall provide meter configuration details including the remote access information for site and installation verification purposes.
 - 6.9.4.2. The seller shall be required to provide commissioning and latest maintenance reports for the Metering Installation, as well as calibration certificates when required.
- 6.9.5. If the Metering Installation is sealed, the Buyer shall have the right to inspect and either accept the sealed meter or request the Seller to re-seal the meters in the presence of the Buyer's nominated agent.
- 6.9.6. The Seller shall provide the Buyer or its nominated representative remote access to the meters. Data retrieved by the Buyer may/will be used to validate the invoice or metering data provided. In this regard,

6.10. Delivery Point

- 6.10.1. Bidders are required to propose the Delivery Point at which metered deliveries of the Net Energy Output of each Facility will be made.
- 6.10.2. The Delivery Point shall be located at the point approved by the Buyer and shall have both the point of connection and supervisory control.
- 6.10.3. The Delivery Point must be clearly demarcated on the Single Line Diagram to be a Schedule to the PPA and where there is more than one Delivery Point for the same Facility this must be also indicated.

6.11. Seller Approvals

- 6.11.1. The Bidder will be responsible for applying for, obtaining, maintaining, renewing and adhering to all approvals and Consents required for each Facility in order to submit a Bid and if successful to fulfil its obligations under the PPA for the term thereof. Failure to do so will be at the entire risk of the Bidder and no relief will be given for errors or omissions by the Bidder.
- 6.11.2. The bidder shall provide proof of compliance in relation to current generation regulations.
- 6.11.3. The PPA provides for the Buyer to terminate the PPA if the Seller has not obtained its Consents or fails to maintain its Consents.

7. REQUIREMENTS FOR BATTERY ENERGY STORAGE SYSTEMS

The BESS requirements are for both grid-connected and off-grid storage applications suitable for City Power.

7.1. Requirements

- 7.1.1. The bidder shall be fully responsible for selecting suitable Battery Energy Storage System for the City Power grid and its satisfactory performance in service.
- 7.1.2. The Battery Energy Storage System shall be used for Peak Shaving, Energy Arbitrage and Reliability.
- 7.1.3. The bidder shall be expected to provide capacity of the Battery Energy Storage System as tabulated in Table 1 below.

Application	Description	Response Time	Typical discharge time	Typical size	Charge / Discharge behavior
Peak shaving	Peak shaving to reduce NMD	Minutes	2 – 4 hours	1 MW – 10 MW	50 – 500 cycles per year
Energy Arbitrage	Generating energy at low-cost periods, storing, and selling at peak periods.	Minutes	1 – 6 hours	1 MW	50 – 250 cycles per year
Reliability	Micro grid / islanded operation during planned or unplanned system outages. Inverter must be capable of grid forming.	Minutes	1 – 12 hours	1 – 10 MW	< 10 cycles per year

Table 1: Battery Storage Grid Applications requirements

ANNEXURE A: REVISION INFORMATION

DATE	REV. NO.	NOTES
October 2022	0	First issue.
February 2024	1	Second issue General editing Included Normative References Included various energy sources Included requirements for Battery Energy Storage Systems

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**ANNEXURE B: PRO- FORMA POWER PURCHASE AGREEMENT
BIDDERS ARE NOT ALLOWED TO MARK UP THIS DOCUMENT – THIS PRO- FORMA PPA
IS NON-NEGOTIABLE**

POWER PURCHASE AGREEMENT (PPA)

Between

“The SELLER”

as defined herein

and

City Power Johannesburg (SOC) Ltd “The BUYER”

CONTRACT NUMBER: XXX__

PREAMBLE:

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

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

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

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

INTRODUCTION

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

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

- (C) The Seller has been, or expects shortly to be granted, and currently holds, or expects shortly to hold, an electricity generation licence permitting it to operate, generate and sell energy from a__power generation facility located.
- (D) To the extent applicable, the **Buyer** has entered into several existing electricity supply agreements with the **Seller** (with the **Seller** as customer), herein collectively referred to as “the **Main Agreement**”, in terms of which the **Buyer** supplies electricity to the **Seller**.
- (E) It is expressly understood by both **Parties** that entering into this **Agreement** in no way constitutes any obligation on them to enter into any additional power purchase agreement or to reference any of the terms of this **Agreement** in any future agreements between them.
- (F) The **Seller** wishes to sell and the **Buyer** wishes to purchase metered deliveries of the Commercial Energy (as defined below) generated by the Facility on the terms and conditions contained in this **Agreement** (“this **Agreement**”). Accordingly, the **Parties** intend to record their agreement as to the terms and conditions governing the sale and purchase of Commercial Energy.

THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Consents” means all consents, permits, clearances, authorisations, approvals, rulings, exemptions, registrations, filings, decisions, licences, required to be issued by or made with any Responsible Authority, including the Seller’s electricity supplier to enable the Seller to exercise its rights and/or perform its obligations under this Agreement.

“**Contracted Capacity**” means such portion of the Net Capacity of the Facility as has been demarcated for the **Buyer** and shall be as stated in **Schedule C1**;

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

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

“**Contracted Generation Profile**” means the **Seller’s** forecast generation relatable to the contracted portion of the Net Energy Output per Month over the Term of this **Agreement** as reflected in **Schedule E1**: (Generation Profiles);

“**Delivery Point(s)**” means the physical point(s), situated on the high voltage side of the generator transformer(s) of the Facility, where the Facility connects to the System (whether or not such point(s) is /(are) situated on or off the Project Site), and where the Commercial Energy is to be delivered by the **Seller** to the **Buyer** as described in **Schedule E1** and for the purposes of this **Agreement** means the **PGC(s)**;

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

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

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

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

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

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

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

“Expiry Date” means **[INSERT]**;

“Facility” means the generation facility located at the Project Site from which the Contracted Capacity will be generated and comprising all plant, machinery and equipment, all associated buildings, structures, roads on the Project Site that are not national, provincial or municipal roads, and other appurtenances, as further described in **Schedule G1** (*Details of Project and Facility*), together with all required interfaces to be constructed for the safe, efficient and timely operation of that facility, including all Facility Connection Works and, for the avoidance of doubt, excluding the Distribution/NTC Connection Works;

