Short-Term Power Supply for Namibia

Request for Tender
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<table>
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<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>ASME</td>
<td>American Society of Mechanical Engineers</td>
</tr>
<tr>
<td>CE mark</td>
<td>Conformité Européenne conformity marking</td>
</tr>
<tr>
<td>COD</td>
<td>Commercial Operations Date</td>
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<tr>
<td>cSt</td>
<td>Centistoke</td>
</tr>
<tr>
<td>ECB</td>
<td>The Electricity Control Board, the Namibian electricity regulator</td>
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<tr>
<td>GRN</td>
<td>The Government of the Republic of Namibia</td>
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<tr>
<td>HFO</td>
<td>Heavy Fuel Oil</td>
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<tr>
<td>Hz</td>
<td>Hertz</td>
</tr>
<tr>
<td>kl</td>
<td>Kilolitre</td>
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<tr>
<td>kV</td>
<td>Kilovolt</td>
</tr>
<tr>
<td>kWh</td>
<td>Kilowatt-hour</td>
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<tr>
<td>LFO</td>
<td>Light Fuel Oil</td>
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<tr>
<td>LUCE</td>
<td>Levelised unit cost of energy</td>
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<tr>
<td>m³</td>
<td>Cubic meter</td>
</tr>
<tr>
<td>mg</td>
<td>Milligram</td>
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<tr>
<td>MME</td>
<td>The Namibian Ministry of Mines and Energy</td>
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<tr>
<td>MW</td>
<td>Megawatt</td>
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<tr>
<td>NAD</td>
<td>Namibian dollar</td>
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<tr>
<td>NTA</td>
<td>Namibia Training Authority</td>
</tr>
<tr>
<td>OHSAS 18001</td>
<td>The British Standard: Occupational Health and Safety Management Systems - Requirements BS OHSAS 18001</td>
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<tr>
<td>PDN</td>
<td>Previously Disadvantaged Namibian, as defined in the Namibian Affirmative Action (Employment) Act, 1998</td>
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<tr>
<td>PDS</td>
<td>Pounds Stirling</td>
</tr>
<tr>
<td>PPA</td>
<td>Power Purchase Agreement</td>
</tr>
<tr>
<td>RIT</td>
<td>This Request for Tender document</td>
</tr>
<tr>
<td>SABS</td>
<td>South African Bureau of Standards</td>
</tr>
<tr>
<td>SCADA</td>
<td>The Supervisory Control and Data Acquisition system operated by NamPower</td>
</tr>
<tr>
<td>TCA</td>
<td>Transmission Connection Agreement</td>
</tr>
<tr>
<td>USD</td>
<td>United States dollar</td>
</tr>
<tr>
<td>VET Levy</td>
<td>Vocational Education and Training levy</td>
</tr>
<tr>
<td>ZAR</td>
<td>South African Rand</td>
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1. BID PROCEDURE

1.1 Purpose of this Document

This Request for Tender (RfT) is issued by the Ministry of Mines and Energy of the Republic of Namibia (the Ministry), and it serves to solicit bids from interested qualified suppliers of short-term power generation solutions for Namibia.

The plant and services to which this document pertains include the provision, installation, commissioning, operation, maintenance, decommissioning and removal, as required, of electricity generation facilities to be located on the west coast of Namibia. For the avoidance of doubt, at no time shall the Ministry be required to take ownership of, install, operate, maintain or remove the generation plant.

1.2 Background to the Project

Detailed studies of the power demand-supply balance in Namibia conducted by the national power utility, NamPower, and verified by independent studies commissioned by the Government, have forecast a domestic electricity supply shortage in both energy and capacity terms from the winter of 2016. Additionally, the Southern Africa region is forecast to have a worsening supply shortage for at least the next five years, thereby limiting opportunities to import electricity into Namibia over that period. Namibia therefore faces a critical energy supply shortfall until either new generation facilities are built in Namibia or regional energy supply surpluses become available.

In response to the immediate situation the Directorate of Energy in Namibia’s Ministry of Mines and Energy has formed a committee with the ECB, NamPower and other stakeholders to address the short term energy security issue. Acting on the recommendations of the committee, the Ministry has decided to contract temporary provision of up to 120 MW of electricity, over a minimum of two separate sites, as soon as possible to meet the forecast shortfall in installed capacity. It is envisaged that this temporary generation could be required for the next five years during which time the successful bidders shall be required to have a minimum contracted capacity available and ready for dispatch.

1.3 Request for Tender

The Ministry invites fully documented bids from eligible and qualified companies, joint ventures and associations with suitable experience in the provision, installation, commissioning, operations, maintenance, and subsequent decommissioning and removal of short-term generation equipment with the target of connecting one or two temporary power stations with a combined capacity of progressively 40, 80 and 120 MW of firm, reliable capacity to the Namibian grid on or before 1 August 2016.

The bids received in response to the RfT will be evaluated by the Ministry on the basis of their ability to meet the necessary financial, legal, technical, environmental soundness, management expertise, project references, insurability, compliance, quality assurance, time frame and other requirements as detailed in this RfT. Only parties that submit responses to this RfT and meet the minimum requirements of this RfT will be considered eligible to supply short-term power supplies to Namibia.

This RfT is issued on 30 October 2015. The closing date for the submission of bid documents is Friday, 27 November 2015 at 14h30 Namibian Time.
Written clarifications will only be provided to queries submitted before 20 November 2015. Any clarification request received seven (7) days before the closing date and time stated above will not be considered.

A clarification meeting will be held at the Anixas Power Station in Walvis Bay, Namibia on or about 18 November 2015 (date to be confirmed with registered tenderers). Site visits will be arranged to coincide with the clarification meeting.

Bidders will be advised by Friday 5 February 2016 of the results of their bids. The Ministry shall not give any reason for its decision.

1.4 Scope of Services

The scope of work for which the Ministry is seeking bids is:

(a) providing generation equipment capable of generating increments of 40, 80 and 120 MW, per site, for deployment in Namibia within six months, subject to the availability and transmission capacity of sites, award of licences and environmental clearances. An initial deployment period of three (3) years is required, with an option to extend for periods of six (6) months for a further five (5) years;

(b) any fuel type available in, or able to be delivered to Namibia, where the forecast cost of fuel will form part of the evaluation;

(c) providing electrical equipment, including transformers and switchgear to enable in-feed from the generation plant at 132 kV, operating at 50 Hz;

(d) providing fuel storage facilities at the generation site(s) adequate to maintain fuel availability for operation at the peak dispatch regime specified in Section 1.6;

(e) delivery of all equipment to the site(s) in Namibia;

(f) installation of the equipment at site(s);

(g) commissioning the generation facilities and their connection to the transmission grid;

(h) operating and maintaining the generation facilities in accordance with an operating regime to be specified by NamPower;

(i) procurement of all consumables, lubricants and chemicals required for erection, commissioning, operation and maintenance of the generation facilities;

(j) Providing SCADA connection to the system controller, NamPower;

(k) provide an on-site fire-fighting system;

(l) providing reports enabling the efficient scheduling of generation by NamPower; and

(m) decommissioning of the generation facilities at the end of the supply period and removal of all plant, equipment and residual consumables (excluding fuel) from the sites.

Bidders are required to provide alternative bids inclusive and exclusive of the following services:

(a) procurement of fuel

(b) delivery of fuel to the site(s);

(c) site preparation, including clearance of vegetation, levelling, bunding for containment of fuel spills, fencing, and provision of water supply and waste water disposal; and

(d) obtaining environmental consents for the installation and operation of the generation plant. Note that bidders with existing environmental clearances will be required to agree to
transfer those clearances as a condition of participation (see Section 2.3.7).

Bidders may, but are not required to offer:

(a) to procure a site or access to a site;
(b) to obtain a licence for installing and operating the generation plant and fuel storage facilities.

1.5 Sites

To the extent possible given the constraints of time and cost, the Ministry is seeking a diversity of supply, ideally with generation facilities located on at least two sites, and with different fuel types appropriate to differing plant operations. To this end, it has identified a number of land-based sites where temporary generation facilities could be connected to the Namibian grid, identified in Annexure D, and for which it is envisaged that connection and environmental consent processes could be expedited. It is not considered possible to expedite environmental approvals for sea-based sites in the absence of any previous precedents in Namibia.

To ensure consistency of bids, two specific sites have been identified as the basis for bids. These are based on the best information available at the time of tender, and the Ministry reserves the right to agree on a different site with the successful bidder(s).

1.6 Plant Operational Requirements

Because Namibia has a highly seasonal hydro-based generation system, utilisation of the plant between the months of January and May is expected to be negligible (depending on hydrological conditions). During the peak months of June to December, plant operation is expected to be in excess of 85 hours per week, but this will be entirely dependent on the supply-demand situation at the time. The generation and fuel logistics planning must therefore be able to accommodate both prolonged operations and/or intermittent part loading operations.

1.7 Namibian Legislative Framework

Namibia has a well-established and stable legislative and regulatory regime. Bidders are expected to familiarise themselves with the legislative and regulatory requirements pertaining to the provision of short-term power supply in Namibia. The Ministry notes that the following legislation is applicable to this project, but makes no claim that this list is exhaustive, and accepts no responsibility or liability for any omissions:

a) Electricity Act, 2007 (available at www.ecb.org.na);
b) Foreign Investment Act, 1990 (amended by Foreign Investment Amendment Act, 1993) (available at www.mti.gov.na);
c) Petroleum (Products and Energy) Act, 1990 and amendments (available at www.mme.gov.na);
d) Environmental Management Act, 2007 and regulations (available at www.met.gov.na); and


1.8 The Procurement Process

The bids received in response to this RfT shall be used to identify preferred suppliers of short-term power supply solutions for Namibia. The Ministry will use the bids received to determine
with which suppliers it wishes to proceed, what maximum capacity it wishes to procure from each supplier, and at which sites.

**No short-term power supply solutions shall be implemented in Namibia other than as a result of this RfT process.**

Once the preferred bidders have been identified the Ministry shall initiate contractual negotiations with successful and responsive bidders to finalise the commercial arrangements for the project.

The Ministry shall be responsible for the payment of any application fees required to initiate the Electricity Control Board’s electricity generation licence process and NamPower’s transmission connection process.

Where necessary, the Ministry will facilitate the process of obtaining environmental clearances, or the transfer of existing environmental clearances, for the selected sites.

Where agreed with a selected supplier, the Ministry shall procure the site establishment works required in advance of the installation of equipment on site.

### 1.9 Instructions to Bidders

#### 1.9.1 Bids by Joint Ventures, Consortiums and Associations

Joint venture, consortium or association respondents must comply with the following requirements:

(a) The formation of a joint venture, consortium or association after the close of bidding will be subject to the written approval of the Ministry prior to the deadline for submission of tenders. Such approval may be denied if:

   (i) partners withdraw from a joint venture, consortium or association and the remaining partners do not meet the qualifying requirements;

   (ii) the level of participation by partners or the structure of the joint venture is substantially changed;

   (iii) the new joint venture is not qualified; or

   (iv) in the opinion of the Ministry, a substantial reduction in competitiveness may result.

(b) Any tender shall be signed so as to legally bind all joint venture partners, jointly and severally, and any tender shall be submitted with a copy of the joint venture agreement providing for joint and several liability with respect to the contract.

(c) The selection of a joint venture, consortium or association does not necessarily imply selection of any of its partners individually or as a partner in any other joint venture, consortium or association. In case of dissolution of a joint venture, consortium or association the Ministry reserves the right to reject a bid that had been accepted from that joint venture, consortium or association.

#### 1.9.2 Probity

The Ministry requires that clients as well as tenderers, suppliers, contractors, concessionaires and consultants, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, the Ministry:
(a) defines, for the purposes of this provision, the terms set forth below as follows:

i. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official, or the threatening of injury to person, property or reputation, in connection with the procurement process or in contract execution in order to obtain or retain business or other improper advantage in the conduct of business; and

ii. "fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the client, and includes collusive practices among tenderers (prior to or after tender submission) designed to establish tender prices at artificial, non-competitive levels and to deprive the client of the benefits of free and open competition;

(b) will reject a proposal for pre-qualification if it determines that an respondent recommended for pre-qualification has engaged in corrupt or fraudulent practices in competing for the contract in question;

(c) will declare a firm ineligible indefinitely or for a stated period of time, to be pre-qualified if it at any time determines that:

i. the firm has engaged in corrupt or fraudulent practices in competing for, or in executing, a contract; or

ii. the firm has been found by a judicial process or other official inquiry to have engaged in corrupt or fraudulent practices.

1.9.3 Evaluation Process

Evaluation of bids will be performed by the Ministry on the basis of companies meeting the necessary financial, legal, technical, environmental soundness, management expertise, project references, insurability, compliance, quality assurance, time frame, and other requirements as detailed in this RfT.

The process to be followed is set out in Section 3, Evaluation Criteria and Methodology.

1.9.4 Ministry Reservations

The Ministry reserves the right to:

(a) amend the scope and value of any contract(s) to be negotiated;
(b) reject or accept any response;
(c) cancel the procurement process and reject all applications;
(d) not accept and not award the lowest priced or highest scoring response;
(e) waive any minor irregularities or informalities in the pre-qualification and RFI process;
(f) meet and/or negotiate with any respondent to the exclusion of others without being under any obligation to involve any other bidders or inform any other bidders of the negotiations and without incurring any obligations to any respondent;
(g) amend this RfT, or any associated documents;
(h) request any bidder to re-submit a response on a revised or alternative basis.

The Ministry shall neither be liable nor be under any obligation to inform the bidders of
the grounds for such action.

1.9.5 Costs of Preparing Bids

Any and all costs incurred by respondents in preparing their responses to this RfT shall be borne by the respondents, and the Ministry shall have no liability for such costs. The Ministry will not bear any expenses or losses incurred by respondents in compiling and submitting their bids.

1.9.6 Contact Details:

The Ministry's designated contact person for any queries in association with this RfT is:
The Tender Administrator,
NamPower Centre,
15 Luther Street,
3rd Floor, Room No F3.23,
Windhoek, Namibia
Tel: +264 61 205 2206
Fax: +264 61 205 2293
Email: tenders@nampower.com.na

1.9.7 Confidentiality

All RfT documents obtained by prospective respondents shall be considered as their personal documents and shall not be transferred to a third party. Information contained in the RfT documentation shall be regarded as confidential and may not be divulged to third parties except as reasonably required for preparation of a response, irrespective of whether a response is submitted or not. All RfT responses shall be treated as confidential and their contents shall not be disclosed to any third party, other than to:
(a) any regulatory bodies that may require such information for the purposes of providing regulatory consents; or
(b) as required by the execution of a court order by a competent Namibian court.

1.9.8 Addenda

Any amendments, interpretations or modifications to this RfT will only be made by formal written addenda issued by the Ministry before the due date for submission of responses. Each addendum issued will be distributed to all the firms or organisations that have registered with the retrieval/collection of the RfT. All addenda issued will be considered part of the RfT.

1.9.9 Requests for Clarifications by Prospective Respondents

Should prospective respondents be in doubt as to the true meaning or understanding of any part of the Pre-qualification and Request for Information document, they should seek clarification, in writing, from the Ministry's designated representative, identified in Section 1.9.6 above.
The Ministry will respond by email to all requests for clarifications received in the period ending seven (7) days prior to the closing date, and such clarifications shall be distributed to all registered respondents.

The Ministry will not divulge the identity of the respondent requesting any clarification.

1.9.10 Tender language

All information, data and documents constituting any part of bids shall be in English.

1.9.11 Number of copies

The response documents shall be prepared in one original, two photocopy sets and one set on an USB memory stick of the fully completed Rft response document. The documents shall be marked ‘Original’ and ‘Copy’ as appropriate.

1.9.12 Format

Response documents should be submitted in typescript format.

Respondents may reproduce the standard forms which are required to be submitted as per the requirements set out in this document, provided that the wording of these standard forms are not changed in any way, except where these forms provide for the respondents to modify the text to reflect their particulars.

1.9.13 Currency of Financial Information

Except where explicitly stated to the contrary, financial information in respect of company performance submitted by respondents must be submitted in USD, Euro, PDS, ZAR, or NAD only.

1.9.14 Contents and Structure of Response Documents

Bids shall provide the information set out in Section 2, Contents of Bids. Failure to supply information requested, or in the form requested, may result in disqualification of a bid.

1.9.15 General and Financial Responses in Separate Envelopes

Response Documents should be submitted in two envelopes:

(a) Responses to the Sections 2.1 (Letter of Application), 2.2 (Probity), 2.3 (General Company Information), 2.4 (Reference Sites), 2.5 (Economic Empowerment), 2.6 (Technical Information), 2.7 (Commercial Information), and 2.8 (Implementation Timeline) should be on one envelope, labelled “Bid for the Provision of Short-term Power Supply to Namibia: Technical Response”, and

(b) Responses to Section 2.9 (Pricing) should be in a separate envelope, labelled “Bid for the Provision of Short-term Power Supply to Namibia: Financial Response”.

1.9.16 Submission of response documents

The response documents shall be submitted to the Tender Box located in the foyer of the NamPower Centre, 15 Luther Street, Windhoek, Namibia by the time specified in Section 1.3, Request for Tender, above.
Responses not received and registered as above before the indicated time and date will not be accepted as received by the Ministry and will be returned unopened irrespective of to whom they were given and for whatever the cause of the delay.

At the Ministry’s discretion, the submission date may be extended. Should the Ministry deem it necessary to grant such an extension an announcement via the same media as the release of this RfT shall be made at least seven (7) days before the submission date.

1.9.17 Delivery of Bids

Bid documents should be provided in a sealed envelope marked “Bid for the Provision of Short-term Power Supply to Namibia” and addressed to the Tender Administrator, at the address given in Clause 1.9.6.

The submission is to be deposited into NamPower’s tender box located at the entrance foyer at the NamPower Centre, 15 Luther Street, Windhoek, Namibia.

Each copy of each bound file that forms part of the bid documents shall be clearly marked with the name of the respondent.

1.9.18 Opening of Bids

There will be a public opening of Response documents.

1.9.19 Selected Bids

The successful bidder(s) will receive notification from the Ministry with a request to acknowledge. Only companies who acknowledge receipt of the notification and confirm their intention to participate further in the procurement process will be invited to do so.

Unsuccessful respondents will be informed that they have been unsuccessful.
2. CONTENTS OF BIDS

2.1 Letter of Application

All bids shall be accompanied by a signed Letter of Application in the form set out in Annexure A.

2.2 Probity

All bids shall be accompanied by a signed Covenant of Integrity in the form set out in Annexure B.

2.3 General Company Information

For each company associated in a bid whether individually or as part of a consortium, joint venture or partnership please provide the following information:

2.3.1 Contact Details

(a) Address to which any correspondence / documentation should be sent:

(b) Company Official to whom any query regarding this questionnaire and related matters should be directed:

2.3.2 Organisation Details

(a) Company Name;

(b) Registered Office;

(c) Registered Number;

(d) A copy of the company registration certificate;

(e) Legal Form of Organisation;

(f) Country of Incorporation;

(g) Date of Incorporation; and

To the extent relevant:

(h) Parent Company Name;

(i) Registered Office of Parent Company;

(j) If part of a Group of Companies, an organisation chart of the group.

2.3.3 Financial Details

(a) A statement is enclosed from your external auditors (or equivalent) certifying that the company is a going concern.

(b) One copy of the audited accounts in English for each of the last three financial years is enclosed.

(c) Confirmation that the company has a liquidity ratio (current assets/current liabilities) of not less than 1.

(d) Confirmation that the company has a solidity ratio (equity/total assets) of not less than 0.3.
(e) Please indicate the annual turn-over for the last three years for services/works of a similar nature to your potential supply in this tender.

(f) Evidence is enclosed as to your financial rating as rated by an internationally recognised rating agency or similar evidence of your financial strength and nature of credit standing.

(g) A certificate of good standing from the Receiver of Revenue (or equivalent) is enclosed as evidence that your company has fulfilled its obligations in relation to payment of taxes in Namibia (if applicable) and country of registration.

(h) A certificate of good standing from the Social Security of Namibia (if applicable) is enclosed as evidence that your company has fulfilled its obligations in relation to the Namibian Social Security regulations.

2.3.4 Resourcing

In respect of the organisation carrying out the Works (the “Generation Company”):

(a) Details of the organisation structure;

(b) Details of the management expertise, legal, technical, financial and economic capacity/resources to carry out the Works;

(c) Details of the total manpower resource availability that will be committed to the Project, together with current manpower commitments to demonstrate their ability to carry out the Works. This is to be presented in the form of a histogram showing current and projected work load and available capacity to carry out the Works with initial deployment in 2016;

(d) Information on numbers of appropriately trained qualified and experienced expatriate personnel that will be located in Namibia during the provision of the Works;

(e) An indication of the level to which work would be subcontracted or carried out through affiliates or associates;

(f) A statement of the experience and expertise of subcontractors or affiliates in similar services provided.

2.3.5 Quality Assurance

(a) Copies of the certificates of approval for ISO 9000 (or equivalent) and ISO 14001 (or equivalent) quality and environmental assurance systems applicable to the delivery of the Works.

(b) Evidence that all major equipment will satisfy internationally recognised certification such as CE marking, ASME standards, or equivalent requirements.

2.3.6 Transfer of Environmental Consent

Bidders should include details of any environmental clearances already held that are applicable to the supply of short-term power supply in Namibia.

Where a bidder has an existing environmental clearance in some form then it is a condition of participation in this tender process that they confirm that they are prepared to transfer that clearance to any alternative power supplier at the Ministry’s request. In such an event:

a) The Ministry will reimburse the bidder the reasonable auditable costs the bidder
incurred in obtaining the clearance; and

b) The Ministry shall be responsible for obtaining permission for the transfer pursuant to Article 41(1) of the Environmental Management Act, 2007.

2.3.7 Environmental Performance

(a) Confirmation that waste water discharge will meet the standards set out in Annexure F (if not, please attach copies of international standards met).

2.3.8 Health and Safety

(a) Evidence of OHSAS 18001 certification (or equivalent) or otherwise a policy statement on health and safety and details of the safety management system employed within your company.

2.3.9 Guarantees

(a) A statement confirming willingness to offer guarantees to meet delivery schedules and output and to accept liquidated damages for failure to meet the guarantees.

2.4 Reference Sites

Respondents shall provide the following details on not less than two (2) reference sites each with an installed capacity in excess of 40 MW.

(a) Location of site (at a minimum, country, region, nearest city/town);
(b) Site area (m²);
(c) Installed capacity (MW);
(d) Supply conditions (kV, Hz);
(e) Fuel (including minimum specification thereof);
(f) On-site fuel storage capacity (kl, m³);
(g) Date of installation;
(h) Time from contract signature to completion of commissioning (days);
(i) Hours of operation per month (typical);
(j) Availability of station over operating life;
(k) Percentage of dispatch instructions complied with over operating life;
(l) Generation equipment manufacturer;
(m) Employer (and power off-taker, if different);
(n) Contact details of two representatives that can be contacted at Employer and/or power off-taker (name, position, phone number, email); and
(o) Confirmation that Ministry staff can visit the site in the four (4) week period immediately following submission of the Respondent’s response.
2.5 Economic Empowerment

The Ministry as an organ of State seeks to create and maximise value for its stakeholders, the citizens of Namibia. To give tangible and pragmatic substance to this objective, the Ministry includes in its procurement process a requirement for suppliers to promote broad participation by previously disadvantaged individuals, businesses and communities.

To this end, bidders are required to provide the information set out below, which will be evaluated in accordance with Section 3, Evaluation Criteria and Methodology. A mandatory level of undertaking is required. Bids will be assessed in terms of the following criteria:

2.5.1 Ownership

Shareholding or Ownership by Previously Disadvantaged Namibian (PDN), in percentage terms;
Shareholding or Ownership by Women and/or Disabled persons, in percentage terms.

2.5.2 Management Control and Employment Equity

The combined board and top management structure filled by PDNs in percentage terms.

2.5.3 Human Resources and Skills Development

The percentage of gross wages related to the fixed cost contract value that will be spent on PDN training and/or skills development.

2.5.4 Entrepreneurship Development (Second tier PDN supplier procurement)

The procurement spend to be allocated to businesses (e.g. mentorship programs, joint ventures, subcontracting) owned by PDNs, in Namibian dollar and percentage terms.

2.5.5 Community Investment

The percentage of the fixed cost contract value that the bidder is prepared to put into community investment.

The NamPower Foundation will provide the successful bidders with the most appropriate vehicles for community investment in the locale of the generation site.

Bidders are required to respond in the format set out in Annexure C.

2.6 Technical Information

2.6.1 Site

The Ministry has identified two potential land-based sites, Kuiseb and Walvis Bay, for the establishment of short-term power supply. Details of these sites are set out in Annexure D.

Bidders proposing land-based sites are required to provide:

(a) Alternate bids for a minimum of 40 MW to be installed at Walvis Bay, and a minimum of 80 MW to be installed at Kuiseb. Bidders may propose another site in addition to these, but must indicate the process proposed to obtain environmental consents for such an additional site. Bidders proposing a sea-
based plant should provide bids for 40, 80 and 120 MW to be connected at Wlotzka.
(b) Conceptual layout of site, showing location of generators, transformers, switchgear, fuel storage, fire-fighting facilities, control room and amenities.
(c) Conceptual layout of fuel and water storage, and compound for truck delivery of both.
(d) Required site conditions: ground preparation; drainage system; trenching, fencing.
Bidders proposing sea-based facilities should provide technical specifications of the vessels proposed.

2.6.2 Utilities

Bidders are to provide details of:
(a) Quantities of raw water required and proposed on-site raw water storage and water treatment facilities;
(b) Proposed method of waste liquids collection and disposal proposed; and
(c) External power supply required during construction and operation.

2.6.3 Fuel

The specifications of fuels available at Walvis Bay is set out in Annexure E.
Bidders are to provide details of:
(a) Guaranteed fuel consumption in l/kWh;
(b) Adequacy of fuel supply chain to run the generation for up to 85 hours per week; and
(c) Proposed design and design standards of on-site fuel storage vessels sufficient for a minimum of 16 hours operations at 120 MW output.

2.6.4 Start-up

Where a different fuel is required for start-up, the bidder should state the guaranteed quantity required in l/kWh-start-up.

2.6.5 Generation Equipment

Please provide:
(a) manufacturers specifications and performance data; and
(b) Confirmation the plant will satisfactorily operate in the environmental conditions reasonably envisaged at the sites provided, including a temperature range from 0°C to 45°C.

2.6.6 Electrical System

Please provide:
(a) A single-line diagram for the installation;
(b) Manufacturer’s specifications for transformers, generators and engines;
(c) Manufacturer’s specifications for switchgear, protection, monitoring and control.
(d) Confirmation that the electrical system will satisfactorily operate in the environmental conditions reasonably envisaged at the sites provided, including a temperature range from 0°C to 45°C.

2.6.7 Installation Information

Please identify:
(a) Method of delivery of generation equipment to Namibia e.g. ship, rail, truck;
(b) Minimum specifications of trucks required for equipment delivery to site;
(c) Specifications of crane required for installation;
(d) Indicative commissioning regime (MW generated, frequency and duration on in-feed);
(e) Standard connection tests required by supplier.

2.6.8 Environmental Information

Please provide details of:
(a) Typical noise levels;
(b) Confirmation that waste water will comply with the standards set out in Annexure F; and
(c) Given the specifications of fuel available in Namibia, comment on the ability of the engines to comply with World Bank emission standards, and guaranteed values of:
   i. Maximum Sulphur Dioxide emissions (mg/m³);
   ii. Maximum Oxides of Nitrogen (as NO₂) emissions (mg/m³);
   iii. Maximum Carbon Monoxide emissions (mg/m³);
   iv. Maximum total unburned hydrocarbons emissions (mg/m³); and
   v. Maximum particulate matter (mg/m³).

If available, please provide a typical Environmental Management Plan.

Bidders proposing sea-based facilities should provide details of the process and timeline for obtaining environmental consents.

2.7 Commercial Information

2.7.1 Power Purchase Agreement and Plant Connection Agreement

The Ministry anticipates that the minimum contractual arrangements shall consist of a Power Purchase Agreement (PPA) and a Transmission Connection Agreement (TCA). The counterparty for these agreements shall be NamPower.

(a) A pro-forma form of contract for the PPA is attached as Annexure G.

(b) A pro-forma form of contract for the TCA is attached as Annexure H. To this contract would be appended a formal Offer Letter from NamPower setting out site-
specific requirements for connection to the Namibian grid.

Bidders are requested to provide, by mark-up or otherwise, an indication of changes that they would seek to the standard terms and conditions set out in these pro-forma agreements, which shall form the basis for contractual negotiations between NamPower and the successful bidder(s).

General issues for which the Ministry seeks comment from bidders are:

(a) The acceptability of Namibian Law as governing any contract awarded;
(b) The nature of insurance cover proposed or held for equipment delivery and during operations;
(c) The acceptability of dispute resolution through the Rules of the Arbitration Foundation of Southern Africa.

Specific values in the PPA for which the Ministry is seeking a proposal from the Bidder are:

(a) Delay liquidated damages (PPA Clause 6.2.2)
(b) the aggregate Delay Liquidated Damages (PPA Clause 6.2.3);
(c) the threshold for application of any Change in Cost remedy (PPA Clause 15.1.2) and the cost elements that should be considered (Paragraph D.7 of Annexure D)
(d) the Indemnity cap (PPA Clause 19.1);
(e) the Contracted Availability offered (PPA Annexure C, Paragraph C.2).

2.7.2 Facilities Agreement

To the extent that mutual requirements for the establishment of the generation plant cannot be satisfactorily accommodated through the terms and conditions of the PPA and TCA, the Ministry anticipates that it may be necessary to establish a separate Facilities Agreement. The counterparty to a Facilities Agreement shall be either NamPower or the Ministry.

Matters that may be appropriately dealt with through a Facilities Agreement include:

(a) Fuel supply arrangements, to the extent that fuel supply is not the responsibility of the generation company;
(b) Site arrangements, including undertakings for site establishment and restitution; and
(c) Compliance monitoring of undertakings associated with Economic Empowerment commitments, and liabilities for non-compliance.

Where bidders consider that there are such issues that cannot be incorporated in the PPA (as indicated in the bidder’s response to Section 2.7.1), bidders are requested to provide a copy of the pro-forma Facilities Agreement proposed.