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

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

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

- (d) any delay in obtaining any Consent, provided that the affected **Party** has complied with all of its obligations in respect of the obtaining of such Consent;
- (e) any official or unofficial strike, lockout, go slow or other such labour disputes generally affecting the construction and energy industry or a significant sector of it;
- (f) war, civil war, armed conflicts or terrorism;
- (g) nuclear contamination; or
- (h) chemical or biological contamination of the Facility and/or the Project Site from any of the events referred to above; but only to the extent that any act, event or circumstance including the circumstances set out above:
- is beyond the reasonable control of the **Party** claiming relief;
 - is without fault or negligence on the part of the Party claiming relief and is not the result of a breach by the Party claiming relief of any of its obligations under any contract in respect of the Project to which it is a party, including this Agreement, any System Agreement or under applicable Law;
 - could not have been (including by reasonable anticipation) avoided or the effects of which could not have been overcome or mitigated by the Party claiming relief, acting in accordance with the standards of a Reasonable and Prudent Operator; and
 - prevents, hinders or delays the **Party** claiming relief in its performance of all or a material part of its obligations under this **Agreement**;

“Gross Capacity” means the gross capacity of the Facility and shall be as stated in **Schedule G1**;

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

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

“**Law**” means:

- (a) any constitution, statute, ordinance, treaty, decree, proclamation or subordinated legislation or other legislative measure, including all national and provincial statutes and legislation and all municipal by- laws, as well as the common law and customary law and any judgment, decision, order or rule of any court or tribunal with relevant jurisdiction, in each case having the force of law in South Africa; and
- (b) any present or future directive, requirement, instruction, request, order, regulation, condition of or limitation in any necessary approval, permission, permit, approval, consent, licence, authorisation, registration, grant, acknowledgement, exemption or agreement to be obtained from any Responsible Authority, or direction or rule of a Responsible Authority which is legally binding or, if not legally binding, would customarily be complied with by a Reasonable and Prudent Operator, including the Codes;

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

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

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

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

“**Net Capacity**” means the Gross Capacity of the Facility, net of Energy consumed within the Facility as Auxiliary Consumption and shall be as stated in **Schedule G1**;

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

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

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

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

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

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

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

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

“**Project Site**” means the site upon which the Facility is to be constructed and operated as more fully described and defined in **Schedule G1 (Details of Project and Facility)**;

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

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

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

“**Scheduled CD**” means the date which corresponds to the stated Scheduled CD in **Schedule G1**, as extended in accordance with the terms of this **Agreement** provided that any extension shall not endure beyond the Expiry Date;

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

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

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

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

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

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

“**TOU**” means time of use;

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

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

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

1.2 Interpretation

In this **Agreement**, unless otherwise specified:

the index and headings of clauses of this **Agreement** are for ease of reference only and shall be ignored in the interpretation and application of this **Agreement**;

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

references to any Recital, clause, paragraph, Schedule or Annex are to those contained in this **Agreement**, and references to a part of a Schedule are to the part of the Schedule in which the reference is relevant, and all Schedules and Annexes to this **Agreement** are an integral part of this **Agreement**. If there is any conflict between the provisions of the main body of this **Agreement** and the provisions of any of the Schedules or Annexes, the provisions of the main body shall prevail;

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

"**person**" includes a corporation, company, firm, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of any of the foregoing that is recognised by Law as the subject of rights and duties, and references to a "**person**" (or to a word incorporating a person) shall be construed so as to include that person's successors in title and assigns or transferees;

in computation of periods of time from a specified day to a later specified day, "**from**" means from and including and "**until**" or "**to**" means to and including;

"**include**", "**including**" and "**in particular**" shall not be construed as being by way of limitation, illustration or emphasis only and shall not be construed as, nor shall they take effect as, limiting the generality of any preceding words. The words "**other**" and "**otherwise**" shall not be construed so as to be limited or defined by any preceding words, where a wider construction is reasonably possible;

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

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

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

references to legislation include any statute, by-law, regulation, rule, subordinate legislation or delegated legislation or order, and a reference to any legislation is to such legislation as amended, modified or consolidated from time to time, and to any legislation replacing it or made under it;

the terms "**hereof**", "**herein**", "**hereunder**" and similar words refer to this entire **Agreement** and not to any particular clause, paragraph, Part, Schedule or any other subdivision of this **Agreement**;

the rule of construction that, in the event of ambiguity, an agreement shall be interpreted against the **Party** responsible for the drafting thereof, shall not apply in the interpretation of this **Agreement**;

the expiration or termination of this **Agreement** shall not affect such of the provisions of this **Agreement** as expressly provide that they will

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

if any provision in **clause 1 (Definitions)** is a substantive provision conferring rights or imposing obligations on either **Party** then, notwithstanding that such provision is contained in such clause, effect shall be given thereto as if such provision were a substantive provision in the body of this **Agreement**.

1.3 Abbreviations

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

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

1.4 Units of measurement

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

1.5 Rounding

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

1.5.1 the calculation of any sums of money owing by either **Party** under this **Agreement** shall be performed to the nearest Cent; and

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

2. TERM

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

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

2.1.2 the Expiry Date;

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

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

2.3 The conditions precedent referred to in Clause 2.2 are:

-
- 2.3.1 The Seller shall ensure that all End User Amendment Agreements have been entered into, and shall be in full force and effect, valid and binding for the duration of the Agreement and shall have provided the Buyer with certified true copies of all such End User Amendment Agreements;
- 2.3.2 the Seller shall have secured the issuance and grant of all Consents and shall have provided the Buyer with a certified true copy of the electricity generation licence (if applicable) and as relevant any amended conditions thereto permitting it to participate in the Agreement; and
- 2.3.3 the Seller shall have provided to the Buyer a certificate signed by a duly authorised officer of the Seller stating, in a form satisfactory to the Buyer (acting reasonably), that all the above conditions precedent have been satisfied.
- 2.4 Subject to 2.4.1, the Seller shall be responsible at its own expense for satisfying and procuring the satisfaction of the conditions precedent referred to in Clause 2.3 by no later than the PPA signature date.
- 2.4.1 On written request by the Seller, the Buyer in its sole discretion may extend the date in writing for the requirement on the Seller to satisfy and procure the satisfaction of the conditions precedent enumerated in Clause 2.3.
- 2.4.2 The suspensive condition referred to in clause 2.3 is not capable of fictional fulfilment and may not be waived by either Party.
- 2.5 If the Agreement does not become unconditional on or before the PPA signature date or such extended date in accordance with clause 2.4.1 then this Agreement, save for the provisions of this clause 2, Clause 1 (Definitions and Interpretation), Clause 11 (Breach), Clause 12 (General Seller Undertakings and Obligations), Clause 14 (Assignment), Clause 16 (Dispute Resolution), Clause 18 (Third Party Indemnity), Clause 19 (Confidentiality), Clause 20 (Governing Law and Jurisdiction), Clause 21 (Notices), Clause 22 (Warranties) and Clause 24 (Miscellaneous), shall fall away and no longer be of any force or effect,

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

3. PROJECT SITE AND CONSTRUCTION

3.1 Project Site

The **Seller** shall obtain and maintain the peaceful use and possession of the Project Site and such associated rights as may be necessary for the purposes of undertaking and implementing the Project for the duration of the Term. The **Seller** shall acquire such other land and/or rights in respect of land as it requires in order to perform its obligations under this **Agreement** and all such land and rights shall be deemed to form part of the Project Site and shall be at the sole risk of the **Seller** and subject to applicable Laws. Details of the Project Site, including a single line diagram setting out the transmission/ distribution lines and substation, interconnection facility, and significant ancillary facilities including the facilities at the Delivery Point(s), is included in **Schedule G1 Part 2 (Single Line Diagram)**.