2.7.3 Government Support

Bidders must identify any requirements for governmental support. In this regard, bidders’ attention is drawn to the Foreign Investments Act, 1990 (as amended) as providing a stable basis for operating in Namibia. Bidders are advised to minimise any GRN support
2.8 **Implementation Timeline**

Bidders are required to provide two alternative timelines with the guaranteed Commercial Operations Date (COD) associated with each:

(a) A timeline inclusive of obtaining environmental clearances in accordance with the Namibian Environmental Management Act, 2007 and associated Regulations; and

(b) A timeline that assumes environmental clearances are already established.

The following basis should be used in each case:

(a) Timelines should be established by reference to the Commencement Date of the contracts, assumed to be 1 February 2016;

(b) Timelines should at a minimum make provision for all items identified in Section 1.4 Scope of Services, above; and

(c) To the extent required by equipment availability, timelines should establish the time required to reach COD for each of 40, 80 and 120 MW of capacity.

2.9 **Pricing**

Bidders are required to provide a firm bid for power pricing. Pricing should be on the basis of the operating regime as set out in Section 1.6 above.

Bidders are required to provide two alternative price structures:

(a) Where the bidder is responsible for the purchase and supply of fuel, and is liable for fuel unavailability; and

(b) Where fuel is purchased and delivered to the bidder’s storage facilities at the site by NamPower.

The cost of purchase and delivery of fuel will be established on the basis of periodic fuel purchase tenders. Accordingly, the bid prices should be exclusive of the delivered cost of fuel. The Ministry will assess the variable fuel costs from the guaranteed fuel consumption for operations and, where applicable, for start-up (to be provided by the bidder) and its own forecast of delivered fuel costs.

2.9.1 **Tariff Structure**

Bidders should present the proposed pricing in accordance with Annexure D of the pro-forma PPA.

(a) Capacity Price. A fixed tariff based on the Contracted Availability offered, for which two options must be provided:

   i. A two part fixed charge expressed in both USD (USD/MW_e/month) and Namibian dollars per MW_e per month (NAD/MW_e/month) reflecting the underlying currency of the costs incurred; and

   ii. The total fixed charge expressed in Namibian dollars per MW_e per month (NAD/MW_e/month);
(b) **Energy Payment:** a two-part payment covering:

i. A fuel procurement administration tariff (only applicable when the bidder procures the fuel, **this specifically excludes the cost of fuel and the delivery cost of fuel**), expressed on a Namibian dollars per kilowatt-hour (NAD/kWh) basis;

ii. A non-fuel variable charge, expressed on a Namibian dollars per kilowatt-hour (NAD/kWh) basis;

(c) **Availability Adjustment:** Bidders should indicate the extent to which they are prepared to accept liability for failure to meet contracted availability through an adjustment to the Capacity Payment.

2.9.2 **Tariff Escalation**

The bidder should propose a mechanism for price escalation, with reference to movement in underlying costs in other currencies.

The tariffs (**which exclude the actual delivered fuel charge**) should only escalate once per year, to coincide with annual tariff increases granted each July by the ECB. The first escalation should apply in July 2017.

2.10 **Additional Information**

Please provide any further information that you consider relevant to the evaluation of your bid.
3. **EVALUATION CRITERIA AND METHODOLOGY**

The relative weighting for the purposes of evaluating bids shall be:

(a) Weighting for technical evaluation: 70%
(b) Weighting for financial evaluation: 30%

Bids shall be assessed as follows.

3.1 **Step 1: Mandatory Requirements and Fatal Floor Evaluation**

Any bid that fails to meet the following mandatory requirements shall be discarded.

The Ministry reserves the right to waive minor deviations, if they do not materially affect the capability of a respondent to perform the contract. In general subcontractors’ experience and resources shall be taken into account in determining the respondent's compliance with the qualifying criteria.

If the Ministry becomes aware that any of the information provided by a bidder is deliberately false, incomplete or misleading, then it shall be grounds for the bid to be discarded.

3.1.1 Compliance with Tender

The bid documents include:

(a) A valid executed copy of the Letter of Application;
(b) A valid executed copy of the Covenant of Integrity;
(c) A copy of the bidder’s company registration certificate;
(d) A copy of the bidder’s audited accounts in English for at least the last financial year.

3.1.2 Corporate Viability

(a) The bidder accepts sole contract liability or does if a consortium, it includes a service provider with the ability which accepts joint and several contract liability;
(b) The bidder accepting contract liability has a liquidity ratio (current assets/current liabilities) of not less than 1;
(c) The bidder accepting contract liability has a solidity ratio (equity/total assets) of not less than 0.3;
(d) The bidder accepts joint and several liability with suppliers of other services required to implement and operate the power supply;
(e) Confirmation that the bidder is willing to conduct all business in English and to provide all documents in the English language.

3.1.3 Reference Sites

Details of at least two (2) similar projects with installed capacity of not less than 20 MW performed by your company or consortium in the last five (5) years, and which can be visited by the Ministry.
3.1.4 Transfer of Existing Environmental Clearance

Where a bidder has declared an existing environmental consent in accordance with Section 2.3.6, the bid document must contain a formal letter confirming that the bidder is prepared to transfer this consent if required by the Ministry.

3.1.5 Economic Empowerment

A minimum score of 50 points, as calculated in accordance with Section 3.3 below

3.2 Step 2: Technical Evaluation

The technical details of the bids shall be evaluated as follows:

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Comment</th>
<th>Maximum score</th>
</tr>
</thead>
<tbody>
<tr>
<td>Corporate Experience</td>
<td>Preference will be given to bidders able to demonstrate successful implementation in Southern Africa, and less to remote implementation experience.</td>
<td>20</td>
</tr>
<tr>
<td>Site</td>
<td>Proposals for each site shall be assessed separately for the detail and adequacy of site layout and information provided.</td>
<td>20</td>
</tr>
<tr>
<td>Implementation Timetable</td>
<td>Where assessed to be credible, faster implementation timelines will be preferred.</td>
<td>20</td>
</tr>
<tr>
<td>Environmental Approvals</td>
<td>Preference shall be given to bids for which the environmental approval process is adjudged to be more rapid.</td>
<td>20</td>
</tr>
<tr>
<td>Extent of Governmental Support Required</td>
<td>Preference shall be given to bids that require little or no explicit support from the Government.</td>
<td>20</td>
</tr>
</tbody>
</table>

3.3 Step 3: Evaluation of Empowerment

The bids shall be attributed a score for economic empowerment as set out below. Note that the score in this section is used in two ways:

(a) A minimum total empowerment score of 50 points is required as a mandatory requirement of the bid; and

(b) The total score is used to adjust the financial component of the evaluation.
<table>
<thead>
<tr>
<th>Criteria</th>
<th>Bid</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Ownership</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Shareholding or Ownership by Previously Disadvantaged Namibian (PDN):</td>
<td>&gt;5% and ≤ 15% shares</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>&gt; 15% and ≤ 25% shares</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>&gt; 25% and ≤ 50% shares</td>
<td>5</td>
</tr>
<tr>
<td></td>
<td>&gt; 50% shares</td>
<td>7</td>
</tr>
<tr>
<td>Shareholding or Ownership by Women and/or Disabled persons is</td>
<td>≤ 25% shares</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>&gt; 25% and ≤ 50% shares</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>&gt; 50% shares</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>Maximum</td>
<td>10</td>
</tr>
<tr>
<td><strong>Management Control and Employment Equity</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>A combined board and top management structure filled by PDNs:</td>
<td>&lt; 50%</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>= 50%</td>
<td>2.5</td>
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<tr>
<td></td>
<td>&gt; 50% and ≤ 60%</td>
<td>3</td>
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<tr>
<td></td>
<td>&gt; 60% and ≤ 70%</td>
<td>3.5</td>
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<td></td>
<td>&gt; 70% and ≤ 80%</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td>&gt; 80% and ≤ 90%</td>
<td>4.5</td>
</tr>
<tr>
<td></td>
<td>&gt; 90% and ≤ 100%</td>
<td>5</td>
</tr>
<tr>
<td><strong>Human Resources and Skills Development</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Percentage of the total fixed cost over a three-year term (as determined</td>
<td>&lt; 0.5%</td>
<td>0</td>
</tr>
<tr>
<td>by the Capacity Charge as defined in the pro-forma PPA) spent on PDN</td>
<td>= 0.5%</td>
<td>10</td>
</tr>
<tr>
<td>training and/or Skills Development</td>
<td>&gt; 0.5% and ≤ 0.6%</td>
<td>12</td>
</tr>
<tr>
<td></td>
<td>&gt; 0.6% and ≤ 0.7%</td>
<td>14</td>
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<tr>
<td></td>
<td>&gt; 0.7% and ≤ 0.8%</td>
<td>16</td>
</tr>
<tr>
<td></td>
<td>&gt; 0.8% and ≤ 0.9%</td>
<td>18</td>
</tr>
<tr>
<td></td>
<td>&gt; 0.9% and ≤ 1.0%</td>
<td>20</td>
</tr>
<tr>
<td><strong>Entrepreneurship Development (Second tier PDN supplier procurement)</strong></td>
<td></td>
<td>35</td>
</tr>
<tr>
<td>Bids will be assessed to determine which bid provides the highest level</td>
<td></td>
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<tr>
<td>of second-tier PDN supplier procurement, which shall be accorded the</td>
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<tr>
<td>maximum points. Other bids shall be ranked relative to that bid, and</td>
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<tr>
<td>points pro-rated according to the ranking.</td>
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</tbody>
</table>
### 3.4 Step 5: Calculation of Financial Score

A separate financial score shall be determined for each fuel type.

The tariffs shall be used to determine a levelised unit cost of energy (LUCE) on the basis of a range of potential operating regimes.

The LUCE values of each bid shall be ranked and the minimum LUCE bid value determined. The score for each bid shall then be determined where the lowest LUCE value is allocated 90 points, and other bids are scored proportionally.

The score for economic empowerment is then adjusted to a point score with a maximum value of 10 points.

The financial score of the bid shall be the sum of the points attributable to the LUCE value and the points attributable to economic empowerment.

### 3.5 Step 6: Composite Score

The composite score for each bid shall be determined for each site, and for each fuel type. The Ministry reserves the right to select any combination of fuel types and sites.
ANNEXURE A  FORM OF LETTER OF APPLICATION

[Letterhead of the Respondent, or partner responsible for a joint venture, including full postal address, telephone no., fax no., and e-mail address]

Date: [insert date]

To: The Director of Energy
The Ministry of Mines and Energy
6 Aviation Road
Private bag 13297
Windhoek
Namibia

Attention: Mr. John Titus

Dear Sir,

Request for Tender: Short-Term Power Supply for Namibia

1. Being duly authorised to represent and act on behalf of [insert name] (hereinafter referred to as "the Respondent"), and having reviewed and fully understood all the information provided in the Request for Tender (RfT), the undersigned hereby submit the following bid for the design, supply, operation, maintenance, decommissioning and removal of a Short-term Power Supply Project for Namibia.

2. The Ministry and its authorised representatives are hereby authorised to conduct any inquiries or investigations to verify the statements, documents, and information submitted in connection with this bid, and to seek clarification from our clients regarding any financial and technical aspects. This Letter of Application will also serve as authorisation to any individual or authorised representative of any institution referred to in our supporting information, to provide such information deemed necessary and requested by yourselves to verify statements and information provided in this application, or with regard to resources, experience, and competence of the respondent.

3. The Ministry and its authorised representatives may contact the following persons for further information: [insert names and details]

4. The application is made with full understanding that:
   ➢ the evaluation of the bid may be based only on the information submitted;
   ➢ only the firms or joint ventures selected on the basis of this RfT will be invited to finalise the terms and conditions for the implementation of a Short-term Power Supply Project for Namibia; and
   ➢ the Ministry reserves the right to reject any bid in the event that it is unable to establish contractual conditions of supply satisfactory to the Ministry

5. Note 1 Appended to this application we give details of the participation of each party, including the professional input, profit/loss agreements, and the liability to the joint venture or association. We also specify on a preliminary basis the commitment in terms of percentage of the input value of each party.

6. Note 1 We confirm that in the event that we further participate in the procurement process, any submission as well as any resulting contract will be:
   ➢ signed as to legally bind all partners, jointly and severally, and
submitted with a joint venture agreement providing the joint and several liability of all partners in the event the contract is awarded to us.

7. The undersigned declare[s] that the statements made and the information provided in the duly completed and signed application (including the forms and attachments thereto) are complete, true, and correct in every detail.

For and behalf of: [insert name of Respondent]
Name: [insert name with company stamp]
Signed: [signature]

For and behalf of: [insert name of Partner(s)]
Name: [insert name with company stamp(s)]
Signed: [signature(s)]

[Note 1: Respondents who are not joint ventures should delete the paragraphs number 5 and 6 and the partner signatures in their Letter of Application.]
ANNEXURE B FORM OF COVENANT OF INTEGRITY

[Letterhead of the Respondent, or partner responsible for a joint venture, including full postal address, telephone no., fax no., and e-mail address]

Date: [insert date]

To: Director of Energy
The Ministry of Mines and Energy
6 Aviation Road
Private Bag 13297
Windhoek
Namibia

Dear Sir,

Covenant of Integrity:
Short-Term Power Supply for Namibia

We declare and covenant that neither we nor anyone, including any of our directors, employees or agents, acting on our behalf with due authority or with our knowledge or consent, or facilitated by us, has engaged, or will engage, in any Prohibited Practice (as defined below) in connection with the tendering process or in the execution or supply of any works, goods or services for the Short-Term Power Supply for Namibia (the “Contract”) and covenant to so inform you if any instance of any such Prohibited Practice shall come to the attention of any person in our organisation having responsibility for ensuring compliance with this Covenant.

"Prohibited Practice" means:

(i) the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official, or the threatening of injury to person, property or reputation, in connection with the procurement process or in contract execution in order to obtain or retain business or other improper advantage in the conduct of business; or

(ii) a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the client, and includes collusive practices among tenderers (prior to or after tender submission) designed to establish tender prices at artificial, non-competitive levels and to deprive the client of the benefits of free and open competition.

We shall, for the duration of the tender process and, if we are successful in our tender, for the duration of the Contract, appoint and maintain in office an officer, who shall be a person reasonably satisfactory to you and to whom you shall have full and immediate access, having the duty, and the necessary powers, to ensure compliance with this Covenant.

If:

(i) we have been, or any such director, employee or agent acting as aforesaid has been, convicted in any court of any offence involving a Prohibited Practice in connection with any tendering process or provision of works, goods or services during the five years immediately preceding the date of this Covenant, or

(ii) any such director, employee or agent has been dismissed or has resigned from any employment on the grounds of being implicated in any Prohibited Practice,
we give details of that conviction, dismissal or resignation below, together with details of the measures that we have taken, or shall take, to ensure that neither this company nor any of our directors, employees or agents commits any Prohibited Practice in connection with the Contract.

[Give details if necessary].

In the event that we are awarded the Contract, we grant The Ministry and auditors appointed by them, as well as any authority having competence under Namibian law, the right of inspection of our records. We accept to preserve these records generally in accordance with applicable law but in any case for at least six years from the date of substantial performance of the Contract.

For and behalf of: [insert name of Respondent]

Name: [insert name with company stamp]

Signed: [signature]
ANNEXURE C  FORM OF RESPONSE ON ECONOMIC EMPOWERMENT

C.1 Ownership

C.1.1 Capital Structure

Total equity capital: N$ ..............................

The total equity is made up as follows:

<table>
<thead>
<tr>
<th>Capital Structure</th>
<th>Amount (N$)</th>
<th>% of Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Capital owned by Previously Disadvantaged Namibian(s)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capital owned by Namibian Women or Persons with Disability</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capital owned by Namibian/Namibian Registered Company</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capital owned by Foreigners/Foreign Company</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

C.1.2 Names of Shareholders/Members

<table>
<thead>
<tr>
<th>Name of Shareholder</th>
<th>Namibian (Y/N)</th>
<th>PDN (Y/N)</th>
<th>Non-Namibian Citizen (Y/N)</th>
<th>Full-time employed (Y/N)</th>
<th>% Shares</th>
</tr>
</thead>
<tbody>
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</table>

The above information must be supported by copies of the CM29 and share certificates in respect of enterprises registered as PTY LTD as well as copies of identity documents of the owners/shareholders.
C.2 Management Control and Employment Equity

C.2.1 Organisational Structure

<table>
<thead>
<tr>
<th>Category</th>
<th>Total</th>
<th>No. of Namibians</th>
<th>No. of PDN</th>
<th>No. of Foreign citizens</th>
</tr>
</thead>
<tbody>
<tr>
<td>Managers (apart from shareholders/members)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>All employees excluding Managers</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of females</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of males</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of disabled females</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of disabled males</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total number of employees including Managers but excluding shareholders/members</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Name of Board of Directors

<table>
<thead>
<tr>
<th>Board of Directors</th>
<th>Namibian Citizen (Y/N)</th>
<th>Role (executive/non-executive)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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<td></td>
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<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
C.3 Human Resources ad Skills Development

Particulars of structured training program/apprenticeship courses of approved standards for labour/technical staff and managerial cadre/specialized training for women and handicapped persons; other programs or activities benefiting Previously Disadvantaged Namibian citizens, assistance, sponsorship, bursaries, etc., provided to vocational training courses.

Give details and furnish documentary proof issued by competent/relevant authority:

..................................................................................................................................................
...
..................................................................................................................................................
...

Provide proof of registration with NTA and proof of payment of the VET levy as required by the Vocational Education and Training Act, Act 1 of 2008.

NB: Entities exempted from this requirement should provide proof of exemption from the relevant authority.
C.4 Entrepreneurship Development

C.4.1 Sub-contractors

Is a Previously Disadvantaged Namibian sub-contractor/sub-vendor involved in the execution of the contract/tender? (Y/N)

Note that provision of the following services by a Previously Disadvantaged Namibian sub-contractor/sub-vendor is mandatory:

(a) Bush clearing;
(b) security services; and
(c) transportation of personnel.

If yes, indicate the extent to which each PDN subcontractor will be utilised, in a format at the bidder's discretion, but appropriate to the nature of the sub-contracting (e.g. person-hours/month; percentage of variable costs).

Please furnish full particulars of each subcontractor/sub-vendor concerned, including physical address and contact details.

........................................................................................................................................................................
........

This is to certify that I, ..............................................

Owner/representative of ..................................................

am a Previously Disadvantaged Namibian sub-contractor/sub-vendor involved in the execution of a tender/contract description no. ______. I am fully aware of the contents and the performance requirements for completing the works.

C.4.2 Namibian Content

Are the goods produced/manufactured/assembled in Namibia? (Y/N)

If yes, give details and furnish documentary proof:

Nature of activities:

........................................................................................................................................................................

C.4.3 Small and Medium Enterprises

Is the principal contractor/tenderer a small and medium enterprise as defined by the Namibian Ministry of Trade and Development? (Y/N)

If Yes, attach the SME certificate from the Ministry of Trade and Development:

C.5 Previously Disadvantaged Namibians

Is the business owned by a previously disadvantaged Namibian(s)? (Y/N)
If yes, give details and furnish documentary proof:

Please state the percentage of the contract/tender procurement spending that has been allocated to businesses owned by previously disadvantaged Namibians.

Give details and furnish documentary proof:

..................................................................................................................................................................................................................................................................................................................................................................................
C.6 Community Investment

C.6.1 Location (If Tender is proposing their own site)

Is the Tenderer located in communal area/underdeveloped area? (Y/N)

If yes, give details and furnish documentary proof:

-------------------------------------------------------------------------------

Percentage of total Capacity Payments (as defined in the pro-forma PPA) over the initial three-year term to be devoted to community investment:

-------------------------------------------------------------------------------
ANNEXURE D DETAILS OF IDENTIFIED SITES

General information about potential sites is set out below. Bidders are required to confirm any specific information required during site visits to be held in conjunction with the clarification meeting.

D.1 Potential Sites

For rapid connection it will be necessary to locate the generation facilities adjacent to a NamPower substation on the West Coast of Namibia. A general layout of the transmission lines and sub-stations in the area is shown below.

Preferred land-based points of connection are at Kuiseb and at Walvis Bay. The only point available for a sea-based plant is Wlotzka.
D.2 Walvis Bay

The Walvis Bay site is the location of NamPower's Anixas and Paratus power stations. Connection at the site would be at 132kV.

The site layout, with approximate areas available for the installation of temporary generation is shown below.
D.3 Kuiseb

The generation facilities are to be sited adjacent to NamPower’s sub-station, in the Namib Naukluft Park. This area is controlled by the Ministry of Environment and Tourism. The Ministry will facilitate the provision of a site for lease to the successful bidder. There is no restriction on the area available for the site.

There are no utilities available at the Kuiseb site. Water must either be trucked to site, or the Bidder could engage with NamWater for connection. This would entail construction of a new pipeline to the site.
**ANNEXURE E  SPECIFICATIONS OF FUEL AVAILABLE**

**E.1 HFO**

<table>
<thead>
<tr>
<th>Test</th>
<th>Units</th>
<th>Lower Limit</th>
<th>Upper Limit</th>
<th>Test Method</th>
<th>Example</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acid No.</td>
<td>mgKOH/g</td>
<td>2.50</td>
<td></td>
<td>D974</td>
<td>0.14</td>
</tr>
<tr>
<td>Al + Si</td>
<td>mg/kg</td>
<td>60.0</td>
<td></td>
<td>IP_470</td>
<td>34.0</td>
</tr>
<tr>
<td>Aluminium</td>
<td>mg/kg</td>
<td>30.0</td>
<td></td>
<td>IP_470</td>
<td>23</td>
</tr>
<tr>
<td>Ash</td>
<td>%m/m</td>
<td>0.1000</td>
<td></td>
<td>D482</td>
<td>0.0600</td>
</tr>
<tr>
<td>CCAI</td>
<td></td>
<td>870.0</td>
<td></td>
<td></td>
<td>856.0</td>
</tr>
<tr>
<td>Density @ 15°C</td>
<td>kg/l</td>
<td>0.9910</td>
<td></td>
<td>D1298</td>
<td>0.9833</td>
</tr>
<tr>
<td>Density @ 20°C</td>
<td>kg/l</td>
<td></td>
<td></td>
<td>D1298</td>
<td>0.9800</td>
</tr>
<tr>
<td>Flash PMCC</td>
<td>°C</td>
<td>62</td>
<td></td>
<td>ASTM-D93</td>
<td>67.0</td>
</tr>
<tr>
<td>Gross CV</td>
<td>MJ/kg</td>
<td></td>
<td></td>
<td>Calc.</td>
<td>42.7</td>
</tr>
<tr>
<td>H2S</td>
<td>ppm</td>
<td>2</td>
<td></td>
<td>IP570</td>
<td>0</td>
</tr>
<tr>
<td>MCRT</td>
<td>%m/m</td>
<td>18.00</td>
<td></td>
<td>D4530</td>
<td>15.52</td>
</tr>
<tr>
<td>Net CV</td>
<td>MJ/kg</td>
<td></td>
<td></td>
<td>Calc</td>
<td>40.4</td>
</tr>
<tr>
<td>Pour Point</td>
<td>°C</td>
<td>21</td>
<td></td>
<td>D6749</td>
<td>0.18</td>
</tr>
<tr>
<td>Strong Acid Number</td>
<td>mg KOH/g</td>
<td>Nil</td>
<td>Nil</td>
<td>D974</td>
<td>Nil</td>
</tr>
<tr>
<td>Sulphur</td>
<td>%m/m</td>
<td>3.500</td>
<td></td>
<td>D2622</td>
<td>2.57</td>
</tr>
<tr>
<td>Total sediment, exist</td>
<td>%m/m</td>
<td>0.10</td>
<td></td>
<td>IP375</td>
<td>0.04</td>
</tr>
<tr>
<td>Total sediment, pot.</td>
<td>%m/m</td>
<td>0.10</td>
<td></td>
<td>IP390</td>
<td>0.03</td>
</tr>
<tr>
<td>Vanadium</td>
<td>mg/kg</td>
<td>350</td>
<td></td>
<td>IP_470</td>
<td>41</td>
</tr>
<tr>
<td>Viscosity Range</td>
<td>cSt</td>
<td>4.0</td>
<td></td>
<td>D445</td>
<td>2.3</td>
</tr>
<tr>
<td>Viscosity at 50°C</td>
<td>cSt</td>
<td>90.0</td>
<td>180.0</td>
<td>D445</td>
<td>141.8</td>
</tr>
<tr>
<td>Water</td>
<td>% vol</td>
<td>0.45</td>
<td></td>
<td>D95</td>
<td>0.10</td>
</tr>
</tbody>
</table>
### E.2 LFO

LFO available at Walvis Bay is diesel (500 mg Sulphur) compliant with SABS 342 : 1998.

<table>
<thead>
<tr>
<th>Test</th>
<th>Units</th>
<th>Lower Limit</th>
<th>Upper Limit</th>
<th>Test Method</th>
<th>Example</th>
</tr>
</thead>
<tbody>
<tr>
<td>Density @ 20°C</td>
<td>kg/l</td>
<td>0.8000</td>
<td>0.8720</td>
<td>ASTM D4052</td>
<td>0.8442</td>
</tr>
<tr>
<td>ASTM colour</td>
<td></td>
<td>L 3.0</td>
<td>L 1.0</td>
<td>ASTM D1500</td>
<td></td>
</tr>
<tr>
<td>Cetane index</td>
<td></td>
<td>48</td>
<td>52.0</td>
<td>ASTM D4737</td>
<td></td>
</tr>
<tr>
<td>Appearance</td>
<td></td>
<td>Bright &amp; Clear, 1, 2</td>
<td>Haze rating</td>
<td>Bright &amp; Clear</td>
<td></td>
</tr>
<tr>
<td>CFPP</td>
<td>Deg. C</td>
<td>-4</td>
<td>-6</td>
<td>IP 309</td>
<td></td>
</tr>
<tr>
<td>Water content</td>
<td>% vol</td>
<td>0.025</td>
<td>0.002</td>
<td>ASTM D1744</td>
<td></td>
</tr>
<tr>
<td>Flash point</td>
<td>Deg. C</td>
<td>62</td>
<td>78</td>
<td>ASTM D93</td>
<td></td>
</tr>
<tr>
<td>90% v/v Rec</td>
<td>Deg. C</td>
<td>362</td>
<td>352</td>
<td>ASTM D86</td>
<td></td>
</tr>
<tr>
<td>Cond @ 15°C</td>
<td>pS/m</td>
<td>100</td>
<td>604</td>
<td>ASTM D2624</td>
<td></td>
</tr>
<tr>
<td>Lubricity</td>
<td>µm</td>
<td>460</td>
<td>217</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Particulate matter</td>
<td>mg/kg</td>
<td>12</td>
<td>2.0</td>
<td>IP 440</td>
<td></td>
</tr>
<tr>
<td>Sulphur</td>
<td>mg/kg</td>
<td>500</td>
<td>461</td>
<td>ASTM D5453</td>
<td></td>
</tr>
<tr>
<td>Cu Corr (3hr @ 100°C)</td>
<td></td>
<td>No. 1</td>
<td>1a</td>
<td>ASTM D130</td>
<td></td>
</tr>
<tr>
<td>RCR (10% Bottom)</td>
<td>% mass</td>
<td>0.2</td>
<td>0.1</td>
<td>ASTM D524</td>
<td></td>
</tr>
<tr>
<td>Sediment</td>
<td>% mass</td>
<td>0.01</td>
<td>&lt;0.01</td>
<td>ASTM D473</td>
<td></td>
</tr>
<tr>
<td>Ash</td>
<td>% mass</td>
<td>0.01</td>
<td>&lt;0.01</td>
<td>ASTM D482</td>
<td></td>
</tr>
<tr>
<td>Cetane number</td>
<td></td>
<td>45</td>
<td>54</td>
<td>ASTM D613</td>
<td></td>
</tr>
<tr>
<td>KV @ 40°C</td>
<td>cSt</td>
<td>2.2</td>
<td>5.3</td>
<td>ASTM D445</td>
<td>3.7</td>
</tr>
<tr>
<td>Strong Acid Number</td>
<td>mg KOH/g</td>
<td>0</td>
<td>0.0</td>
<td>ASTM D974</td>
<td></td>
</tr>
<tr>
<td>Total Acid Number</td>
<td>mg KOH/g</td>
<td>0.25</td>
<td>0.03</td>
<td>ASTM D974</td>
<td></td>
</tr>
<tr>
<td>Oxidation Stability</td>
<td>Mg/100ml</td>
<td>2</td>
<td>0.5</td>
<td>ASTM D2274</td>
<td></td>
</tr>
</tbody>
</table>
ANNEXURE F  WASTE WATER STANDARDS

All waste waters shall be reutilized as much as possible and should be used for landscaping purposes (for sewage waste water) or evaporated.

The national environmental quality standards for Waste Water Discharge in General Industries based on Namibia’s Water Act, 1956 (Act 54 of 1956, Article 140 of Act 1 of 1990) and on the World Bank Guidelines (International Finance Corporation: Environmental, Health and Safety Guidelines, 19/12/2008) are summarized in Table 1 below. The more stringent of two values shall prevail.