3.2 Risk and liability

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

3.3 Buyer's inspection rights

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

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

3.4 No use of electricity from the System

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

4. COMMENCEMENT DATE [CD]

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

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

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

5. SALE OF ENERGY

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

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

6. INVOICING

6.1 Content of Invoices

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

6.2 General principles as regards invoicing

6.2.1 Save as provided in the VAT Act, every payment due and payable by either **Party** to the other pursuant to this **Agreement** shall be subject to VAT.

6.2.2 The **Party** who received the Invoice shall pay to the other **Party** (who issued the Invoice) the amount of each Invoice within thirty (30) Days of receipt of such Invoice (the "**Due Date**").

6.2.3 All payments due by either **Party** to the other under this **Agreement** shall be made:

6.2.3.1 in Rand in immediately available funds to such bank account in South Africa as the recipient **Party** shall from time to time nominate; and

6.2.3.2 subject to **clause 13** (*Set-Off*), without deduction or withholding, whether by way of set-off or otherwise, other than as required by any Law or as expressly provided in this **Agreement**.

6.2.4 If a manifest error is however evident, the **Buyer** shall pay an amount equal to the average of the accounts rendered for the preceding Month, or otherwise as agreed to by the **Parties**.

6.2.5 Where the **Seller** has overcharged the **Buyer** and the **Buyer** has paid such overcharged amount, the **Seller** will reimburse the **Buyer** by crediting the next Invoice with such overcharged amount.

6.2.6 Where the **Seller** has undercharged the **Buyer**, the **Seller** shall debit the subsequent Invoice with the amount undercharged and such amounts shall be payable by the **Buyer**.

6.3 Billing disputes

6.3.1 A **Party** shall notify the other **Party** in writing if it disputes (in good faith) an Invoice (including the data or records on which the dispute is

based) before the Due Date for payment thereof, which notice shall specify the amount in dispute, and provide appropriate details of the basis of the dispute. The disputing **Party** shall pay the undisputed portion of the Invoice on the Due Date.

6.3.2 The **Parties** will use their reasonable endeavours to resolve the dispute as soon as practicable, and in any event within thirty (30) days of the notice of the dispute served pursuant to **clause 6.3.1**. Without limiting the generality of the foregoing, where the dispute is in respect of the billing data obtained by the **Seller** from the Metering Installation(s), the disputing **Party** shall be entitled to request a test of the Metering Installation(s) in accordance with **clause 7 (Metering)**.

6.3.3 If it is agreed or determined (including as a result of a test of the Metering Installation(s) pursuant to **clause 7 (Metering)** that all or part of a disputed amount which was paid should not have been paid, then the amount of such overpayment shall be refunded within five (5) Business Days of such agreement or determination, together with interest at the Agreed Interest Rate from the date of such overpayment to, but excluding, the date of repayment.

7. METERING

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

- 7.5.1 The Seller shall provide meter configuration details including the remote access information for site and installation verification purposes;
- 7.5.2 If the Seller has a valid metering Code exemption which may negatively impact remote access to the meters, such details need to be revealed upon the conclusion of the Agreement in which event the Seller will be required to co-operate or put alternate measures in place to the satisfaction of the Buyer to enable the Buyer to obtain the required access to the Metering Installation. The Buyer reserves its right to contest any exemption granted; and
- 7.5.3 The Seller shall provide commissioning and latest maintenance reports for the Metering Installation at the request of the Buyer.
- 7.6 The Metering Installation will be sealed at all times and such sealing or removal thereof shall be done in the presence of the Buyer or its nominated agent. If the Metering Installation is sealed, the Buyer shall have the right to inspect and either accept the sealed meter or request the Seller to re-seal the meters in the presence of the Buyer's nominated agent.
- 7.7 The **Seller** shall be responsible for interrogating and retrieving data from the Metering Installation(s) for invoicing purposes.
- 7.8 The Metering Installation(s) shall be tested by the **Seller** as often as may be necessary but in any event within 30 (thirty) days of the **Buyer's** written request for such test and the **Buyer** shall have the right to be represented at the conduct of any such test.
- 7.9 The **Seller** shall promptly provide the **Buyer** with a test report including all supporting metering data and records, if so requested by the **Buyer** in writing. The **Seller** shall promptly and in full answer any questions of the **Buyer** concerning such test report.
- 7.10 The **Seller** shall not, interfere in any manner whatsoever with the proper functioning of the Metering Installation(s) save in the course of an inspection, testing, maintenance or agreed adjustment in the presence of duly authorised representatives of both **Parties**.
- 7.11 Neither **Party** shall re-locate the Metering Installation(s) without the prior written approval of the other **Party**.

8. GENERATION FORECASTING AND DECLARATION OF PLANT
AVAILABILITY

8.1 Daily Generation Forecast

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

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

8.2 Weekly Generation Forecast

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

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

8.3 The **Seller** and the **Buyer** agree that respectively the operational and emergency contact personnel for the purposes of this **Agreement** for any forecasting, demand or supply and other operational issues will be the representatives set out in **Schedule E1** hereto.

9. UTILITIES AND CONSUMABLES

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

10. FORCE MAJEURE

- 10.1 Subject to **clause 10.2.2**, the **Party** claiming relief shall be relieved from liability under this **Agreement** to the extent that, by reason of the Force Majeure event, it is not able to perform all or a material part of its obligations under this **Agreement**.
- 10.2 Where a **Party** is (or claims to be) affected (“the Affected **Party**”) by an event of Force Majeure:
- 10.2.1 it shall take all reasonable steps to mitigate the consequences of such an event upon the performance of its obligations under this **Agreement** and to resume performance of its obligations affected by the event of Force Majeure as soon as practicable, and shall use all reasonable endeavours to remedy its failure to perform; and
- 10.2.2 it shall not be relieved from liability under this **Agreement** to the extent that it is not able to perform, or has not in fact performed, its obligations under this **Agreement** due to its failure to comply with its obligations under **clause 10.2.1**
- 10.3 The **Party** claiming relief shall serve written notice on the other **Party** within five (5) Business Days of it becoming aware of the relevant event of Force Majeure. Such initial notice shall give sufficient details to identify the particular event claimed to be an event of Force Majeure.
- 10.4 A subsequent written notice shall be served by the **Party** claiming relief on the other **Party** within a further fifteen (15) Business Days which shall contain such relevant information relating to the failure to perform (or delay in performing) as is available, including (without limitation) the effect of the event of Force Majeure on the ability of the **Party** to perform, the action being taken in accordance with

clause 10.2.1, the date of the occurrence of the event of Force Majeure and an estimate of the period of time required to overcome it (and/or its effects).

10.5 The **Party** claiming relief shall notify the other as soon as the consequences of the event of Force Majeure have ceased and when performance of its affected obligations can be resumed.

10.6 If, following the issue of any notice referred to in **clause 10.4**, the **Party** claiming relief receives or becomes aware of any further information relating to the event of Force Majeure (and/or any failure to perform), it shall submit such further information to the other **Party** as soon as reasonably possible.

10.7 The **Party** claiming relief shall have the burden of proving both the existence of any Force Majeure event and the effect (both as to nature and extent) which any such Force Majeure event has on its performance in terms of this **Agreement**.

10.8 If the Affected **Party's** performance of all or a material part of its obligations under this **Agreement** is prevented, hindered or delayed by a Force Majeure event occurring prior to the CD, then, provided that the Affected **Party** has complied with the requirements of this **clause 10**, the time limits for the performance of those obligations shall be extended, and the scheduled dates for the affected milestones correspondingly amended, by a period equal to the period by which its performance is prevented, hindered or delayed by such Force Majeure event, but only to the extent that any extension period shall not have the effect of extending the Term of this **Agreement** beyond the Expiry Date, in which event, this **Agreement** will be deemed to be terminated with effect from the Expiry Date.

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

10.10 If the event of Force Majeure subsists for more than 90 (ninety) consecutive Days, the non-Affected **Party** shall have the right to terminate this **Agreement** after having given the other **Party** fourteen

(14) days written notice, or alternatively the **Buyer** (to the extent the Affected **Party** is the **Seller**) may on fourteen (14) days written notice reduce the Maximum Contract Value for the remaining Term of this **Agreement**. The amount to be deducted in terms of this **clause 10.10** from remaining Maximum Contract Value will be based on the accepted Energy rates relative to the TOU Periods weighed against that portion of the Energy per the Contracted Generation Profile that was not produced in the period of the Force Majeure event.

11. BREACH

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

12. GENERAL SELLER UNDERTAKINGS AND OBLIGATIONS

- 12.1 All End User Amendment Agreements shall have been entered into, and shall be in full force and effect, valid and binding for the duration of this **Agreement**. The Seller shall procure that any future electricity supply agreements will contain a provision that will enable the electricity supplier to invoice the end-use customer with reference to the metered consumption of Energy from the Facility as well as the electricity supply point. (Corresponding amendments may also be required upstream between the electricity supplier and its suppliers).
- 12.2 The Seller will be responsible for the decommissioning of the Facility if applicable in compliance with the requirements of its environmental licence, Consents and the Law.
- 12.3 The System Agreements and any agreements required for the Construction, Operation and Maintenance of the Facility as may be required in order for the Seller to fulfil its obligations under this **Agreement**, shall have been entered into, and shall be in full force and effect, valid and binding from the CD and thereafter for the duration of this **Agreement**.
- 12.4 The **Seller** shall have secured the issuance and grant of all Consents required to allow the **Seller** to fulfil its obligations in terms of this **Agreement**.
- 12.5 Accordingly, as between the **Parties** and save as otherwise expressly provided for in this **Agreement**, at all times during the Term, the **Seller** shall exercise its rights and perform all of its obligations as provided for in this **Agreement**, including to the extent applicable the construction, operation and maintenance of the Facility, at its sole cost and risk and in compliance with the requirements of:

12.5.1 applicable Laws;

12.5.2 the Codes;

12.5.3 the System Agreements;

12.5.4 the Consents;

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

12.5.6 the standards of a Reasonable and Prudent Operator; and

12.5.7 relevant manufacturers' guidelines and instructions.

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

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

13. SET-OFF

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

**STANDARD FOR SHORT TERM
POWER PURCHASE PROGRAMME**

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14. ASSIGNMENT

14.1 Save as provided in **clause 14.2**, neither **Party** may sell, cede, delegate, assign, transfer or otherwise dispose of (collectively, "**Assign**") all or any part of its rights and/or obligations hereunder to a third party without the prior written approval of the other **Party**.

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

14.2.1 To an Affiliate without the prior consent of the **Seller**; or To a third party as part of and pursuant to:

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

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

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

15. CONTRACTORS

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

16. DISPUTE RESOLUTION

16.1 Referable Disputes

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

16.2 Internal Referral

16.2.1 If a dispute arises in relation to any aspect of this **Agreement**, the **Parties** shall attempt in good faith to come to an agreement in relation to the disputed matter, in accordance with the following informal process:

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

16.2.1.2 if the **Parties** have been unable to resolve the dispute within fifteen (15) days of referral to the persons specified in **clause 16.2.1.1**, either **Party** may refer the dispute for a decision by the accounting officer or accounting authority of the **Buyer** and the chief executive officer or equivalent officer of the **Seller**.

16.2.2 In attempting to resolve the dispute in accordance with the provisions of this **clause 16.2** (*Internal Referral*), the **Parties** shall (and shall procure that their employees and representatives shall) use reasonable endeavours to resolve such dispute without delay by negotiations or any other informal procedure which the relevant representatives may adopt. Those attempts shall be conducted in good faith in an effort to resolve the dispute without necessity for formal proceedings.

16.2.3 Any dispute which has not been resolved by the representatives contemplated in **clause 16.2.1.2** within fifteen (15) days of the dispute being referred to them (or any longer period agreed between the **Parties**) shall be treated as a dispute in respect of which informal resolution has failed.