Table 1: Waste Water Environmental Criteria

<table>
<thead>
<tr>
<th>No</th>
<th>Determinants</th>
<th>Water Act</th>
<th>World Bank</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Arsenic</td>
<td>0.5 mg/l as As</td>
<td>0.5 mg/l</td>
</tr>
<tr>
<td>2</td>
<td>Biological Oxygen Demand (BOD)</td>
<td>no value given</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Boron</td>
<td>1.0 mg/l as B</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Chemical Oxygen Demand (COD)</td>
<td>75 mg/l as O</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Chlorine, residual</td>
<td>0.1 mg/l as Cl₂</td>
<td>0.2 mg/l</td>
</tr>
<tr>
<td>6</td>
<td>Chromium, hexavalent</td>
<td>50 µg/l as Cr(VI)</td>
<td>500 µg/l</td>
</tr>
<tr>
<td>7</td>
<td>Chromium, total</td>
<td>500 µg/l as Cr</td>
<td>0.5 mg/l</td>
</tr>
<tr>
<td>8</td>
<td>Copper</td>
<td>1.0 mg/l as Cu</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Cyanide</td>
<td>500 Ng/l as CN</td>
<td>0.5 mg/l</td>
</tr>
<tr>
<td>10</td>
<td>Oxygen, Dissolved (DO)</td>
<td>at least 75% saturation</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>Detergents, Surfactants, Tensides</td>
<td>0.5 mg/l as MBAS</td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>Fats, Oil &amp; Grease (FOG)</td>
<td>2.5 mg/l (gravimetric method)</td>
<td>10 mg/l</td>
</tr>
<tr>
<td>13</td>
<td>Fluoride</td>
<td>1.0 mg/l as F</td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>Free &amp; Saline Ammonia</td>
<td>10 mg/l as N</td>
<td></td>
</tr>
<tr>
<td>15</td>
<td>Lead</td>
<td>1.0 mg/l as Pb</td>
<td>0.5 mg/l</td>
</tr>
<tr>
<td>16</td>
<td>Oxygen, Absorbed (OA)</td>
<td>10 mg/l as O (also known as Permanganate Value (PV))</td>
<td>6 - 9</td>
</tr>
<tr>
<td>17</td>
<td>pH</td>
<td>5.5 – 9.5</td>
<td></td>
</tr>
<tr>
<td>18</td>
<td>Phenolic Compounds</td>
<td>100 µg/l as phenol</td>
<td></td>
</tr>
<tr>
<td>19</td>
<td>Phosphate</td>
<td>1.0 mg/l as P</td>
<td></td>
</tr>
<tr>
<td>20</td>
<td>Sodium</td>
<td>not more than 90 mg/l Na more than influent</td>
<td>50 mg/l</td>
</tr>
<tr>
<td>21</td>
<td>Sulphide</td>
<td>1.0 mg/l as S</td>
<td></td>
</tr>
<tr>
<td>22</td>
<td>Temperature</td>
<td>35°C</td>
<td></td>
</tr>
<tr>
<td>23</td>
<td>Total Dissolved Solids (TDS)</td>
<td>not more than 500 mg/l Na more than influent</td>
<td>500 µg/l</td>
</tr>
<tr>
<td>24</td>
<td>Total Suspended Solids (TSS)</td>
<td>25 mg/l</td>
<td>50 mg/l</td>
</tr>
<tr>
<td>25</td>
<td>Typical faecal Coli.</td>
<td>no typical coli should be counted per 100 ml</td>
<td>5 µg/l</td>
</tr>
<tr>
<td>26</td>
<td>Zinc</td>
<td>5.0 mg/l as Zn</td>
<td>1.0 mg/l</td>
</tr>
<tr>
<td>27</td>
<td>Iron</td>
<td>1.0 mg/l</td>
<td></td>
</tr>
<tr>
<td>28</td>
<td>Cadmium</td>
<td>0.1 mg/l</td>
<td></td>
</tr>
<tr>
<td>29</td>
<td>Mercury</td>
<td>5 µg/l</td>
<td></td>
</tr>
</tbody>
</table>
POWER PURCHASE AGREEMENT

between

[SHORT-TERM ELECTRICITY GENERATION COMPANY]

and

NAMIBIA POWER CORPORATION (PROPRIETARY) LIMITED

This Document constitutes Annexure G of the
Request for Tender: Short-Term Power Supply for Namibia
Issued Friday 30 October 2015 NamPower Tender No. NPWR/2015/65
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PREAMBLE

This Power Purchase Agreement dated [...] is made by and between:

(1) The SHORT-TERM ELECTRICITY GENERATION COMPANY a company incorporated in terms of the Laws of [ ] (registered under company registration number: [...] and having its registered office at [...] (hereinafter referred to as the “Seller”); and

(2) NAMIBIA POWER CORPORATION (PROPRIETARY) LIMITED a company incorporated in terms of the Laws of Namibia (registered under company registration number: 2051) and having its registered office at NamPower Centre, 15 Luther Street, Windhoek, Namibia (hereinafter referred to as “NamPower”),

(together, the “Parties” and “Party” shall mean either of them).

RECITALS

(A) The Seller has been issued with an electricity Generation Licence by the ECB to generate up to 120 MW at a power station at [site] in Namibia.

(B) The Seller intends to install a temporary project with an initial capacity of [...] MW generating electricity from [fuel].

(C) NamPower is authorised, amongst others, to purchase wholesale electricity from other utilities and/or independent power producers in Southern Africa and owns and controls certain generation facilities and the main transmission lines in Namibia.

(D) The Seller wishes to sell the Power from the Power Plant to NamPower and NamPower is willing to purchase the Power of the Power Plant from the Seller.

(E) The Seller has undertaken to deliver electricity at the Delivery Point and to conclude a Transmission Connection Agreement for transmitting electricity from the Power Plant at the appropriate voltage level as a requirement of the Transmission System.

(F) The Parties intend to stipulate in this Agreement the terms and conditions upon and subject to which NamPower agrees to purchase Power from the Seller.

THE PARTIES AGREE as follows:

1. DEFINITIONS

In this Agreement the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings:

“Affected Party” means a Party affected by a Force Majeure Event as contemplated in Clause 16;

“Affiliate” means in respect of either Party, any person (excluding any government), hereinafter referred to as "company" which directly or indirectly: (a) is controlled by such Party; or (b) controls such Party; or (c) is controlled by a company which directly or indirectly controls such Party. For the purposes of the foregoing definition: (i) a company is directly controlled by another company, if the latter company holds shares, quotas or voting rights, carrying in the aggregate the majority (more than fifty percent) of the votes exercisable at shareholders' meetings of the former company, and (ii) a particular company is indirectly controlled by a company, hereinafter called the "parent company", if a series of companies can be specified, beginning with the parent company and ending with the particular company, so related that each
company of the series, except the parent company, is directly
controlled by one of the companies earlier in the series;

“AFSA” means the Arbitration Foundation of Southern Africa

“AFSA Rules” means the arbitration rules of AFSA in force from time to time;

“Ancient Interest Rate” means the prime rate of interest from time to time charged by
Standard Bank Namibia Limited correlated with overdraft facilities;

“Agreement” means this Power Purchase Agreement including its recitals and
annexures, amended or modified from time to time in accordance
with the terms hereof;

“Annual Indexation” means the indexation in accordance with Paragraph D.4 of
Annexure D (Payments for Capacity and Energy);

“Auxiliary Consumption” means such part of the electrical energy produced at the Power
Plant as is consumed exclusively within the Power Plant itself for
the sole purpose of generating electrical energy, related services
and auxiliaries;

“Availability Declaration” has the meaning set forth in Clause 11.3.1;

“Billing Period” means the start of the first day of a month to the end of the last
day of the said month, provided that:

(a) the first Billing Period shall commence on the Connection
Date or the Deemed Commercial Operation Date, if
applicable and end on the last day of the month in which
the Connection Date or the Deemed Commercial
Operation Date, if applicable occurs; 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 any day except a Saturday, a Sunday or a public holiday
in Namibia;

“Capacity Payment” means the amount payable by NamPower to the Seller for
energy delivered under this Agreement in any Billing Period, as
calculated in accordance with Annexure D;

“Change in Costs” has the meaning set forth in Clause 15.1.2;

“Change in Law” means:

(a) the adoption, promulgation, modification, repeal or
reinterpretation after the Signature Date by any Competent
Authority of any Law; or

(b) the imposition by any Competent Authority of any material
condition in connection with the issuance, renewal, or
modification of, or the revocation or non-renewal (other
than for cause) of, any Consents after the Signature Date,

that in either case:
(i) results in any change in respect of Taxes and duties applicable or passed through to the Seller or the Contractors;

(ii) establishes, modifies or abolishes requirements for, or interferes with, the activities of the Seller in connection with the Power Project or the corporate affairs of the Seller that affect the obligations or rights of the Seller, the Contractors, or the shareholders of the Seller, or the financial position of the Seller under this Agreement; or

(iii) renders the performance by the Seller or any other person of its obligations under this Agreement or any other Project Document (including the payment of debt service or the declaration or payment of distributions to the shareholders of the Seller) according to its terms illegal or unenforceable;

"Commercial Operation Date" means the date on which the complete Power Plant is commissioned pursuant to the Construction Programme Schedule in Annexure H and commences commercial operation;

"Competent Authority" means, with respect to the Republic of Namibia, any ministry, department, agency, authority or other organisation under the direct or indirect control of the Government of Namibia, court of competent jurisdiction, or other body exercising legislative, executive, regulatory, administrative or judicial functions or quasi-judicial functions or at any time exercising any form of jurisdiction or de facto control over the Parties, the Contractors or the shareholders of the Seller, any aspect of the Power Project or this Agreement (or any transaction or agreement contemplated herein);

"Conditions Precedent" means the conditions set out in Clause 4.2;

"Confidential Information" shall have the meaning set forth in Clause 25.1;

"Connection Date" means the date of connection of the Power Plant to the Transmission System;

"Connection Offer Letter" has the meaning given to it under the Transmission Connection Agreement;

"Connection Works" has the meaning given to it under the Transmission Connection Agreement;

"Connection Facilities" has the meaning given to it under the Transmission Connection Agreement;

"Consents" means the permits, licences, consents, authorisations, approvals, concessions, acknowledgements, exemptions or like or similar documentation required to be obtained in relation to the entering into any of the Project Documents, the performance of any of the transactions contemplated under any of the Project Documents, or otherwise in relation to the Power Project, including without limitation, those set out in Annexure A;
“Construction Programme” means the programme for construction of the Power Project as set out in Annexure H, which specifies certain Milestones for the construction of the Power Project and the due dates for such Milestones;

“Contractor” means any supplier or contractor engaged by either Party to undertake the whole or any part of either Party’s respective obligations under this Agreement, including any sub-contractors appointed by any person who falls within this definition;

“Contract Year” means each period of one (1) calendar year which falls within the Term, provided that:

(a) the first Contract Year shall commence on the Commercial Operation Date and end on the last of the calendar year in which the Commercial Operation Date occurs; and

(b) the last Contract Year shall commence on the first day of the calendar year in which the Term is due to end and shall end (unless this Agreement is terminated early in accordance with its terms) on the Termination Date;

“Contracted Availability” means the Capacity of the Power Plant required to be available to generate Net Energy in any hour, as specified in Paragraph C.2 of Annexure C;

“Contracted Capacity” means the Maximum Export Capacity of the Power Plant as specified in Paragraph C.1 of Annexure C;

“Daylight Hours” means, for each calendar day, the hours between sunrise and sunset;

“Deemed Commercial Operation Date” has the meaning given to it in Clause 6.3.1;

“Deemed Commercial Operation Period” means the period commencing on the Deemed Commercial Operation Date and ending on the Commercial Operation Date;

“Delay Liquidated Damages” means the liquidated damages payable by the Seller to NamPower for a delay caused by the Seller in achieving the Commercial Operation Date by the Target Commercial Operation Date;

“Delivery Point” means the battery limit between the Seller and NamPower where the Net Energy output is measured and transferred from the Seller to NamPower as shown in the Single Line Diagram attached as Annexure B;

“Dispute” means any dispute or disagreement of any kind whatsoever between the Parties arising under, in connection with, or relating to, this Agreement or the transactions contemplated herein;

“ECB” means the Electricity Control Board, the Namibian regulatory authority for electricity established in terms of the Electricity Act, 4 of 2007;

“ECB Levy” means all levies as may be imposed from time to time on the provision of electricity for the benefit of the ECB;
"Effective Date" means the date on which all of the Conditions Precedent have been satisfied or duly waived by both Parties;

"Energy Charge" means the amount in Namibian Dollar payable by NamPower to the Seller for Net Energy in accordance with Annexure D;

"Energy Payment" means the amount payable by NamPower to the Seller for energy delivered under this Agreement in any Billing Period, as calculated in accordance with Annexure D, including any ECB Levy and NEF Levy;

"EPC Contract" means the engineering, procurement and construction contract entered into between the Seller and the EPC Contractor;

"EPC Contractor" means the person appointed by the Seller to undertake the engineering, procurement and construction of the Power Plant;

"Event of Deemed Availability" means each of the following events:
(a) a NamPower Transmission Default;
(b) a NamPower Event of Default;

"Financial Close" means the date on which all of the conditions to the first availability of debt under the Finance Documents have been satisfied or waived;

"Force Majeure Event" has the meaning given to it in Clause 16.1.1;

"Fuel" means […];

"Fuel Payment" means the amount payable by NamPower to the Seller for fuel consumed in the generation of energy delivered under this Agreement in any Billing Period, as calculated in accordance with Annexure D;

"Fuel Price" means the price in Namibian dollars per litre of Fuel delivered to the Power Plant, as evidenced by the Seller’s invoices from its fuel supplier;

"Generation Licence" means the generation licence No […] issued to the Seller by the ECB and which came into force on […] (as the same may be amended from time to time thereafter);

"Generation Schedule" has the meaning given to it in Clause 11.1.2;

"Government Action" means:
(a) the expropriation (including creeping expropriation), compulsory acquisition, requisition, confiscation or nationalisation by any Competent Authority of any shares in the Seller or assets of the Power Project; or any material assets or rights of the Seller, or any other similar act of such Competent Authority that materially adversely affects: (i) the enjoyment by the Seller of any of the rights and benefits contemplated by this Agreement, or (ii) the performance by the Seller of any of its obligations under or pursuant to this Agreement, or,
(b) in the case of NamPower, the reorganisation, restructuring or privatisation of NamPower or the sale of the Government’s controlling interest in NamPower;
"Grid Code" means, at any time, the most recent version of the grid code published by the ECB in terms of the Electricity Act, 4 of 2007;

"Indexed Tariff" means the Base Tariff indexed as specified in Paragraph D.1 and D.2 of Annexure D, as the case may be;

"IRR" means the real post tax internal rate of return on the equity, taking into account the equity invested into the Power Project and the distributions to the shareholders of the Seller;

"Law" means any constitution, statute, ordinance, treaty, decree, proclamation, by-law, regulation, notice, circular, code, rule, direction, delegated or subordinated legislation or other legislative measure, the Grid Code and the Consents, as well as the common law and customary law and any judgment, decision, order or ruling of any court or tribunal with relevant jurisdiction, in each case having the force of law in the Republic of Namibia. For the purposes of this definition, "customary law" means those customs and practices which, in terms of the common law, have gained the force of law in the Republic of Namibia;

"Long Stop Date" has the meaning set forth in Clause 4.3.2;

"Losses" has the meaning set forth in Clause 19.2.1;

"Make-up Period" has the meaning set forth in Clause 3.2.1;

"Maximum Export Capacity" has the meaning given to it in the Transmission Connection Agreement;

"Metering Equipment" has the meaning given to it in the Transmission Connection Agreement;

"Milestone" means each key stage during the construction period as identified in the Construction Programme;

"Monthly Net Energy" means the Net Energy for a specific month;

"MW" means Megawatt;

"MWh" means Megawatt hours;

"NAD" or "Namibian Dollar" means the official currency of the Republic of Namibia;

"NamPower Event of Default" has the meaning set forth in Clause 18.3;

"NamPower Transmission Default" means a breach by NamPower under the Transmission Connection Agreement;

"National Control Centre" means the centre for control and coordination of power flows within Namibia;

"NEF Levy" means all levies as may be imposed from time to time under the Petroleum Products and Energy Act, Act No 13 of 1991, on the provision of electricity for the benefit of the National Energy Fund;

"Net Energy" means for any period the electrical output of the Power Plant measured in kWh at the Delivery Point;

"Notice of Intention to Terminate" means a notice issued pursuant to Clause 18.2, 19.4 or 19.5.1;
“Parties” shall mean the Seller and NamPower, or their successors-in-title, and ‘Party’ shall be construed accordingly;

“Power Plant” means the power plant with the Contracted Capacity, to be located at the Project Site, at which energy will be generated by the Seller and sold to NamPower pursuant to this Agreement;

“Power Project” means the development, construction and operation of the Power Plant, located at the Project Site;

"Project Documents" means this Agreement, the [Facilities Agreement], EPC Contract, Transmission Connection Agreement, the Generation Licence, the Consents, and any other agreements or contracts in relation to the Power Project;

"Project Insurances" shall have the meaning set forth in Clause 20.1;

"Project Site" means the location of the Power Project as described in Clause 5.1;

“Prudent Industry Practice” means the practices, methods and acts engaged by a utility in the electricity industry in Southern Africa having regard to operational and engineering considerations, including manufacturers’ recommendations, and to reasonable costs consistent with reliability and safety or a globally leading power producer who, in the conduct of its undertaking, exercises that degree of diligence, prudence and foresight reasonably and ordinarily exercised by skilled and experienced internationally recognised operators engaged in the same type of undertaking under the same or similar circumstances and conditions, and includes:

(i) complying with:

(a) recognised standards pertaining to that activity;

(b) manufacturers’ instructions and operating manuals; and

(c) the terms of this Agreement; and

(ii) taking reasonable steps to ensure that:

(a) adequate materials, resources and supplies are available at the necessary places under normal conditions associated with existing operations;

(b) sufficient experienced and trained operating personnel are available to operate the Power Plant and the Connection Facilities, as the case requires, properly, efficiently and within manufacturer’s guidelines and specifications and are able to respond to emergency conditions;

(c) preventative, routine and non-routine maintenance and repairs are carried out to provide long term and reliable operation and are performed by knowledgeable, trained and experienced personnel using proper equipment, tools and procedures in
accordance with the manufacturer’s recommendations;

(d) appropriate monitoring and testing is carried out to ensure that equipment will function properly under normal and emergency conditions;

(e) equipment is operated and maintained in a manner safe for workers, the general public, and the environment; and

(f) equipment is operated and maintained in accordance with any valid requirement established by legislation or regulation of any governmental agency having jurisdiction with respect to the Power Plant and the Connection Facilities, as the case requires;

"Power Project Acceptance Test" means the acceptance test(s) of the Power Project, to be conducted with respect to all Units simultaneously and to be completed by the Seller in accordance with Annexure H;

"Reasonable and Prudent Operator" means a person seeking in good faith to perform its 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 internationally experienced developer, contractor, owner or operator complying with all Laws, engaged in the same or a similar type of undertaking, in the same or similar circumstances and conditions;

"Scheduled Connection Date" means twelve (12) months following the Effective Date and has the meaning given to it in the Transmission Connection Agreement;

"Scheduled Outage" means a Scheduled Transmission System Outage and/or a Scheduled Plant Outage;

"Scheduled Transmission System Outage" means a pre-scheduled interruption in the transmission capacity of the Transmission System due to Transmission Maintenance, as notified by NamPower from time to time;

"Seller Event of Default" has the meaning set forth in Clause 18.2;

"Seller’s Revised Tariff" has the meaning set forth in Clause 15.1.8;

"Signature Date" means the date this Agreement is duly signed and dated by the last Party signing it;

"Taxes" means any tax, charge, impost, tariff, duty or fee of any kind charged, imposed or levied, directly or indirectly, by any Competent Authority, including any value-added tax, sales tax, gross receipts tax, remittance tax, withholding tax, excise tax, property tax, water tax, vocational tax or environmental, energy or fuel tax, but excluding corporation or personal taxes on income;

"Target Commercial Operation Date" means the intended Commercial Operation Date being the date falling one (1) month from the Scheduled Connection Date or as it may be extended in terms of this Agreement;
"Term" has the meaning set forth in Clause 3.1;
"Termination Amount" has the meaning set forth in Annexure G;
"Termination Date" means the date of the expiry of the Term or the date of the earlier termination of this Agreement, as the case may be;
"Termination Notice" means a written notice of termination served by the Seller or NamPower to the other Party pursuant to Clause 4.5 or Clause 18.5 (as the case may be);
"Transmission Connection Agreement" means the agreement between the Parties in terms of which the Parties shall construct the Connection Works to connect the Power Plant with the Transmission System, and the terms and conditions that will regulate such connection and establish the technical specifications for the connection;
"Transmission Maintenance" means scheduled maintenance of the Transmission System required to be performed by NamPower;
"Transmission System Outage" means a disruption or failure of the Transmission System;
"Transmission System" has the meaning given to it in the Transmission Connection Agreement;
"Transmission Unavailability" means the aggregate number of Daylight Hours in a Contract Year during which the Transmission System fails to allow the injection and transmission of the electrical energy generated by the Power Plant into and through the Transmission System;
"Transmission Unavailability Threshold" means ninety one (91) Daylight Hours, per Contract Year;
"Unscheduled Outage" means an Unscheduled Transmission System Outage and/or an Unscheduled Plant Outage;
"Unscheduled Plant Outage" means any period when the Power Plant is out of service as a result of an unforeseen equipment failure or for any other reason;
"Unscheduled Transmission System Outage" has the meaning given to it in the Transmission Connection Agreement;
"Week" means the period between 00:00 hours on a Monday and 24:00 hours on the following Sunday.

2. **INTERPRETATION**

In this Agreement, unless the context clearly indicates a contrary intention:

(a) The headings are for convenience only and shall not form part of the interpretation of this Agreement;

(b) The singular includes the plural and vice versa;

(c) References to clauses and annexures are, unless the context otherwise requires or states, references to clauses of, and annexures to, this Agreement; and references to clauses are, unless the context otherwise requires or states, references to clauses in the annexures to this Agreement;

(d) References to legislation (including subordinate legislation) and regulations made or licences issued there under are references to such legislation, regulations and licences as
they may be amended from time to time;

(e) References to other agreements or documents are, unless the context otherwise requires or states, references to those agreements or documents at the Signature Date and as amended and/or re-enacted and/or consolidated and/or replaced from time to time;

(f) A gender shall include the other gender;

(g) A natural person shall include a juristic person, and vice versa;

(h) All provisions contained in this Agreement are equally valid and enforceable, even if they belong, to a definition or an Annexure. Obligations resulting from a definition or an Annexure will have the same force as if it had been part in the main body of this Agreement;

(i) This Agreement shall be binding on and enforceable by the estates, heirs, executors, administrators, trustees, permitted assigns, liquidators or other legal successors of the Parties as fully and effectually as if they had signed this Agreement in the first instance and reference to any Party shall be deemed to include such Party’s estates, heirs, executors, administrators, trustees, permitted assigns, liquidators or other legal successors, as the case may be;

(j) Where figures are in this Agreement described both in numerals and in words, the words shall prevail in the event of any conflict between the two;

(k) Should this Agreement be signed on a date that results in the use of any tenses herein being inappropriate, the terms shall be read in the appropriate tense; and

(l) Any reference to a month shall mean a calendar month.

2.1 Inclusion of Dates

When any number of days are prescribed in this Agreement which relates to invoicing and payments, the same shall be reckoned exclusively of the first and inclusively of the last day, unless the last falls on a Saturday, Sunday or public holiday in Namibia, in which case the last day shall be the next successive Business Day.

2.2 Construction

The rule of construction that this Agreement shall be interpreted against the Party responsible for the drafting or preparation of this Agreement shall not apply.

2.3 Annexures

The Annexures to this Agreement shall be deemed to be incorporated herein and to form an indivisible part hereof.

3. Duration of Agreement

3.1 Term

This Agreement shall come into force in accordance with Clause 4 (Conditions Precedent) and, subject to the other provisions of this Agreement, shall continue in effect for a period of three (3) years from the Commercial Operation Date (the “Term”).

3.2 Make-up Term

3.2.1 Without limiting the generality of Clause 3.1, the Term shall be extended on a day-for-day basis for all periods during which an Affected Party is unable to perform its obligation pursuant to a Force Majeure Event, and is relieved of its obligations to
so perform in accordance with Clause 16 (Force Majeure) (the “Make-up Period”).

3.2.2 The occurrence of Force Majeure events during the Make-up Period shall give rise to a further extension of the Make-up Period.

3.2.3 All terms and conditions contained in this Agreement and the respective rights and obligations of the Parties shall remain unchanged for the duration of the Make-up Period.

3.3 NamPower Option to Extend the Term

3.3.1 Notwithstanding the provisions as contained in this Clause 3, NamPower reserves the right to extend the Term of this Agreement for an additional 3 (three) year period, in increments of 6 (six) months. Should NamPower exercise this right, NamPower shall upon its first request for extension, provide the Seller with 6 (six) months written notice of its intention to extend. Should NamPower wish to extend the Term after such an initial request for a further 6 (month) period, NamPower shall then provide the Seller with 3 (three) months written notice.

3.3.2 All terms and conditions as contained in this Agreement and the respective rights and obligations of the Parties shall remain unchanged where NamPower exercises its option to extend the Term as provided in Clause 3.3.1 above.

4. CONDITIONS PRECEDENT

4.1 On Signature Date

Clause 2 (Interpretation), Clause 4 (Conditions Precedent), Clause 12 (Additional Obligations), Clause 13 (Representation and Warranties), Clause 14 (Applicable Law and Jurisdiction), Clause 15 (Change in Costs), Clause 16 (Force Majeure), Clause 17 (Dispute Resolution), Clause 18 (Termination), Clause 19 (Liability for Damage or Loss), Clause 21 (Waiver of Sovereign Immunity), Clause 22 (Cession and Assignment), Clause 23 (Severability), Clause 24 (Anti-Corruption Measures), Clause 25 (Confidentiality), Clause 26 (Survival), Clause 27 (Notices and Domicilium), and Clause 28 (General and Miscellaneous) shall come into full force and effect on and from the Signature Date. None of the other provisions of this Agreement shall be effective until the Conditions Precedent enumerated in Clause 4 (Conditions Precedent) have either been fulfilled or waived by the Parties.

4.2 On Effective Date

The remainder of the rights and obligations of the Parties under this Agreement shall come into full force and effect upon the date of fulfilment of all of the following Conditions Precedent or until they have been waived (such date being the “Effective Date”):

4.2.1 The Seller having obtained all Consents as listed in Paragraph A.2 of Annexure A (Consents) required for it to perform its obligations under this Agreement and all such Consents being in full force and effect;

4.2.2 The Seller and NamPower having entered into a Transmission Connection Agreement;

4.2.3 [The Seller and NamPower having entered into a Facilities Agreement];

4.2.4 The Seller obtaining and holding a valid Generation Licence and such Generation Licence is in full force and effect;

4.2.5 NamPower receiving all Consents listed in Paragraph A.1 of Annexure A
4.3 Responsibilities as regards to conditions precedent

4.3.1 The Parties shall be responsible at their own expense and risk for satisfying and procuring the satisfaction of the Conditions Precedent referred to in Clause 4.2.

4.3.2 The Parties shall use their reasonable endeavours to cause the Conditions Precedent enumerated in Clause 4.2 to be satisfied within six (6) months from the Signature Date, as the same may be extended by the Parties in writing (the “Long Stop Date”). NamPower shall provide the Seller with such reasonable cooperation as may be necessary to assist the Seller in satisfying the Conditions Precedent listed above.

4.4 Notice

4.4.1 Each Party shall notify the other in writing by the fifteenth (15th) day of each month on the progress made in satisfying the Conditions Precedent enumerated in Clause 4.2 for which it is responsible.

4.4.2 The Parties undertake to disclose promptly to each other in writing anything which will or is likely to materially delay or prevent the fulfilment of any of the Conditions Precedent by the Long Stop Date.

4.4.3 A Party shall promptly inform the other Party in writing when any Condition Precedent for which it is responsible has been satisfied.

4.4.4 A Party shall promptly in writing inform the other Party of its waiver of any Condition Precedent required to be fulfilled by the other Party.

4.4.5 A Party who wishes to waive any condition precedent must provide the other Party with evidence (to the other Party’s reasonable satisfaction) that the waiver of such condition precedent will not have a material adverse effect on its ability to satisfy its obligations under this Agreement.

4.5 Non-fulfilment of conditions precedent

If the Conditions Precedent are not satisfied or waived on or before the Long Stop Date, then either Party shall have the right to terminate this Agreement by issuing a Termination Notice to the other Party, within a period of thirty (30) days after the occurrence of the Long Stop Date. Neither Party shall have any liability whatsoever to the other Party in respect of such termination, except in relation to any antecedent breaches of this Agreement.

5. CONSTRUCTION AND DEVELOPMENT OF THE POWER PLANT

5.1 Project Site

5.1.1 [Pursuant to the Facilities Agreement] the Seller shall use its best endeavours to 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 Power Project for the duration of the Term. The Seller shall obtain such other land and/or rights in respect of land as are required for the Seller to perform its obligations under this Agreement and all such land and/or rights shall be deemed to form part of the Project Site and shall be at the sole obligation and sole responsibility of the Seller.

5.1.2 The Power Plant shall be located at the area generally described as:

Site: ..............................
A scale map that identifies the location of the Project Site, project transmission and substation, Connection Facilities, and significant ancillary facilities including the facilities at the Delivery Point, is included in Annexure B.

5.2 Risk and liability

5.2.1 The Seller shall be responsible, at its own cost and risk, for:

(a) obtaining all Consents including those obtained under Clause 4.2.1, except for NamPower’s Consents, and maintaining all Seller’s Consents in full force and effect during the Term of this Agreement;

(b) the commencement of supply of Net Energy to NamPower no later than the Target Commercial Operation Date excluding delays not attributable to the Seller;

(c) connecting the Power Plant with the Connection Facilities at the Delivery Point as contemplated in the Connection Offer Letter;

(d) operating and maintaining the Power Plant throughout the Term of this Agreement free and clear of encumbrances, except as expressly permitted under Clause 22 (Cession and Assignment); and

(e) fulfilling all obligations undertaken by the Seller under this Agreement.

5.2.2 The Seller shall be fully responsible for the suitability of the Project Site, for the conduct of the Project, for the condition of the Project Site and shall assume all risk and liabilities associated with the Project Site.

5.3 Information regarding Connection Works

The Seller shall be required to obtain all information with regard to the Connection Works as is reasonably necessary to enable it to design, install and operate all interconnection plant and apparatus on the Seller’s side of the Delivery Point in accordance with the Transmission Connection Agreement and the Grid Code.

5.4 NamPower inspection rights

NamPower 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 NamPower’s representatives who shall be entitled to have access to the Project Site at reasonable times for the purpose of viewing the Power Plant and verifying the Seller’s compliance with its obligations under this Agreement. Such request from NamPower shall not be unreasonably refused by the Seller. NamPower shall ensure that its representatives shall comply with all Project Site health and safety precautions and standards and shall not interfere with the construction, operation and maintenance of the Power Project.

5.5 General Construction obligations

5.5.1 The Seller shall design, construct, erect, commission, complete and test the Power Plant in accordance with:

(a) the Construction Programme;

(b) all applicable Laws, including the Seller’s Consents;
the Grid Code;
(d) the Transmission Connection Agreement and
(e) the standard of a Reasonable and Prudent Operator.

5.5.2 The Seller shall provide or procure all plant, equipment, machinery consumables, parts, materials and services whatsoever required for the construction of the Power Plant as provided for in Clause 5.5.1 above.