16.3 Performance to Continue

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

16.4 Dispute Resolution

16.4.1 If informal resolution of any dispute has failed, then any **Party** to such dispute may require that such dispute shall be referred to arbitration.

16.4.2 The arbitrator shall be appointed by the **Parties**, and failing agreement, shall be nominated by Arbitration Foundation of South Africa ('AFSA').

16.4.3 The arbitration shall be held in accordance with the Rules of AFSA, or if AFSA shall not be in existence, in accordance with the formalities and procedures settled by the arbitrator, which shall be in an informal and summary manner, that is, it shall not be necessary to observe or carry out either the usual formalities or procedure or the strict rules of evidence, and the arbitration shall be otherwise subject to the provisions of the Arbitration Act 1965.

16.4.4 The arbitrator shall be entitled to investigate or cause to be investigated any matter, fact or thing which he considers necessary or desirable in connection with any matter referred to him for decision, to decide the matters submitted to him according to what he considers just and equitable in all the circumstances, having regard to the purpose of this **Agreement** and make such award, as he in his discretion may deem fit and appropriate.

16.4.5 The arbitration shall be held as expeditiously as possible after such arbitration is demanded, with a view to such arbitration

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

- 16.4.6 This clause is severable from the rest of this **Agreement** and shall therefore remain in effect even if this **Agreement** is terminated.
- 16.4.7 The **Parties** hereby confirm that they shall abide by the terms of any arbitral award, the terms of which shall be final and binding on the **Parties** hereto.

17. LIABILITY

17.1 Direct losses

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

17.2 Mitigation

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

18. THIRD PARTY INDEMNITY

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

19. CONFIDENTIALITY

19.1 Confidential Information

Subject to the remaining provisions of this **clause 19 and 24.8**, each **Party** shall treat any and all information and data disclosed to it by the other **Party** in connection with this **Agreement** in any form whatsoever, and this **Agreement** itself (the "**Confidential Information**") as confidential and proprietary, shall preserve the secrecy of the Confidential

Information and shall not use the Confidential Information for any purpose other than solely in connection with the Project. Project Data shall not constitute Confidential Information.

19.2 Exclusions to Confidential Information

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

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

19.3 Permitted disclosure of Confidential Information

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

- 19.3.1 by either **Party** to any Responsible Authority (where for the purposes of this **clause 19.3** (*Permitted disclosure of Confidential Information*) such definition shall be limited to South Africa) or to any of the shareholders (direct or indirect), agents, consultants, contractors, advisers, financiers, potential financiers, investors, potential purchasers of the interests of a shareholder (direct or indirect), insurers or lenders of such **Party** or its Affiliates, in any such case for the purpose of enabling the

disclosing **Party** to comply with its obligations under this

Agreement, provided that:

19.3.1.1 such **Party** notifies the recipient at or about the time of such disclosure that the information is confidential and should not be disclosed by the recipient to third parties; and

19.3.1.2 such **Party** shall be responsible for ensuring that the recipient keeps the Confidential Information confidential and shall accordingly be responsible for any failure of the recipient to do so;

19.3.2 by either **Party** as may be required by the regulations of any recognised securities exchange upon which the share capital of the **Party** (or any shareholder (direct or indirect) in the **Party**) is or is proposed to be from time to time listed or dealt in, and the **Party** making the disclosure shall, if reasonably practicable prior to making the disclosure, and in any event as soon as reasonably practicable thereafter, supply the other **Party** with a copy of such disclosure or statement and details of the persons to whom the Confidential Information is to be, or has been, disclosed;

19.3.3 by either **Party** as may be necessary to comply with any obligation under any applicable Law;

19.3.4 by the **Buyer** to the Distributor as may be necessary to enable the Distributor to operate the Distribution System and carry out its obligations in relation thereto as a Reasonable and Prudent Operator (including in relation to the application by any person for connection to the Distribution System), provided that:

19.3.4.1 only Confidential Information which is necessary for such purpose is disclosed by the **Buyer** to the Distributor; and

19.3.4.2 the **Buyer** notifies the recipient at or about the time of such disclosure that the information is confidential and should not be disclosed by the recipient to third parties;

19.3.5 by either **Party** if required by any court, any arbitrator or administrative tribunal or an expert in the course of proceedings before it to which the disclosing **Party** is a party; or

19.3.6 by either **Party**, if so agreed in writing by the **Parties** prior to the disclosure.

19.4 Ownership and treatment

19.4.1 Subject to **19.4.2**, all information supplied by or on behalf of a **Party** shall remain the property of such **Party**, and this **Agreement** shall not operate to transfer ownership interest therein.

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

20. GOVERNING LAW AND JURISDICTION

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

20.2 The **Parties** hereby submit to the jurisdiction of the High Court of South Africa (Witwatersrand Local Division) for the purposes of any proceedings for urgent relief arising out of or in connection with this **Agreement** and for the purposes of enforcing any award made by an arbitrator under **clause 16**.

21. NOTICES

21.1 Methods of delivery

Unless otherwise provided in this **Agreement**, all notices, requests, statements and other communications required or permitted between the **Parties** by this **Agreement** shall be in writing and either hand-delivered or sent by pre-paid registered post, email or to the address or email within South Africa of the **Party** concerned set out in **clause 21.2** (*Addresses*) or such other address or number as contemplated in **clause 21.4** (*Change in address*). No communication shall be effective until received by the addressee and a communication shall be deemed to have been received:

- 21.1.1 if delivered by hand during ordinary business hours, to its physical address in **clause 21.2** (*Addresses*), when so delivered;
- 21.1.2 if delivered by pre-paid registered post, to its postal address in **clause 21.2** (*Addresses*), seven (7) Business Days after posting, subject to proof of posting;
- 21.1.3 if delivered by email, upon receipt by the sender of a return email from the recipient in which the sender's communication is acknowledged (it being the responsibility of the sender to obtain such acknowledgement); and

21.2 Addresses

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

21.2.1 The **Seller**:

Postal Address: **[INSERT]**

Physical Address: **[INSERT]**

Email address: **[INSERT]**

Tel No.: **[INSERT]**

Attention: **[INSERT]**

The **Buyer**:

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

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

Email Address: mbaepi@citypower.co.za

Tel No.: +27 11 490 7679

Attention: Senior Manager, Strategic Energy Projects, Energy Management

21.3 Domicilium citandi et executandi

The **Parties** choose the physical address set out opposite their names in **clause 21.2** (*Addresses*) as their *domicilium citandi et executandi* for all purposes of and in connection with this **Agreement**. Notwithstanding anything to the contrary herein, a written legal notice or process actually received by a **Party** shall be an adequate written notice or process, notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