5.5.3 No later than thirty (30) days after the expiry of each calendar quarter in the period from the Effective Date to the Commercial Operation Date, the Seller shall deliver to NamPower a written report setting out the construction activities undertaken in the preceding period as well as the overall progress in the construction of the Power Plant with reference to all Milestones.

5.5.4 Notwithstanding any review or inspection of, or recommendation in respect of, any preliminary or detailed design, plan or report, the Project Site, the construction contract(s) or any construction report (each as may be amended) on the part of NamPower or its representatives, the Seller shall be solely responsible for all aspects of the construction of the Power Plant. The Seller shall not be obliged to assume any obligation to implement or address any comments or recommendations of NamPower arising from NamPower's review or inspection as aforesaid, except that the Seller may (in its sole discretion and its sole risk) take such comments and recommendations into consideration whether with or without incurring any additional costs or resultant delays in the Construction Programme.

5.5.5 For the avoidance of doubt, notwithstanding the above, NamPower shall be solely responsible for the availability and condition of the Transmission System, including the completion of the construction of the Connection Works by the Scheduled Connection Date, in accordance with the Transmission Connection Agreement.

5.6 Construction Programme

5.6.1 The Seller shall achieve the Commercial Operation Date on or before the Target Commercial Operation Date in accordance with Clause 6 (Commercial Operation Date).

5.6.2 The Seller shall comply with the Construction Programme as set out in Annexure H and shall without any unreasonable delay notify NamPower in writing of any anticipated failure to achieve the Commercial Operation Date on or before the Target Commercial Operation Date, which notice shall identify:

(a) the nature of the reason for the failure;
(b) the impact which such failure has had, or in the reasonable opinion of the Seller (acting as a Reasonable and Prudent Operator), is likely to have, on its ability to achieve any Milestone on the applicable due date; and
(c) the steps which the Seller (acting as a Reasonable and Prudent Operator) has taken, is taking and will take to mitigate adverse consequences of such failure.

6. COMMERCIAL OPERATION DATE

6.1 Commercial Operation Date

The Seller shall use reasonable endeavours to construct and commission the Power Plant to achieve the Commercial Operation Date on or before the Target Commercial Operation Date.
6.2 **Delay in Commercial Operation Date**

6.2.1 If the Commercial Operation Date is not achieved on or before the Target Commercial Operation Date, other than due to an Event of Deemed Availability, Force Majeure, Government Action then the Seller shall pay to NamPower the Delay Liquidated Damages.

6.2.2 The Delay Liquidated Damages shall be paid at a rate of [a percentage of the monthly capacity payment], for every day or part thereof from the Target Commercial Operation Date to the Commercial Operation Date.

6.2.3 The maximum aggregate payment of the Delay Liquidated Damages under this Clause 6.2 shall not exceed NAD […].

6.2.4 The Parties acknowledge that the Delay Liquidated Damages are a reasonable and genuine pre-estimate of the likely extent of the damages suffered by NamPower as a result of such delays. The Parties agree that the Delay Liquidated Damages shall be the full and final compensation to be paid in respect of a failure of the Seller to meet the Target Commercial Operation Date as stipulated in this Clause 6.2.

6.2.5 In the case of a delay to the Commercial Operation Date as envisioned by this Clause 6.2, the Seller shall keep NamPower informed of the date upon which it anticipates that it will be able to achieve the Commercial Operation Date.

6.2.6 If due to any delay, default or circumstance caused by an Event of Deemed Availability, the Seller’s construction and commissioning of the Power Project by the Target Commercial Operation Date is prevented, hindered or delayed as a result of such Event of Deemed Availability, then the Seller, as soon as the Seller becomes aware thereof or should reasonably have become aware thereof, shall give notice to NamPower as soon as practicable after the delay, default or circumstance has occurred setting out the full particulars thereof, its net effect on the Power Project, including any anticipated performance delays, and any measures undertaken or proposed to be undertaken in relation thereto, provided that the Seller shall use its reasonable efforts to minimise any delay, in as far as it is in the Seller’s ability, and the effect of any such delay, default or circumstance acting in accordance with Prudent Industry Practice.

6.2.7 Following the occurrence of any delay, default or circumstance as contemplated in this Clause 6.2, the Parties shall confer as to the effect, if any, of such delay, default or circumstance, and the Target Commercial Operation Date shall be extended by a period agreed by the Parties taking into account:

(a) the effect which the Power Project reasonably demonstrates is properly attributable to such delay, default or circumstance; and

(b) the ability of the Parties to reschedule activities to minimise the overall delays to the Commercial Operation Date resulting from such delay, default or circumstance.

6.3 **Deemed Commercial Operation Date**

6.3.1 Notwithstanding the extension to the Target Commercial Operation Date contemplated by Clause 6.2.5, if a delay, default or circumstance occurs as a result of an Event of Deemed Availability, and, as a consequence, the Seller is unable to conduct the Power Project Acceptance Tests on the date on which such Power Project Acceptance Tests would otherwise have occurred had such delay, default or circumstance not occurred, the Seller shall be entitled to enjoy certain rights as set out in this Clause 6.3 with effect from the date on which the
Commercial Operation Date would have occurred had such delay, default or circumstance not occurred (the "Deemed Commercial Operation Date").

6.3.2 In the case of a delay, default or circumstance as contemplated by Clause 6.3.1:

(a) each Party shall keep the other informed on a regular basis of the date upon which it anticipates that such delay, default or circumstance will be resolved;

(b) the Parties shall undertake all reasonable measures to ensure that any Power Project Acceptance Tests delayed due to the circumstances contemplated by Clause 6.3.1 shall be undertaken as soon as possible after the circumstances that resulted in such delay, default or circumstance are no longer in place; and

(c) Provided that the Seller was ready and in a position to conduct any Power Project Acceptance Tests, which Power Project Acceptance Tests were hindered or obstructed solely as a result of a delay, default or circumstance as contemplated by Clause 6.3.1, NamPower shall pay the Capacity Payment to the Seller commencing from the Deemed Commercial Operation Date until the Commercial Operation Date. The Capacity Payment shall be calculated as provided in Paragraph D.1 of Annexure D.

6.3.3 In the event that the delay, default or circumstance contemplated by Clause 6.3.1 is remedied, and the Power Plant fails the Power Project Acceptance Tests, the Seller shall be liable to repay the Capacity Payments paid to it under this Clause 6.3 to NamPower.

7. **SALE AND PURCHASE OF ENERGY AND CAPACITY**

7.1 **Obligations to Sell and Purchase Capacity and Energy**

7.1.1 Subject to and in accordance with the terms and conditions of this Agreement, the Seller commits to sell and supply at the Delivery Point and NamPower commits to take and purchase at the Delivery Point the Contracted Capacity and all Net Energy generated in accordance with a valid dispatch instruction by the Power Plant as from the Commercial Operation Date (or the Deemed Commercial Operation Date). Title to, and risk of loss, for the Net Energy shall pass from the Seller to NamPower at the Delivery Point.

7.1.2 Commissioning of the Power Plant and the Connection Works shall be in accordance with the commissioning schedule contained in Annexure I. The Parties agree that Net Energy will be sold to and purchased by NamPower from the Connection Date. The Term shall only commence upon the Commercial Operation Date in accordance with Clause 3.1.

7.1.3 The Parties acknowledge that the physical connection of the Power Plant to the Transmission System shall be in accordance with the Transmission Connection Agreement.

7.2 **Restrictions on Sale of Capacity and Energy**

7.2.1 Subject to the express and mandatory requirement of the Grid Code, the Seller shall not sell any Capacity or Net Energy to any person other than NamPower (save for electrical energy consumed by the Power Plant as Auxiliary Consumption) without NamPower’s prior written consent.

7.2.2 The Seller must ensure that all electrical energy required by the Power Plant for
Auxiliary Consumption while the Power Plant is generating electrical energy to meet the Seller’s obligations under this Agreement, is supplied by the Power Plant itself and not by any other supplier, including any other supplier which supplies electrical energy to the private network of customers which may provide load to the Power Plant, other than by NamPower as agreed in the Transmission Connection Agreement.

8. **PROVISION OF SUPPLY, METERING EQUIPMENT AND PROCEDURES**

8.1 **Delivery Point**

The supply from the Seller to NamPower shall be delivered at the Delivery Point in accordance with the Transmission Connection Agreement.

8.2 **Metering**

The Net Energy generated by the Power Plant and delivered to NamPower pursuant to this Agreement shall be monitored, measured and recorded by the Metering Equipment at the Delivery Point in accordance with the provisions of the Transmission Connection Agreement.

9. **PAYMENT FOR ELECTRICITY**

9.1 **Payments prior to Commercial Operation Date**

For any Billing Period that occurs prior to the Commercial Operation Date during which NamPower requests and receives Energy from the Power Plant, NamPower shall pay the Energy Payment, [the Start-up Payment] and the Fuel Payment.

9.2 **Payment for Capacity and Energy**

For each Billing Period during the Term (including the Billing Period in which the Commercial Operation Date occurs), NamPower shall pay to the Seller the Capacity Payment, as adjusted for any failure to meet the Contracted Availability (as per Annexure D); and the Energy Payment (as per Annexure D).

9.3 **Payment for Fuel**

For each Billing Period during the Term (including the Billing Period in which the Commercial Operation Date occurs), NamPower shall pay to the Seller the Fuel Payment (as per Annexure D).

The Seller shall supply invoices from its fuel supplier with each invoice submitted to NamPower, confirming any movement in the Fuel Price.

9.4 **[Payment for Start-ups**

For each kilowatt that the plant is instructed to start-up during the Billing Period, NamPower shall pay the Start-up Payment (as per Annexure D).]

9.5 **Indexation of the Capacity and Energy Charge**

The Capacity Charge and the Energy Charge shall escalate in accordance with the indexation in Paragraph D.4 to Annexure D.

9.6 **Transmission Use of System Charge**

The Energy Payment to be paid by NamPower to the Seller shall include, among other
components, transmission charges provided for in the Transmission Connection Agreement including the Transmission Use of System Charge, which is set in Namibian Dollars per month and is calculated in accordance with applicable ECB Generation and Transmission tariff methodology. This amount will be reviewed annually in accordance with ECB approval, all as specified in Annexure D.

10. INVOICING AND PAYMENT

10.1 Frequency

The Energy Payment and Capacity Payment, as calculated and adjusted in accordance with Clause 9.2, together with the Fuel Payment [and the Start-up Payment] shall be invoiced in arrears at the end of each Billing Period and shall be invoiced in Namibian Dollars. The Seller shall charge NamPower value added tax and any other taxes or surcharges, including the ECB Levy and NEF Levy if applicable, in accordance with applicable legislation.

10.2 Payments Free from Tax

All sums payable by either Party under this Agreement shall be paid:

(a) free of any restriction or condition; and

(b) free and clear of and (except to the extent required by law and as herein below recorded) without any deduction or withholding for or on account of any bank charge or tax imposed, levied, collected, withheld or assessed by or within Namibia or by any federation or organisation of which Namibia is a member at the time of payment.

10.3 Deductions Made Whole

10.3.1 Each Party shall make any payments payable by it under this Agreement, without withholding or deduction of, or in respect of, any Tax, unless required by Law.

10.3.2 If any such withholding or deduction of any Tax is required the Party making the payment shall, when making the payment to which the withholding or deduction relates, pay the receiving Party such additional amounts as will ensure that the receiving Party receives the same total amount that it would have received if no such withholding or deduction had been required.

10.3.3 Clause 10.3.2 does not apply in the event where a Party is compensated or allowed to recoup such Tax via alternative mechanisms.

10.4 Invoicing and Payment Procedure

10.4.1 Invoices for all payments due under this Agreement shall be submitted by the Seller to NamPower by the seventh (7th) day (or, if such day is not a Business Day, the immediately following Business Day) of each month following that in respect of which they are payable.

10.4.2 Each invoice shall be due and payable on or before the thirtieth (30th) day after the invoice is received (or, if such day is not a Business Day, the immediately following Business Day).

10.4.3 Any amount properly due from one Party to the other Party pursuant to this Agreement and remaining unpaid after the due date shall bear interest from the date when payment was due, such interest to accrue daily and be compounded monthly at a rate equal to the Agreed Interest Rate from the date when payment was due until the amount due is actually received by the payee. Any overpayments by either Party resulting from an invoicing error or an error in payment shall be
refunded by the other Party, together with interest at the Agreed Interest Rate and thereafter a new invoice shall be issued.

10.4.4 Should NamPower dispute an invoice it shall notify the Seller within five (5) Business Days of receipt of such an invoice. NamPower shall not be entitled to defer payment thereof beyond the date specified for payment but shall pay such an invoice except in instances of manifest error. In the event the Parties fail to resolve a dispute regarding an invoice within fifteen (15) days, either Party shall be entitled to refer the dispute for dispute resolution for a determination. In the event it is found that an error was made on the invoice, such invoice shall be cancelled and thereafter a new invoice shall be issued within ten (10) days from the resolution of such dispute.

10.4.5 In case of a manifest error on an invoice, NamPower shall immediately notify the Seller, and the Seller shall issue a corrected invoice.

10.4.6 Should an invoice be in error as a result of a metering or reconciliation error the payments shall be recalculated as soon as practicable following the correction of the metering error and any over-payment or under-payment corrected in the invoice for the month following the receipt of the correct metered data.

10.4.7 The Seller shall notify NamPower of its Namibian bank account details for payment by NamPower to the Seller.

10.4.8 In the event that the Seller is required to pay to NamPower any Liquidated Damages, NamPower shall issue an invoice to the Seller in accordance with the procedure described above, mutatis mutandis.

10.4.9 NamPower shall notify the Seller of its bank account details for payment by the Seller to NamPower.

10.4.10 No Party shall be entitled to offset any amounts payable to the other Party under or in relation to this Agreement.

11. **Control and Operation of the Power Plant**

11.1 **Dispatch Procedures**

11.1.1 Weekly Generation Forecast

(a) NamPower shall provide to the Seller in writing for each Week from the Commercial Operation Date, by no later than 09:00 hours on the preceding Wednesday, NamPower’s forecast level of electrical energy expected to be generated by the Power Plant for each day in the Week in the format attached hereto as Annexure E (the "Weekly Generation Forecast").

(b) In the event that NamPower fails to provide the Weekly Generation Forecast for any Week, then the last Weekly Generation Forecast provided by NamPower in accordance with Clause 11.1.2(a) above shall be deemed to be the Weekly Generation Forecast for such Week.

11.1.2 Generation Schedule

(a) NamPower shall provide to the Seller in writing for each day following the Commercial Operation Date, by no later than 10:00 hours on the preceding day, NamPower’s scheduled level of electrical energy to be generated each hour (the first such hour starting at 00:00 and ending at 00:60 minutes) by the Power Plant in the day (starting at 00:00 hours and ending at 24:00 hours) (the “Generation Schedule”).
(b) In the event that NamPower fails to provide the Generation Schedule for any day, then the last Generation Schedule provided by NamPower in accordance with Clause 11.1.2(a) above shall be deemed to be the Generation Schedule for the day.

11.2 Maintenance of Adequate Fuel Supply

11.2.1 The Seller shall be responsible for ensuring that adequate fuel is available, either in storage or through delivery, to enable the Power Plant to operate in accordance with the Weekly Generation Forecast.

11.2.2 Subject to Clause 11.2.3, in the event that the Power Plant is not available for dispatch on any day in accordance with the Generation Schedule for that day, due to the non-availability of fuel, and the availability is below the Contracted Availability, then the Capacity Payment shall be adjusted in accordance with Paragraph D.4 of Annexure D.

11.2.3 If the Net Energy scheduled for a day in accordance with a Generation Schedule is greater than the Net Energy forecast for that day in accordance with the Weekly Generation Forecast then the availability of the Power Plant shall not be adjusted to the extent that the available Capacity is less than the Capacity required to meet the Generation Schedule but greater than, or equal to the Capacity required to meet the Weekly Generation Forecast.

11.3 Availability Declaration

11.3.1 The Seller shall provide to NamPower in writing for each Week by 12h00 Friday a notice ("Availability Declaration") of any reduction in Contracted Capacity available in the coming week. Such notice shall include capacity unavailable:

(a) by reason of any Unscheduled Plant Outages; or
(b) due to the non-availability of fuel;
(c) in accordance with the standards of a Reasonable and Prudent Operator; or
(d) for any circumstances relating to safety (of either a personnel or the Power Project or apparatus); or
(e) to the extent of any illegality, in circumstances where to do so would be unlawful; or
(f) for reasons of Force Majeure; or
(g) in any other circumstances, with NamPower’s approval.

11.3.2 The Seller shall sell, and NamPower shall purchase, all the Energy generated by the Power Plant.

11.4 Other relevant data

So far as possible, by 30 (thirty) days before each anniversary of the Commercial Operation Date, the Seller shall submit to NamPower in written form details of any material factors which in the reasonable opinion of the Seller may have a material effect on the ability of the Power Plant to produce Net Energy.

11.5 Further revisions

11.5.1 The Seller shall, as soon as is reasonably practicable, make revisions to the Availability Declaration submitted to NamPower should circumstances affecting the operation of the Power Plant or its operating characteristics change at any
time.

11.5.2 Should circumstances change such that the original or the current Availability Declaration is no longer a reasonable estimate made in good faith, the Seller must, as soon as is reasonably practicable:

(a) make revisions to the data submitted to NamPower under Clause 11.3 and Clause 11.4;
(b) notify NamPower of any revisions to any previously submitted data; and
(c) notify NamPower of any special factors of which it becomes aware.

11.6 Communication of Declarations

Each Party hereby authorises the other Party to record all telephone voice communications relating to availability, scheduling and dispatch of the Power Plant received from the other Party and, where recording equipment of a Party has failed, the other Party shall supply, at the request of the first Party, a copy or transcript of any such recording.

11.7 Maintenance

The Seller shall, during the Term, carry out such maintenance as shall be commensurate with the proper running of the Power Plant and in accordance with Prudent Industry Practice. Such maintenance shall not reduce the capacity available for dispatch.

11.8 Unscheduled Plant Outages

11.8.1 The Seller shall notify NamPower promptly upon the occurrence of any event resulting in the Power Plant being unable to operate.

11.8.2 In such case, the Seller shall:

(a) give NamPower notice of such event as soon as reasonably practicable after the occurrence of such event or, the Seller becoming aware of the need for such outage;
(b) notify NamPower of the expected dates and duration of the Unscheduled Plant Outage; and
(c) use its best efforts to minimise the duration and effects on the Power Plant of the Unscheduled Plant Outage.

11.8.3 NamPower shall not be entitled to any payment and/or indemnification and/or reimbursement from the Seller in connection with any Unscheduled Plant Outages.

11.9 Transmission System Outages

NamPower shall not be entitled to any reduction to capacity payments as a result of the Power Plant being unavailable for dispatch as a result of a Scheduled Transmission System Outage or an Unscheduled Transmission System Outage.

12. ADDITIONAL OBLIGATIONS

12.1 NamPower’s obligations

NamPower shall, in addition to its other obligations under this Agreement, without cost to the Seller:

(a) to the extent NamPower has not done so at the Signature Date, apply in a timely fashion for, obtain, maintain and comply with all Consents required from time to time for NamPower to fulfil its obligations under this Agreement; and
(b) reasonably assist the Seller in obtaining any Consents which the Seller requires to construct, commission, operate and maintain the Power Plant under this Agreement; and

(c) at all times from the Connection Date until the occurrence of the Commercial Operation Date during which the Seller generates Net Energy from the Power Plant, accept the Net Energy so generated and pay the Seller for this Net Energy as set out in Annexure C (Energy Payment).

12.2 **General Obligations of the Seller**

12.2.1 From the Commercial Operation Date and for the remainder of the Term, the Seller shall, in addition to its other obligations under this Agreement, manage, operate and maintain the Power Plant in accordance with:

(a) all relevant Consents required from time to time for the Seller to fulfil its obligations under this Agreement;

(b) all applicable Laws (including, without limitation, all health, safety and environmental Laws);

(c) Prudent Industry Practice; and

(d) the relevant manufacturer's guidelines and instructions.

12.2.2 In the event of a conflict among any such standards, the most stringent standard shall prevail, provided that in no circumstances shall the Seller be required to control or operate the Power Plant in violation of any of its Consents or any applicable Law, or in a manner contrary to Prudent Industry Practice.

12.2.3 As soon as granted and not later than Financial Close, the Seller shall give notice to NamPower of all Consents and approvals necessary in Namibia to allow the Seller to enter into this Agreement and/or operate the Power Plant and to carry out the transactions contemplated hereby.

13. **Representation and Warranties**

13.1 **The Seller’s warranties**

The Seller hereby represents and warrants to NamPower that:

(a) it is a validly existing legal entity under the Laws of Namibia;

(b) it is a limited company, incorporated under the Laws of Namibia which has been in continuous existence since incorporation;

(c) it has the full legal capacity and authority to enter into and carry out its obligations under this Agreement and this Agreement constitutes a valid, legally binding and enforceable obligation of the Seller;

(d) to the best of the Seller's knowledge and belief, all Consents necessary to allow the Seller to enter into this Agreement and to carry out the transactions contemplated herein, including approval by the board of directors of the Seller, shall be given or received after Signature Date and it shall use its best efforts to keep them remaining in full force and effect for the duration of this Agreement;

(e) to the best of the Seller’s knowledge and belief there are no applicable Laws in force on the Signature Date or any provisions of any organisational document of the Seller or of any agreement by which the Seller is bound, which restrict or prohibit the ability of the Seller to enter into and perform the terms of this Agreement;
(f) this Agreement does not conflict with any provisions of any Law, any regulations of Namibia or any provision of the articles or memorandum of association of the Seller in effect as at the Signature Date;

(g) at the Signature Date no litigation, arbitration or administrative proceedings before any court or arbitrator or authority are presently pending or to the best of the Seller's knowledge are being threatened against the Seller or any of its assets, which might materially or adversely affect the Seller's ability to perform its obligations under this Agreement or result in the dissolution of the Seller;

(h) execution of this Agreement will not violate, be in conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any indenture, agreement for borrowed money, bond, note, instrument or other agreement to which the Seller is a party or by which the Seller or its property is bound; and

(i) it has fully investigated the Project Site and has satisfied itself as to the Project Site's adequacy and fitness for the purposes of the Power Project and this Agreement.

13.2 NamPower Warranties

NamPower hereby represents and warrants to the Seller that:

(a) it is a validly existing legal entity under the Laws of Namibia which on the date of this Agreement is wholly-owned by the Government of Namibia;

(b) it is a private limited company incorporated under the Laws of Namibia which has been in continuous existence since incorporation;

(c) it has the full legal capacity and authority to enter into and carry out its obligations under this Agreement and this Agreement constitutes a valid, legally binding and enforceable obligation of NamPower;

(d) all Consents necessary to allow NamPower to enter into this Agreement and to carry out the transactions contemplated herein have been given or received and remain in full force and effect;

(e) it has given notice to the Seller of all Consents necessary in Namibia to allow NamPower to enter into this Agreement and to carry out the transactions contemplated therein;

(f) there are no applicable Laws in force on the Signature Date or any provisions of any organisational document of NamPower or of any agreement by which NamPower is bound, which restrict or prohibit the ability of NamPower to enter into and perform the terms of this Agreement;

(g) execution of this Agreement does not conflict with any provision of any Law or any provision of the articles or memorandum of association of NamPower in effect as at the Signature Date;

(h) at the Signature Date no litigation, arbitration or administrative proceedings before any court or arbitrator or authority are presently pending or to the best of NamPower's knowledge are being threatened against NamPower or any of NamPower's assets, which might materially or adversely affect NamPower's ability to perform its obligations under this Agreement or result in the dissolution of NamPower; and

(i) execution of this Agreement will not violate, be in conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any indenture, agreement for borrowed money, bond, note, instrument or other agreement to which NamPower is a party or by which NamPower or its property is bound.
14. **APPLICABLE LAW AND JURISDICTION**

This Agreement shall be governed, construed and interpreted in accordance with the Laws of Namibia, and the Parties consent to the non-exclusive jurisdiction of the High Court of Namibia, subject to the provisions of Clause 17 (Dispute Resolution). Subject to the provisions of Clause 17 (Dispute Resolution), the Parties agree that a judgment in any proceedings in connection with this Agreement by the Namibian courts shall be binding upon them and may be enforced against them in any other jurisdiction.

15. **CHANGE IN COSTS**

15.1 **Adjustments to Tariff**

15.1.1 The tariff agreed in this Agreement is approved by the ECB, with annual escalations as set out in Annexure C (Energy Payment).

15.1.2 In the event of any Change in Law resulting in a Change in Costs that materially changes the economic position of the Seller, and more specifically has the effect of an increase in cost or decrease in revenue to the Seller of more than [ten million] Namibian dollars in aggregate, projected over the Term, NamPower and the Seller shall approach the ECB to adjust the tariff so as to ensure that the Seller’s expected revenue is maintained.

15.1.3 The Change in Costs as contemplated in Clause 15.1.2 must have the effect of (a) impacting one or more of the inputs identified in Paragraph D.7 of Annexure D and / or (b) result in one or more changes to the Grid Code.

15.1.4 In the event of a Change in Law (“Change in Costs”) which falls within the ambit of Clause 15.1.3, the Seller may only claim relief for a Change in Costs in the event:

(a) the principle effect of such Change in Costs is directly borne by:
   i. the Power Project;
   ii. the Seller and not other persons; and
(b) in respect of which the Seller is not entitled to any other relief pursuant to any other provisions of this Agreement; and
(c) which was not foreseen by the Seller on or before the Signature Date or if it was foreseen, the impact on the Power Project was not foreseen; and
(d) which could not reasonably have been foreseen by any person in the position of the Seller on or before the Signature Date or if it could have reasonably have been foreseen, the impact on the Power Project could not reasonably have been foreseen.

15.1.5 An increase in taxes of general application which does not discriminate against the Seller or against the Seller and other parties undertaking projects similar to the Power Project shall not be deemed a Change in Costs.

15.1.6 A Change in Costs shall not include any Law that was enacted or made but not yet in force as at the Signature Date, or any bill that was promulgated for comment at any time before the Signature Date if and to the extent that such bill is materially unchanged when enacted and brought in effect.

15.1.7 If any one or more Changes in Costs as envisaged in Clause 15.1.2 or Clause 15.1.3 takes place, the Parties agree to meet in accordance with Clause 15.2 to quantify the financial implications of the Changes in Costs so as to
calculate the changes required to the Capacity and/or Energy Payment in Annexure D such that the Seller’s forecast revenue over the Term is restored to what it would be had the Change in Costs not occurred.

15.1.8 Once the then applicable Capacity and/or Energy Payment has been re-calculated in accordance with Clause 15.1.7, the implementation of such revised Capacity and/or Energy Payment ("Seller's Revised Tariff") is subject to the official approval of the ECB. In the event that the ECB does not approve the Seller's Revised Tariff or in the event that the ECB determines a revised Capacity and/or Energy Payment which is less beneficial to the Seller than the Seller's Revised Tariff, the Seller shall be entitled to refer the matter to an Expert for a determination.

15.2 Process for adjustments to the tariff because of Change in Costs

15.2.1 After a Change in Costs as contemplated in Clause 15.1.2 and Clause 15.1.3, the Seller shall submit to NamPower within a reasonable time the re-calculation of the Seller's Revised Tariff, setting forth in reasonable detail the basis of, and the calculations in the claim for, any necessary adjustments to the Capacity and/or Energy Payment arising from such Change in Costs.

15.2.2 Within fourteen (14) days after the date of the re-calculation delivered pursuant to Clause 15.2.1 NamPower shall notify the Seller whether it agrees or disagrees with Seller's Revised Tariff. If NamPower notifies the Seller of its disagreement, the Parties agree to meet within seven (7) days and discuss, in good faith, the Seller's Revised Tariff.

15.2.3 In the event that NamPower agrees with the re-calculation delivered pursuant to Clause 15.2.1 or as negotiated pursuant to Clause 15.2.2 and subject to the approval of the ECB in accordance with Clause 15.2.4, the calculation of the Capacity and/or Energy Payment shall be amended accordingly.

15.2.4 The Seller's Revised Tariff shall apply as from the date on which the NamPower's annual tariff revision is approved by ECB and takes effect (falling no later than twelve (12) months from the previous NamPower application for tariff review).

15.2.5 The Parties shall ask the ECB to approve the Seller's Revised Tariff within fourteen (14) days pursuant to Clause 15.1 or Clause 15.2.

15.2.6 The calculation of the revised Capacity and/or Energy Payment t and the Annual Indexation determined pursuant to this Clause 15 shall take into consideration the period from the date of the relevant Change in Costs until the date on which the revised Capacity and/or Energy Payment and the Annual Indexation take effect in accordance with Clause 15.2. In calculating the adjustment, the effect of the Change in Costs from the effective date of such Change in Costs until the date of the final adjustment becomes effective shall be taken into consideration.

15.2.7 In the event, the Parties have met to discuss the re-calculation of the Seller’s Revised Tariff pursuant to Clause 15.2.2, and NamPower is in disagreement with the Seller’s calculations, the Parties shall be entitled to refer the matter to the ECB for mediation. If the ECB does not approve the Seller's Revised Tariff or in the event that the ECB determines a revised Capacity and/or Energy Payment which is less beneficial to the Seller than the Seller's Revised Tariff, the Parties shall be entitled to refer the matter to an Expert for a determination.

15.2.8 In the event the Expert rules in favour of the Seller, and the ECB does not implement the re-calculated tariff as determined by the Expert, the Seller may terminate this Agreement and NamPower shall not have any claim and/or demand
and shall not be entitled to any indemnification and/or reimbursement in connection with such termination. The aforementioned right to termination is subject to NamPower having approved the re-calculation of the tariff in accordance with Clause 15.2.7.

16. **FORCE MAJEURE**

16.1 **Definition of Force Majeure Event**

16.1.1 A **“Force Majeure Event”** means any event or circumstance which:

(a) is beyond the reasonable control of the Party affected by the Force Majeure (the “Affected Party”) or its Contractors;

(b) is without fault or negligence on the part of the Affected Party or its Contractors and is not the result of a breach by the Affected Party or its Contractors of any of their obligations under any Project Document (including, in respect of the Affected Party, this Agreement), Consents or applicable Law;

(c) was not foreseeable, or if foreseeable, could not have been (including by reasonable anticipation) avoided or the effects of which could not have been overcome by the Affected Party or its Contractors, acting in accordance with Prudent Industry Practice; and

(d) prevents, hinders or delays the Affected Party in its performance of any of its obligations under this Agreement.