21.4 Change in address

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

22. WARRANTIES

22.1 Seller warranties

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

- 22.1.1 it is a limited liability company, duly incorporated and validly existing under the Laws and has taken all necessary actions to authorise its execution of and to fulfil its obligations under this **Agreement** and other agreements necessary for the implementation of the Project to which it is a party;
- 22.1.2 its obligations under this **Agreement** are legal, valid and binding and enforceable against it, in accordance with the terms of this **Agreement**;
- 22.1.3 the execution and performance of this **Agreement** does not and will not contravene any provision of the memorandum or articles of association or memorandum of incorporation of the **Seller** as

at the Effective Date, or any order or other decision of any Responsible Authority or arbitrator that is binding on the **Seller** as at the Effective Date;

22.1.4 all Consents required for the conduct of the Project are in full force and effect as at the Signature Date, save for any Consents which are not required under the Laws to be obtained by the Signature Date, provided that the **Seller** warrants that it knows of no reason (having made all reasonable enquiries in this regard) why any such Consent will not be granted on reasonable terms by the time it is required to obtain such Consent;

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

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

22.1.7 no proceedings or any other steps have been taken or, to the best of the knowledge of the **Seller** (having made all reasonable enquiries), threatened for the winding-up or liquidation (whether voluntary or involuntary, provisional or final), judicial management (whether provisional or final), business rescue or deregistration of the **Seller** or for the appointment of a liquidator, judicial manager or similar officer over it or over any of its assets.

22.2 Buyer warranties

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

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

23. REPRESENTATIVES

23.1 Buyer's Representative

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

23.2 Seller's Representative

- 23.2.1 The **Seller** shall appoint from the Signature Date until the Expiry Date, an individual (the "**Seller's Representative**") whose identity shall be notified to the **Buyer** to act as the **Seller's** duly

authorised representative for all purposes connected with this **Agreement under Schedule 4**.

The **Seller** shall notify the **Buyer** in writing forthwith upon the replacement at any time of the **Seller's** Representative and such replacement shall not be effective until such notice has been given.

- 23.2.2 Any notice, instruction or information required to be given by or made to the **Seller** shall only be valid if given by or delivered to the **Seller's** Representative.

24. MISCELLANEOUS

24.1 No partnership or agency

This **Agreement** shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the **Parties** other than the contractual relationship expressly provided for in this **Agreement**. Neither **Party** shall have, nor represent that it has, any authority to make any commitments on the other **Party's** behalf.

24.2 No amendment or variation

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

24.3 Waiver

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

24.4 Third Parties

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

24.5 Counterparts

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

24.6 Entire Agreement

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

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

24.7 Further assurances

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

24.8 Public Relations and Publicity

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

24.8.1.1 NERSA;

24.8.1.2 Parliament and its members and officers;

24.8.1.3 the Auditor-General under the Public Audit Act, 2004; and

24.8.1.4 persons acting in the public interest in accordance with the provisions of the Promotion of Access to Information Act, 2002.

24.8.2 The Seller shall not communicate with representatives of the press, television, radio or other communications media on any matter concerning this **Agreement** without the prior approval of the **Buyer**, such consent not to be unreasonably withheld.

24.8.3 To the extent that the **Buyer** is obliged to disclose or publish information pursuant to **clause 24.8.1 or 24.8.2**, it undertakes to the **Seller**, if time permits, to consult with the **Seller** prior to any communication contemplated by this **clause 24.8.3**, and if time does not so permit, such consultation shall be dispensed with by the **Parties**.

24.8.4 No facilities to photograph or film in or upon the Project Sites shall be given to or permitted by the **Seller** unless the **Buyer** has given prior written approval.

24.9 Language

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

24.10 Costs

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

24.11 Severability

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

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

Date: _____

Name: [INSERT] Title: [INSERT]

DULY AUTHORISED

As Witnesses:

1. _____

2. _____

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

Date: _____

Name: [INSERT] Title: [INSERT]

DULY AUTHORISED

As Witnesses:

1. _____

2. _____

FORM A1: DECLARATION REGARDING MANDATORY REQUIREMENTS

No.	Gatekeeper	Yes / No
1.	The generation facility is located within borders of South Africa.	
2.	The capacity to be made available as the Contracted Capacity for the facility under the PPA is not less than 1MW.	
3.	The capacity relatable to the Contracted Capacity is incremental.	
4.	Scheduled Commencement Date (SCD) is on or before PPA signature date	

Bidders to confirm YES or NO for each question above

ANNEXURE D: LIST OF TECHNICAL SCHEDULES

**SCHEDULE B1: DECLARATION REGARDING ARRANGEMENTS WITH
ELECTRICITY SUPPLIER**

(TO BE PLACED ON THE Bidder's LETTERHEAD)

TO: CITY POWER JOHANNESBURG (SOC) LTD ("City Power")

I _____, (*full names and surname*) in my capacity as _____ confirm that I am duly authorised to make this declaration. I confirm that all information supplied herein is to the best of my knowledge true and correct and I state as follows:

1. (*insert full registered name of the entity*) has a valid Electricity Supply Agreement with its electricity provider (*state Eskom or the name of municipality or other distributor*) which was entered into on the (*state date*) and will remain valid for the duration of the term of the Power Purchase Agreement.
2. (*insert full registered name of the entity*) is in a position to forward a copy of this agreement to City Power immediately upon request.
3. (*insert full registered name of the entity*) confirms that it has discussed with and has received approval from its electricity provider (*state Eskom or the name of municipality or other distributor*) to participate in this **Bid No. XXX** and approval to conclude a Reconciliation / Amendment Agreement for the reconciliation of power where applicable. A letter confirming this approval from (*state Eskom or the name of municipality or other distributor*) is attached to this declaration.

I understand that City Power may disqualify the bid submission and accept that City Power reserves it's right to act against the Bidder and/or the bidding group or me personally in terms hereof, should this declaration prove to be false.