16.1.2 If an Affected Party or its Contractors could, by acting in accordance with Prudent Industry Practice, have mitigated an event or circumstance that otherwise satisfies the requirements set out in Clause 16.1.1 above, that part of the event or circumstance that could have been mitigated shall not be a Force Majeure Event.

16.1.3 Without limiting the generality of the foregoing, a Force Majeure Event may include any of the following acts, events or circumstances, but only to the extent that it satisfies the requirements set out in Clause 16.1.1 above:

(a) any material effect of the natural elements, including lightning, drought, wind, fire, earthquake, solar flares, volcanic eruption, landslide, flood, storm, tsunami, cyclone, typhoon, tornado, or meteorites; or

(b) air crash, shipwreck, train wreck or major failure or stoppage of transportation, objects falling from aircraft or other aerial devices, sonic boom, explosions or chemical contamination; or

(c) epidemic, famine or plague; or

(d) any event or circumstance constituting a Force Majeure Event under any other Project Document; or

(e) act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, civil commotion, sabotage, act of terrorism or exercise of military or usurped power; or

(f) radioactive contamination or ionising radiation; or

(g) labour unrest, strike, go-slow or other labour action but not those affecting only the personnel of a Party;

provided that the following shall not constitute a Force Majeure Event unless
caused by or resulting from a Force Majeure Event:

(a) a failure or inability to make any payment, any inability to raise finance or any changes in price or market conditions;

(b) late delivery or interruption in the delivery of machinery, equipment, materials, spare parts or consumables;

(c) a delay or failure by a third party which prevents, hinders or delays the Affected Party in the performance of its obligations under this Agreement, save where the cause of such delay or failure by the third party would constitute a Force Majeure Event pursuant to this Agreement; or

(d) any technical or operational problems with the Power Plant arising from a fault in the construction, operation and/or maintenance of the Power Plant which is attributed to any failure by the Affected Party to obtain and/or maintain a Consent; or

(e) wear and tear, flaws, breakdown in or degradation of, any equipment or machinery.

16.2 Procedure

16.2.1 If an Affected Party wishes to cite a Force Majeure Event as being the cause of it being unable to meet any or some of its obligations hereunder, the Affected Party shall, as soon as reasonably practicable of it becoming aware of the Force Majeure Event, but not later than two days of the occurrence of the event, advise the other Party of the nature, cause and/or likely duration of the Force Majeure Event (to the extent the same can be reasonably determinable at the time of such notice) and, when appropriate or when reasonably requested to do so by the other Party, update such information.

16.2.2 Both Parties shall take such steps as are reasonably available to it to overcome such Force Majeure Event and each Party shall mitigate its effect on the ability of the Affected Party to meet its obligations under this Agreement, and shall consult to develop and implement a remedial plan to minimise each Party's losses.

16.2.3 The Affected Party shall promptly provide notice to the other Party of:

(a) the cessation of the Force Majeure Event; and

(b) its ability to immediately recommence performance of its obligations under this Agreement by reason of the cessation of the Force Majeure Event.

16.2.4 During the occurrence of a Force Majeure Event, each Party shall bear its own costs resulting from the occurrence of the Force Majeure Event.

16.3 Consequences of a Force Majeure Event

16.3.1 Notwithstanding any other provisions of this Agreement, to the extent the Affected Party hereto is unable to perform any of its obligations under this Agreement due to a Force Majeure Event then the Affected Party shall be relieved from liability in respect of such obligations and shall be entitled to suspend performance of such obligations in accordance with and subject to Clause 16.3.

16.3.2 If it is agreed or determined that a Force Majeure Event has occurred, the Affected Party shall, provided that it has complied with the requirements of Clause 16.2, not be liable for any failure to perform an obligation under this Agreement as a consequence of such Force Majeure Event, to the extent only that:

(a) such performance is prevented, hindered or delayed by the Force Majeure
Event; and

(b) such failure could not have been mitigated by the Affected Party acting in accordance with Prudent Industry Practice.

16.3.3 Any time period specified in this Agreement for the performance of any obligation, including but not limited to the Long Stop Date, the Target Commercial Operation Date and the Commercial Operation Date, shall be extended on a day-for-day basis for each day that the relevant Force Majeure Event prevents, hinders or delays the Affected Party from performing that obligation within the time period, and the Term shall be extended in accordance with Clause 3.2.

16.4 Termination on Account of Force Majeure

If the Force Majeure Event or its direct effect or consequences on the operations of either Party is of such magnitude or will be (or it is more probable than not that it will be) of such duration that after a period of twelve (12) months it is unreasonable in all the circumstances for the Seller to perform its obligations under this Agreement, the Seller may upon not less than thirty (30) days’ notice, terminate this Agreement.

17. DISPUTE RESOLUTION

17.1 Procedure

17.1.1 If any Dispute arises relating to this Agreement or any claims for damages or otherwise are made as the result of breach of any obligation hereunder, the Parties shall meet and use their reasonable efforts to resolve such dispute through good faith negotiation. The Parties acknowledge the ECB's rules and entitlement to mediate the settlement of certain disputes between the Parties as provided for in the Generation Licence. The Parties shall follow the applicable dispute resolution as set by the ECB.

17.1.2 Should the Parties fail to resolve such Dispute in accordance with Clause 17.1.1 above within seven (7) days of their meeting or such longer period as the Parties may agree, the matter shall be elevated to chief executive (or equivalent) level for resolution.

17.1.3 Should the chief executives (or equivalent) of the Parties fail to resolve such Dispute in accordance with Clause 17.1.2 above within fourteen (14) days of their meeting or such longer period as the Parties may agree, any Party may refer such dispute or difference to arbitration to be undertaken by three (3) arbitrators. The Parties shall agree on the identity of the arbitrators. Should the Parties fail to agree on the arbitrators within fourteen (14) days of the referral of the dispute to arbitration, the President of the Law Society of Namibia shall appoint the arbitrators from a list of approved arbitrators having the requisite experience and expertise in the field of the Dispute.

17.1.4 In the event of a technical dispute between the Parties during the Construction Period, the Parties shall refer the matter to the chief executive officers for resolution. In the event of a failure to resolve the Dispute, the matter shall be referred to a technical expert ("Independent Expert") appointed by the Parties.

17.1.5 In the event that the Parties are unable to agree on the appointment of the Independent Expert, the parties shall refer the matter to the ECB who shall nominate the Independent Expert.

17.1.6 The Parties agree that the Independent Expert shall act as an expert and not as an arbitrator and shall decide those matters referred or reserved to the
Independent Expert under this Agreement by reference to Prudent Industry Practice using the Independent Expert's skills, experience and knowledge with regard to such matters as the Independent Expert in his or her sole discretion considers appropriate.

17.1.7 The Parties agree they will make every reasonable effort to supply whatever information, documents and materials the Independent Expert considers necessary to address the matters referred and will act in good faith as regards matters failing within the ambit of this Clause 17.1.

17.1.8 The Independent Expert will endeavour to provide the Independent Expert's decision within the shortest time possible. In most cases, it is expected that the Independent Expert should be able to supply a decision to the Parties within fourteen (14) Business Days. If for any reason, the Independent Expert requires longer than fourteen (14) Business Days, the Independent Expert will provide the Parties a written explanation for the required extension of time with an estimate of the likely timetable for a decision on the matter referred.

17.1.9 The Parties shall share equally the fees and expenses of the Independent Expert.

17.1.10 Should the Independent Expert fail to resolve such dispute in accordance with this Clause 17.1 within fourteen (14) Business Days or such longer period as the Parties may agree, any Party may refer such dispute or difference to arbitration in accordance with the provisions of Clause 17.2.

17.2 Arbitration

17.2.1 Except where otherwise specifically provided for, any Dispute at any time between the Parties or any failure by them to reach agreement in regard to any matter arising out of or in connection with this Agreement or its interpretation or effect, or arising in any way out of the termination or failure of any of them, shall be submitted to arbitration pursuant to the applicable Namibian arbitration laws. In the event, the arbitration laws are deemed to be found to be insufficient, the AFSA Rules shall apply.

17.2.2 The decision of the arbitrators shall be given in writing as soon as reasonably possible after the dispute has been referred to the arbitrators but not longer than six weeks from the date on which the hearing, including argument, was concluded. The decision shall be final and binding upon the Parties and shall not be subject to appeal to any court or tribunal of any kind unless manifestly unlawful or unjust, provided however that any Party may take action in any court of competent jurisdiction to enforce the arbitrators’ decision, including its award in respect of the costs of arbitration.

17.2.3 Each Party shall bear its own costs and the costs of arbitration shall be borne equally by the Parties, unless the arbitrators decide otherwise.

17.2.4 Arbitration shall be conducted under the Namibian arbitration laws and shall be held in Windhoek before three (3) arbitrators. In any event the arbitration shall be conducted in the English language.

17.2.5 The Parties may be legally represented and may present evidence by independent experts or as otherwise permitted by the arbitrators.

17.2.6 The aforesaid notwithstanding, any Party shall be entitled to approach any competent court having jurisdiction for urgent relief on an interim basis, pending
the finalisation of the resolution of the dispute in terms of this Clause 17.2.

17.3 Obligations during Disputes

17.3.1 While a Dispute is continuing, the Parties are required to continue to perform their respective obligations, including the payment of the Energy Payment and/or Deemed Energy Payment, under this Agreement until such dispute has been fully and finally resolved.

17.3.2 Where a Dispute has been referred for resolution by arbitration in accordance with the Namibian arbitration laws, then neither of the Parties shall be entitled to exercise any rights or election arising in consequence of any alleged default by the other arising out of the subject matter of the Dispute until the Dispute has been resolved by the decision of the arbitrators.

17.4 Proceedings in Confidence

All proceedings held by the Parties for the purpose of resolving Disputes shall be held in private and except as permitted or required by any other provision of this Agreement, shall not be open to third parties, it being agreed that for the purposes of this Agreement the record and outcome of any proceedings shall also constitute Confidential Information of each Party hereto and safeguarded in accordance with the provisions of Clause 25 (Confidentiality).

18. TERMINATION

18.1 Events of Termination

This Agreement shall terminate on the earliest to occur of:

(a) termination due to failure to satisfy the Conditions Precedent, in accordance with Clause 4; or

(b) termination by the Seller due to a Change in Costs, in accordance with Clause 15.2.8; or

(c) termination by NamPower following a Seller Event of Default, in accordance with Clause 18.2; or

(d) termination by the Seller following a NamPower Event of Default, in accordance with Clause 18.3; or

(e) on receipt of a notice from the Seller in accordance with Clause 16.4 (Force Majeure).

18.2 Seller Event of Default

Each of the following shall constitute a “Seller Event of Default”, save to the extent excused by Clause 16 (Force Majeure) of this Agreement, or a NamPower Event of Default or an Event of Deemed Availability, or a NamPower Transmission Default, and shall entitle NamPower to issue a Notice of Intention to Terminate to the Seller:

(a) prior to the Commercial Operation Date, the Seller abandons construction of the Power Plant for a consecutive period of more than ninety (90) days, without NamPower's prior written consent, which shall not be unreasonably refused or delayed;

(b) following the Commercial Operation Date, the Seller abandons the operation of the Power Plant for a consecutive period of more than thirty (30) days, without NamPower's prior written consent, which shall not be unreasonably refused or
delayed;

(c) the Seller fails to cause the Commercial Operation Date to occur by the date falling six (6) months after the Target Commercial Operation Date excluding in the event that the Commercial Operation Date did not occur due to any reason not attributable to the Seller;

(d) a default is caused by the Seller under the Transmission Connection Agreement and is not remedied within the period, if any, specified for remedy for such breach in the Transmission Connection Agreement and the Transmission Connection Agreement is terminated;

(e) the transfer of the Seller’s rights or obligations under this Agreement, which are not permitted under Clause 22 (Cession and Assignment) of this Agreement, excluding a transfer to an Affiliate and/or a wholly owned subsidiary;

(f) the liquidation or insolvency of the Seller, except for any frivolous or vexatious petitions for winding up or insolvency or any petition for the winding up or insolvency of the Seller which is discharged, stayed or dismissed within 60 (sixty) days of commencement thereof, or, if earlier, the date on which it is advertised;

(g) the Seller is in material breach of its obligations under this Agreement and fails to remedy such breach within sixty (60) days of receipt of the notice of breach, provided that if such failure cannot be remedied by the Seller within such period of sixty (60) days with the exercise of reasonable diligence, then such cure period shall be extended by mutual agreement for an additional reasonable period of time (not to exceed a further sixty (60) days), so long as such failure is capable of being remedied with the exercise of reasonable diligence and the Seller is exercising reasonable diligence to remedy such failure;

(h) cancellation of the Generation Licence;

(i) failure of the Seller to pay any sum or sums due and owing to NamPower within thirty (30) days of the due date therefor;

(j) any environmental failure as follows:
   i. where, as a result of an environmental failure on the part of or attributable to the Seller, a Seller Consent is withdrawn by the Competent Authority rendering it unlawful for the Seller to carry on any activity for which such permission is required; or
   ii. where, as a result of an environmental failure on the part of or attributable to the Seller, a directive or order is made by any Competent Authority or any court for the cessation of any of the Seller’s activities, in either case rendering it unlawful for the Seller to perform any material obligations under this Agreement; or
   iii. in the event of any persistent or recurring material environmental failures over a period of at least six (6) consecutive months, in respect of which the Seller has received a final warning to desist, from a Competent Authority, with which the Seller has not complied.

The Seller shall, to the extent that it has knowledge of the same, promptly notify NamPower in writing of the occurrence of any Seller Event of Default.

18.3 NamPower Event of Default

Each of the following shall constitute a “NamPower Event of Default” to the extent that it is not caused by a Force Majeure Event or Seller Event of Default and shall entitle the
Seller to issue a Notice of Intention to Terminate to NamPower:

(a) failure of NamPower to pay any sum or sums due and owing to the Seller within thirty (30) days of the due date therefor;

(b) NamPower is in material breach of its obligations under this Agreement and fails to remedy such breach within 60 (sixty) days of receipt of the notice of breach, provided that if such failure cannot be remedied by NamPower within such period of sixty (60) days with the exercise of reasonable diligence, then such cure period shall be extended by mutual agreement for an additional reasonable period of time (not to exceed a further thirty (30) days), so long as such failure is capable of being remedied with the exercise of reasonable diligence and NamPower is exercising reasonable diligence to remedy such failure, excluding in the event of NamPower's failure to pay any sum or sums due and owing to the Seller under this Agreement, which shall be remedied within thirty (30) days of receipt of the notice of breach;

(c) a NamPower Transmission Default occurs and is not remedied within the period, if any, specified for remedy for such breach in the Transmission Connection Agreement and the Transmission Connection Agreement is terminated; or

(d) the liquidation or insolvency of NamPower, except for any frivolous or vexatious petitions for winding up or insolvency or any petition for the winding up or insolvency of NamPower which is discharged, stayed or dismissed within sixty (60) days of commencement thereof or, if earlier, the date on which it is advertised.

NamPower shall, to the extent that it has knowledge of the same, promptly notify the Seller in writing of the occurrence of any NamPower Event of Default.

18.4 Notice of Intention to Terminate and Termination Notice

18.4.1 A Party may serve a Notice of Intention to Terminate on the other Party upon the occurrence of any of the following events:

(a) in the event that the Conditions Precedent are not satisfied (or waived by both Parties) in accordance with the provisions of Clause 4;

(b) in the event that either Party is unable to perform all or a material part of its obligations under this Agreement for reasons for a Force Majeure Event (or the effects thereof) continuing for a consecutive period of more than twelve (12) months;

(c) in the event that a Change in Costs entitling it to issue such a Notice of Intention to Terminate as provided for in Clause 15.2.8 or Clause 18.4 occurs; or

(d) in the event of a Seller Event of Default or a NamPower Event of Default (as the case may be).

18.4.2 Following the issue of a Notice of Intention to Terminate pursuant to Clause 18.4.1, except if due to a default in payment by NamPower, the Parties shall consult for thirty (30) days, or such longer period as the Parties may agree, to determine what steps need to be taken to prevent termination of this Agreement. Failing agreement within such time, the Party having given the Notice of Intention to Terminate may terminate this Agreement forthwith by delivering a Termination Notice to the defaulting Party.

18.4.3 [The termination of this Agreement shall be subject to the Facilities Agreement, and in the event of a conflict, the terms of the Facilities Agreement shall prevail.]

18.5 Consequences of Termination

18.5.1 Subject to Clause 18.5.2, upon termination of this Agreement, both Parties shall
be excused and relieved of all obligations and liabilities under this Agreement, except for payment of all amounts due, and liabilities resulting from any action, inaction or event occurring before the Termination Date or as a result of the termination.

18.5.2 On termination of this Agreement for a NamPower Event of Default, NamPower shall be liable to pay the Seller, within sixty (60) days, the relevant Termination Amount set out in Annexure G (the Termination Amount), to the account specified by the Seller, which amount shall be payable gross of any applicable withholding or other Taxes, and undertake such other actions in favour of the Seller as are specified in Annexure G (The Termination Amount).

18.5.3 In the event of a termination by NamPower as a result of a Seller Event of Default, NamPower shall be entitled to claim its direct losses and costs arising from such termination. These losses and costs shall be capped at 10% of the EPC Contract Amount, and calculation thereof shall be based on Monthly Generation Forecasts and the rates as set out in Annexure C (Energy Payment).

18.5.4 For avoidance of doubt, NamPower shall not assume any liability for termination of this Agreement as a result of a Force Majeure Event, Change in Law, Government Action, or a Seller Event of Default.

19. LIABILITY FOR DAMAGE OR LOSS

19.1 Indemnity

Each Party shall indemnify, defend and hold harmless the other Party (and its Affiliates) against all losses, damages, claims, liabilities, costs or expenses which the other Party may suffer or incur by reason of any claim for or in respect of: (i) the death or personal injury of any individual or (ii) damage to property or (iii) any third-party liabilities and damages, arising out of the indemnifying Party’s default under this Agreement, save where that default is excused in terms of Clause 16 (Force Majeure) of this Agreement, except to the extent that the Party seeking to be indemnified is at fault or is negligent.

This amount shall be capped to NAD [...].

19.2 Liability

19.2.1 In the event that any losses, claims or damages ("Losses") in relation to any death or personal injury arises out of or results from the joint or concurrent negligence or the intentional conduct of both Parties, each Party shall be liable in proportion to its degree of negligence or fault. The Parties shall make all reasonable endeavours to mitigate any Losses they may suffer as a result of the breach of any of the other Party’s material obligations under this Agreement.

19.2.2 Neither Party shall be liable to the other Party save as expressly provided for in this Agreement.

19.3 Damages

19.3.1 Other than as provided in this Agreement, in no event shall either Party be liable to the other Party, at law or in equity and whether based on contract, tort or otherwise, for any indirect, incidental, special or consequential damages incurred by such Party or any third party as a result of the performance or non-performance of the obligations imposed pursuant to this Agreement, irrespective of the causes thereof, including fault or negligence. To the extent that any damages required to be paid hereunder are liquidated, the Parties acknowledge that such damages are difficult or impossible to determine, or otherwise obtaining an adequate remedy is
inconvenient, and the liquidated damages constitute a reasonable approximation of the harm or loss that may be suffered by the Party affected thereby.

19.3.2 For avoidance of doubt, the aforesaid limitation on liability does not affect or limit the Termination Amount payable to Seller by NamPower pursuant to Clause 18.5 or payment by the Seller to NamPower in case of termination as a result of Seller Event of Default pursuant to Clause 18.5.3.

20. PROJECT INSURANCE

20.1 Insurances and information

20.1.1 The Seller shall, in accordance with this Clause 20, obtain and maintain in effect, at its own cost and expense, such insurance coverage as is required by:

(a) any Laws; and
(b) the standards of a Reasonable and Prudent Operator,

(together with insurances procured pursuant to Clause 20.1.2 and Clause 20.1.3 below, the “Project Insurances”).

20.1.2 The Seller shall take reasonable steps to ensure that it and its contractors obtain and maintain in effect at all times such insurance cover as is appropriate for a contractor acting as a Reasonable and Prudent Operator.

20.1.3 Nothing in this Clause 20 shall prevent the Seller from procuring additional insurance cover, over and above such insurance coverage as it is required to procure pursuant to this Clause 20.1.

20.1.4 The Seller shall provide a copy of all Project Insurances to NamPower, along with such documentation as may be necessary to evidence that the Project Insurances are in full force and effect and otherwise in compliance with the other requirements of this Clause 20.

20.1.5 Not later than thirty (30) days after the date on which the policy for any Project Insurance is issued, amended to any material extent or renewed in accordance with its terms, the Seller shall cause its insurers or agents to provide NamPower with such documentation as may be reasonably necessary to evidence that such policy is in force and the amount of the cover thereunder.

20.1.6 The Seller shall provide NamPower, from time to time, with copies of receipts or statements from the Seller’s insurers or agents evidencing payment by the Seller of the premiums in respect of each Project Insurance and the amount of cover.

20.2 Endorsements and Clauses

20.2.1 The Seller shall cause its insurers to waive all rights of subrogation against NamPower in respect of a claim arising under any of its Project Insurances (except, in so far as the waiver of such rights against the Seller) is concerned in circumstances where the Seller has by its act or omission vitiated the Project Insurances.

20.2.2 The Seller shall ensure that the policy for each of its Project Insurances contains a provision:

(a) naming NamPower as additional insured thereunder (other than in respect of loss of revenue related to Project Insurances);

(b) that each additional insured shall be separately indemnified in respect of claims by them under the Project Insurances, provided that the liability of
the insurer concerned shall not be increased beyond the amount for which the insurer would have been liable for in the absence of such separate indemnity provision;

(c) for automatic reinstatement of the sum insured on the basis that the sum insured shall not be reduced by the amount of any claim whether paid or due and payable; and

(d) recording that such Project Insurance is primary insurance and shall not be subject to contribution by any other insurance.

20.3 Application of insurance proceeds

Unless NamPower otherwise agrees in writing, the Seller shall apply proceeds of any insurance claim made due to loss or damage to the Power Plant or any part of the Power Plant (other than claims under business interruption insurance, delay in start-up, any other loss of revenue policies or third party liability policies) towards reinstatement, reconstruction, replacement, repair or renewal of such loss or damage in the first instance.

21. WAIVER OF SOVEREIGN IMMUNITY

The Parties hereby unconditionally and irrevocably agree that the entry into and performance of this Agreement by the Parties constitute private and commercial acts and neither of the Parties nor any of their assets is entitled to immunity from arbitration or legal process or jurisdiction on grounds of sovereignty or otherwise.

22. CESSION AND ASSIGNMENT

22.1 Prior Consent

The Parties shall not be entitled to cede or assign this Agreement or any of its rights and obligations without the prior written consent of the other Party except as provided in Clause 22.2 hereto. Such consent shall not be unreasonably withheld.

22.2 Restructuring

22.2.1 Notwithstanding the above, NamPower shall be entitled to cede, assign or transfer its rights and obligations under this Agreement to a third party but only in the context of: (i) the dissolution of NamPower; (ii) the restructuring, amalgamation, reorganisation or analogous event of NamPower; or (iii) the transfer of all or any material part of NamPower's property, assets and undertaking to a third party or successor, provided that, in each case such dissolution, restructuring, amalgamation, reorganisation, analogous event or transfer is at the instruction of or sanctioned by the Government of the Republic of Namibia or any Competent Authority.

22.2.2 In the event of a restructuring or reorganisation of NamPower resulting in the cession or assignment of this Agreement to another entity in the NamPower group of companies, NamPower shall be jointly and severally liable with the newly created entity for the performance of its obligations in terms of this Agreement.

23. SEVERABILITY

Each Party agrees that it will perform its obligations under the terms of this Agreement in accordance with all applicable Laws, rules and regulations now or hereafter in effect. If any Clause or Clauses of this Agreement is found to be illegal or unenforceable, then the Parties shall take all possible steps to re-negotiate and to re-structure this Agreement in
such a manner that it will comply with provisions of such laws. If this cannot be done, the offending Clause or Clauses will be removed and regarded as pro non scripto, and the remaining Clauses of this Agreement shall remain binding on the Parties.

24. **ANTI-CORRUPTION MEASURES**

Each Party to this Agreement undertakes not to offer, directly or indirectly, an advantage to third parties and not to request, promise or accept for its own benefit or for the benefit of a third party, illicit gifts with the purpose of obtaining favourable judgement in the performance of this Agreement or any associated projects or any other negotiations between the Parties not directly related to this Agreement. The Parties undertake to impose and enforce these anti-corruption measures on their employees, Affiliates and agents.

25. **CONFIDENTIALITY**

25.1 **Confidential Information**

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

25.2 **Duty to Maintain Confidentiality**

Each Party will use the same means as it uses to protect its own confidential information, but in no event less than reasonable means, to prevent the disclosure and to protect the confidentiality of such information. No Confidential Information as referred to in Clause 25.1 will be disclosed by the recipient Party, other than to its agents, representatives or employees and to Contractors, without the prior written consent of the other Party.

25.3 **Exclusions**

These provisions shall not apply to information which is:

(a) publicly known or has become publicly known through no unauthorised act of the recipient Party;
(b) rightfully received by the recipient Party from a third party;
(c) independently developed by the recipient Party without use of the other Party’s information;
(d) disclosed by the other Party to a third party without similar restrictions;
(e) required to be disclosed pursuant to a requirement of a Competent Authority or any applicable Law, so long as the Party required to disclose the information gives the other Party prior notice of such disclosure; or
(f) publicly disclosed with the other Party’s written consent.

25.4 **Disclosure**

All media releases, public announcements and public disclosures by any Party or their respective employees or agents relating to this Agreement or its subject matter, including without limitation promotional marketing material, shall be co-ordinated with and approved by each Party prior to the release thereof. The foregoing will not apply to any announcement intended solely for internal distribution by any Party or to any disclosure
required by legal, accounting or regulatory requirements beyond the reasonable control of the Party in question.

26. **SURVIVAL**

Termination of this Agreement shall not affect the accrued rights and liabilities of the Parties hereto and the provisions of Clause 14 (Applicable Law and Jurisdiction), Clause 18 (Termination), Clause 17 (Dispute Resolution) and Clause 25 (Confidentiality) shall continue to have effect notwithstanding the termination of this Agreement.

27. **NOTICES AND DOMICILIAM**

27.1 **Domicilia Citandi et Executandi**

The Parties choose as their *domicilia citandi et executandi* their respective addresses specified in Clause 27.2 hereof, for all purposes arising out of or in connection with this Agreement, at which addresses all process and notices arising out of or in connection with this Agreement, its breach or termination may be served upon or delivered to the Parties.

27.2 **Addresses**

For the purposes of Clause 27.1, the Parties’ respective addresses shall be:

In the case of the Seller:

[.........]

In the case of NamPower:

Namibia Power Corporation (Pty) Ltd
NamPower Centre
15 Luther Street
PO Box 2864
Windhoek, Namibia

Or at such other postal and physical address in Namibia, not being a post office box or poste restante, or which the Party concerned may notify the other in writing.

27.3 **Delivery of Notices**

All notices, notifications, requests, demands or other communications given in terms of this Agreement shall be in writing and shall:

(a) if delivered by hand be deemed to have been duly received by the addressee on the date of delivery;

(b) if posted by prepaid registered post be deemed to have been received by the addressee on the 7th (seventh) day following the date of such posting;

(c) if successfully transmitted by facsimile with successful transmission confirmed be deemed to have been received by the addressee one day after dispatch; or

(d) if successfully transmitted by electronic mail and having received a read receipt from the addressee, be deemed to have been received by the recipient on the first Business Day on the day of receiving the confirmation receipt.
28. **WRITTEN NOTICE**

Notwithstanding anything to the contrary contained in this Agreement, a written notice or communication actually received by one Party from the other, including by way of facsimile or electronic mail transmission, shall be adequate written notice or communication to such Party.

29. **SHAREHOLDING IN SELLER**

The controlling shareholder (holder of not less than fifty-one percent (51%)) of the shares in the Seller at the Signature Date shall not transfer control in the Seller during the Term, unless such transfer of control has been approved by NamPower in writing prior thereto, such approval not be unreasonably withheld.

30. **GENERAL AND MISCELLANEOUS**

30.1 **Sole Record of Agreement**

This Agreement constitutes the sole record of the agreement between the Parties with regard to the subject matter hereof. No Party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein.

30.2 **No amendments except in writing**

No addition to, variation of, or agreed cancellation of, this Agreement shall be of any force or effect unless in writing and signed by or on behalf of the Parties.

30.3 **Waivers**

Any relaxation or indulgence which any Party may grant to any other shall not constitute a waiver of the rights of that Party and shall not preclude that Party from exercising any rights which may have arisen in the past or which might arise in future.

30.4 **Approvals and Consents**

An approval or consent given by a Party under this Agreement shall only be valid if in writing and shall not relieve the other Party from responsibility for complying with the requirements of this Agreement nor shall it be construed as a waiver of any rights under this Agreement except as and to the extent otherwise expressly provided in such approval or consent, or elsewhere in this Agreement.
Pro-Forma PPA: Subject to Contract

IN WITNESS whereof the said Parties have signed this Agreement on the dates and at the places specified hereunder.

On behalf of the Seller by the signatory who warrants that he is duly authorised:

Signed: ___________________ Title: _________________________
Witness: ___________________ Title: _________________________
This _________ day of _________
At: _____________________________

On behalf of NamPower by the signatory who warrants that he is duly authorised:

Signed: ___________________ Title: _________________________
Witness: ___________________ Title: _________________________
This _________ day of _________
At: _____________________________
Annexure A  CONSENTS

A.1 NamPower’s Consents
  1. Transmission licence amendment (if required) / EIA approvals / Board consent
  2. Letter of No Objection from NamPower’s lenders
  3. Approval by the ECB of the Base Tariff and tariff structure

A.2 The Seller’s Consents
  1. Those stipulated in the conditions of the Licence including suspensive conditions, site permit, EIA, Generation licence
Annexure C    PLANT PERFORMANCE

C.1 Contracted Capacity

The Contracted Capacity of the Power Plant shall be:

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C.2 Contracted Availability

The minimum Capacity that shall be available for dispatch at all times (the “Contracted Availability”) shall be [ninety-five percent (95%)] of the Contracted Capacity.

C.3 Net Fuel Consumption

The Net Fuel Consumption of the Power Plant shall be [...] litres of [...] per net kWh metered as injected into the Grid.
Annexure D  PAYMENTS FOR CAPACITY AND ENERGY

This Annexure sets out the Payments payable under Clause 9 of this Agreement, for each Billing Period. The year referred to in this Annexure is the NamPower financial year i.e. 1st of July to 30st of June and not a calendar year i.e. from 1st of January to 31st of December.

D.1 Capacity Payment
TBA

D.2 Energy Payment
TBA

D.3 Fuel Payment
The Fuel Payment in any Billing Period shall be determined in accordance with the following formula:

Fuel Payment = Metered Energy x Net Fuel Consumption x Fuel Price

D.4 Adjustment of Capacity Payment for Failure to Meet Contracted Availability
In any month where in any hour the Available Capacity is less than the Contracted Availability other than:

(a) for reasons of Force Majeure; or
(b) with NamPower’s approval;
then the Capacity Payment shall be adjusted as follows:

[TBA]

D.5 Annual Indexation
TBA

D.6 Transmission Use of System Charge
The Transmission Use of System Charge shall be calculated as defined in Paragraph E8 of Annexure E to the Connection Offer Letter:

NAD […] calculated in accordance with the ECB generation and Transmission methodology which is based on the average generation from each generator during the peak load flow in the Transmission system (such amount will be reviewed annually in accordance with the ECB approval).

D.7 Cost Basis of Capacity Payment and Fuel Payment
The following cost elements shall be considered when determining the impact of any Change in Cost:

(a) TBA
### Annexure E  FORMAT OF WEEKLY GENERATION FORECAST

Forecast Generation Required in Week Commencing: Monday [...]  

<table>
<thead>
<tr>
<th>Time</th>
<th>Monday</th>
<th>Tuesday</th>
<th>Wednesday</th>
<th>Thursday</th>
<th>Friday</th>
<th>Saturday</th>
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Annexure F  LAYOUT DIAGRAM OF POWER PLANT
Annexure G  CALCULATION OF TERMINATION AMOUNT

G.1  Definitions

"Breakage Costs" means all Losses that have been or will be reasonably and properly incurred by the Seller and its Contractors as a result of the termination of this Agreement, including (without limitation):

(a) the cost of any materials or goods ordered for the purpose of the Generation Project,
(b) any expenditure incurred in anticipation of the provision of services or the completion of works in the future;
(c) any contracts placed that cannot be cancelled without such Losses being incurred;
(d) the cost of demobilization of the Generation Project;
(e) redundancy payments for employees of the Seller and its Contractors that have been or will be reasonably incurred by the Seller or its Contractors as a result of termination of this Agreement;

"Losses" means all damages, losses, liabilities, costs, expenses (including legal and other professional charges and expenses), and charges whether arising under statute, contract or at law or in connection with judgments, proceeding, internal costs or demands;

G.2  Compensation on Termination for NamPower Event of Default

In the event of termination as a result of a NamPower Event of Default, NamPower will pay an amount (a "Termination Amount") which shall equal the aggregate of the following, calculated at the date of termination:

(a) any Breakage Costs incurred by the IPP and its Contractors; and
(b) any documented costs and expenses of enforcement or protection or preservation of security properly and reasonably incurred by the Seller from the date of termination to the date of payment by NamPower;
(c) [and other compensation amount TBA].

NamPower shall not assume any liability for termination of this Agreement as a result of a Force Majeure event, Change in Law, Government Action, or a Seller Event of Default.
Annexure H  CONSTRUCTION PROGRAMME

H.1  Milestone Dates]

[TBA]
Annexure I  **COMMISSIONING SCHEDULE**

**I.1 Acceptance/ Performance Test**

Prior to synchronisation of the Power Plant, the Seller shall be required to get the Power Plant certified for the requisite acceptance/performance test with respect to the entire Power Plant as may be laid down by an agency identified by both Parties to carry out testing and certification for the Power Plant.

**I.2 Synchronisation with and connection to the Transmission System**

I.2.1 The Seller shall give NamPower at least 60 (sixty) days’ advanced preliminary written notice and at least 30 (thirty) days advanced final written notice, of the date on which it intends to synchronise the Power Plant to the Transmission System.

I.2.2 Subject to Clause I.2.1 above, the Power Plant may only be synchronised and/or connected by the Seller to the Transmission System when it meets all the connection conditions prescribed in any Grid Code then in effect and otherwise meets all other legal requirements for synchronisation to the Transmission System and provided that:

(a) the Metering Equipment has been installed, tested and successfully commissioned in accordance with the minimum testing standards referred to in the Grid Code and any additional testing standards as may apply in relation thereto;

(b) the Transmission Connection Agreement is in full force and effect and any conditions precedent to its effectiveness have either been fulfilled or duly waived in accordance with its terms; and

(c) the Connection Works referred to in the Transmission Connection Agreement have been completed and commissioned in accordance with the terms of the Transmission Connection Agreement and the Grid Code.

I.2.3 The synchronisation equipment shall be installed by the Seller at its generation facility of the Power Plant at its own cost. The Seller shall synchronise its system with the Transmission System only after the approval of synchronisation scheme is granted by the National Control Centre.

I.2.4 The Seller shall immediately after each synchronisation/tripping of the Power Plant, inform the National Control Centre in accordance with the applicable Grid Code.

**I.3 Testing and commissioning**

I.3.1 Following connection and/or synchronisation, as the case may be, of the Power Plant with the Transmission System as described in Clause I.2 above (Synchronisation with and connection to the Transmission System) the Seller shall test and commission the Power Plant in accordance with the Grid Code, the Transmission Connection Agreement, the standards of a Reasonable and Prudent Operator and the Construction Programme, so as to cause the Commercial Operation Date to fall on or before the Target Commercial Operation Date.

I.3.2 The Seller shall be required to conduct the Power Project Acceptance Test for the purposes of, inter alia, achieving the Commercial Operation Date and determining the initial capacity of the Power Plant (and in this regard, the Power
Project Acceptance Test shall serve as the dependable capacity Test for the Power Plant).

I.3.3 The Seller shall give NamPower not less than ten (10) days' prior written notice of each of the Power Project Acceptance Tests, and NamPower or its nominated representative shall be entitled to attend and witness the Power Project Acceptance Tests.

I.3.4 At all times from the Effective Date to the Commercial Operation Date (including during the conduct of the Power Project Acceptance Tests), NamPower shall co-operate with the Seller, provide load for such testing and, subject to the terms of this Agreement, at the request of the Seller, dispatch the Power Plant up to its full available capacity as notified by the Seller to NamPower immediately prior to the Power Project Acceptance Tests.

I.3.5 Immediately following the Power Project Acceptance Tests, the Seller shall provide NamPower with a copy of all relevant data and reports from the relevant Power Project Acceptance Test, including, in respect of the Power Project Acceptance Test, the determination of the dependable capacity of the Power Plant.

I.3.6 If a Power Project Acceptance Test has been commenced and the Seller is prevented, hindered or delayed in completing such Power Project Acceptance Test, or any Power Project Acceptance Test is not duly completed, due in either case to a NamPower Event of Default, NamPower shall bear the reasonable costs directly incurred by the Seller in the performance of such prevented, hindered or delayed Power Project Acceptance Test.
TRANSMISSION CONNECTION AGREEMENT

BETWEEN

NAMPOWER

AND

........................ (PROPRIETARY) LIMITED

This Document constitutes Annexure H of the
Request for Tender: Short-Term Power Supply for Namibia
Issued Friday 30 October 2015
NamPower Tender No. NPWR/2015/65
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1.2  Interpretation

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3  CONDITIONS PRECEDENT
3.1  Charges and Security
3.2  Consents and Approvals
3.3  Scope of this Agreement

4  CHARGES AND SECURITY

5  RESPONSIBILITIES OF CUSTOMER

6  DELAYS IN COMMERCIAL OPERATION DATE OF TRANSMISSION

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22.4 Disclosure
22.5 Survive Termination

23 NOTICES
23.1 Giving of Notices
23.2 Address for Notices
23.3 Notice of Change of Address

24 MISCELLANEOUS
THIS TRANSMISSION CONNECTION AGREEMENT is made on ______, - , and entered BETWEEN:

(1)  NAMIBIA POWER CORPORATION (PROPRIETARY) LIMITED, a company incorporated under the laws of the Republic of Namibia with registration number 2051 and having its registered office at NamPower Centre, 15 Luther Street, Windhoek, Namibia ("NamPower"), acting in accordance with the Transmission Licence issued by the Electricity Control Board of Namibia and tasked with the responsibility of owning, operating and maintaining the Transmission System; and

(2)  IPP (PTY) LTD a company incorporated in terms of the Laws of Namibia (registered under company registration number: ____________) and having its registered offices at __________________________, Namibia (hereinafter referred to as the “Customer”).………………………………………….. and/or, subject to the Electricity Act’s requirements on the transfer of a licence, its Affiliate and/or a wholly owned Namibian subsidiary to be set specifically for the purposes of this Agreement, a company incorporated under the laws of the Republic of Namibia (Registration Number: …..) and having its registered office at ……..

(together, the “Parties” and “Party” shall mean either of them)
RECITALS:

(a) NamPower owns and operates the Transmission System and may enter into agreements with legal entities licensed to undertake the generation of electrical energy (a) for the connection of their licensed power plants to the Transmission System (as such term is defined below), (b) for the use by such licensed entities of the Transmission System in connection with their generation undertakings, and (c) for matters relating to the operational interface between such licensed power plants and the Transmission System;

(b) The Customer has applied for and been granted a Generation Licence under the Electricity Act, Act No 4 of 2007;

(c) The Customer and NamPower acknowledge that this Agreement is entered into pursuant to the REFIT Programme of the Government of the Republic of Namibia;

(d) The Customer has applied to NamPower for connection of the Customer's Facility to be developed by the Customer at ………………….. in the ……………………. region in Namibia (hereinafter referred to as the “Project Site”) to the Transmission System (as such term is defined herein);

(e) NamPower submitted a connection offer letter to the Customer, which the Customer has accepted (the “Connection Offer Letter”), of which an executed copy is attached hereto as Annexure I, such Connection Offer Letter being subject to the conclusion and coming into effect of this Agreement;

(f) NamPower has agreed to the connection of the Customer's Facility to the Transmission System at the Point of Connection, for the use by the Customer of the Transmission System in connection with their generation undertakings and for other matters relating to the operational interface between such licensed Customer's Facility and the Transmission System in accordance with this Agreement;

(g) This Agreement, among other, sets out the terms and conditions upon which (a) NamPower and/or the Customer shall undertake the connection works which will physically connect the Customer's Facility (as such term is defined below) to the Transmission System, (b) NamPower shall permit the Customer to use the Transmission System in connection with its licensed generation undertaking at the Customer's Facility, (c) the Parties shall cooperate with each other in relation to the operational interface between the Customer's Facility and the Transmission System, and (d) Each party shall pay to the other party the required charges as set out in this Agreement.

The Parties further acknowledge that the Electricity Control Board's regulatory oversight extends to amendments to this Transmission Connection Agreement (TCA) and that any amendments to this TCA must be submitted to the ECB for regulatory oversight prior to signature thereof.
IT IS HEREBY AGREED as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, except where the context requires otherwise, the following capitalised words and expressions shall have the meanings assigned to them below, and cognate words and expressions shall have corresponding meanings; terms that are not defined shall have the meaning specified in either the PPA or the Connection Offer Letter:

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
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<tbody>
<tr>
<td>&quot;Affected Party&quot;</td>
<td>has the meaning given to it in Clause 16.1.1(a)(Definition of Force Majeure);</td>
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<tr>
<td>&quot;Affiliate&quot;</td>
<td>means in respect of either Party, any Person (excluding any government), hereinafter referred to as &quot;company&quot; which directly or indirectly: (a) is controlled by such Party; or (b) controls such Party; or (c) is controlled by a company which directly or indirectly controls such Party. For the purposes of the foregoing definition: (i) a company is directly controlled by another company or companies, if the latter company holds shares, quotas or voting rights, carrying in the aggregate the majority (more than fifty percent) of the votes exercisable at shareholders' meetings of the former company or companies, and (ii) a particular company is indirectly controlled by a company or companies, hereinafter called the &quot;parent company&quot; or &quot;parent companies&quot;, if a series of companies can be specified, beginning with the parent company or parent companies and ending with the particular company, so related that each company of the series, except the parent company or parent companies, is directly controlled by one or more of the companies earlier in the series;</td>
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<tr>
<td>(a) &quot;AFSA&quot;</td>
<td>means the Arbitration Foundation of Southern Africa;</td>
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<td>&quot;AFSA Rules&quot;</td>
<td>means the arbitration rules of AFSA in force from time to time;</td>
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<tr>
<td><strong>“Agreed Interest Rate”</strong></td>
<td>means the prime lending rate (being the minimum overdraft rate at which a bank would lend to its best customers) as published by Standard Bank Namibia from time to time plus 4%;</td>
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<tr>
<td><strong>“Agreement”</strong></td>
<td>means this Transmission Connection Agreement (TCA) between NamPower and the Customer;</td>
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<tr>
<td><strong>“Annexures”</strong></td>
<td>means the documents annexed to this Agreement as:</td>
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<td>a) Annexure 1 - Connection Offer Letter, including:</td>
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<td>b) Annexure A – Single Line Diagrams;</td>
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<td>c) Annexure B - the Connection Facilities – HV Lines and Substations;</td>
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<td>d) Annexure C - the Project Monitoring;</td>
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<td>e) Annexure D - the Construction Programme:</td>
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<td>(i) Annexure D1 - Customer Construction Programme;</td>
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<td>(ii) Annexure D2 - NamPower Construction Programme;</td>
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<tr>
<td></td>
<td>(iii) Annexure D3 – Connection Works Milestone dates</td>
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<td>f) Annexure E - the Transmission Charges;</td>
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<td>g) Annexure F - the NamPower Technical Specifications and Requirements;</td>
</tr>
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<td>h) Annexure G - the NamPower Transmission Tariff Structure;</td>
</tr>
<tr>
<td></td>
<td>i) Annexure H - Form of Bank Guarantee;</td>
</tr>
<tr>
<td><strong>&quot;Auxiliary Power&quot;</strong></td>
<td>means power purchased by the Customer from NamPower and imported to the Customer's Facility, for the Customer's own use;</td>
</tr>
<tr>
<td><strong>“Bank Guarantee”</strong></td>
<td>means a bank guarantee substantially in the form set out in Annexure H (Form of Bank Guarantee) which (a) is issued by a bank which holds an Approved Credit Rating and is registered under applicable Law to carry on the business of a bank in Namibia or South Africa with a corresponding branch in Namibia or a bank registered in terms of the Namibian Banking Institution Act of 1998 (Act No.2 of 1998),</td>
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<tr>
<td><strong>Pro-forma TCA: Subject to Contract</strong></td>
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<table>
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<tr>
<th><strong>Pro-forma TCA: Subject to Contract</strong></th>
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</table>

- and (b) constitutes an on-demand, unconditional and irrevocable commitment to pay by the bank by which it is issued;

<table>
<thead>
<tr>
<th><strong>“Bond Amount”</strong></th>
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<tr>
<td>As provided in the Connection Offer Letter in Annexure 1;</td>
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<tr>
<th><strong>“Breaching Party”</strong></th>
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<tbody>
<tr>
<td>has the meaning given to it in Clause 17.1.1 (Notice of Breach);</td>
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<tr>
<th><strong>&quot;Business Day&quot;</strong></th>
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<tbody>
<tr>
<td>means any day except a Saturday, a Sunday or a public holiday in Namibia;</td>
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<thead>
<tr>
<th><strong>“Change in Costs”</strong></th>
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<tbody>
<tr>
<td>has the meaning given to it in the Power Purchase Agreement;</td>
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<tr>
<th><strong>“Change in Law”</strong></th>
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<tr>
<td>has the meaning given to it in the Power Purchase Agreement;</td>
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<tr>
<th><strong>&quot;Charge&quot; or “Charges”</strong></th>
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<td>means the Transmission Charges specified in Annexure E of the Connection Offer Letter and as they may be amended from time to time pursuant to Clause 10.2 (Payment), charges approved by the ECB and any additional charges that may become applicable pursuant to Clause 10.3 (Disputed Amounts);</td>
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<tr>
<th><strong>“Commercial Operation Date of the Customer’s Facility”</strong></th>
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<tr>
<td>means the day determined to be the Commercial Operation Date of the Customer’s Facility under the PPA;</td>
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<tr>
<th><strong>“Confidential Information”</strong></th>
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<tr>
<td>has the meaning given to it in Clause 22.1 (Confidential Information);</td>
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<tr>
<th><strong>&quot;Connection&quot;</strong></th>
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<tr>
<td>means the connection of the Customer’s Facility to the Transmission System;</td>
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<tr>
<th><strong>“Connection Date”</strong></th>
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<tr>
<td>means the date of connection of the Customer’s Facility to the Transmission System;</td>
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<thead>
<tr>
<th><strong>“Connection Facilities”</strong></th>
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<tr>
<td>means the transmission plant and equipment forming part of the Transmission System that are required to provide Connection for the Customer’s Facility;</td>
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<table>
<thead>
<tr>
<th><strong>&quot;Connection Offer Letter&quot;</strong></th>
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</thead>
<tbody>
<tr>
<td>means the connection offer letter to the Customer, as attached hereto as Annexure 1;</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>&quot;Connection Works&quot;</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>means the NamPower Connection Facilities and the Customer’s Facility Connection Equipment;</td>
</tr>
<tr>
<td><strong>“Consents”</strong></td>
</tr>
<tr>
<td>---------------</td>
</tr>
<tr>
<td><strong>&quot;Construction Programme&quot;</strong></td>
</tr>
<tr>
<td><strong>&quot;Contract Year&quot;</strong></td>
</tr>
<tr>
<td><strong>“Customer’s Facility”</strong></td>
</tr>
<tr>
<td><strong>&quot;Customer's Facility Connection Equipment&quot;</strong></td>
</tr>
<tr>
<td><strong>“Daylight Hours”</strong></td>
</tr>
<tr>
<td><strong>“Capacity Payment”</strong></td>
</tr>
<tr>
<td><strong>“De-Energise”</strong></td>
</tr>
<tr>
<td><strong>“Disconnect”</strong></td>
</tr>
</tbody>
</table>

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*STD TCA 122014*
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<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>&quot;Pro-forma TCA: Subject to Contract&quot;</td>
<td></td>
</tr>
<tr>
<td>&quot;Disconnection&quot;, &quot;Disconnected&quot; and &quot;Disconnecting&quot;</td>
<td>shall be construed accordingly;</td>
</tr>
<tr>
<td>&quot;Electricity Act&quot;</td>
<td>means the Namibian Electricity Act, Act No 4 of 2007, as amended or superseded from time to time;</td>
</tr>
<tr>
<td>&quot;Electricity Control Board&quot; or &quot;ECB&quot;</td>
<td>means the Electricity Control Board of Namibia constituted and empowered under the Electricity Act;</td>
</tr>
<tr>
<td>&quot;Effective Date&quot;</td>
<td>has the meaning given to it in Clause 2.1 (Term);</td>
</tr>
<tr>
<td>&quot;Force Majeure Event&quot;</td>
<td>has the meaning given to it in Clause 16.1.3 (Definition of Force Majeure);</td>
</tr>
<tr>
<td>&quot;Generation Licence&quot;</td>
<td>has the meaning given to it in the Power Purchase Agreement;</td>
</tr>
<tr>
<td>&quot;Grid Code&quot;</td>
<td>means, at any time, the most recent version of the Grid Code published by the ECB pursuant to the Electricity Act of 2007;</td>
</tr>
<tr>
<td>&quot;Independent Expert&quot;</td>
<td>has the meaning given to it in Clause 20.2 (Reference of Technical Disputes to Independent Expert);</td>
</tr>
<tr>
<td>&quot;Indexed Tariff&quot;</td>
<td>has the meaning given to it in the PPA;</td>
</tr>
<tr>
<td>&quot;Law&quot;</td>
<td>has the meaning given to it in the PPA, mutatis mutandis;</td>
</tr>
<tr>
<td>&quot;Long Stop Date&quot;</td>
<td>means [twelve (12)] months from the Signature Date of this Agreement;</td>
</tr>
<tr>
<td>&quot;Make-up Period&quot;</td>
<td>has the meaning given to it in Clause 2.2 (Commencement and Term);</td>
</tr>
<tr>
<td>&quot;Maximum Export Capacity&quot;</td>
<td>means the maximum capacity (specified in clause 3 of the Connection Offer Letter in Annexure 1) at the Point of Connection of the Customer’s Facility for injection into the Transmission System;</td>
</tr>
<tr>
<td>&quot;Maximum Import Capacity&quot;</td>
<td>means the maximum capacity (specified in kVA in clause 3 of the Connection Offer Letter in Annexure 1) of the Point of Connection of the Customer’s Facility for taking power off the Transmission System;</td>
</tr>
<tr>
<td>&quot;Megawatt &quot; or &quot;MW &quot;</td>
<td>means a measure of active electrical power equal to one million watts;</td>
</tr>
</tbody>
</table>
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<table>
<thead>
<tr>
<th>Term</th>
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</tr>
</thead>
<tbody>
<tr>
<td>“Megavolt-amperes” or “MVA”</td>
<td>means a measure of active and reactive electrical power equal to one million volt-amperes;</td>
</tr>
<tr>
<td>&quot;Metering Equipment&quot;</td>
<td>means the Main Measuring System and the Check Measuring System for measuring active power, and measuring devices for measuring reactive power;</td>
</tr>
<tr>
<td>“Milestone”</td>
<td>means each key stage during the construction period as identified in the Construction Programme;</td>
</tr>
<tr>
<td>&quot;Monthly Extension Charges&quot;</td>
<td>As provided in Annexure E to the Connection Offer Letter in Annexure 1;</td>
</tr>
<tr>
<td>&quot;MWh&quot;</td>
<td>means a measure of active electrical energy equal to one MW of active electrical power supplied, conveyed or consumed in one hour;</td>
</tr>
<tr>
<td>“MVAh”</td>
<td>means a measure of active and reactive energy equal to one MVA of active and reactive electrical power supplied, conveyed or consumed in one hour;</td>
</tr>
<tr>
<td>“NAD” or “Namibian Dollar”</td>
<td>means the official currency of the Republic of Namibia;</td>
</tr>
<tr>
<td>&quot;NamPower Technical Specifications&quot;</td>
<td>as per Annexure F of the Connection Offer Letter in Annexure 1;</td>
</tr>
<tr>
<td>“Non-Breaching Party”</td>
<td>has the meaning given to it in Clause 17.1.1 (Notice of Breach);</td>
</tr>
<tr>
<td>“Notifying Party”</td>
<td>has the meaning given to it in Clause 17.1.2 (Notice of Breach);</td>
</tr>
<tr>
<td>“Operating Committee”</td>
<td>(b) has the meaning given to it in the PPA;</td>
</tr>
<tr>
<td>&quot;Party&quot;</td>
<td>means a party to this Agreement and shall include its successors in title, permitted assignees and permitted transferees;</td>
</tr>
<tr>
<td>&quot;Person&quot;</td>
<td>means any individual, company, corporation, firm, partnership, joint venture, undertaking, organisation, trust, government authority or government department (in each case whether or not having separate legal personality);</td>
</tr>
<tr>
<td>“Point of Connection”</td>
<td>means the point at which the Customer’s Facility is connected to the Connection Facilities as shown in Annexure A of the Connection Offer Letter in Annexure 1;</td>
</tr>
<tr>
<td>Term</td>
<td>Definition</td>
</tr>
<tr>
<td>------</td>
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</tr>
<tr>
<td>“Potentially-Breaching Party”</td>
<td>has the meaning given to it in Clause 17.1.2 (Notice of Breach); has the meaning as set forth in the Power Purchase Agreement</td>
</tr>
<tr>
<td>“Power Project”</td>
<td></td>
</tr>
<tr>
<td>“Power Purchase Agreement” or “PPA”</td>
<td>means the power purchase agreement for the sale of energy by the Customer to NamPower;</td>
</tr>
<tr>
<td>“Project&quot;</td>
<td>the connection of the Customer’s Facility to the Transmission System;</td>
</tr>
<tr>
<td>&quot;Project Site&quot;</td>
<td>has the meaning as set forth in the Power Purchase Agreement;</td>
</tr>
<tr>
<td>&quot;Project Costs&quot;</td>
<td>has the meaning given to it in Clause 9.1(Charges and Payments for Connection Works);</td>
</tr>
<tr>
<td>&quot;Project Documents&quot;</td>
<td>means this Agreement, the EPC Agreement, Power Purchase Agreement, the Generation Licence (as determined in the PPA), the Consents (as determined in the PPA), the Operation and Maintenance Agreement, and any other agreements or contracts in relation to the Project;</td>
</tr>
<tr>
<td>“Prudent Industry Practice”</td>
<td>has the meaning given to it in the Power Purchase Agreement;</td>
</tr>
<tr>
<td>“REFIT Programme”</td>
<td>means the Renewable Energy Feed-In Tariff Programme adopted by the Government of the Republic of Namibia through the Ministry of Mines and Energy, and implemented by the ECB and NamPower;</td>
</tr>
<tr>
<td>“Remedy Period”</td>
<td>has the meaning given to it in Clause 17.2.2 (Notice to Remedy);</td>
</tr>
<tr>
<td>“Scheduled Connection Date”</td>
<td>has the meaning set forth in the Connection Offer Letter in Annexure 1.</td>
</tr>
<tr>
<td>(c) “Scheduled Commercial Operation Date of Transmission”</td>
<td>(4) [●] months following the Effective Date of this Agreement</td>
</tr>
<tr>
<td>&quot;Scheduled Transmission System Outage&quot;</td>
<td>means a pre-scheduled interruption in the generating capacity of the Customer’s Facility or the transmission capacity of the Transmission System (as the case may be) agreed between the Parties (in accordance with Clause 7.3.3 (Maintenance and Outage Coordination) as the case may be);</td>
</tr>
</tbody>
</table>
“Signature Date” means the date on which the last Party to this Agreement signs this Agreement;

“Termination Date” has the meaning given to it in Clause 2.1.2 (Commencement and Term);

“Transmission Unavailability” has the meaning given to it in the PPA;

"Transmission Unavailability Threshold" has the meaning given to it in the PPA;

"Transmission Connection Equipment" means the Connection Equipment under the responsibility of NamPower, as specified in Annexure A and Annexure B;

"Transmission Default" (e) means the following events to the extent caused by NamPower which prevents the Customer from exporting power from the Point of Connection or use the Transmission System, namely:
- a delay in the Scheduled Connection Date or
- Transmission Unavailability exceeding the Transmission Unavailability Threshold as defined in the PPA.

"Transmission System" means the electricity transmission infrastructure in Namibia owned and operated by NamPower;

“Transmission Tariff Methodology” means the method for calculating the charges for the provision by NamPower of transmission-related services as approved from time to time by the ECB. As described in Annexure G to the Connection Offer Letter;

"Unscheduled Transmission System Outage" means any period when the Customer’s Facility or the Transmission System (as the case may be) is out of service to do repair work as a result of an unforeseen equipment failure or for any other reason.

1.2 Interpretation

In this Agreement, unless provided otherwise:

1.2.1 clause headings used in this Agreement have no effect on the interpretation or construction of any of the terms of the Agreement;

1.2.2 if any provision in a definition in this Agreement is a substantive provision conferring rights or imposing obligations on either Party, then, notwithstanding that it is in a definition, effect shall be given to it as a substantive provision of this Agreement;

1.2.3 if any provision in the recital is a substantive provision conferring rights or imposing obligations on either Party, then, notwithstanding that it is in the
recital, effect shall be given to it as a substantive provision of this Agreement;

1.2.4 unless otherwise specified, any reference to a recital, an Annexure or a Clause shall be reference to a recital, an Annexure or Clause in the Agreement;

1.2.5 any reference to another agreement or document (including the Grid Code) shall be construed as a reference to that other agreement or document as the same may have been, or may from time to time be, amended;

1.2.6 the use of the singular form of a word includes the plural form and the use of the plural form includes the singular;

1.2.7 any word or expression, cognate with respect to a word or expression defined in the Agreement shall bear a corresponding meaning;

1.2.8 the words “include” and “including” are to be construed without limitation;

1.2.9 wherever provision is made for the giving or issuing of any notice, decision, consent, acceptance, agreement, expression of satisfaction, endorsement, approval, certificate, instruction or determination by any Person, unless otherwise specified, such notice, decision, consent, acceptance, agreement, expression of satisfaction, endorsement, approval, certificate, instruction or determination shall be in writing (and writing shall be inclusive of mail transmitted electronically) and the words “notify”, “decide”, “consent”, “accept”, “agree”, “endorse”, “approve”, “certify”, “instruct” or “determine” and other cognate expressions shall be construed accordingly;

1.2.10 references to materials, information, data and other records shall be to materials, information, data and other records whether stored in electronic, written or other form;

1.2.11 a time of day shall be construed as a reference to Central African Time (CAT);

1.2.12 .

1.2.13 any reference to “month” shall mean a “calendar month”.

1.2.13 In the case of conflict between the provisions of the PPA and this Agreement, the provisions of the PPA shall prevail

2 COMMENCEMENT AND TERM

2.1 Term

2.1.1 This Agreement shall commence on the date on which the last Party to this Agreement signs this Agreement and shall become effective upon the date
that the conditions precedent have been met ("Effective Date") as set out in Clause 3 (Conditions Precedent).

2.1.2 This Agreement, unless terminated earlier by either Party in accordance with the provisions of this Agreement, shall terminate twenty five (25) years following the Commercial Operation Date of the Customer’s Facility (the "Termination Date").

2.2 Without limiting the generality of Clause 2.1 (Term), the Term shall be extended by the number of days which is equal to the aggregate number of days or part days during which a Party is unable to perform its obligation pursuant to a Force Majeure Event, and is relieved of its obligations to so perform in accordance with Clause 16 (Force Majeure) (the “Make-up Period”).

2.3 The occurrence of Force Majeure events during the Make-up Period shall give rise to a further extension of the Make-up Period.

2.4 All terms and conditions contained in this Agreement and the respective rights and obligations of the Parties shall remain unchanged for the duration of the Make-up Period.