Signed

Date

Name

Position

**Name of
Bidder**

SCHEDULE C1: DECLARATION REGARDING INCREMENTAL CAPACITY

(TO BE PLACED ON THE Bidder's LETTERHEAD)

TO: CITY POWER JOHANNESBURG (SOC) LTD ("City Power")

I _____, (*full names and surname*) in my capacity as _____ confirm that I am duly authorised to make this declaration. I confirm that all information supplied herein is to the best of my knowledge true and correct and I state as follows:

1. (*insert full registered name of the entity*) confirms that the following is a complete list of City Power programmes (such as DMP; IDM/DSM programmes; etc.) that (*insert full registered name of the entity*) is participating in and declares that by entering into a Power Purchase Agreement under this **Bid No. XXX**, it will not receive any additional financial benefit for the same energy that is being incentivised under any other City Power or other programme:
 - a.
 - b.
 - c.
2. The forecast and historical (if applicable) generation profile data of the Facility submitted as part of the Bid Submission clearly demarcates any generation under any previous or current contractual agreements which includes the initiatives in item 1 above.

I understand that City Power may disqualify the bid submission and accept that City Power reserves it's right to act against the Bidder and/or the bidding group or me personally in terms hereof, should this declaration prove to be false which could result in termination of the Power Purchase Agreement.

Signed

Date

Name

Position

.....
.....

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**Name of
Bidder**

SCHEDULE D1A: BID INFORMATION SCHEDULE – STPPP

Bidders are required to submit the following information:

Item	Data
Scheduled Commencement Date (SCD) (cannot be later than 24 months after PPA signature)	
Installed Capacity (MW)	
Net Capacity (MW)	
Contracted Capacity (MW) (cannot be less than 1 MW)	
Price/Rate (R/kWh)	
Geographical location/province and magisterial district (Facility must be located within borders of South Africa)	

SCHEDULE D1B: BID INFORMATION SCHEDULE – BESS

Bidders are required to submit the following information:

Item	Data
Scheduled Commencement Date (SCD) (cannot be later than 24 months after PPA signature)	
Installed Capacity (MW)	
Net Capacity (MW)	
Contracted Capacity (MW) (cannot be less than 1 MW)	
Price/Rate (R/kWh)	
Geographical location/province and magisterial district (Facility must be located within borders of South Africa)	

SCHEDULE E1: FORECAST BASELINE - GENERATION PROFILE

The capacity to be contracted in terms of this bid must be incremental. The Bidder must submit the actual generation profile data of the facility for the period 01 July 2024 to 30 June 2027 clearly demarcating any generation under any previous or current contractual agreements.

Forecast Actual Generation Profile	Peak (MWh)	Standard (MWh)	Off Peak (MWh)
July 2024			
August 2024			
September 2024			
October 2024			
November 2024			
December 2024			
January 2025			
February 2025			
March 2025			
April 2025			
May 2025			
June 2025			
July 2025			
August 2025			
September 2025			
October 2025			
November 2025			
December 2025			
January 2026			
February 2026			
March 2026			
April 2026			
May 2026			
June 2026			
July 2026			
August 2026			
September 2026			
October 2026			
November 2026			
December 2026			
January 2027			
February 2027			
March 2027			
April 2027			
May 2027			
June 2027			

In addition, the Bidder also needs to provide its Own Generation Profile and its Own Generation Capacity in MWh.

Forecast of Own Generation Profile	Peak (MWh)	Standard (MWh)	Off Peak (MWh)
July 2024			
August 2024			
September 2024			
October 2024			
November 2024			
December 2024			
January 2025			
February 2025			
March 2025			
April 2025			
May 2025			
June 2025			
July 2025			
August 2025			
September 2025			
October 2025			
November 2025			
December 2025			
January 2026			
February 2026			
March 2026			
April 2026			
May 2026			
June 2026			
July 2026			
August 2026			
September 2026			
October 2026			
November 2026			
December 2026			
January 2027			
February 2027			
March 2027			
April 2027			
May 2027			
June 2027			

Own Generation Profile Capacity: _____ [INSERT] MW

***Note:** City Power may consider developing an hourly Own Generation Profile Capacity.

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Daily:

<i>DATE:</i>	
<i>TIME (hour beginning)</i>	<i>CAPACITY</i>
<i>00:00</i>	
<i>01:00</i>	
<i>02:00</i>	
<i>03:00</i>	
<i>03:00</i>	
<i>04:00</i>	
<i>05:00</i>	
<i>06:00</i>	
<i>07:00</i>	
<i>08:00</i>	
<i>09:00</i>	
<i>10:00</i>	
<i>11:00</i>	
<i>12:00</i>	
<i>13:00</i>	
<i>14:00</i>	

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<i>15:00</i>	
<i>16:00</i>	
<i>17:00</i>	
<i>18:00</i>	
<i>19:00</i>	
<i>20:00</i>	
<i>21:00</i>	
<i>22:00</i>	
<i>23:00</i>	

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

**SCHEDULE F1: FORECAST OF CONTRACTED GENERATION PROFILE (MWH /
TOU PERIOD / MONTH)**

Month	Peak (MWh)	Standard (MWh)	Off Peak (MWh)
July 2024			
August 2024			
September 2024			
October 2024			
November 2024			
December 2024			
January 2025			
February 2025			
March 2025			
April 2025			
May 2025			
June 2025			
July 2025			
August 2025			
September 2025			
October 2025			
November 2025			
December 2025			
January 2026			
February 2026			
March 2026			
April 2026			
May 2026			
June 2026			
July 2026			
August 2026			
September 2026			
October 2026			
November 2026			
December 2026			
January 2027			
February 2027			
March 2027			
April 2027			
May 2027			
June 2027			

* Bidders to provide the forecast for the 12 month period starting from their bid in SCD, which can be no later than 24 months after PPA signature date.

SCHEDULE G1: PARTICULARS OF FACILITY

Bidders must in relation to **each** Facility proposed by them complete and submit Schedule G1 (*Bid for Generation Energy*) to the PPA

DETAILS OF THE PROJECT AND FACILITY

Part 1

Facility

[Seller to provide a one paragraph description of the Facility and its components and a scale map of the Facility showing the layout of the Project, including location of the Facility, substation and cables up to the Delivery Point and the location of the Metering Installation]

Gross Capacity: _____ (MW)

Net Capacity: _____ (MW)

Contracted Capacity: _____ (MW)

Generating Technology: _____

Type of Fuel: _____

Location: Street Address, city and province of Generation Facility: _____

GPS coordinates: _____

System to which the Source Facility will be connected and nearest substation:

_____.

Name of licensed Electricity Supplier: _____

Electricity Account Number: _____

Scheduled CD: _____

Distributor or NTC: _____

Point of Delivery: _____

The physical point where the commercial energy is to be delivered by the Seller to the Buyer as described in Annex 1 to Schedule 1 hereto (Single Line Diagram)

Part 2

Single Line Diagram

[Seller to provide single line diagram of the facility with a clear demarcation of the following:

Ownership and operational boundaries;

Delivery Point;

Point of Connection (as defined in the Distribution Agreement); and Substation.]