3 CONDITIONS PRECEDENT

3.1 Charges and Security

This Agreement shall, subject to Clause 3.2.4 (Waiver of Conditions Precedent), only become effective upon the satisfaction by the Customer or the waiver by NamPower of each of the following conditions precedent:

3.1.1 the Customer having provided security to NamPower in accordance with Clause 4 (Charges and Security) in form and substance satisfactory to NamPower; and

3.1.2 the fulfilment or waiver by either Party of the conditions precedent mentioned in this Clause 3.

3.2 Consents and Approvals

3.2.1 This Agreement shall, subject to Clause 3.2.4 (Waiver of Conditions Precedent), only become effective following the satisfaction of each of the following conditions precedent by NamPower:

(a) the acquiring of all environmental consents required under applicable legislation;

(b) the site for the Transmission Connection Equipment and the transmission infrastructure related thereto being made available to NamPower for the life of the Project (at NamPower’s cost and risk).
3.2.2 This Agreement shall, subject to Clause 3.2.4 (Waiver of conditions precedent), only become effective following the satisfaction of each of the following conditions precedent by the Customer:

(a) the Customer obtaining and holding a Generation Licence and such Generation Licence is in full force and effect and the Customer is in compliance with the conditions attached thereto;

(b) the Customer having been granted permission to occupy and obtaining the vacant possession of, or full and unencumbered title to, the site for the Customer and all necessary way leaves and other access rights as are necessary to ensure the connection of the Customer’s Facility infrastructure to the Transmission System;

(c) the acquiring of the environmental consents required by the Customer; and

(d) the PPA becoming effective.

3.2.3 Notice

(a) The Parties shall notify the other in writing by the fifteenth (15th) day of each month on progress made in satisfying the conditions precedent enumerated in this Clause 3 for which it is responsible.

(b) The Parties undertake to promptly inform the other party in writing of anything which will or is likely to materially delay or prevent the fulfilment of any of the conditions precedent by the Long Stop Date.

(c) A Party shall promptly notify the other Party in writing when the conditions precedent have been satisfied or waived in writing by the Party in whose favour the condition precedent are operating.

3.2.4 Waiver of conditions precedent

(a) NamPower shall be entitled to waive any of NamPower’s conditions precedent, provided that NamPower has received prior written consent by the Customer, of its consent to the waiver of NamPower’s relevant condition precedent.

(b) The Customer shall be entitled to waive any of the Customer’s conditions precedent, provided the Customer has received prior written consent by NamPower, of its consent to the waiver of the relevant Customer’s relevant condition precedent.

(c) A Party who wishes to waive any condition precedent must provide the other Party with evidence (to the other Party’s reasonable satisfaction) that the waiver of such condition precedent will not have a material adverse affect on its ability to satisfy its obligations under this Agreement.
3.2.5 Non-fulfilment of conditions precedent

If the conditions precedent are not satisfied or waived on or before the Long Stop Date, either Party shall have the right to terminate the Agreement by issuing a termination notice to the other Party, within a period of thirty (30) days after the occurrence of the Long Stop Date. Neither Party shall have any liability whatsoever to the other Party in respect of such termination, except in relation to any antecedent breaches of this Agreement.

3.3 Scope of this Agreement

This Agreement makes provision for: (a) the Connection of the Customer's Facility to the Transmission System; (b) NamPower permitting the Customer to use the Transmission System in connection with its licensed generation undertaking at the Customer's Facility in accordance with this Agreement; (c) the cooperation between the Parties in relation to the operational interface between the Customer's Facility and the Transmission System; and (d) payment by the Customer of the required charges to NamPower as set out in this Agreement, provided that this Agreement shall not govern any other services provided by NamPower to the Customer or by the Customer to NamPower unless specifically contained herein.

4 CHARGES AND SECURITY

4.1 The Customer shall satisfy NamPower that it is capable of effecting the payment in respect of the Connection Facilities, as contemplated in Clause 9 (Charges and Payments for Connection Facilities), by:

(a) providing NamPower with evidence of the Customer's credit rating and such credit rating is at NamPower's sole discretion, at a satisfactory level; or

(b) providing a bond or bonds or other form of guarantee (from a Namibian or South African banking institution registered in terms of the Namibian Banking Institution Act of 1998 (Act No2 of 1998)) approved by NamPower in favour of NamPower; or

(c) a letter from the Customer's lenders, indicating that funds required under this Agreement, shall be available to the Customer.

4.2 If the Customer has provided NamPower with evidence of the Customer’s credit rating pursuant to Clause 4.1(a) above and the Customer's credit rating is downgraded or the Customer has reason to believe that its credit rating may be downgraded:

(a) the Customer shall forthwith notify NamPower of same; and

(b) NamPower may on giving the Customer three (3) Business Days written notice require the Customer to provide a bond or bonds or other form of guarantee in the form described in Clause 4.1 above.
5 RESPONSIBILITIES OF CUSTOMER

Subject to the terms and conditions of this Agreement and its Generation Licence the Customer shall, acting in accordance with Prudent Industry Practice:

5.1 Design, engineer, procure, supply, erect, deliver, construct, install, test commission, operate and maintain the Customer’s Facility in accordance with this Agreement and the PPA;

5.2 Design, engineer, procure, supply, erect, deliver, construct, install, test, commission, operate and maintain the Customer’s Facility and/or the Customer’s Facility Connection Equipment in all material respects in accordance with NamPower Technical Specifications and Requirements (attached hereto in Annexure F) and the Grid Code;

5.3 Ensure that that the Customer’s Facility and/or the Customer’s Facility Connection Equipment are compliant with the NamPower Technical Specifications and Requirements as well as the Grid Code’s requirements for connections to the Transmission System;

5.4 If NamPower (acting reasonably) believes that the Customer’s Facility and/or the Customer’s Facility Connection Equipment do not meet the relevant design standards in or referred to in the NamPower Technical Specifications and Requirements and/or the Grid Code and/or may pose a threat to the safety and reliability of the Transmission System, then NamPower may, following consultation with the Customer, and a delivery of a written notice which shall detail its basis, reject the connection of the Customer’s Facility. In such a case, if disputed by the Customer as anticipated in clause 20.2, the matter will be referred to an Independent Expert as per the provisions of this Agreement. If the rejection was found by the Independent Expert to be unjustified and the rejection caused a delay in the commissioning of the Customer’s Facility as per the Customer Construction Programme, the Customer will be entitled to extension of time for completion and NamPower shall compensate the Customer according to the Capacity Payment as specified in the PPA (“Capacity Payment”);

5.5 Obtain and maintain all Consents in connection with the design, engineering, procurement, supply, erection, delivery, construction, installation, improvement, testing, commissioning, operation and maintenance of the Customer’s Facility and the Customer’s Facility Connection Equipment and the export of electrical energy into the Transmission System at the Point of Connection;

5.6 Achieve the construction milestones as provided in Annexure D1 (Customer Construction Programme) by the corresponding dates, so as to enable NamPower to complete the Connection Works in accordance with Annexure D2 (NamPower Construction Programme) and, in particular, to commission the Transmission Connection Equipment by the Scheduled Connection Date. Without limiting the foregoing, the Customer shall promptly notify NamPower in writing of any deviations from any of the milestones as provided in Annexure D1 (Customer Construction Programme).
6 DELAYS IN SCHEDULED CONNECTION DATE

6.1 NamPower shall achieve the Connection Date prior to or on the Scheduled Connection Date as provided in Annexure D2 (NamPower Construction Programme), so as to enable the Customer to complete the construction works of the Customer’s Facility in accordance with Annexure D1 (Customer Construction Programme) and, in particular, the commissioning of the Connection Works prior to or on the Scheduled Connection Date.

6.2 In the event, there is a delay by NamPower in achieving the Connection Date by the Scheduled Connection Date as per the NamPower Construction Programme, due to a Transmission Default, resulting in a corresponding delay to the Target Commercial Operation Date (as specified in the PPA) of the Customer’s Facility, NamPower shall be liable to pay to the Customer the Capacity Payment compensation payments, in accordance with the terms of the PPA. The aforementioned is subject to the obligation of the Customer to take steps to mitigate its losses.

6.3 Without limiting the foregoing, NamPower shall promptly notify the Customer in writing of any deviations from any of the milestones as provided in Annexure D2 (NamPower Construction Programme), which notice shall identify:

(a) the nature of the reason for the deviation;
(b) the impact which such deviation has had, or in the reasonable opinion of NamPower (acting as a reasonable and prudent operator), is likely to have, on its ability to achieve any milestone on the applicable due date; and
(c) the steps which NamPower (acting as a reasonable and prudent operator) has taken, is taking and will take to mitigate adverse consequences of such deviation.

6.4 As soon as a Party becomes aware of any fact, matter or thing that may delay the Scheduled Connection Date, that Party shall as soon as reasonably practicable notify the other Party in writing of the delay, the reasons for the delay, the measures that the notifying Party proposes to take to mitigate, the impact of the delay and an estimate of the likely duration of the delay.

6.5 In the event of a delay in the Scheduled Connection Date occurring, the Parties undertake to take all reasonable measures to ensure that any acceptance tests as provided for in Annexure D2 (NamPower Construction Program) or other works necessary to achieve the Scheduled Connection Date shall be undertaken as soon as possible after the circumstances that resulted in such delay, default or circumstance are no longer in place.
7 CONNECTION SERVICES

7.1 Connection Services

7.1.1 NamPower shall connect the Customer’s Facility at the Point of Connection so as to enable the Customer to inject power into the Transmission System, up to the Maximum Export Capacity and/or to take power from the Transmission System at up to the Maximum Import Capacity.

7.1.2 The Customer may take power at the Point of Connection provided that:

(a) the amount of power taken by the Customer at the Point of Connection does not exceed the Maximum Import Capacity;

(b) the Customer has complied and at all times complies with the NamPower Technical Specifications and Requirements and the Grid Code and any instructions issued pursuant to the aforesaid documents. In the event of a conflict between the NamPower Technical Specifications and Requirements and the Grid Code, the Grid Code shall prevail; and

(c) the amount of power taken by the Customer at the Point of Connection shall be limited to Auxiliary Power requirements only.

7.1.3 Subject to Clause 15 (De-Energisation), NamPower shall keep the Point of Connection energised at all times subject to any provisions of this Agreement containing anything to the contrary. In the event the Customer suffers any loss or damage as a result of NamPower’s failure to keep the Point of Connection energised as a result of a Transmission Default the Customer shall be entitled to compensation according to the Capacity Payment provisions of the PPA.

7.1.4 NamPower shall complete the Connection Works by the Scheduled Connection Date according to the schedule specified in section 4 of Annexure D to the Connection Offer Letter.

7.2 Operation of Customer’s Facility and Transmission System

7.2.1 NamPower shall, at all times, operate the Connection Facilities in accordance with the Safety Code, Grid Code and otherwise in accordance with Prudent Industry Practice for the operation of transmission plant and equipment;

7.2.2 NamPower shall be deemed to have acted in accordance with Prudent Industry Practice for the operation of transmission plant and equipment if it complies with, observes, or performs all relevant provisions of the Grid Code where such provisions are prescribed in the Grid Code;
7.2.3 The Customer shall operate the Customer's Facility and the Customer's Facility Connection Equipment in accordance with the NamPower Technical Specifications and Requirements and/or the Grid Code and otherwise in accordance with Prudent Industry Practice. In the event of a conflict between the NamPower Technical Specifications and Requirements and the Grid Code, the Grid Code shall prevail.

7.2.4 The Customer shall be deemed to have acted in accordance with Prudent Industry Practice for the operation of the Customer's Facility and the Customer's Facility Connection Equipment and equipment if it complies with, observes or performs all relevant provisions of the NamPower Technical Specifications and Requirements and/or the Grid Code where such provisions are prescribed.

7.2.5 NamPower may require the Customer to comply with, observe or perform provisions that are not prescribed in the NamPower Technical Specifications and Requirements and/or the Grid Code if NamPower considers such provisions are necessary to ensure that the operation of the Customer’s Facility and the Customer’s Facility Connection Equipment is in accordance with Prudent Industry Practice. If NamPower so requires, NamPower shall:

(a) provide to the Customer the reasons for requiring such provisions;

(b) consult with the Customer on how such provisions may be met; and

(c) if the Parties cannot agree on the need for such provisions or on how such provisions should be met, refer the matter for resolution by the Independent Expert in terms of clause 20, provided that Customer shall not be required by NamPower to act in contravention of

(i) any applicable Laws (including, without limitation, all health, safety and environmental Laws);

(ii) Prudent Industry Practice; or

(iii) the relevant manufacturer's guidelines and instructions.

Any additional work required from the Customer as a result of any Change in Law which results in a Change of Cost to the Customer, shall be dealt with under the provisions of clause 15 of the PPA (Change in Costs).

7.2.6 The Customer shall, acting in accordance with Prudent Industry Practice:

(a) Unless with the written approval of NamPower, under no circumstances, test or otherwise operate the Customer's Facility or the Customer's Facility Connection Equipment or export any electrical energy from the Customer's Facility prior to the Connection Date;
(b) Save as per the provisions of this Agreement, not exceed the Maximum Export Capacity when transmitting electrical energy between the Customer’s Facility and the Transmission System; and

(c) Forthwith upon being requested to do so by NamPower on written notice given at any time after the Connection Date, undertake such testing of any Customer’s Facility and/or the Customer’s Facility Connection Equipment in accordance with the NamPower Technical Specifications and Requirements and/or the Grid Code.

7.3 Maintenance and Outage Coordination

7.3.1 NamPower shall maintain the Connection Facilities in accordance with Prudent Industry Practice for the maintenance of transmission plant and equipment;

7.3.2 The Customer shall maintain the Customer’s Facility and the Customer’s Facility Connection Equipment in accordance with Prudent Industry Practice for the maintenance of the Customer’s Facility and the Customer’s Facility Connection Equipment connected at the Point of Connection;

7.3.3 The Parties agree that the Transmission System may be unavailable for not more than the Transmission Unavailability Threshold annually, during which NamPower shall perform Transmission System maintenance. NamPower shall, not less than two (2) months prior to the Scheduled Connection Date and on an annual basis for the remainder of the term of this Agreement, at least two (2) months prior to the anniversary of the Connection Date, provide to the Customer its proposal for Scheduled Transmission System Outages, and shall use its best endeavours to coordinate that the timing of the Scheduled Transmission System Outages shall not be during Daylight Hours (i.e., shall not overlap generation hours). Such schedule shall include:

(a) the number of expected Scheduled Transmission System Outages; and

(b) the estimated dates and duration of each Scheduled Transmission System Outage.

7.3.4 The Operating Committee shall meet and coordinate the timing of Scheduled Transmission System Outages for the forthcoming Contract Year, at least one (1) month prior to the commencement of that Contract Year.

7.3.5 If there is a requirement to change the dates of any Scheduled Transmission System Outage, NamPower shall provide the Customer with written notice at least twenty-eight (28) days in advance of the relevant Scheduled Transmission System Outage which, unless there is compelling reason not to do so (the burden of proof shall be on the Customer), the Customer must approve within five (5) days of such request.

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7.3.6 NamPower shall be responsible for all costs incurred by it in connection with or arising from any maintenance carried out by it or on its behalf on the Transmission System. The Customer shall not be entitled to any payment and/or indemnification from NamPower in connection with such Scheduled Transmission System Outages.

7.3.7 Subject to having complied with the foregoing provisions of this Clause 7.3, NamPower shall be entitled to shut down the Transmission System from service at the agreed date and time. The Scheduled Transmission System Outages and Unscheduled Transmission System Outages (excluding Force Majeure events) shall not lead to a Transmission Unavailability in excess of the Transmission Unavailability Threshold. Should the Transmission Unavailability be in excess of the Transmission Unavailability Threshold on an annual basis for reasons other than Force Majeure, NamPower shall be liable to pay the Capacity Payment equal to the aggregate number of days or part days in excess of the Transmission Unavailability Threshold commencing from the date on which such Transmission Unavailability Threshold is exceeded.

7.3.8 NamPower shall notify the Customer promptly:

(a) Upon the occurrence of any event resulting in the Transmission System being unable to operate or events affecting the Transmission System stability; and/or

(b) If NamPower determines that the maintenance of the Transmission System is required prior to the next Scheduled Transmission System Outage scheduled pursuant to Clause 7.3.3 (Maintenance and Outage Coordination) and that an Unscheduled Transmission System Outage is required.

7.3.9 In each case NamPower shall:

(a) give the Customer notice of such event as soon as reasonably practicable after the occurrence of such event, or, in the case of an Unscheduled Transmission System Outage, NamPower becoming aware of the need for such outage;

(b) notify the Customer of the expected duration of the Unscheduled Transmission System Outage; and

(c) use its best efforts to minimise the duration and effects on the Transmission System of the Unscheduled Transmission System Outage.

8 OWNERSHIP OF EQUIPMENT

8.1 NamPower shall at all times retain ownership of, risk in, and title to the Transmission Connection Equipment. The Customer shall not encumber or
attempt to encumber or cause to be encumbered any of the Transmission Connection Equipment.

8.2 The Customer shall at all times retain ownership of, risk in, and title to the Customer's Facility Connection Equipment.

8.3 The Parties acknowledge and agree that nothing herein, including the payment by the Customer of the Project Costs, shall confer on the Customer any right of ownership or any encumbrance over or other legal or beneficial right in respect of, any of the Connection Works.

9 CHARGES AND PAYMENTS FOR CONNECTION WORKS

9.1 The Customer shall pay to NamPower the payment of the costs set out in this Clause 9.1 (the “Project Costs”). The Project Costs shall be paid according to the following schedule:

<table>
<thead>
<tr>
<th>Amount N$ (VAT excluded)</th>
<th>Scheduled and agreed payment dates</th>
<th>In Consideration of</th>
</tr>
</thead>
<tbody>
<tr>
<td>N$…………………</td>
<td>Upon the signing the Agreement:</td>
<td>Final design and planning, including NamPower project management and tendering evaluation on materials and project execution.</td>
</tr>
<tr>
<td>N$…………………</td>
<td>…… (.m) months from the signing of the Agreement:</td>
<td>Ordering materials, starting with ground and civil works.</td>
</tr>
<tr>
<td>N$…………………</td>
<td>…… (.m) months from the signing of the Agreement:</td>
<td>Construction of the Connection Facilities</td>
</tr>
<tr>
<td>N$…………………</td>
<td>…… (.m) months from the signing of the Agreement:</td>
<td>Steel works, assembly and erection of the Connection Facilities</td>
</tr>
<tr>
<td>N$…………………</td>
<td>…… (.m) months from the signing of the Agreement:</td>
<td>Electrical works, testing of the Connection Facilities</td>
</tr>
<tr>
<td>N$…………………</td>
<td></td>
<td>Project Costs</td>
</tr>
</tbody>
</table>

9.1.1 The Project Costs does not include VAT.

9.1.2 The Project Costs are specified in Namibian dollars as at the date of the Connection Offer Letter and may be adjusted for inflation by NamPower from the date of the Connection Offer Letter to the date on which the amount is invoiced for payment. The inflation - adjusted amounts payable shall be invoiced by NamPower and paid by the Customer in accordance with Clause 10 (Invoicing and Payment) of this Agreement.

9.2 Final Costs
The Project Costs indicated in Clause 9.1 above hereto are based on a fixed capital price. No capital refund or capital shortfall shall be allocated to the Customer’s account on completion of the Project.

9.3 Charges

The Customer shall pay to NamPower the Charges for the use of the Transmission System and all transmission services to be rendered by NamPower in connection with such use, which Charges shall be as set out in the Connection Offer Letter attached hereto as Annexure I.

10 INVOICING AND PAYMENT

10.1 Invoicing

NamPower shall invoice the Customer for the Charges monthly. The invoice for each month shall be sent by NamPower to the Customer no later than the 7th day of each calendar month.

10.2 Payment

10.2.1 The Customer shall pay to NamPower the invoiced amount no later than 30 days after the date of the invoice (“Due Date”). When the Due Date is other than a Business Day, the Charges shall be due and payable on the first Business Day following.

10.2.2 The Customer shall pay the invoiced amount of the Charges without any set-off, counterclaim or other deduction.

10.2.3 All invoices to NamPower shall be made in Namibian Dollars, and not indexed to any other currency.

10.2.4 NamPower shall notify the Customer of its Namibian bank account details for payment.

10.2.5 The Customer shall notify NamPower of its Namibian bank account details for payment by NamPower to the Customer.

10.2.6 No Party shall be entitled to offset any amounts payable to the other Party under or in relation to this Agreement.

10.2.7 If the Customer believes the invoice to be in error it shall notify NamPower, in writing, forthwith and:

(a) if the invoice is in error NamPower shall send the Customer a revised invoice and adjust the Due Date accordingly;

(b) if the invoice is not in error, NamPower shall advise the Customer, by a written notice forthwith of the same and the Due Date shall be within 14 days of such notice.
10.2.8 All amounts payable under this Agreement shall be paid:

(a) free of any restriction or condition;

(b) free and clear of and (except to the extent required by law) without any deduction or withholding for or on account of any bank charge or tax imposed, levied, collected, withheld or assessed by or within Namibia or by any federation or organisation of which Namibia is a member at time of payment.

10.2.9 If either Party must deduct or withhold any such tax or other amount from any amount payable under this Agreement, it will pay such additional amount to the other Party as is necessary to ensure that the other Party receives and retains (free from any liability other than tax on its own net income) a net amount equal to what it would have received and retained had the deduction or withholding not been required or made.

10.3 **Disputed Amounts**

10.3.1 Should the Customer dispute an amount invoiced by NamPower, the Customer should notify NamPower of the dispute and grounds of the dispute within ten (10) Business Days of receipt of such an invoice.

10.3.2 If the Customer disputes the amount invoiced by NamPower the Customer shall pay NamPower the undisputed amount by the Due Date and the dispute shall be resolved in accordance with Clause 20 (Dispute Resolution).

10.3.3 Subject to Clause 10.4 (Default Interest), following resolution of a dispute the Party that is liable to pay the other Party shall pay the other Party the amount owing, including default interest, within five (5) Business Days of the resolution of the dispute.

10.4 **Default Interest**

10.4.1 If any amount payable by one Party to the other under this Agreement has not been paid on or before the date specified in this Agreement for payment, the unpaid amount including payments due following resolution of a dispute shall accrue interest from the date on which payment was due until the date on which payment is made.

10.4.2 The interest shall accrue daily and be compounded monthly at a rate equal to the Agreed Interest Rate from the date when payment was due until the amount due is actually received by the payee. Any overpayments by either Party resulting from an invoicing or payment error, will attract interest at the Agreed Interest Rate.

11 **CUSTOMER’S FACILITY**

11.1 **Technical Specifications**
The Customer undertakes to construct the Customer’s Facility and the Customer’s Facility Connection Equipment in compliance with the NamPower Technical Specifications and Requirements, the Grid Code and any other technical requirements set out in Annexure I and F, attached hereto. The Customer undertakes to comply with the NamPower Technical Specifications and Requirements and the Grid Code to the extent that same is applicable to the Customer and the Customer’s Facility and the Customer’s Facility Connection Equipment and acknowledges that for the purposes of Clause 17 (Breach of this Agreement and the Grid Code) a material breach of the NamPower Technical Specifications and Requirements and/or the Grid Code shall be deemed to be a breach of this Agreement.

11.2 Amendments to the NamPower Technical Specifications and Requirements and the Grid Code

The Customer acknowledges and agrees that the NamPower Technical Specifications and Requirements and/or the Grid Code may be amended from time to time and that the Customer is responsible for any reasonable costs and expenses it may be required to incur arising from such amendments and its obligations to comply with them. An amendment to the NamPower Technical Specifications and Requirements and/or the Grid Code and which results in any increase in costs to the Customer, and which affects all other power plants under the REFIT Programme, shall be deemed a Change in Costs in terms of clause 15 of the Power Purchase Agreement and that clause shall apply to this Agreement.

11.3 Modifications

11.3.1 No material modifications that affect the Transmission System or the Connection Facilities may be made to the Customer’s Facility except in accordance with this Clause 11.3 and subject always to the provisions of the NamPower Technical Specifications and Requirements and the Grid Code, to the extent applicable.

11.3.2 If the Customer wishes to modify the Customer’s Facility the Customer shall submit to NamPower its proposed modification and shall provide to NamPower such information as NamPower reasonably requires to assess the effect of the proposed modification on the Transmission System, as soon as practicably possible.

11.3.3 NamPower will consider the proposed modification and advise the Customer within 14 days from the date of such proposal:

(a) whether NamPower will permit the proposed modification unchanged; or

(b) whether NamPower requires the proposed modification to be changed to avoid adverse effects on the operation of the Transmission System; or
whether the proposed modification, changed as necessary to avoid adverse effects on the operation of the Transmission System, will result in NamPower being required to modify the Transmission System; and

(d) if the Transmission System needs to be modified to accommodate the proposed modification to the Customer's Facility, the estimated cost.

11.3.4 If the proposed modification of the Customer's Facility requires NamPower to modify the Transmission System, NamPower will provide to the Customer an offer in respect of the modifications to the Transmission System [and the provisions of Clause 5] will apply to the design, construction, commissioning and payment for the modifications to the Transmission System.

12 METERING SYSTEM

12.1 Metering Installations

12.1.1 Unless otherwise agreed between the Parties, NamPower shall install, maintain and operate revenue class meters at or in close proximity to the Point of Connection for the purpose of measuring the electrical power injected into or taken from the Transmission System by or through the Customer's Facility. The location of the meters shall be in the location defined in the Connection Offer Letter attached as Annexure I.

12.1.2 Metering installations shall be according to the Grid Code and Annexure B of the Connection Offer Letter.

12.1.3 Each Metering Installation shall comprise one (1) main tariff meter and one check tariff meter. These two (2) tariff meters shall be suitable for three-phase imbalanced loads, and measure power in full four-quadrant mode. The class type and accuracy tolerances shall be in accordance to the prevailing NRS057 or such other standard as may be referenced in the Grid Code from time to time.

12.1.4 The Customer shall have the right to install check metering to monitor the Metering Equipment of NamPower.

12.2 Meter Tests

12.2.1 Commissioning, auditing and testing of Metering Installations shall be done in accordance with the Grid Code specifications. Each meter shall be tested:

(a) Upon installation or following any repair; or

(b) when the Customer or NamPower reasonably requires and, in the absence of evidence of malfunction, annual testing shall be deemed reasonable; or
(c) when the main and check meters differ by more than 1% (one percent); or

(d) at least once in every ten years, when each meter shall be checked and calibrated against a standard instrument as per the Grid Code.

The cost of testing a meter shall be borne by the Party requesting the test except when the Customer requests a test and the test demonstrates that the meter was more than 1% (one percent) inaccurate in which case NamPower shall bear the cost.

12.3 Adjustment of Invoices

12.3.1 In the event of any meter which has been used for the purpose of calculating amounts payable being found pursuant to any test made pursuant to Clause 12.2 (Meter Tests) to be exceeding the allowed accuracy range of 1% or where evidence exists of meter tampering or other interference, all previous invoices for Charges that have been calculated using metered data from the NamPower meter and all future invoices until such time as the faulty meter is replaced or recalibrated shall be recalculated after applying adjustments to correct the metered data for the meter inaccuracy.

12.3.2 If the NamPower Meter is faulty and metered data are available from the Customer meter, the metered data from the Customer meter shall be used to calculate the Charges during the period of inaccuracy of the NamPower meter.

12.3.3 If any of the Parties has invoiced the other Party for payment of any Charge calculated using metered data from a faulty meter, the relevant Party shall recalculate the relevant Charges. Any additional amount payable by or refund due to the other Party as a result of that recalculation shall be included as an adjustment in the invoice for the month immediately following the receipt of the correct metered data.

13 PROTECTION

13.1 Equipment to be Installed

13.1.1 As specified in Annexure 1 (the Connection Offer Letter), the Customer shall, at its own expense, provide and install as part of the Customer’s Facility and/or the Customers’ Facility Connection Equipment and in accordance with the NamPower Technical Specifications and Requirements, the Grid Code and any requirements set out in the Annexures, to this Agreement:

(a) communication and other equipment, as are reasonably required by NamPower for the purposes of operation of the Transmission System. For information purposes only, and without limitation, such equipment may include dial up telephone line connections and/or fibre optic link between the Customer and NamPower and via the

STD TCA 122014
public telephone network for voice communication and data collection from the Metering Installation as detailed in the NamPower Technical Specifications and Requirements as specified in Annexure I and the Grid Code;

(b) power supplies for the operation of metering, operational instrumentation, NamPower’s switchgear, control and protection equipment. Such power supplies, unless otherwise advised by NamPower, shall be **230V AC, 50Hz**;

(c) control and protection equipment, associated instrument transformers and cabling and power supplies therefore, as specified in Annexure I.

13.1.2 Such equipment, transformers, cabling and power supplies shall be maintained by the Customer throughout the term of this Agreement to the reasonable satisfaction of NamPower and the Customer shall provide to NamPower such evidence as to the completion of such maintenance as is from time to time required by NamPower (acting reasonably).

13.2 **Signalling and Indications**

The Customer shall provide to NamPower relevant signalling and indications as required by NamPower (acting reasonably). Such signalling and indication shall provide NamPower with parameters of the Customer’s Facility including the status of switchgear, power flows and voltages.

14 **RIGHTS OF ACCESS**

The Parties agree that whilst the NamPower Substation shall be located in the NamPower area (as set out in Annexure A), certain ancillary facilities, equipment, lines, cables and wires included in the Transmission Connection Equipment (such as tele-control equipment) may be installed by or on behalf of NamPower at the Customer’s Facility.

14.1 **Customer to Grant Consents**

The Customer shall at its own expense grant to NamPower all consents as are reasonably required to be given by the Customer for the installation, operation, maintenance, inspection, removal of and access to NamPower's plant and equipment situated at or on the Customer’s Facility.

14.2 **Access at Times to be Agreed**

NamPower’s employees and/or authorised agents and/or subcontractors may, subject to the Customer’s prior written approval, enter at times to be agreed between the Parties the Customer’s Facility to enable NamPower to carry out any works, modifications or inspections, or for operating, testing, repairing, renewing, maintaining, isolating, protecting or removing NamPower’s equipment, material or
temporary works, Disconnecting or De-Energising, monitoring compliance with the terms of this Agreement or the Grid Code, or to enable NamPower to fulfil its obligations under this Agreement and the PPA. NamPower shall give the Customer forty eight (48) hour notice prior to requiring access to the Customer's premises, such consent to be given or denied (with reasonable justification) within the forty eight hour notice.

14.3 **Access at Any Time**

In the event of emergency, NamPower’s employees and/or authorised agents and/or subcontractors shall be entitled to enter the Project Site and Customer’s Facility at any time and, only when in NamPower’s opinion such entry is necessary for the prudent operation of the Transmission System, including in respect of De-Energisation of the Connection.

14.4 **NamPower to grant consents**

NamPower shall grant access to the Customer, its employees and/or agents to NamPower’s portion of land (excluding the fenced off substation area), and the access road for the purposes of construction, operation and maintenance of the Customer’s Facility and/or the Customer’s Facility Connection Equipment and the …kV line connecting the Customer’s Facility and the NamPower ……… Substation.

15 **DE-ENERGISATION**

15.1 **Circumstances of De-Energisation**

The Point of Connection may be De-Energised:

(a) at the request of the Customer;

(b) subject to Clause 7.3 (Maintenance and Outage Coordination) when NamPower believes there is an emergency which requires it to De-Energise the Point of Connection to connect new plant or equipment or to carry out maintenance of the Transmission System;

(c) if NamPower considers it necessary to prevent loss of life or damage to property or if there is reason to believe that the condition of the Point of Connection poses an immediate threat of injury or death to any person;

(d) if NamPower believes there is an emergency that requires the Point of Connection to be De-energised to maintain the safe operation of the Transmission System;

(e) if the Customer is in material breach of the Grid Code, the NamPower Technical Specifications and Requirements, or any relevant safety regulation or requirement in force at the time and is unable or unwilling to
remedy the breach after a 30-day prior written notice and the Customer’s breach poses a serious threat to the secure operation of the Transmission System;

(f) in the event of a Force Majeure Event;

(g) in the event of default of payment of any amount owed by the Customer to NamPower after a 30-day prior written notice and such payment default having occurred on three consecutive occasions and

(h) on the termination of this Agreement.

15.2 **Energisation Following De-Energisation**

If the Point of Connection has been De-Energised it shall be energised as soon as practicable, following:

(a) a request from the Customer that it be energised, if the Point of Connection was initially De-Energised at the Customer's request,

(b) the completion of maintenance, if the Point of Connection was De-Energised by NamPower to carry out maintenance of the Transmission System,

(c) the remedying of a situation causing danger to persons or property if the Point of Connection was De-Energised by NamPower to prevent damage or loss to persons or property,

(d) the remedying of an emergency situation on the Transmission System, if the Point of Connection was De-Energised by NamPower to maintain the safe operation of the Transmission System,

(e) payment of any amounts due, if the Point of Connection was De-Energised by NamPower because of default of payment of an amount owed by the Customer to NamPower,

(f) the Customer’s remedying of the breach, if the Point of Connection was De-Energised by NamPower because of the Customer’s breach of the NamPower Technical Specifications and Requirements of the Grid Code or any other relevant safety regulation or other requirements in force at the time.

15.3 **Cost of De-Energisation and Energisation**

15.3.1 The cost of De-energisation and Energisation shall be borne by the Customer:

(a) if the Point of Connection was De-Energised and energised at the request of the Customer; or
(b) if the Point of Connection was De-Energised by NamPower because the Customer was in material breach of the NamPower Technical Specifications and Requirements, the Grid Code or any relevant safety regulation or other requirement in force at the time;

(c) in the event of a default of payment of any amount owed by the Customer to NamPower as anticipated in Clause 15.1(f); or

(d) on termination of this Agreement due to the Customer’s default.

15.3.2 If the Point of Connection is De-Energised due to:

(a) a reason other than those set out in Clause 15.1 (Circumstances of De-Energisation); or

(b) NamPower’s failure to operate the Transmission System according to Prudent Industry Practice;

(c) NamPower’s negligence;

(d) maintenance of the Transmission System in excess of the Transmission Unavailability Threshold in any Contract Year,

and in the event the Customer suffers any loss or damage as a result of any of De-Energisation and Energisation under this clause 15.3.2, NamPower shall be liable to compensate the Customer in accordance to the Capacity Payments pursuant to the terms of the PPA.

16 FORCE MAJEURE

16.1 Definition of Force Majeure

16.1.1 A Force Majeure Event means any event or circumstance which:

(a) is beyond the reasonable control of the Party affected by the Force Majeure (the “Affected Party”) or its Contractors;

(b) is without fault or negligence on the part of the Affected Party or its Contractors and is not the result of a breach by the Affected Party or its Contractors of any of their obligations under any Project Document (including, in respect of the Affected Party, this Agreement), Consents or applicable Law;

(c) was not foreseeable, or if foreseeable, could not have been (including by reasonable anticipation) avoided or the effects of which could not have been overcome by the Affected Party or its Contractors, acting in accordance with Prudent Industry Practice; and

(d) prevents, hinders or delays the Affected Party in its performance of any of its obligations under this Agreement.
16.1.2 If an Affected Party or its Contractors could, by acting in accordance with Prudent Industry Practice, have mitigated an event or circumstance that otherwise satisfies the requirements set out in paragraphs (a) to (d) of Clause 16.1.1, that part of the event or circumstance that could have been mitigated, shall not be Force Majeure.

16.1.3 Without limiting the generality of the foregoing, Force Majeure may include any of the following acts, events or circumstances, but only to the extent that it satisfies the requirements set out in paragraphs (a) to (d) of Clause 16.1.1 and Clause 16.1.2:

(a) any material effect of the natural elements, including lightning, drought, wind, fire, earthquake, solar flares, volcanic eruption, landslide, flood, storm, tsunami, cyclone, typhoon, tornado, or meteorites; or

(b) air crash, shipwreck, train wreck or major failure or stoppage of transportation, objects falling from aircraft or other aerial devices, sonic boom, explosions or chemical contamination; or

(c) epidemic, famine or plague; or

(d) any event or circumstance constituting Force Majeure under any other Project Document; or

(e) act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, civil commotion, sabotage, act of terrorism or exercise of military or usurped power; or

(f) radioactive contamination or ionising radiation; or

(g) labour unrest, strike, go-slow or other labour action but not those affecting only the personnel of a Party;

provided that the following shall not constitute a Force Majeure Event unless caused by or resulting from Force Majeure:
(a) a failure or inability to make any payment, any inability to raise finance or any changes in price or market conditions;

(b) late delivery or interruption in the delivery of machinery, equipment, materials, spare parts or consumables;

(c) a delay or failure by a third party which prevents, hinders or delays the Affected Party in the performance of its obligations under this Agreement, save where the cause of such delay or failure by the third party would constitute Force Majeure event pursuant to this Agreement; or

(d) any technical or operational problems with the Power Project arising from a fault in the construction, operation and/or maintenance of the Customer's Facility which is attributed to any failure by the affected Party to obtain and/or maintain a Consent;

(e) wear and tear, flaws, breakdown in or degradation of, any equipment or machinery.

16.2 Procedure

16.2.1 If an Affected Party wishes to cite a Force Majeure Event as being the cause of it being unable to meet any or some of its obligations hereunder, the Affected Party shall, as soon as reasonably practicable of it becoming aware of the Force Majeure Event but not later than two days of the occurrence of the event, advise the other Party of the nature, cause and/or likely duration of the Force Majeure Event (to the extent the same can be reasonably determinable at the time of such notice) and, when appropriate or when reasonably requested to do so by the other Party, update such information.

16.2.2 Both Parties shall take such steps as are reasonably available to it to overcome such Force Majeure Event and each Party shall mitigate its effect on the ability of the Affected Party to meet its obligations under this Agreement, and shall consult to develop and implement a remedial plan to minimise each Party's losses.

16.2.3 The Affected Party shall promptly provide notice to the other Party of:

(a) the cessation of the Force Majeure Event; and

(b) its ability to immediately recommence performance of its obligations under this Agreement by reason of the cessation of the Force Majeure Event.

16.2.4 During the occurrence of a Force Majeure Event, each Party shall bear its own costs resulting from the occurrence of the Force Majeure Event.

16.3 Consequences of Force Majeure
16.3.1 Notwithstanding any other provisions of this Agreement, to the extent the Affected Party hereto is unable to perform any of its obligations under this Agreement due to a Force Majeure Event then the Affected Party shall be relieved from liability in respect of such obligations and shall be entitled to suspend performance of such obligations in accordance with and subject to this Clause 16.3.

16.3.2 If it is agreed or determined that a Force Majeure Event has occurred, the Affected Party shall, provided that it has complied with the requirements of Clause 16.2 (Procedure), not be liable for any failure to perform an obligation under this Agreement as a consequence of such Force Majeure Event, to the extent only that -

(a) such performance is prevented, hindered or delayed by the Force Majeure Event; and

(b) such failure could not have been mitigated by the Affected Party acting in accordance with Prudent Industry Practice.

16.3.3 Any time period specified in this Agreement for the performance of any obligation shall be extended on a day-for-day basis for each day that the Force Majeure Event prevents, hinders or delays the Affected Party from performing that obligation within the time period, and the term of this Agreement shall be extended accordingly.

16.4 Termination on Account of Force Majeure

If the event or circumstance of Force Majeure or its direct effect or consequences on the operations of either Party is of such magnitude or will be (or it is more probable than not that it will be) of such duration that after a period of twelve (12) months it is unreasonable in all the circumstances for either Party to perform its obligations under this Agreement, either Party may upon not less than thirty (30) days’ notice terminate this Agreement.

17 BREACH OF THIS AGREEMENT AND THE GRID CODE

17.1 Notice of Breach

17.1.1 If either Party becomes aware that it is or could be in breach of any of the provisions of this Agreement, the Grid Code or any relevant safety regulation or other requirement in force at the time (the “Breaching Party”), then such Breaching Party shall as soon as reasonably practicable, but no later than fourteen (14) days, notify the other Party (the “Non-Breaching Party”) of the breach or potential breach and advise whether in its opinion the breach can be remedied and the timescale for the remedy and giving sufficient details thereof to the Non-Breaching Party to enable it to assess the importance of the breach.

17.1.2 If either Party in its opinion believes (the “Notifying Party”) that the other Party is or could be in breach of any of the provisions of this Agreement or
the Grid Code or any relevant safety regulation or other requirement in force at the time (the “Potentially Breaching Party”) then the Notifying Party shall notify as soon as reasonably practicable, but no later than fourteen (14) days, the Potentially Breaching Party of the breach or potential breach and request the Potentially Breaching Party to advise whether the breach can be remedied and the timescale for the remedy and giving sufficient details thereof to enable the Notifying Party to assess the importance of the breach.

17.2 Notice to Remedy

17.2.1 If either Party has determined that the other Party is in breach of this Agreement or the Grid Code or any relevant safety regulation or other requirement in force at the time, the Parties shall discuss the breach in good faith with the aim of agreeing on a means of remedying the breach.

17.2.2 If the breach is capable of remedy the Parties shall agree upon a time period, but in any event no longer than sixty (60) days, within which the Breaching Party shall remedy the breach (the “Remedy Period”) provided that if such failure cannot be remedied by the Breaching or Potentially Breaching Party within such period of sixty (60) days with the exercise of reasonable diligence, then such Remedy Period shall be extended by mutual agreement for an additional reasonable period of time (not to exceed a further sixty (60) days).

17.3 Right to Terminate

(a) If the breach is capable of remedy but is not remedied before the end of the Remedy Period or (b) if the breach is incapable of remedy or (c) the Breaching Party is unwilling to remedy the breach and the breach poses a serious threat to the secure operation of the Transmission System and/or the Connection Facilities and/or the Customer’s Facility and/or the Customer’s Facility Connection Equipment and/or the Project Site and/or the Point of Connection, the Non-Breaching Party shall have the right to terminate this Agreement on giving the Breaching Party thirty (30) days written notice. Nothing in this Clause shall prevent any Party from availing itself of the usual remedies at law and/or to claim damages arising from such breach.

18 TERMINATION

18.1 Circumstances of Early Termination

18.1.1 Notwithstanding Clause 17, NamPower shall have, subject to the lapse of the respective prior notice period as per Clause 17 (Breach of this Agreement and the Grid Code) above, the right to terminate the Agreement:
(a) if the Customer has failed to make payment of a duly rendered invoice or any other amount due to NamPower under the Agreement and NamPower has given not less than sixty (60) days notice.

(b) if the Customer is declared bankrupt, placed in curatorship, enters into a scheme of arrangement (other than for the purpose of a solvent reconstruction or amalgamation approved by NamPower (such approval not to unreasonably withheld) and such proceedings were not cancelled within sixty (60) days from the date of commencement of such proceedings;

(c) if the Customer has failed to obtain or maintain any licences, authorisations or other approvals required to generate electricity in Namibia pursuant to Clause 3.2.2(a) (Consents and Approvals);

(d) on account of a material breach of the Grid Code or NamPower Technical Specification (under Annexure F of the Connection Offer Letter in Annexure 1) pursuant to Clause 17.1.1 (Notice of Breach); or

(e) on termination of the Power Purchase Agreement.

18.1.2 Notwithstanding Clause 17. the Customer, subject to the lapse of the respective prior notice period as per Clause 17 (Breach of this Agreement and the Grid Code) above, shall have the right to terminate the Agreement:

(a) if NamPower is declared bankrupt, placed in curatorship, enters into a scheme of arrangement (other than for the purpose of a solvent reconstruction or amalgamation approved by NamPower (such approval not to unreasonably withheld)) and such proceedings were not cancelled within 60 (sixty) days from the date of commencement of such proceedings;

(b) if NamPower has failed to obtain or maintain any licences, authorisations or other approvals required to transmit electricity in Namibia;

(c) on account of Force Majeure as contemplated under Clause 16.4 (Termination of Account of Force Majeure); or

(d) on termination of the PPA.

18.2 Termination and Disconnection

NamPower shall be entitled to disconnect the Customers Facility from the Transmission System following the termination of this Agreement.

19 LIABILITY FOR DAMAGE OR LOSS

19.1 Indemnity
19.1.1 Subject to Clause 19.1.2, each Party shall indemnify, defend and hold harmless the other Party against all losses, damages, claims, liabilities, costs or expenses which the other Party may suffer or incur by reason of any claim for or in respect of: (i) the death or personal injury of any individual or (ii) damage to property or (iii) any third-party liabilities and damages, arising out of the indemnifying Party’s default under this Agreement, save where that default is excused in terms of Clause 16 (Force Majeure) of this Agreement, except to the extent that the Party seeking to be indemnified is at fault or is negligent.

19.1.2 Indemnification required from a Party under Clause 19.1.1 shall be capped at N$…………… (………… Namibian Dollars), VAT excluded. In the event that any losses, claims or damages in relation to any death or personal injury arises out of or results from the joint or concurrent negligence or the intentional conduct of both Parties, each Party shall be liable in proportion to its degree of negligence or fault. The Parties shall make all reasonable endeavours to mitigate any losses they may suffer as a result of the breach of any of the other Party's material obligations under this Agreement.

19.1.3 Neither Party shall be liable for the other Party’s losses save as expressly provided for in this Agreement.

19.2 Damages

Other than as provided in this Agreement and in the PPA, in no event shall either Party be liable to the other Party, at law or in equity and whether based on contract, tort or otherwise, for any indirect, incidental, special or consequential damages incurred by such Party or any third party as a result of the performance or non-performance of the obligations imposed pursuant to this Agreement, irrespective of the causes thereof, including fault or negligence. To the extent that any damages required to be paid hereunder are liquidated, the Parties acknowledge that such damages are difficult or impossible to determine, or otherwise obtaining an adequate remedy is inconvenient, and the liquidated damages constitute a reasonable approximation of the harm or loss that may be suffered by the affected Party.

20 DISPUTE RESOLUTION

20.1 Procedure

20.1.1 If any dispute arises relating to this Agreement or any claims for damages or otherwise are made as the result of breach of any obligation hereunder, the Parties shall meet and use their reasonable efforts to resolve such dispute through good faith negotiation. The Parties acknowledge the ECB’s entitlement to mediate the settlement of certain disputes between
the Parties as provided in the Generation Licence. The Parties shall follow the applicable dispute resolution as set by the ECB

20.1.2 Should the Parties fail to resolve such dispute in accordance with Clause 20.1.1 above within seven (7) days of their meeting or such longer period as the Parties may agree, the matter shall be elevated to chief executive level for resolution.

20.1.3 Should the chief Executives of the Parties fail to resolve such dispute in accordance with Clause 20.1.2 above within fourteen (14) days of their meeting or such longer period as the Parties may agree, any Party may refer such dispute or difference (except for a technical dispute which shall be dealt with in accordance with Clause 20.2) to arbitration to be undertaken by three (3) arbitrators agreed to by the Parties in accordance with Clause 20.3 (Arbitration). Should the Parties fail to agree on arbitrators within 14 (fourteen) days of the referral of the dispute to arbitration, the President of the Law Society of Namibia shall appoint the arbitrators from a list of approved arbitrators having the requisite experience and expertise in the field of the dispute.

20.2 Reference of Technical Disputes to Independent Expert

20.2.1 If the Parties are unable to resolve a technical dispute through good faith negotiation or resolution by the Chief Executives, the dispute shall be resolved by an independent person that is a technical expert on the matter under dispute (“Independent Expert”) agreed between and appointed by both Parties.

20.2.2 The Parties agree that the Independent Expert shall act as an expert and not as an arbitrator and shall decide those matters referred or reserved to the Independent Expert under this Agreement by reference to Prudent Industry Practice using the Independent Expert’s skills, experience and knowledge and with regard to such other matters as the Independent Expert in the Independent Expert’s sole discretion considers appropriate.

20.2.3 The Parties agree they will make every effort to supply whatever information, documents and materials the Independent Expert considers necessary to address the matters referred and will act in good faith regarding matters failing within the ambit of this Clause 20.2.

20.2.4 The Independent Expert will endeavour to provide the Independent Expert’s decision within the shortest time possible. In most cases, it is expected that the Independent Expert should be able to supply a decision to the Parties within fourteen (14) Business Days. If for any reason, the Independent Expert requires longer than fourteen (14) Business Days, the Independent Expert will provide the Parties a written explanation for the required extension of time with an estimate of the likely timetable for a decision on the matter referred.
20.2.5 The Parties shall share equally the fees and expenses of the Independent Expert.

Should the Independent Expert fail to resolve such dispute in accordance with this Clause 20.2 within fourteen Business Days or such longer period as the Parties may agree, any Party may refer such dispute or difference to arbitration in accordance with the provisions of Clause 20.1.3 (Procedure) and in accordance with Clause 20.3 (Arbitration).

20.3 Arbitration

20.3.1 Except where otherwise specifically provided for, any dispute at any time between the Parties or any failure by them to reach agreement in regard to any matter arising out of or in connection with this Agreement or its interpretation or effect, or arising in any way out of the termination or failure of any of them, shall be submitted to arbitration pursuant to the arbitration laws of Namibia. In the event the arbitration laws are deemed insufficient, the AFSA rules shall apply.

20.3.2 The decision of the arbitrators shall be given in writing as soon as reasonably possible and not later than six (6) weeks from the date on which the hearing, including argument, was concluded. The decision shall be final and binding upon the Parties and shall not be subject to appeal to any court or tribunal of any kind unless manifestly unlawful or unjust, provided however that any Party may take action in any court of competent jurisdiction to enforce the arbitrators' decision, including its award in respect of the costs of arbitration.

20.3.3 Each Party shall bear its own costs and the costs of arbitration shall be borne equally by the Parties, unless the arbitrators decide otherwise.

20.3.4 Arbitration shall be conducted in accordance with the arbitration laws of Namibia and shall be held in Windhoek before three (3) arbitrators. The arbitration shall be conducted in the English language.

20.3.5 The Parties may be legally represented and may present evidence by independent experts or as otherwise permitted by the arbitrators.

20.3.6 The aforesaid notwithstanding, any Party shall be entitled to approach any competent court having jurisdiction for urgent relief on an interim basis, pending the finalisation of the resolution of the dispute in terms of this Clause 20.2 (Arbitration).

20.4 Obligations during Disputes

20.4.1 While a dispute is continuing, the Parties are required to continue to perform their respective obligations, including the payment of the Energy

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Payment according to the PPA, under this Agreement until such dispute has been fully and finally resolved.

20.4.2 Where a dispute has been referred for resolution by arbitration in accordance with the arbitration laws of Namibia, then neither of the Parties shall be entitled to exercise any rights or election arising in consequence of any alleged default by the other arising out of the subject matter of the dispute until the dispute has been resolved by the decision of the arbitrators.

20.5 Proceedings in Confidence

All proceedings held by the Parties for the purpose of resolving disputes shall be held in private and except as permitted or required by any other provision of this Agreement, shall not be open to third parties, it being agreed that for the purposes of this Agreement the record and outcome of any proceedings shall also constitute Confidential Information of each Party hereto and safeguarded in accordance with the provisions of Clause 22 (Confidentiality).

21 CESSION AND ASSIGNMENT

21.1 Prior Consent

The Parties shall not be entitled to cede or assign this Agreement or any of its rights and obligations without the prior written consent of the other Party except to the lenders for the purpose of providing security under the Finance Documents or an assignment by the Customer to its Affiliate and/or a wholly owned subsidiary. Such consent shall not be unreasonably withheld: Provided that where such cession or assignment requires approval under the Act, such approval must first be obtained before such cession or assignment becomes effective.

21.2 Restructuring

12.2.1 Notwithstanding the above, NamPower shall be entitled to cede, assign or transfer its rights and obligations under this Agreement to a third party but only in the context of: (i) the dissolution of NamPower; (ii) the restructuring, amalgamation, reorganisation or analogous event of NamPower; or (iii) the transfer of all or any material part of NamPower's property, assets and undertaking to a third party or successor, provided that, in each case such dissolution, restructuring, amalgamation, reorganisation, analogous event or transfer is at the instruction of or sanctioned by the Government of the Republic of Namibia or any Competent Authority.

12.2.2 In the event of a restructuring or reorganisation of NamPower resulting in the cession or assignment of this Agreement to an Affiliate of NamPower, NamPower shall be jointly and severally liable with the newly created entity for the performance of its obligations in terms of this Agreement.
12.2.3 In the event that the restructuring or reorganisation of NamPower resulting in the cession or assignment of this Agreement to an entity not forming part of the NamPower group of companies, such restructuring or reorganisation shall not take place without the prior written consent of the Seller's lenders, provided that such consent shall not be unreasonably withheld.

22 CONFIDENTIALITY

22.1 Confidential Information

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

22.2 Duty to Maintain Confidentiality

Each Party will use the same means as it uses to protect its own Confidential Information, but in no event less than reasonable means, to prevent the disclosure and to protect the confidentiality of such information. No information referred to in Clause 22.1 (Confidential Information) will be disclosed by the recipient Party, its agents, representatives or employees without the prior written consent of the other Party (other than to its advisers and the lenders and their advisers).

22.3 Exclusions

These provisions shall not apply to information which is:

(a) publicly known or has become publicly known through no unauthorised act of the recipient Party;

(b) rightfully received by the recipient Party from a third party;

(c) independently developed by the recipient Party without use of the other Party’s information;

(d) disclosed by the other Party to a third party without similar restrictions;

(e) required to be disclosed pursuant to a requirement of a Competent Authority or any applicable Law, so long as the Party required to disclose the information gives the other Party prior notice of such disclosure; or

(f) publicly disclosed with the other Party’s written consent.

22.4 Disclosure

All media releases, public announcements and public disclosures by any Party or their respective employees or agents relating to this Agreement or its subject matter,
including without limitation promotional marketing material, shall be co-ordinated with and approved by each Party prior to the release thereof.

The foregoing will not apply to any announcement intended solely for internal distribution by any Party or to any disclosure required by legal, accounting or regulatory requirements beyond the reasonable control of the Party in question.

22.5 **Survival of Termination**

Termination of this Agreement shall not affect the accrued rights and liabilities of the Parties hereto and the provisions of Clause 18 (Termination), Clause 20 (Dispute Resolution), Clause 22 (Confidentiality) and Clause 24.9 (Applicable Law and Jurisdiction) shall continue to have effect notwithstanding the termination of this Agreement.

23 **NOTICES**

23.1 **Giving of Notices**

23.1.1 Any notice or other communication given or made under or in connection with the matters contemplated by this Agreement shall be in writing and sent by hand or facsimile. Any such notice or other communication shall be addressed as provided in Clause 23.2 (Address for Notices) and, if so addressed, shall be deemed to have been duly given or made as follows:

(a) if sent by hand, upon delivery at the physical address of the relevant Party;

(b) if sent by facsimile, on the Business Day following the successful transmission of the facsimile;

(c) if sent by electronic mail, upon receipt by the sender of a "read" receipt or an acknowledgement of receipt of the notice or other communication by the intended recipient.

23.1.2 Each notice, demand, request, statement, instrument, certificate or other communication given, delivered or made by one Party to the other under or in connection with this Agreement shall be in English.

23.2 **Address for Notices**

The relevant addressee, address and facsimile number of each Party for the purposes of this Agreement subject to Clause 23.3 (Notice of Change of Address) are as follows:
In the case of NamPower
Addresses: 15 Luther Street
P.O. Box 2864
Windhoek
Namibia
Fax: +264 61 232 805
Email: legal@nampower.com.na
Attention: The Chief Legal Advisor

In the case of [●]
Addresses:
Windhoek
Namibia
Fax: +264
Email:
Attention: (Director)

23.3 Notice of Change of Address

Either Party must notify the other Party of a change to its name or relevant address in writing no less than 30 (thirty) days before the change is due to take place provided that a change of address must be to an address in Namibia.

24 MISCELLANEOUS

24.1 No Partnership

This Agreement does not create, nor is it evidence of a partnership or joint enterprise of any kind. Rather, the Parties are and shall remain independent and no Party has the power to bind the other for any purpose (except as otherwise specifically provided in this Agreement). Nothing contained in this Agreement shall be construed to constitute either Party as any of the other Party’s attorney, partner or agent.

24.2 No Waiver of Rights

No delay, neglect, grant or extension of time or forbearance on the part of either Party in enforcing against the other Party any provision of this Agreement shall be deemed to be a waiver of or shall in any way prejudice any right of that Party under this Agreement. No waiver by either Party of any default or defaults by the other Party in the performance of any of the provisions of this Agreement shall operate or be construed as a waiver of any other or further default or defaults whether of a like or different character; or shall be effective unless in writing duly executed by a duly authorised representative of the waiving Party. Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions, and provisions of this Agreement nor time or other indulgence granted by one Party to the other whether in writing or not shall act as a waiver of such breach or
acceptance of any variation or the relinquishment of any such right or any other right under this Agreement which shall remain in full force and effect.

24.3 **No Third Party Rights**

This Agreement is intended solely for the benefit of the Parties. Other than as specifically provided for in this Agreement, nothing in this Agreement shall be construed to create any duty to, or standard of care with reference to, or any liability to any Person not a Party to this Agreement.

24.4 **Direct Agreement**

NamPower recognises that the Seller may wish to finance or refinance the Power Project through limited recourse or other financing and that the entering into of the a Direct Agreement shall be a precondition to the provision of such finance. NamPower will cooperate in good faith with the Seller and its Lenders to agree and enter into such a Direct Agreement.

24.5 **Severability**

Each Party agrees that it will perform its obligations under the terms of this Agreement in accordance with all applicable Laws, rules and regulations now or hereafter in effect. If any Clause or Clauses of this Agreement is found to be illegal or unenforceable, then the Parties shall take all possible steps to re-negotiate and to re-structure this Agreement in such a manner that it will comply with provisions of such laws. If this cannot be done, the offending Clause or Clauses will be removed and regarded as *pro non scripto*, and the remaining Clauses of this Agreement shall remain binding on the Parties; provided that, where necessary, such remaining Clauses shall be amended as necessary by mutual agreement of the Parties.

24.6 **Amendments**

This Agreement may be amended or modified only in writing and such amendment shall executed by the Parties hereto which states specifically that it is intended to amend or modify this Agreement. In the event of changes to the Grid Code, which require changes to this Agreement, the Parties shall negotiate in good faith to incorporate such changes into this Agreement.

24.7 **Counterparts**

This Agreement may be executed in any number of identical counterparts, each of which when executed and delivered shall constitute an original, but all the counterparts shall together constitute one and the same agreement. No counterpart shall be effective until each Party has executed at least one part or counterpart.

24.8 **Anti-Corruption Measures**

Each Party undertakes not to offer, directly or indirectly, advantage to third parties and not to request, promise or accept for its own benefit or that of a third party,
illicit gifts with the purpose of obtaining favourable judgement in the performance of this Agreement or in relation to any other matters between the Parties whether or not directly related to this Agreement. Such undertaking shall bind each Party and its directors, officers, employees, authorised agents, contractors, subcontractors and professional advisers.

24.9 **Applicable Law and Jurisdiction**

This Agreement shall be governed, construed and interpreted in accordance with the laws of Namibia and the Parties consent to the non-exclusive jurisdiction of the High Court of Namibia, subject to the provisions of Clause 20 (Dispute Resolution). The Parties agree that a judgment in any proceedings in connection with this Agreement by the Namibian courts shall be binding upon them and may be enforced against them in any other jurisdiction.

24.10 **Change in Law**

Nothing in this Agreement shall prejudice or affect the rights or powers of either Party under any statute, statutory instrument or regulation for the time being in force. If at any time following the date of signature of this Agreement a change in law results in a Change in Cost as anticipated in the PPA the Parties shall, as soon as is reasonably practical, meet to negotiate the adjustment of this Agreement to ensure that the Customer or NamPower is not prejudiced as a result of such change in cost and the same mechanism of a Change in Costs as set out in the PPA (Clause 16) shall apply to this Agreement with the necessary adjustments.

24.11 **Waiver of Immunity**

The Parties hereby unconditionally and irrevocably agree that the entry into and performance of this Agreement by the Parties constitute private and commercial acts and neither of the Parties nor any of their assets is entitled to immunity from arbitration or legal process or jurisdiction on grounds of sovereignty or otherwise.

signature page to follow
IN WITNESS WHEREOF this Agreement have been executed as a deed by the Parties with the intent that it is delivered on the day and year first above written:

Executed as a Deed by

NAMIBIA POWER CORPORATION (PROPRIETARY) LIMITED

acting by

[Name of authorised signatory]  

and

[Name of authorised signatory]  

Executed as a Deed by

[●]

acting by

[Name of authorised signatory]  

and

[Name of authorised signatory]  

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