**SCHEDULE H1: DECLARATION REGARDING GRID CONNECTION AND
METERING INSTALLATION**

(TO BE PLACED ON THE Bidder's LETTERHEAD)

TO: CITY POWER JOHANNESBURG (SOC) LTD ("City Power")

I _____, (*full names and surname*) in my capacity as _____ confirm that I am duly authorised to make this declaration. I confirm that all information supplied herein is to the best of my knowledge true and correct and I state as follows:

1. (*insert full registered name of the entity*) is satisfied that its Project is able to comply with the applicable Codes prior to Scheduled CD.
 - a. (*insert full registered name of the entity*) confirms the following deviation from the Code requirements for connection to the System:
 -
 -
 - b. (*insert full registered name of the entity*) confirms that it has discussed these deviations with the relevant Responsible Authority and It has been agreed that the Bidder will be exempt from some or all of the compliance requirements normally necessary for this type and/or size of connection (**See attached signed confirmation of the exemption by the relevant authority e.g. NERSA**)
2. (*insert full registered name of the entity*) is satisfied that its Metering Installation shall comply with the Codes as well as any additional City Power requirements prior to the Scheduled CD.
 - a. (*insert full registered name of the entity*) confirms the following deviation from the Code requirements for the Metering Installation of the Facility:
 -
 -
 - b. (*insert full registered name of the entity*) confirms that it has discussed these deviations with the relevant Responsible Authority and It has been

agreed that the Bidder will be exempt from some or all of the compliance requirements normally necessary for this type and/or size of Facility **(See attached signed confirmation of the exemption by the relevant authority e.g. NERSA)**

I understand that City Power may disqualify the bid submission and accept that City Power reserves it's right to act against the Bidder and/or the bidding group or me personally in terms hereof, should this declaration prove to be false.

Signed

Date

Name

Position

**Name of
Bidder**

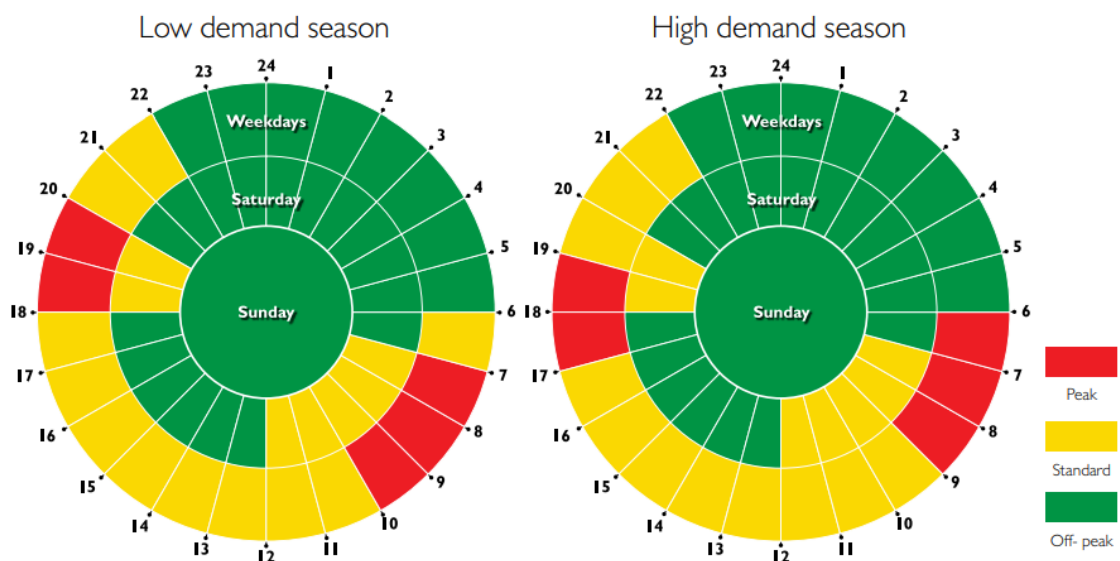
SCHEDULE I1: PRICING/RATES INPUT SHEET

High Demand Season (June – August)		
Rates excl. VAT	Eskom Rates (R/kWh)	Offered Rates (R/kWh)
Peak Rates	5.3617	
Standard Rates	1.6242	
Off-Peak Rates	0.8821	

Low Demand Season (September - May)		
Rates excl. VAT	Eskom Rates (R/kWh)	Offered Rates (R/kWh)
Peak Rates	1.7491	
Standard Rates	1.2041	
Off-Peak Rates	0.7637	

Note: Used Eskom - Megaflex Local Authority Tariff. All rates are excluding VAT

TOU Periods



SCHEDULE J1: NOTICE OF COMMENCEMENT OF FACILITY

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

[Date]

City Power SOC Ltd
40 Heronmere Road
Reuven
Johannesburg

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

Email to:

Attention:

Notice of Commencement of Facility

Dear Sir/Madam

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

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

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

1. The Facility is ready to export energy to the Buyer (“CD”) under the Agreement and to deliver Commercial Energy to the **Buyer**, and the Commencement Date shall be *[insert date and time]*.
2. We have obtained all of the Consents and licencing as required for the **Seller** to meet its obligations in terms of the Agreement, all of which remain in full force and effect, and we know of no reason why any such Consent may be withdrawn or terminated.

The Facility is compliant with the Codes.

3. We have concluded the necessary agreements required for the Seller to fulfil its obligations under the PPA and as may be required at CD in compliance with all Laws (including the arrangements pertaining to connection and use of the System) which shall remain in full force and effect, valid and binding for the duration of the PPA.
4. The End User Amendment Agreements to all electricity supply agreements between any suppliers of electricity (whether this is the Buyer in that capacity, a municipality, a municipal entity or any other licensed electricity supplier) of the one part, and end-use customers or customers who are part of the supply chain that supplies electricity to end-use customers (in either case where these end-use customers provide full or partial load to the Facility) of the other part, which ensure that there is no over-recovery whatsoever by the Seller and/or any such customers as a result of any electricity supplies to these customers flowing, whether in whole or in part, from the Facility, are in full force and effect and remain valid and binding for the duration of the Agreement.
5. The Metering Installation has been procured, installed, tested and successfully commissioned in accordance with the NERSA’s minimum testing standards, the Codes as well as any additional Buyer requirements as set out in the PPA and the System Agreements.

Yours faithfully,

[NAME OF SELLER]

Representative of the Seller

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